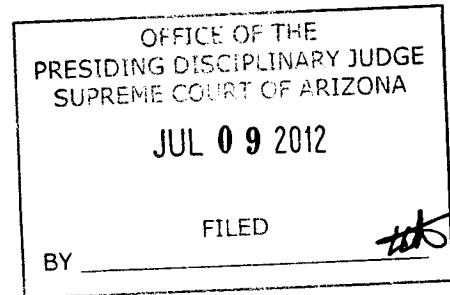


David L. Sandweiss, Bar No. 005501
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7272
Email: LRO@staff.azbar.org



Harold Hyams, Bar No. 003731
Harold Hyams and Associates, PC
680 S. Craycroft
Tucson, AZ 85732-3748
Telephone: 520-790-6500
Email: HaroldHyams@aol.com
Respondent

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

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

Harold Hyams,
Bar No. 003731,

Respondent.

PDJ-2012-9034

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

State Bar No. 11-1333

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Harold Hyams, who has chosen not to seek the assistance of counsel, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.3 and 1.4. Upon acceptance of this agreement, Respondent agrees

to accept imposition of the following discipline: Admonition and Probation. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on April 27, 1974. Respondent was also admitted to practice in New York in 1971.

COUNT ONE of ONE (State Bar File No. 11-1333)

2. Complainant Richard Grabwoski was injured on approximately June 14, 2009, as a result of getting entangled in a utility company wire near his property.

3. On approximately July 6, 2009, Mr. Grabwoski retained Respondent to represent him in a claim against the culpable utility on a contingent fee plus costs basis.

4. On July 6, 2009, Mr. Grabwoski wrote to Respondent and informed him of (among other things) the following:

- a. he enclosed pictures of the cable wire outside his property;
- b. he told Respondent, "To this day, the wire has not been picked up by a utility company nor has anyone made any effort to warn the neighborhood of its potential danger. I spoke to one of your associates about what happened on June 15th";
- c. he described the incident as one involving "a cable wire";

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

d. he told Respondent, "We called APS (Arizona Power Supply) and asked if it was one of theirs. We were told that it did not belong to them. We heard of a new cable company coming into the neighborhood and believe that it might be theirs. But we don't have a name. . . . From the looks of it the company responsible deliberately put the wire and just left it there. No one is claiming ownership. . . . If you need any more information, please feel free to call me anytime"

5. Through January of 2011, Mr. Grabwoski and his wife called periodically to ascertain the status of Mr. Grabwoski's case and were unable to reach Respondent personally.

6. Through January of 2011, Mr. Grabwoski and his wife were never informed by Respondent's legal assistant "NFB" that there was any particular problem with the case.

7. Respondent's "Notes by Matter", containing NFB's summary of her activities in the case, reflect that Respondent believed the utility responsible for Mr. Grabwoski's injury was Qwest.

8. In August and September 2009, Respondent sent notice of representation letters to Qwest, but received no acknowledgments or responses.

9. On October 13, 2009, NFB told Respondent that "we have not heard back from Qwest Legal Dept. I sent 2 Atty rep ltrs., the second I sent certified."

10. Respondent instructed NFB "to check back with him in a month. He thinks they may have gone bankrupt."

11. On November 19, 2009, NFB told Respondent that Qwest still had not responded to Respondent's notice of representation letters. Respondent instructed NFB to file suit ("HH said to file suit").

12. On December 23, 2009, NFB notified Mrs. Grabwoski that Respondent would file suit in Mr. Grabwoski's case "but there were others in front of his."

13. Respondent did not inform Mr. Grabwoski that Qwest had failed to respond to Respondent's notice of representation letters or that Respondent believed Qwest had gone bankrupt.

14. NFB's notes through January 2011 reflect that Mr. Grabwoski had several serious medical problems some of which may have been directly attributable to his fall, some of which may have been aggravations of preexisting conditions, and some of which were questionably related (if at all) to his fall.

15. Some time before April 5, 2011, Mr. Grabwoski called Respondent who told Mr. Grabwoski that he could no longer represent him because Respondent was closing his law firm and retiring.

16. On April 5, 2011, a little more than two months prior to expiration of the statutory limitation period in Mr. Grabwoski's case, Respondent wrote a letter to Mr. Grabwoski saying that he would no longer represent Mr. Grabwoski because he could not definitively ascertain who the proper parties were to sue.

17. In his letter, Respondent suggested that Mr. Grabwoski retain a new attorney.

18. In late April of 2011, Mr. Grabwoski reported Respondent's conduct to the State Bar and informed a State Bar A/CAP counsel that he tried to retain other counsel but no one with whom he communicated was willing to take his case at that late date.

19. In May 2011, Respondent told A/CAP counsel that he would file suit for Mr. Grabwoski a few days before the limitation period expired to give Mr. Grabwoski time to find another attorney.

20. Respondent admitted to A/CAP counsel that he had prepared suit documents long before he discharged Mr. Grabwoski "and it sat on my desk because I was having a very hard time deciding whether or not to file suit." He apologized for not explaining this to Mr. Grabwoski earlier as well as for not explaining to him that, in Respondent's opinion, Mr. Grabwoski's case was a difficult one to win because of unclear medical and causation issues.

21. In June of 2011, Respondent filed suit for Mr. Grabwoski in Pima County Superior Court, naming several Qwest-related companies as defendants.

22. After Qwest was served with the summons and complaint, it removed the case to Federal Court.

23. In the process of subsequent discovery and disclosure, Respondent learned that Qwest never owned or was responsible for the cable that caused Mr. Grabwoski's injuries.

24. In December of 2011, the parties stipulated to dismiss the suit with prejudice.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3 and 1.4.

CONDITIONAL DISMISSALS

The State Bar conditionally agrees to dismiss the charge that Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 8.1, on the ground that there is not clear and

convincing evidence that Respondent knowingly failed timely to comply with the State Bar's lawful demand for information and to furnish copies of requested records and files. The State Bar also conditionally agrees to dismiss the charge that Respondent violated Rule 54(d)2.C, Ariz. R. Sup. Ct., on the ground that it is fairly debatable whether a violation of that rule requires a knowing mental state as Respondent contends, or whether no specific mental state is required.

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: Admonition and Probation.

PROBATION TERMS

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.3 and 1.4, and Respondent's procedures and criteria for case selection, retention, scaling back his practice to keep and focus on the more meritorious or promising matters, and withdrawal in the event Respondent chooses no longer to represent a client in a matter that turns out to be of less quality than originally anticipated. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The

probation period will commence at the time of the entry of the judgment and order and will conclude two years from that date. Respondent shall be responsible for any costs associated with LOMAP.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days 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, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

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

The duty violated

ERs 1.3 and 1.4 state duties owed to clients. Mr. Hyams, therefore, violated his duty to his client, Mr. Grabwoski. The most important ethical duties are those obligations which a lawyer owes to clients. *Standards* II., Theoretical Framework.

The lawyer's mental state

Mr. Hyams negligently failed to exert reasonable diligence on Mr. Grabwoski's behalf, and negligently failed to communicate reasonably with him.

The extent of the actual or potential injury

There was potential harm to Mr. Grabwoski as a result of Mr. Hyams' negligent failures.

Based on the foregoing considerations, ABA Standards 4.43 and 4.44 apply. They read:

4.43: Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

4.44: Admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

Thus, the presumptive sanction in this matter is admonition, reprimand, or something between the two. Admonition with Probation fills the bill.

Aggravating and mitigating circumstances

The following aggravating and mitigating factors should be considered.

In aggravation:

(a) prior disciplinary offenses--censure and probation in 2010 for conduct during a complex toxic exposure case with multiple appeals; Diversion in 2011 for ER 1.15 (medical lien);

(d) multiple offenses;

(h) vulnerability of victim; and

(i) substantial experience in the practice of law.

In mitigation:

(b) absence of a dishonest or selfish motive;

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

(g) character or reputation (bar counsel is aware of evidence supporting Respondent's good character and reputation).

Proportionality

Discipline panels no longer consult proportionality cases as a matter of course. See Rule 58(k), Ariz. A. Sup. Ct. Rather, panels conduct a proportionality analysis "if appropriate." In recent years, the ER 1.3 and 1.4 cases generally have included numerous other violations that made disbarment or suspension the appropriate sanction. Such is not the case here. The closest recent similar case currently on the discipline matrix is the *Matter of Nancy D. Petersen*, No. 08-1964, in which the former Arizona Supreme Court Disciplinary Commission voted 7-1 in a primarily ER 1.3 and 1.4 case to assess an Informal Reprimand (currently, Admonition) and Probation. Ms. Petersen failed to adequately communicate with her client and to comply with reasonable requests for information. Also, she improperly used a retainer agreement for the representation instead of a flat fee agreement. She violated ERs 1.4(a)(3), 1.4(a)(4), 1.5 and 8.4(a). There was one aggravating factor, four mitigating factors, her mental state was negligent, and there was

potential injury. Dissenting Commissioner Todd would have assessed a censure (currently, Reprimand).

Discussion

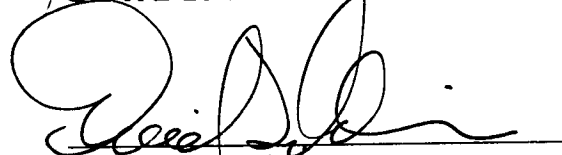
The parties conditionally agree that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. The aggravating and mitigating factors offset such that the presumptive sanction of admonition with probation should apply. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

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

DATED this 20th day of July, 2012.

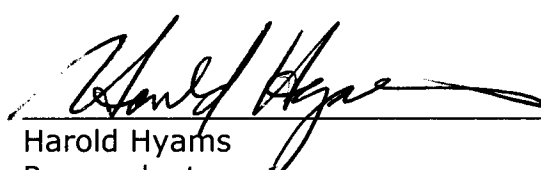
STATE BAR OF ARIZONA



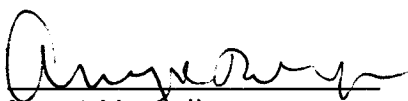
David L. Sandweiss
Senior Bar Counsel

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

DATED this 6 day of July, 2012.


Harold Hyams
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 9th day of July, 2012.

Copies of the foregoing mailed/emailed
this 9th day of July, 2012, to:

Harold Hyams
Harold Hyams and Associates, PC
680 S. Craycroft
Tucson, AZ 85732-3748
Email: HaroldHyams@aol.com
Respondent

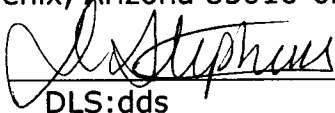
Copy of the foregoing emailed
this 9th day of July, 2012, to:

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 9th day of July, 2012, to:

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

By:

A handwritten signature in black ink, appearing to read "DLS:dds", written over a horizontal line.

DLS:dds

EXHIBIT "A"

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Harold Hyams, Bar No. 003731, Respondent

PDJ # 2012-9034

File No(s). 11-1333

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.

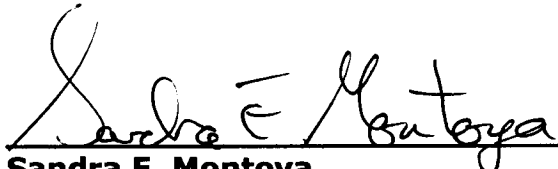
Staff Investigator/Miscellaneous Charges

06/26/12 Travel and mileage for bar counsel to hearing \$ 153.88

Total for staff investigator charges \$ 153.88

TOTAL COSTS AND EXPENSES INCURRED

\$1,353.88



Sandra E. Montoya

Lawyer Regulation Records Manager

6-29-12

Date

EXHIBIT "B"

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

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

**Harold Hyams,
Bar No. 003731,**

Respondent.

PDJ-2012-9034

FINAL JUDGMENT AND ORDER
State Bar No. 11-1333

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, **Harold Hyams**, is hereby admonished with probation for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective _____.

IT IS FURTHER ORDERED that Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.3 and 1.4, and Respondent's procedures and criteria for case selection, retention, scaling back his practice to keep and focus on the more meritorious or promising matters, and withdrawal in the event Respondent chooses

no longer to represent a client in a matter that turns out to be of less quality than originally anticipated. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of this judgment and order and will conclude two years from that date. Respondent shall be responsible for any costs associated with LOMAP.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days 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, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ \$1,353.88.

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:

Harold Hyams
Harold Hyams and Associates, PC
P.O. Box 13748
680 S. Craycroft
Tucson, AZ 85732-3748
Email: HaroldHyams@aol.com
Respondent

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: _____