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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

DEC 06 2013

BY _____ FILED 

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Respondent

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

In the Matter of a Member of
the State Bar of Arizona,

FRED L. HOWE,
Bar No. 013270,

Respondent.

PDJ-2013-9098

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

[State Bar Nos. 10-1688, 11-1562,
11-1592, 11-1984, and 11-2359]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Fred L. Howe, who has chosen not to seek the assistance of counsel, hereby submit this Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.

On May 17, 2011, an *Order of Admonition, Probation, CLE, LOMAP and Costs* (Order of Admonition and Probation) was entered against Respondent in File No. 10-1688 (the order was signed on May 17, 2011, and filed on May 18, 2011). Thereafter, terms and conditions of probation were developed by the State Bar's

Law Office Management Assistance Program (LOMAP), as directed in the Order of Admonition and Probation.

On May 11, 2012, a *Final Judgment and Order* (Order of Suspension and Probation) was entered against Respondent in PDJ-2012-9010. Thereafter, terms and conditions of probation were developed by LOMAP and the State Bar's Member Assistance Program (MAP), as directed in the Order of Suspension and Probation.

A *Notice of Non-Compliance with Terms and/or Conditions of Probation* (Notice of Non-Compliance) was filed on November 1, 2013.

Respondent voluntarily waives the right to an adjudicatory hearing regarding the Notice of Non-Compliance, 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.

The complainants in the underlying matters that resulted in the Notice of Non-Compliance have not been notified of this agreement because this matter pertains solely to Respondent's failure to comply with disciplinary orders and the terms and/or conditions of probation. Rule 53(b)(3), Ariz. R. Sup. Ct.

Respondent conditionally admits that his conduct, as set forth below, violated ER 3.4(c) and Rules 54(c) and (e), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: suspension from the practice of law in Arizona for six months and one day and payment of the costs and expenses of the probation violation proceeding.¹ The

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.

period of suspension will begin 30 days after the Presiding Disciplinary Judge (PDJ) accepts this Agreement for Discipline by Consent and enters a formal judgment and order, with the exception that Respondent may continue to represent client Backus through January 31, 2014. Respondent will comply with the requirements of Rule 72, Ariz. R. Sup. Ct. The two-year period of suspension will be calculated from the earlier of February 1, 2014, or the date a court grants Respondent's motion to withdraw as counsel for client Backus. Respondent will be subject to appropriate terms and conditions of probation when he is reinstated to the practice of law in Arizona. The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice law in Arizona on October 27, 1990. Respondent was suspended from the practice of law in Arizona, effective July 1, 2012, and was reinstated to the practice of law in Arizona on September 17, 2012.
2. On May 17, 2011, Judge Michael D. Ryan, then Chair of the Arizona Attorney Discipline Probable Cause Committee signed an Order of Admonition and Probation regarding File No. 10-1688. That order stated that Respondent violated ER 1.2(a), ER 1.3, ER 3.2, ER 8.1(b), and Rules 53(d) & (f), Ariz. R. Sup. Ct., and stated in part:

Respondent is hereby placed on Probation under the following terms and conditions:

1. The probation period will begin to run at the time this Order is served upon Respondent, and will conclude two (2) years from that date.

2. Respondent shall participate in and successfully complete the State Bar's Law Office Management Program ("LOMAP"). . . . The Director of LOMAP shall develop "Terms and Conditions of Probation" and those terms shall be incorporated herein by reference. . . . Respondent shall be responsible for any costs associated with LOMAP.

3. On May 19, 2011, a State Bar employee mailed to Respondent by regular and certified mail, return receipt requested, a copy of the Order of Admonition and Probation.
4. On July 12, 2011, LOMAP billed Respondent \$1,250.00 for his participation in LOMAP as a condition of probation regarding File No. 10-1688.
5. On July 18, 2011, Respondent paid \$312.50 to LOMAP regarding File No. 10-1688.
6. On September 26, 2011, Respondent signed the *Terms & Conditions of Probation (Law Office Management Assistance Program)* (LOMAP Terms & Conditions) regarding File No. 10-1688.
7. On October 3, 2011, Cathy McNeelege (McNeelege), an assistant in LOMAP, mailed a letter to Respondent in which she inquired whether he wished to establish a payment plan for the fees associated with LOMAP, and notified him that his current balance was \$937.50. An executed copy of the LOMAP Terms & Conditions regarding File No. 10-1688 was enclosed with that letter. That letter stated in part:

The Terms and Conditions of Probation require that fees be paid within 30 days after the Terms has [sic] been signed, unless a payment plan has been authorized. Please let me know if you wish to establish a payment plan for the services regarding the above matter. Payments may be in any amount of at least \$75.00 and you may choose the due date. All fees must be paid by the date the Terms and Conditions of Probation are scheduled to expire.

8. On October 27, 2011, McNeelege mailed another letter to Respondent in which

she inquired whether he wished to establish a payment plan for the fees associated with LOMAP, and notified him that his current balance was \$937.50.

9. On November 7, 2011, Respondent paid another \$200.00 to LOMAP regarding File No. 10-1688; thereafter, Respondent made no further payments to LOMAP regarding File No. 10-1688.
10. On March 30, 2012, LOMAP sent a billing statement to Respondent noting that he still owed \$737.50 for probation associated with File No. 10-1688, and that payment was over 90 days past due.
11. On May 11, 2012, Presiding Disciplinary Judge (PDJ) William O'Neil signed a *Final Judgment and Order* (Order of Suspension and Probation) in File No. PDJ-2012-9010 (which addressed State Bar File Nos. 11-1562, 11-1592, 11-1984 and 11-2359). Respondent was suspended for 60 days for violations of ER 1.1, ER 1.3, ER 1.4(b), ER 1.5(b), ER 1.7(a), ER 1.8(a), ER 1.15(a), ER 3.4(c), ER 3.7 and ER 8.4(a) & (d), and Rules 43(b)(1)(A) & (C), 43(b)(2)(B) & (C), and 54(d)(2), Ariz. R. Sup. Ct. The Disciplinary Clerk's Office mailed and/or emailed a copy of the Order of Suspension and Probation to Respondent on May 11, 2012. The Order of Suspension and Probation included a term placing Respondent on two years of probation following his reinstatement to the practice law in Arizona. That order required Respondent to submit to a LOMAP examination of his office's procedures and a MAP assessment. That order stated in part:

The director of LOMAP, or her designee, shall develop "Terms and Conditions of Probation," which shall be incorporated herein by reference.

. . .

. . . The director of MAP, or her designee, shall develop "Terms and Conditions of Probation" if it is determined that the results of the

assessment indicate the need for further services. The MAP Terms and Conditions of Probation shall be incorporated herein by reference.

12. On May 14, October 31, and November 30, 2012, LOMAP sent billing statements to Respondent noting that he still owed \$737.50 for probation associated with File No. 10-1688, and that payment was over 90 days past due.
13. On January 16, 2013, Respondent made a payment of \$312.50 to LOMAP regarding File No. PDJ-2012-9010.
14. On January 31, 2013, bar counsel sent a letter to Respondent informing him that he needed to contact CorpCare Associates regarding the MAP portion of his terms of probation regarding File No. PDJ-2012-9010.
15. On February 15, 2013, Respondent signed the LOMAP Terms & Conditions regarding File No. PDJ-2012-9010.
16. On February 27, 2013, McNeelege sent a letter to Respondent regarding File No. PDJ-2012-9010 in which she listed the due dates for LOMAP payments, quarterly reports, copies of trust account records, and copies of his fee agreement(s). An executed copy of the LOMAP Terms & Conditions regarding File No. PDJ-2012-9010 was enclosed with that letter. That letter stated in part that (a) the quarterly report requirement could be fulfilled by "send[ing] a letter or memo briefly outlining the steps [Respondent] ha[d] taken to achieve compliance with the Terms and Conditions"; (b) Respondent was required to make payments of at least \$100.00 per month toward the LOMAP fees, which were due within 30 days of February 15, 2013, unless a payment plan had been authorized; (c) the LOMAP balance was then \$937.50, which "must be paid by the date the Terms and Conditions of Probation are scheduled to expire," and that Respondent's next payment of at least \$100.00 was due by March 1, 2013; and (d) the trust

account reporting term required Respondent to submit to LOMAP each month for three months beginning March 20, 2013, the following: copies of bank statements; client ledgers; administrative fees/bank charges ledger; general ledger/check register; all checks written in the month; all deposits made in the month; and Respondent's monthly three-way reconciliations.

17. On or about February 28, 2013, LOMAP sent a billing statement to Respondent noting that he still owed a total of \$1,675.00 for probation associated with File Nos. 10-1688 and PDJ-2012-9010, and that \$937.50 was between 61 and 90 days past due and that \$737.50 was over 90 days past due.
18. On March 5, 2013, bar counsel spoke with Respondent and informed him that he needed to complete the MAP term of probation regarding File No. PDJ-2012-9010, and that a notice of non-compliance with terms and conditions of probation would be filed if he failed to participate in MAP through CorpCare, a company that the State Bar contracts with to provide MAP services.
19. On or about March 28, 2013, LOMAP sent a billing statement to Respondent noting that he still owed a total of \$1,675.00 for probation associated with File Nos. 10-1688 and PDJ-2012-9010, and that payment was over 90 days past due.
20. On March 29, 2013, McNeelege sent an email message to Respondent regarding File No. PDJ-2012-9010 in which she directed him to provide the following by April 8, 2013: (a) a quarterly report (which was due on March 17, 2013); (b) copies of his fee agreement(s) (which was due on March 18, 2013); (c) copies of his trust account records for February 2013 (which were due March 20, 2013); and (d) payment towards his LOMAP balance of \$937.50.

21. On April 9, 2013, Respondent made a payment of \$300.00 to LOMAP regarding File No. PDJ-2012-9010; thereafter, Respondent made no further payments to LOMAP regarding File No. PDJ-2012-9010.
22. Also on April 9, 2013, McNeelege sent an email message to Respondent in which she directed him to provide the following by April 16, 2013: (a) a quarterly report (which was due on March 17, 2013); (b) copies of his fee agreement(s) (which was due on March 18, 2013); and (c) copies of his trust account records for February 2013 (which were due March 20, 2013).
23. As of April 18, 2013, Respondent had failed to provide the documents requested by McNeelege in her email messages dated March 29 and April 9, 2013. Therefore, on April 18, 2013, Tracy Ward (Ward), the State Bar's Practice Management Advisor, sent a letter to Respondent by regular and certified mail informing him that (a) his quarterly report to LOMAP was due on March 17, 2013; (b) copies of his fee agreement(s) was due to LOMAP on March 18, 2013; and (c) copies of his February 2013 trust account records were due to LOMAP on March 20, 2013. That letter further stated that McNeelege's March 29, 2013, email message requested Respondent to submit his quarterly report, copies of his fee agreements, and trust account records by April 8, 2013, and that McNeelege's April 9, 2013, email message requested Respondent to provide his quarterly report, copies of his fee agreements, and trust account records by April 16, 2013. Ward directed Respondent to provide his quarterly report, fee agreements, and trust account records for February and March 2013 to her by 5:00 p.m. on May 1, 2013.
24. In mid- to late-April 2013, attorney Dan Dodds (Dodds), Respondent's Practice

Monitor regarding File No. PDJ-2012-9010, informed Respondent that he had received a letter from the State Bar dated April 18, 2013, which stated that Respondent and Dodds were to meet as soon as possible. Dodds also informed Respondent that Dodds was expected to file a quarterly report with LOMAP by June 17, 2013.

25. On or about May 3, 2013, LOMAP sent a billing statement to Respondent noting that he still owed \$1,375.00 for probation associated with File Nos. 10-1688 and PDJ-2012-9010, and that payment was over 90 days past due.
26. As of July 5, 2013, Respondent had not met with Dodds to discuss his efforts to address the State Bar's concerns.
27. Respondent failed to file a quarterly report with LOMAP by July 8, 2013, regarding File No. PDJ-2012-9010.
28. On or about July 26, 2013, LOMAP sent a billing statement to Respondent noting that he still owed \$1,375.00 for probation associated with File Nos. 10-1688 and PDJ-2012-9010, and that payment was over 90 days past due.
29. On August 26, 2013, Yvette Penar (Penar), the State Bar's Probation Compliance Monitor, sent an email message to Respondent regarding File No. PDJ-2012-9010, to which she attached *Terms and Conditions of Probation (Member Assistance Program)* (MAP Terms and Conditions). Penar asked Respondent to read, sign and return the MAP Terms and Conditions by August 30, 2013.
30. On September 5, 2013, Penar sent an email message to Respondent in which she inquired whether he had signed the MAP Terms and Conditions and, if so, when he mailed them back to her, and when he would sign and return them if

- he had not yet signed and returned them.
31. On or about September 5, 2013, LOMAP sent a billing statement to Respondent noting that he still owed \$1,375.00 for probation associated with File Nos. 10-1688 and PDJ-2012-9010, and that payment was over 90 days past due.
 32. On September 12, 2013, Penar spoke with Respondent by telephone and reminded him that he needed to sign and return the MAP Terms and Conditions.
 33. Respondent claimed he mailed the signed MAP Terms and Conditions to MAP on September 23 and/or 25, 2013, but MAP did not receive them.
 34. As of the date the Notice of Non-Compliance was filed, the State Bar had not received from Respondent the signed MAP Terms and Conditions regarding File No. PDJ-2012-9010.

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 ER 3.4(c) and Rules 54(c) and (e), Ariz. R. Sup. Ct., by failing to comply with the terms of the Order of Admonition and Probation and the Order of Suspension and Probation and the terms and conditions of probation developed by LOMAP and MAP pursuant to those orders: Respondent (a) failed to meet with his Practice Monitor, Dan Dodds, as directed, to discuss his efforts to address the State Bar's concerns (Term I., C. of the LOMAP Terms & Conditions regarding File No. PDJ-2012-9010); (b) failed to submit quarterly reports to LOMAP regarding File No.

PDJ-2012-9010, which were due on March 17 and July 8, 2013, (Term I., D. of the LOMAP Terms & Conditions regarding File No. PDJ-2012-9010); (c) failed to submit a copy of his fee agreement(s) to LOMAP regarding File No. PDJ-2012-9010, which was due on March 18, 2013, (Term I., G., 19. of the LOMAP Terms & Conditions regarding File No. PDJ-2012-9010); (d) failed to submit to LOMAP copies of his trust account records, which were due on March 20, April 20, and May 20, 2013, (Term I., G., 24. of the LOMAP Terms & Conditions regarding File No. PDJ-2012-9010); (e) failed to pay the outstanding LOMAP fee balance of \$737.50 regarding File No. 10-1688 (Order of Admonition and Probation, and Term II. of the LOMAP Terms & Conditions regarding File No. 10-1688); (f) failed to pay the outstanding LOMAP fee balance of \$637.50 regarding File No. PDJ-2012-9010 (Order of Suspension and Probation, and Term II. of the LOMAP Terms & Conditions regarding File No. PDJ-2012-9010); (g) failed to sign and return the MAP Terms and Conditions, as directed on several occasions (Order of Suspension and Probation in File No. PDJ-2012-9010); and (h) failed to meet with Chris Jackson, LPC, LISAC, NCGC II, NCC, for two counseling sessions per month for a period of six months, as set forth in the unsigned MAP Terms and Conditions (Order of Suspension and Probation, and Term C. of the unsigned MAP Terms and Conditions regarding File No. PDJ-2012-9010).

RESTITUTION

Restitution is not an issue in this probation violation matter (an order of restitution to Robert Travelbee in the amount of \$223.00 was entered on May 11, 2012, in PDJ-2012-9010).

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: suspension from the practice of law in Arizona for six months and one day and payment of the costs and expenses of the probation violation proceeding. The period of suspension will begin 30 days after the PDJ accepts this Agreement for Discipline by Consent and enters a formal judgment and order, with the exception that Respondent may continue to represent client Backus through January 31, 2014. Respondent will comply with the requirements of Rule 72, Ariz. R. Sup. Ct. The two-year period of suspension will be calculated from the earlier of February 1, 2014, or the date a court grants Respondent's motion to withdraw as counsel for client Backus. Respondent will be subject to appropriate terms and conditions of probation when he is reinstated to the practice of law in Arizona.

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.² The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208

² On or about February 4, 2012, the ABA House of Delegates passed/adopted a resolution that re-affirmed the "black letter" of the *ABA Standards for Imposing Lawyer Sanctions*, but rescinded its adoption of the Commentary. The Supreme Court of Arizona last referenced the commentary to the *ABA Standards* in an attorney discipline opinion in 2009 (*In re White-Steiner*, 219 Ariz. 323, 198 P.3d 1195 (2009)); therefore, it is unclear whether the Court will also rescind its use of the commentary. Nevertheless, the Court's use of the *ABA Standards* indicates its desire for consistency in the imposition of disciplinary sanctions.

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 *Standards 6.22, 7.2, 8.1 and 8.3* are the appropriate *Standards* given the facts and circumstances of this matter. *Standard 6.22* states, "Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding."

Standard 7.2 states, "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."

Standard 8.1 states, "Disbarment is generally appropriate when a lawyer: (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession."

Standard 8.3 states, "Reprimand is generally appropriate when a lawyer: (a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or (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.”

The duty violated

As described above, Respondent’s conduct violated his duty to (a) his client, Robert Travelbee, by failing to pay restitution as ordered; (b) the profession by failing to comply with the terms and conditions of probation; and (c) the legal system insofar as his failure to comply with the terms and conditions of probation required supplemental proceedings before the PDJ.

The lawyer’s mental state

For purposes of this agreement the parties agree that Respondent knowingly failed to comply with the terms and conditions of probation (he was provided with copies of the orders and the terms and conditions of probation developed by MAP and LOMAP), and that his conduct violated the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual harm to his former client Robert Travelbee to the extent that Mr. Travelbee has not had use of the funds that Respondent was previously ordered to pay as restitution. Respondent’s decision not to file a pleading responsive to the Notice of Non-Compliance and failure to admit one or more of the alleged violations of the terms and/or conditions of probation resulted in potential harm to the profession insofar as his failure to comply with the terms and conditions of probation required supplemental proceedings before the PDJ.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is suspension or disbarment. The

parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22(a) – prior disciplinary offenses (Respondent was admonished and placed on two years of probation (LOMAP and review “Common Courtroom Conundrums”) on May 17, 2011 (filed on May 18, 2011), in File No. 10-1688 for violation of ER 1.2(a), ER 1.3, ER 3.2, ER 8.1(b), and Rules 53(d) and (f), Ariz. R. Sup. Ct. (2010); Respondent was also suspended for 60 days and placed on two years of probation on May 11, 2012, in File No. PDJ-2012-9010 for violation of ER 1.1, ER 1.3, ER 1.4(b), ER 1.5(b), ER 1.7(a), ER 1.8(a), ER 1.15(a), ER 3.4(c), ER 3.7, ER 8.4(a) & (d), and Rules 43(b)(1)(A) & (C), 43(b)(2)(B) & (C), and 54(d)(2), Ariz. R. Sup. Ct.

Standard 9.22(b) – dishonest or selfish motive (to the extent that Respondent failed to pay restitution to Robert Travelbee, his former client, as ordered);

Standard 9.22(c) – a pattern of misconduct (to the extent that various types of violations of the terms and conditions of probation establishes a “pattern”);

Standard 9.22(d) – multiple offenses (insofar as there were various types of violations of the terms and conditions of probation);

Standard 9.22(e) – bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency (Respondent’s failure to comply with the probation orders and the terms and conditions developed pursuant thereto resulted in supplemental proceedings before the PDJ);

Standard 9.22(h) – vulnerability of the victim (to the extent that Robert Travelbee, Respondent’s former client, had no means by which he could force Respondent to pay the restitution he was ordered to pay);

Standard 9.22(i) – substantial experience in the practice of law (Respondent was admitted to practice law in Arizona on October 27, 1990, and admitted to practice law in Iowa in 1990); and

Standard 9.22(j) – indifference to making restitution (as evidenced by Respondent’s failure to pay the restitution he was previously ordered to pay).

In mitigation:

Standard 9.32(j) – delay in disciplinary proceedings (Respondent’s first instance of failing to comply with the terms and conditions of probation

occurred a number of months prior to the filing of the Notice of Non-Compliance).

Proportionality

In appropriate cases, a proportionality analysis may assist in determining an appropriate sanction. *Cf.*, Rule 58(k), Ariz. R. Sup. Ct. ("Sanctions imposed [based upon formal proceedings regarding a complaint] shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* and, if appropriate, a proportionality analysis.").

Attorney William Doran was suspended for six months and one day for violating the terms of probation, which were imposed along with a reprimand. *In re Doran*, PDJ-2013-9002 (2013) (in the underlying matter that led to the term of probation, Doran violated ER 1.2, ER 1.3, ER 1.4, ER 1.15(a), ER 8.1(b), and Rules 43(b) & (d), and 54(d), Ariz. R. Sup. Ct.).

Attorney Ryan Wackerly was suspended for six months and one day for violating the terms of probation, which were imposed along with a reprimand. *In re Wackerly*, PDJ-2012-9094 (2012) (in the underlying matter that led to the term of probation, Wackerly violated ER 3.4(c), ER 8.1(b), ER 8.4(d), and Rule 54(d), Ariz. R. Sup. Ct.). The only aggravating factor was substantial experience in the practice of law, and the only mitigating factor was personal or emotional problems.

Attorney Allan Barfield was suspended for six months and one day for failing to complete the State Bar's Ethics Enhancement Program and maintain malpractice insurance during his probation period. *In Re Barfield*, SB-06-1929 (2008) (in the underlying matter that led to the term of probation, Barfield was censured for violating ER 1.7(b) and ER 1.8(b)). Four aggravating factors were present: a prior disciplinary offense; multiple offenses; refusal to acknowledge wrongful nature of

conduct; and substantial experience in the practice of law. There were no mitigating factors.

Attorney Eric Casper was suspended for six months and one day for violating the terms of probation by failing to contact LOMAP or MAP. *In Re Casper*, SB-05-2180 (2007) (he was also reprimanded at the time he was placed on probation). The only aggravating factors were a pattern of misconduct and bad faith obstruction of the disciplinary proceeding. There were no mitigating factors.

Attorney Mark Turley was suspended for one year followed by two years of probation upon reinstatement for violating the terms of probation previously imposed by the Arizona Supreme Court. *In re Turley*, SB-03-0017-D (2003). Turley violated the terms of his probation by failing to timely contact LOMAP and MAP. There were four aggravating factors: dishonest or selfish motive; a pattern of misconduct; multiple offenses; and refusal to acknowledge wrongful nature of conduct. There were four mitigating factors: absence of a prior disciplinary record; full and free disclosure to disciplinary board or cooperative attitude toward proceedings; mental disability or chemical dependency, including alcoholism or drug abuse; and imposition of other penalties and sanctions.

Attorney Gaila Davis was suspended for six months and placed on probation for two years for violating a number of the terms of probation that had previously been imposed when she was informally reprimanded (the equivalent of a current admonishment). *In re Davis*, 181 Ariz. 263, 889 P.2d 621 (1995). The following mitigation was found: absence of a dishonest or selfish motive; personal or emotional problems; and the need for Ms. Davis to undertake her own secretarial duties when her secretary became ill. The Disciplinary Commission found that the

aggravating factor of prior disciplinary sanctions (two prior informal reprimands) “balanced the mitigators, thus requiring no increase or decrease in sanction.” *Id.* at 265, 889 P.2d at 623. The Court concluded that a six-month suspension followed by probation would address the goals of discipline without punishing Davis for engaging in the misconduct.

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: Respondent knowingly failed to comply with the terms and conditions of probation. That failure reflects a refusal to participate in the rehabilitative process, which is the primary purpose of probation. Therefore, it is inappropriate to return Respondent to probation.

The *Davis* Court stated:

Merely extending the probation or adding additional terms would not provide her or other lawyers with a meaningful indication of the seriousness of violating probationary terms and ignoring the State Bar’s information requests. Indeed, anything less than suspension would make a mockery of the disciplinary process.

Davis at 266, 889 P.2d at 624 (internal citation omitted).

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.

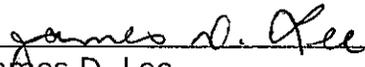
CONCLUSION

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 PDJ, the parties agree that the objectives of discipline can be met by a six-month-and-one-day suspension and payment of the costs and expenses of the probation violation proceeding. A proposed form order is attached hereto as Exhibit "B."

DATED this 6th day of December, 2013.

STATE BAR OF ARIZONA



James D. Lee
Senior Bar Counsel

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

DATED this _____ day of December, 2013.

Fred L. Howe
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 _____ day of December, 2013.

prerogative of the PDJ, the parties agree that the objectives of discipline can be met by a six-month-and-one-day suspension and payment of the costs and expenses of the probation violation proceeding. A proposed form order is attached hereto as Exhibit "B."

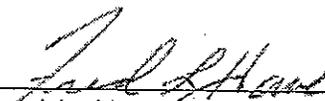
DATED this _____ day of December, 2013.

STATE BAR OF ARIZONA

James D. Lee
Senior Bar Counsel

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

DATED this _____ day of December, 2013.



Fred L. Howe
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 _____ day of December, 2013.

Copies of the foregoing mailed/mailed
this 17th day of December, 2013, to:

Fred L. Howe
Law Office of Fred L. Howe
14239 West Bell Road, Suite 205
Surprise, Arizona 85374-2471
Email: fredhowe@cox.net
Respondent

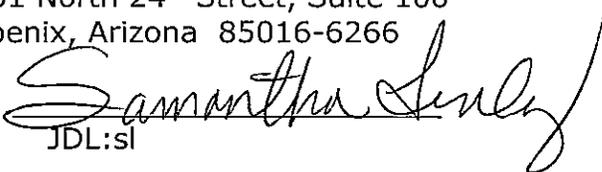
Copy of the foregoing emailed
this 17th day of December, 2013, to:

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 17th day of December, 2013, to:

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

By:


JDL:sl

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

FRED L. HOWE,
Bar No. 013270

Respondent.

PDJ-2013-9098

FINAL JUDGMENT AND ORDER

[State Bar No. 10-1688, 11-1562,
11-1592, 11-1984, and 11-2359]

FILED: December 18, 2013

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on December 6, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Fred L. Howe, Bar No. 013270**, is hereby suspended for six months and one day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from this Order, with the exception that Respondent may continue to represent client Backus through January 31, 2014.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent may be placed on probation with terms to be determined at the reinstatement hearing.

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

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these proceedings.

DATED this 18th day of December, 2013.

William J. O'Neil

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 18th day of December, 2013.

Copies of the foregoing mailed/emailed
this 18th day of December, 2013, to:

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Surprise, Arizona 85374-2471
Email: fredhowe@cox.net
Respondent

Copy of the foregoing hand-delivered/emailed
this 18th day of December, 2013, to:

James D. Lee
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: s/LHopkins