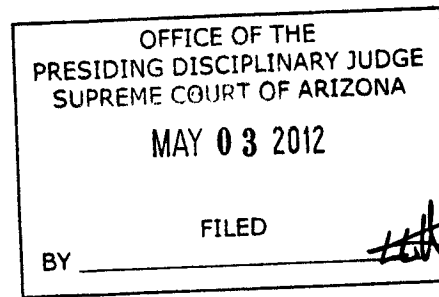


David L. Sandweiss, Bar No. 005501
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7272
Email: LRO@staff.azbar.org



Nancy A. Greenlee, Bar No. 010892
Attorney and Counselor at Law
821 E. Fern Dr. N
Phoenix, AZ 85014-3248
Telephone: 602-264-8110
Email: nancy@nancygreenlee.com
Respondent's Counsel

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

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

Evan A. Nielsen,
California Bar No. 239691,

Respondent.

PDJ-2012- 9040

**AGREEMENT FOR DISCIPLINE
BY CONSENT (PRE-FILING)**

No. 11-3433

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Evan A. Nielsen, who is represented in this matter by counsel, Nancy A. Greenlee, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.¹ Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 5.5, 7.1, and 7.5, and Rule 54(c). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand. Respondent also agrees to pay the costs and

¹ All rules referred to herein are the Arizona Rules of the Supreme Court, unless specifically designated otherwise.

expenses of the disciplinary proceeding.² The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

COUNT ONE of ONE (State Bar File No. 11-3433)

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of California where he was admitted on December 1, 2005. He has never been admitted to practice law in Arizona.

2. On October 13, 2010, in State Bar matter No. 10-1027, a Probable Cause Panelist issued to Respondent an Informal Reprimand (currently, Admonition) for violating Rule 42, ER 5.5, and Rule 31, both of which forbade the unauthorized practice of law ("UPL") in Arizona.

3. On October 18, 2010, the State Bar wrote to Respondent (through his counsel) in matter No. 10-1027, and provided detailed information regarding the nature of the UPL violations, and the evidence supporting same. Reference was also made to use of "Esq" following Respondent's name. Further, Respondent was reminded that his first UPL case resulted in a dismissal with comment and in this, the second UPL case, he was being informally reprimanded. Respondent was informed that any future instances of the unauthorized practice of law would result in the State Bar seeking more formal discipline.

4. In June 2011, the Arizona Supreme Court Administrative Office of the Courts ("AOC") initiated an investigation into Respondent's violation of certified legal document preparer ("CLDP") rules and claims of UPL. Those rules appear, respectively, in the Arizona Supreme Court Rules and the Arizona Code of Judicial Administration.

² Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

5. The investigation was prompted by a consumer complaint alleging that Respondent exceeded the authority of a CLDP, thereby engaging in UPL, when he attempted to negotiate a settlement of a property dispute (horse trailer) between two citizens. The conduct occurred between June 8 – 14, 2011, eight months after the State Bar issued Respondent the Order of Informal Reprimand and letter described above in paragraphs 2 and 3.

6. On August 31, 2011, Respondent signed a Consent Agreement that provided the following:

1. Nielsen is a licensed California attorney. Nielsen acknowledges that licensure in one jurisdiction does not obviate the responsibility to comply with the requirements of a Legal Document Preparer certification and the practice of law in Arizona. Nielsen for himself and Nielsen & Associates, LLC admits that he used the designation of "Esq.," and "law firm" in connection with his name or the LLC in electronic mail and a website directed to actual or anticipated customers in Arizona in violation of Arizona Supreme Court Rule 31, ACJA 7-201(F)(1), ACJA 7-208(F)(2), and (J)(5)(c) which constitutes grounds for discipline under ACJA 7-201(H)(6)(a), (H)(6)(j), (H)(6)(k)(3), and (H)(6)(k)(9).

2. Nielsen admits that from June 8, 2011, to June 14, 2011, he exceeded the roles and responsibilities of a holder of a Legal Document Preparer Certificate when he participated in discussions that involved recommending remedies and options for and participated in negotiations relating to return of property belonging to a customer, Ms. Kruszka. After June 14, 2011, Nielsen did not participate in further discussions and Arizona Attorney Dwight Bickel handled all further communication between Ms. Kruszka and Mr. and Mrs. Kempf. Nielsen admits that the conduct described in this paragraph constitutes violation of Arizona Supreme Court Rule 31(b), ACJA 7-201(F)(1), ACJA 7-208(F)(2) and (J)(5)(b) which constitutes grounds for discipline under ACJA 7-201(H)(6)(a) and (H)(6)(k)(3).

3. Nielsen admits that he failed to disclose being the subject of a complaint to the State Bar of Arizona, file number 09-2645, in applications he submitted to the Division on November 30, 2009, for himself and Nielsen & Associates, LLC, for individual and business entity certification as Legal Document Preparers, in violation of ACJA 7-201(F)(5)(a), ACJA 7-208(F)(2), and (J)(1)(a) which constitutes grounds for discipline under ACJA 7-201(H)(6)(a), (H)(6)(j), (H)(6)(k)(3), and (H)(6)(k)(11).

4. Nielsen admits that he failed to disclose being the subject of a "bar charge" by the State Bar of Arizona, file number 09-2465, on the application for individual renewal of his Legal Document Preparer certificate for the period 2011-2103 that he submitted to the Division on May 27, 2011, in violation of ACJA 7-201(F)(5)(a), ADA 7-208(F)(2), and (J)(1)(a) which constitutes grounds for discipline under ADA 7-201(H)(6)(a), (H)(6)(j), (H)(6)(k)(3), and (H)(6)(k)(11).

5. Nielsen admits that he failed to disclose being the subject of a complaint to the State Bar of Arizona, file number 10-1027, and the informal reprimand issued by the Arizona State Bar under that file number on October 13, 2010, on the application for individual renewal of his Legal Document Preparer certificate for the period 2011-2013 that he submitted to the Division on May 27, 2011, in violation of ADA 7-201(F)(5)(a), ACJA 7-208(F)(2), and (J)(1)(a) which constitutes grounds for discipline under ACJA 7-201(H)(6)(a), (H)(6)(j), (H)(6)(k)(3), and (H)(6)(k)(11).

7. Respondent consented to revocation of his individual legal document preparer certification and his business entity certification (Nielsen & Associates, LLC); he agreed to comply with a cease and desist order by which he and his business entity are enjoined from preparing legal documents, representing themselves to the public as certified legal document preparers, or conducting any activity constituting UPL; and he agreed to pay \$1,411.75 in costs.

8. Through counsel, Respondent explained that at all times he thought he was working under the supervision of an Arizona licensed attorney who managed the Arizona branch of Respondent's California law office. Respondent explained that his firm's client knew that he was not authorized to practice law in Arizona and that the firm's client was happy with the work provided by the firm. Respondent explained that he was not operating as a CLDP and despite having obtained that certification, he had never acted as a document preparer. Respondent agreed to the Consent Agreement in part because the AOC has a lower burden of proof ("preponderance of the evidence"). Respondent explained further that prior to the conclusion of the CLDP matter, he hired a new Arizona office managing attorney who would be (and is) present in the office full-time because Respondent determined that not having an Arizona attorney present full-time in the office had contributed to some of the difficulties at issue. Respondent explained that he did not report State Bar File No. 09-2465 to LDP Board because he already had filed his initial application to become a CLDP prior to receiving notice of the bar charge and did not know he had to supplement his application. He explained that State Bar File Nos. 09-2465 and 10-1027 were not reported in conjunction with his renewal application because a staff member filled out and submitted the application online without confirming with

Respondent the accuracy of the information submitted. While Respondent acknowledged that he was responsible for the content of the application, he contends that he did not knowingly or intentionally mislead the LDP board.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 5.5, 7.1, and 7.5, and Rule 54(c).

CONDITIONAL DISMISSALS

Given the State Bar's burden to prove by clear and convincing evidence that Respondent acted with a knowing or intentional mental state, the State Bar conditionally agrees to dismiss the charge that Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of ER 8.4(c).

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Reprimand and payment of costs.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have

engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

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

The parties agree that Respondent violated his duty to the legal profession, his mental state was "knowing", and there was potential injury caused by his misconduct. The parties agree that *Standard* 8.3 is applicable in this matter. It states:

Reprimand is generally appropriate when a lawyer . . .

(b) has received an admonition for the same or similar misconduct and engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

Aggravating and mitigating circumstances

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

In aggravation:

- (a) prior disciplinary offenses;
- (c) a pattern of misconduct;
- (d) multiple offenses; and
- (i) substantial experience in the practice of law.

In mitigation:

- (b) absence of a dishonest or selfish motive;
- (d) good faith effort to rectify the consequences of misconduct (by recognizing the need for a full-time Arizona managing attorney and hiring same)
- (e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings;
- (k) imposition of other penalties or sanctions; and

(l) remorse.

Discussion

The presumptive sanction is reprimand and given that Respondent is not admitted in Arizona, reprimand is the only formal sanction practicable.

CONCLUSION

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

DATED this 30th day of May, 2012.

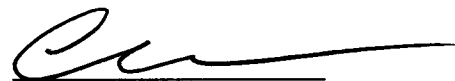
STATE BAR OF ARIZONA



David L. Sandweiss
Senior Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 30 day of APRIL, 2012.



Evan A. Nielsen
Respondent

DATED this 30 day of APRIL, 2012.



Nancy A. Greenlee
Counsel for Respondent

Approved as to form and content:



Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 3rd day of May, 2012.

Copies of the foregoing mailed/emailed
this 3rd day of May, 2012, to:

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

Copy of the foregoing emailed
this 3rd day of May, 2012, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 3rd day of May, 2012, to:

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

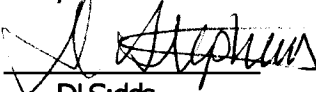
By: 
DLS:dds

EXHIBIT "A"

Statement of Costs and Expenses

In the Matter of a Non-Member of the State Bar of Arizona,
Evan A. Nielsen, Respondent

File No(s). 11-3433

Administrative Expenses

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

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

General Administrative Expenses for above-numbered proceedings

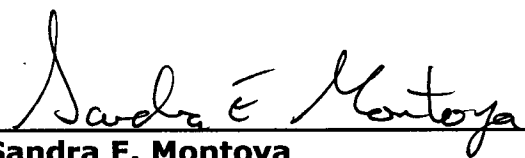
\$1,200.00

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

Staff Investigator/Miscellaneous Charges

Total for staff investigator charges \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED **\$1,200.00**



Sandra E. Montoya
Lawyer Regulation Records Manager

4-23-12
Date

EXHIBIT "B"

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

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

**Evan A. Nielsen,
California Bar No. 239691,**

Respondent.

PDJ-2012-

FINAL JUDGMENT AND ORDER

No. 11-3433

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

IT IS HEREBY ORDERED that Respondent, **Evan A. Nielsen**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 5/9/12

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____.

DATED this ____ day of _____, 2012.

**The Honorable William J. O'Neil
Presiding Disciplinary Judge**

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this ____ day of _____, 2012.

Copies of the foregoing mailed/emailed
this ____ day of _____, 2012, to:

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

Copy of the foregoing hand-delivered/emailed
this ____ day of _____, 2012, to:

David L. Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

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

By: _____

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

FILED

APR 16 2012

STATE BAR OF ARIZONA

BY

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

No. 11-3433

EVAN NIELSEN

PROBABLE CAUSE ORDER

Respondent

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 13, 2012, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation, and Respondent's Response.

By a vote of 7-0-2,¹ the Committee finds probable cause exists to file a complaint against Respondent in File No. 11-3433.

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

Parties may not file motions for reconsideration of this Order.

DATED this 13th day of April, 2012.

Lawrence F. Winthrop

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

¹ Committee members Daisy Flores and Karen Osborne did not participate in this matter.

Original filed this 16th day
of April, 2012, with:

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

Copy mailed this 17th day
of April, 2012, to:

Ms. Nancy A. Greenlee
Attorney at Law
821 East Fern Drive North
Phoenix, Arizona 85014-3248
Respondent's Counsel

Copy emailed this 17th day
of April, 2012, to:

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

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

by: 