

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**PETER G. SCHMERL,**  
**Bar No. 013400**

Respondent.

**PDJ-2017-9029**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 16-1292]

**FILED JULY 10, 2017**

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on June 7, 2017, under Rule 57(a), Ariz. R. Sup. Ct., accepted the parties' proposed agreement.

Accordingly:

**IT IS ORDERED** entering an admonition against Respondent, **PETER G. SCHMERL, Bar No. 013400**, for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents effective the date of this order.

**IT IS FURTHER ORDERED** Mr. Schmerl shall be placed on probation for eighteen (18) months (LOMAP), effective immediately.

**IT IS FURTHER ORDERED** as a term of probation, Mr. Schmerl shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this order. He shall submit to a Law Office Management Assistance

Program (“LOMAP”) examination of his office procedures. Mr. Schmerl shall sign terms and conditions of participation, including reporting requirements, which are incorporated herein. Mr. Schmerl shall be responsible for any costs associated with LOMAP.

### **NON-COMPLIANCE LANGUAGE**

In the event that Mr. Schmerl 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 Mr. Schmerl 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 Mr. Schmerl pay the costs and expenses of the State Bar of Arizona for \$1,200.00, within thirty (30) days from this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge’s Office with these disciplinary proceedings.

**DATED** this 10<sup>th</sup> day of July, 2017.

*William J. O’Neil*  
\_\_\_\_\_  
**William J. O’Neil, Presiding Disciplinary Judge**

Copies of the foregoing mailed/mailed  
this 10th day of July, 2017, to:

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**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**PETER G. SCHMERL,**  
**Bar No. 013400**

Respondent.

**PDJ-2017-9029**

**DECISION ACCEPTING  
AGREEMENT**

[State Bar No. 16-1292]

**FILED JULY 10, 2017**

On January 31, 2017, the Attorney Discipline Probable Cause Committee (ADPCC) issued an Order of Admonition and Probation (LOMAP) for violating ERs 1.3, 1.4, 1.5(b), 8.1, and Rule 54(d). Mr. Schmerl timely filed a demand for formal proceeding pursuant to Rule 55(c)(4)(B)<sup>1</sup>. As required under that Rule, on February 17, 2017, the Order of Admonition and Probation was vacated by ADPCC.

On March 3, 2017, the State Bar filed its formal complaint alleging violations of Rule 42, ERs, 1.3 (diligence), 1.4 (communication), 1.5(b) (fees), 8.1 (false statement of fact) and Rule 54(d) (failure to furnish information). Mr. Schmerl filed his answer denying these allegations on April 5, 2017.

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<sup>1</sup> Unless otherwise stated, all rule references are to the Rules of the Supreme Court of Arizona.

An Agreement for Discipline by Consent (Agreement) was filed on June 7, 2017 and submitted under Rule 57(a) Ariz. R. Sup. Ct. Upon filing such Agreement, the presiding disciplinary judge, “shall accept, reject, or recommend the agreement be modified.” Rule 57(a)(3)(b).

Rule 57 requires admissions be tendered solely “...in exchange for the stated form of discipline....” Under that rule, the right to an adjudicatory hearing is waived only if the “...conditional admission and proposed form of discipline is approved....” If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

Pursuant to Rule 53(b)(3), notice of this Agreement was provided to the Complainant by letter dated June 7, 2017. Complainant was notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel’s notice. No objection has been received.

The Agreement details a factual basis to support the admissions to violations of Rule 42, ERs, 1.3 (diligence), 1.4 (communication), and 1.5(b) (fees). The ER 8.1 and Rule 54(d) allegations are to be dismissed. Mr. Schmerl agrees to accept the sanction of admonition and eighteen (18) months of probation with the State Bar’s Law Office Management Assistance Program (LOMAP) and the payment of the

State Bar's costs and expenses within thirty (30) days or interest will accrue at the lawful rate. The misconduct is briefly summarized.

Mr. Schmerl has been licensed to practice law in Arizona since 1990. At an unstated date in early 2016, Ms. Hennel paid Mr. Schmerl \$600 to represent her regarding a simple real estate transaction (contract and quit claim deed) of her father and stepmother's townhome in Arizona. Ms. Hennel was attempting to buy her stepmother's half interest in the property. Father was 92 years old and stepmother suffered from dementia and lived in a supervised care home in Oregon. The Stepmother's son had power of attorney and approved of the real estate transaction. The parties stipulate Mr. Schmerl knew her father was 92 as he had been hired to draft burial instructions for him a year earlier in 2015.

On March 6, 2016, the Ms. Hennel corresponded with Mr. Schmerl reminding him that time was of the essence as her father and stepmother were elderly. He did not respond. Ms. Hennel emailed Mr. Schmerl's assistant on March 10, 2016, and called on March 11, 2016 emphasizing the urgency of the matter. The assistant summarized the matter to Mr. Schmerl on March 10, 2016 and scheduled a phone call with Ms. Hennel for March 11, 2016.

In the March 11, 2016, telephone call, Mr. Schmerl communicated to Ms. Hennel that her case was a "straight forward transaction" and "should take a week, maybe two." The project should have been completed no later than March 25, 2016,

or an explanation given to Ms. Hennel. However, as Mr. Schmerl concedes in his agreement, he had no intention to complete the task by that date. Instead, he “created an internal deadline of April 6, 2016.” He did not inform his client of this.

A week later, Ms. Hennel followed up by email to Mr. Schmerl’s assistant on March 17, 2016. Two weeks after his promise, on March 25, 2016, she again emailed his assistant and then called Mr. Schmerl’s assistant on March 30, 2016 re-emphasizing the urgency given her father’s advanced age. The parties stipulate she was not given any useful information.

Finally, Mr. Schmerl called Ms. Hennel on April 6, 2016 (the date of his “internal deadline”) and stated he understood the urgency. The parties stipulate that Mr. Schmerl “promised to send Complainant a draft on April 8, 2016. It was another promise he did not keep as Mr. Schmerl sent nothing to Ms. Hennel by April 8, 2016. As conceded by Mr. Schmerl, that was because he “pushed back that date due to the demand of other cases.” The ignoring of his client and his task was because of the baseless conclusion by Mr. Hennel that Ms. Hennel “was just being antsy.”

Despite the multiple requests for immediate action on the “straightforward” task by his client and his multiple failed promises to perform, Mr. Schmerl continues to rationalize his misconduct. In the agreement he claims, “had he understood that Ms. Hennel’s father was terminal ill he would have accelerated his efforts.” There is no offered foundation for Mr. Schmerl’s hunch that his client “was just being antsy.”

Nor is there any foundation for his speculation that if he had believed her, he would have kept his promises and done the task he was hired to do.

On April 11, 2016, one month after his initial promise to his client to complete the task in not later than two weeks, Ms. Hennel called Mr. Schmerl's assistant and stated she would be forced to hire new counsel if her matter was not concluded by April 15, 2016. Mr. Schmerl continued to ignore her and did nothing in response to her call. She terminated his services on April 18, 2016 and reported him to the State Bar. He did not refund his unearned fees. On April 26, 2016, Ms. Hennel requested a refund. Mr. Schmerl again ignored her.

As anticipated, and as Mr. Schmerl had been repeatedly cautioned, the condition of the father of Ms. Hennel deteriorated and she could not obtain new counsel on such short notice. On May 1, 2016, Ms. Hennel emailed Mr. Schmerl,

Time is running out for us to buy out my father's wife's interest in the house, and now probably will not happen. I have no words for the sadness it is causing. The money is the least of it. Please remit by 5/6 and I plan to just forget about you. If no money, then I am forced to consider other options.

Mr. Schmerl could have prepared the needed documents which might have been evidence of remorse, but as stated in the agreement "his practice has grown" and he prioritized other clients. He instead returned his unearned fee of \$600.00 to

Ms. Hennel on May 2, 2016. On May 6, 2016, Ms. Hennel's father was placed in hospice care and died on May 8, 2016.

The inaction of Mr. Schmerl was the direct cause of substantial financial loss to his client. In the agreement, Mr. Schmerl only concedes "that he did not complete Ms. Hennel's projects as quickly as he would like have liked, and he did not update her as promptly as he should have." It is unclear what his statement should mean. The facts are Mr. Schmerl did nothing. He never updated her and apparently never even began the "projects."

The interest of Ms. Hennel's father passed to his step-wife and the parties stipulate that "defeated the intentions of all concerned parties." The loss to his client is stipulated to be \$39, 250.

### **LEGAL GROUNDS STATED IN SUPPORT FOR SANCTION**

Under Rule 57(a)(2)(E), the parties consulted the American Bar Association's *Standards for imposing Lawyer Sanctions*. The parties stipulate *Standard 4.4, Lack of Diligence* applies to Mr. Schmerl's violation of ERs 1.3 (diligence) and 1.4 (communication). *Standard 4.43* provides 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.

The parties further stipulate reprimand is the presumptive sanction, as Mr. Schmerl *negligently* violated ER 1.3 and 1.4. The PDJ disagrees as the conditional

admissions as written state otherwise. Conditional admission #2 states he was aware in 2015 of the age of her father when he wrote the father's burial instructions. In conditional admission #7 the parties stipulate, "Ms. Hennel described the transaction to Respondent in a letter dated March 7, 2016, and stated "Time is of the essence as we know in the cases involving elderly patients."

Ms. Hennel then followed up with Respondent's assistant and communicated the urgency given her father's advanced age. Conditional admission #13 states, "Respondent called Complainant on April 6, 2016 and told her that he *understood* the urgency." But this statement under the agreement is untrue because Mr. Schmerl admits he didn't believe there was any urgency, but that she was just "antsy." Conditional admission #29 states, "Respondent created an internal deadline of April 6, 2016, by which to complete Ms. Hennel's legal task but pushed back that due date due to the demands of other cases." These are not negligent acts. They are knowingly, if not the intentional prioritization of other cases.

Conditional admission 30 admits Mr. Schmerl didn't believe his client, but offers no explanation why. "Respondent thought at the time that Ms. Hennel "was just being antsy." These conditional admissions far more support a knowing mental state and that Mr. Schmerl knowingly prioritized other cases ahead of Ms. Hennel. Mr. Schmerl "promised" his client he would perform the task, but intentionally did not keep his promise, because he prioritized the demand of other cases. He may

have been negligent in scheduling a completion date *after* his promised performance deadline, but he intentionally pushed that date back farther because he didn't believe her, his practice had grown and he "prioritized" other cases. Rather than inform her of his disinclination to believe her and that he no longer had any intention of keeping his promise, he avoided her.

"Knowingly" is defined under ER 1.0(f). It "denotes actual knowledge of the fact in question." Under the *Standards*, negligence is "when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." While he may have failed to be aware of the imminent death of the father of Ms. Hennel, his avoidance of her, broken promises, and prioritization of other cases was knowingly done despite multiple clear warnings that he had actual knowledge of.

The parties submit in aggravation factors 9.22(d) (multiple offenses) and 9.22(i) (substantial experience in the practice of law). In mitigation are factors 9.32(a) (absence of prior disciplinary record), 9.32(b) (absence of dishonest or selfish motive), 9.32(d) timely good faith effort to make restitution or rectify consequences of misconduct), 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude towards proceedings), and 9.32(l) (remorse).

Nothing is stated to explain how it is not dishonest to prioritize other cases while promising to prioritize the “straightforward” task for Ms. Hennel. Nor is there any explanation of why the prioritization of these other cases was not for selfish reasons. No explanation is stated that any efforts at restitution were made, or how the consequences of his misconduct was rectified. Similarly, there is nothing offered to suggest “remorse.” Unless the parties are submitting the self-serving concession of Mr. Schmerl that he “did not complete Ms. Hennel’s projects as quickly as he would like have liked, and he did not update her as promptly as he should have.”

The parties stipulate the mitigating factors outweigh the aggravating factors, without explaining how or why. They agree to admonition and eighteen (18) months of probation (LOMAP). Mr. Schmerl asserts “LOMAP could help him develop better techniques to meet the challenge of juggling and prioritizing cases.”

Mr. Schmerl was previously diverted to LOMAP in State Bar Files No. 11-1166 and 11-1114. Mr. Schmerl has had the benefit of the LOMAP rehabilitative program and completed LOMAP diversion. It is not clear how retaking LOMAP will cause Mr. Schmerl to keep his promises to his clients, perform his assigned tasks or be honest in his communications with clients.

On these admitted facts, it appears Mr. Schmerl knowingly, if not intentionally, misled his client, ignored her communications, and delayed in refunding her monies. The agreement appears to rely on the rationalizations that his

case load has grown and that he had a right to disbelieve his client based on his own baseless, speculative hunches about the health of her 92 year old father. He admits he did nothing to complete the task he acknowledged was “straightforward” because he favored the demands of other cases. The parties stipulate his client suffered actual harm of over \$39,000. It is not clear how a repeat of LOMAP will prevent untruthfulness, and a lack of loyalty to his client.

Notwithstanding, this matter resulted in a determination of the Attorney Discipline Probable Cause Committee to offer an admonition, from which Mr. Schmerl demanded these formal proceedings be filed. The client, Ms. Hennel, true to her statement that, “I plan to just forget about you,” has not objected. Consent agreements, are a necessary part of the prioritization of discipline matters by the State Bar. Consent agreements are resolutions based on minimal information, rather than the fuller presentation brought by a litigated hearing with exhibits and testimony. The PDJ defers to the parties and the ADPCC, but remains troubled by the admitted facts, yet also recognizes pertinent information may have been omitted. Accordingly:

**IT IS ORDERED** accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: admonition with eighteen (18) months of probation (LOMAP) and costs and expenses of the disciplinary proceeding stipulated to be \$1,200.00, to be paid within thirty (30) days

from this date. There are no costs incurred by the office of the presiding disciplinary judge. A final judgment and order shall issue.

**DATED** this 10<sup>th</sup> day of July, 2017.

*William J. O'Neil*

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**William J. O'Neil, Presiding Disciplinary Judge**

Copies of the foregoing emailed/mailed  
this 10th day of July, 2017, to:

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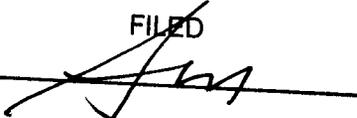
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OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

JUN 7 2017

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**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**PETER G. SCHMERL,  
Bar No. 013400,**

Respondent.

**PDJ 2017-9029**

**State Bar File No. 16-1292**

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

The State Bar of Arizona (“SBA”) and Respondent Peter G. Schmerl, who is represented in this matter by counsel, Denise M. Quinterri, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.<sup>1</sup>

<sup>1</sup> All references herein to rules are to the Arizona Rules of the Supreme Court unless stated otherwise.

Respondent voluntarily waives the right to an adjudicatory hearing, 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 admissions and proposed form of discipline are approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant by letter and email on June 7, 2017. Complainant has been notified of the opportunity to file a written objection to the agreement with the State Bar within five business days of bar counsel's notice. A copy of Complainant's objection, if any, has been or will be provided to the presiding disciplinary judge.

On January 31, 2017, the Attorney Discipline Probable Cause Committee ("ADPCC") issued its "Order of Admonition, Probation (LOMAP), and Costs." On February 10, 2017, Respondent filed his "Demand for Formal Proceeding" by which he appealed ADPCC's order. On May 9, 2017, after the parties filed their initial pleadings and disclosure statements, and this court issued its initial scheduling order, the parties attended a settlement conference. At the settlement conference, the parties resolved this matter for an admonition with probation, consistent with (if not

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identical to) the earlier ADPCC order. The settlement conference officer, Scott Palumbo, authorized bar counsel to state that Mr. Palumbo concurs that the consent into which the parties entered is reasonable and appropriate.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.3 (Diligence), 1.4 (Communication), and 1.5(b) (Fee Agreements). The SBA conditionally dismisses the charge that Respondent violated ER 8.1 and Rule 54 (Failure to Cooperate with a Disciplinary Authority). Upon acceptance of this agreement, Respondent agrees to accept imposition of an admonition with probation (LOMAP for 18 months). Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.<sup>2</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

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<sup>2</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 Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

## **WARNING RE: NONCOMPLIANCE WITH PROBATION**

If Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5). 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 impose 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.

### **FACTS**

#### **COUNT ONE of ONE (File no. 16-1292/ Hennel)**

1. Respondent was licensed to practice law in Arizona on October 27, 1990.
2. In 2015, Christine Hennel and her 92 year-old father hired Respondent to write the father's burial instructions.
3. Respondent completed the representation for \$125, and both Ms. Hennel and her father were satisfied.

4. In 2016, Ms. Hennel returned to Respondent and hired him for \$600 to draft a contract and quit claim deed by which she was to buy the father's wife's (Margaret Hennel, Ms. Hennel's step-mother) one-half interest in the couple's \$130,000 Green Valley townhome.

5. Margaret suffered from dementia and lived in a supervised care home in Oregon.

6. Her son had a power of attorney and approved the transaction.

7. Ms. Hennel described the transaction to Respondent in a letter dated March 7, 2016, and stated: "Time is of the essence as we know in these cases involving elderly clients."

8. She followed up with Respondent's assistant by email on March 9, and called on March 10, emphasizing the urgency of the situation given her father's advanced age.

9. The assistant summarized the case to Respondent on March 10 and he arranged a phone consult with Ms. Hennel on March 11.

10. Respondent told Ms. Hennel the project was a "straight forward transaction" and should take just a week, maybe two.

11. Ms. Hennel emailed Respondent's assistant on March 17 and 25, 2016, and called on March 30 and April 1 for updates, but was unable to obtain any useful information.

12. In the phone calls, Ms. Hennel emphasized to the assistant how critical it was to move ahead on the matter given her father's age and his anxiety about finalizing the project.

13. Respondent called Complainant on April 6, 2016, and told her that he understood the urgency. He promised to send Complainant a draft on April 8.

14. Respondent, however, did not send a draft to Complainant on April 8, and did not call her, either.

15. Complainant had to reassure Margaret's son that she would keep him informed of any progress.

16. Ms. Hennel called Respondent's assistant on April 11, and followed up with an email to Respondent, to express her disappointment and that the project needed to be done by April 15 or she would have to hire new counsel.

17. Ms. Hennel heard nothing from Respondent so she sent him a letter on April 18 terminating his services, and reporting him to the State Bar.

18. On April 26, 2016, Ms. Hennel asked Respondent for a \$600 refund.

19. After she fired Respondent, in mid- to late April Ms. Hennel tried to retain new counsel and/or a title company to consummate the sale to her of Margaret's interest in the townhome.

20. Ms. Hennel's father's condition deteriorated and she was unable to get a commitment from anyone to handle the matter on short notice.

21. On May 1, 2016, Ms. Hennel emailed Respondent:

Time is running out for us to buy out my father's wife's interest in the house, and now probably will not happen. I have no words for the sadness it is causing. The money is the least of it. Please remit by 5/6 and I plan to just forget about you. If no money, then I am forced to consider other options.

22. Respondent sent Ms. Hennel \$600 on May 2.

23. On May 6, 2016, Ms. Hennel's father entered hospice care.

24. Hurriedly, she again tried to get legal help but her father died on May 8, 2016, before she was able to do so.

25. His interest in the Green Valley home passed to Margaret, which defeated the intentions of all concerned parties.

26. Had Respondent timely completed the project, Ms. Hennel would have bought Margaret's interest for approximately \$39,250 (half of the difference between the sale price minus the mortgage balance—she had the funds); Ms. Hennel

would have become a joint tenant with right of survivorship with her father, and would also have become obligated on the mortgage; and when her father died, she would have become the sole owner with an equity interest of about \$78,500.

27. Instead, what actually occurred is that Ms. Hennel's father and Margaret Hennel remained owners of the townhome as community property with rights of survivorship; Ms. Hennel saved \$39,250 but lost the benefit of the bargain; Margaret lost the opportunity to acquire \$39,250 in cash; but, when Ms. Hennel's father died, Margaret became the sole owner of the townhome with an equity interest of about \$78,500.

28. Respondent conceded that he did not complete Ms. Hennel's project as quickly as he would have liked, and he did not update her as promptly as he should have.

29. Respondent created an internal deadline of April 6, 2016, by which to complete Ms. Hennel's legal task but pushed back that date due to the demands of other cases.

30. Respondent thought at the time that Ms. Hennel "was just being antsy" and claimed that had he understood that Ms. Hennel's father was terminally ill he would have accelerated his efforts. Respondent stated that his practice has grown

and he agrees that LOMAP could help him develop better techniques to meet the challenge of juggling and prioritizing cases.

31. Respondent produced a draft of a "Memorandum of Fee Agreement" but it is not signed by anyone and there is no indication he sent it to Ms. Hennel or her father.

### **CONDITIONAL ADMISSIONS**

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

Respondent conditionally admits that his conduct violated Rule 42, ERs 1.3, 1.4, and 1.5(b).

### **CONDITIONAL DISMISSALS**

The State Bar conditionally agrees to dismiss the charge that Respondent violated ER 8.1 and Rule 54 (failure to cooperate with the SBA in an investigation). Respondent did respond to intake counsel's initial request for information and misunderstood intake counsel's instruction to contact him again upon returning from a vacation.

## 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 sanctions are appropriate: admonition with probation (LOMAP for 18 months). If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

## 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**

As described above, Respondent's conduct violated his duty to his client.

**The lawyer's mental state**

The parties agree that Respondent conducted himself negligently, in violation of the Rules of Professional Conduct.

**The extent of the actual or potential injury**

The parties agree that there was actual harm to Respondent's client and to other members of the public.

The parties agree that the following *Standards* apply:

ERs 1.3 and 1.4

*Standard* 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.

ER 1.5(b)

*Standard* 4.64 -- Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a

client with accurate or complete information, and causes little or no actual or potential injury to the client.

**Aggravating and mitigating circumstances**

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

**In aggravation: *Standard 9.22*—**

- (d) multiple offenses;
- (i) substantial experience in the practice of law (admitted in 1990).

**In mitigation: *Standard 9.32*—**

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings (arguable);
- (l) remorse.

**Discussion**

The parties conditionally agree that upon application of the aggravating and mitigating factors the presumptive sanction should be mitigated to admonition with probation. A greater or lesser sanction is neither necessary nor appropriate. The presumptive sanction is reprimand; mitigating factors outweigh aggravating factors;

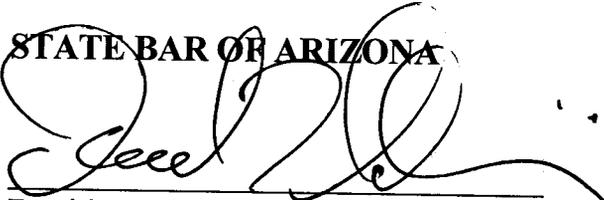
and coupling probation with an admonition will accomplish the purposes of lawyer discipline. Additionally, this outcome is consistent with the objective views of ADPCC and the settlement conference officer.

### 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 order is attached hereto as Exhibit B.

DATED this 7<sup>th</sup> day of June, 2017.

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<sup>th</sup> day of June, 2017.



---

Peter G. Schmerl  
Respondent

**DATED** this \_\_\_\_\_ day of June, 2017.

The Law Office of Denise M. Quinterri,  
PLLC

---

Denise M. Quinterri  
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  
of the Supreme Court of Arizona  
this \_\_\_ day of June, 2017.

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

**DATED** this 6<sup>th</sup> day of June, 2017.



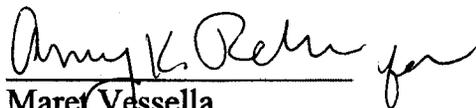
\_\_\_\_\_  
Peter G. Schmerl  
Respondent

**DATED** this \_\_\_\_\_ day of June, 2017.

The Law Office of Denise M. Quinterri,  
PLLC

\_\_\_\_\_  
Denise M. Quinterri  
Counsel for Respondent

Approved as to form and content



\_\_\_\_\_  
Mary Vessella  
Chief Bar Counsel

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
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DATED this \_\_\_\_\_ day of June, 2017.

\_\_\_\_\_  
Peter G. Schmerl  
Respondent

DATED this 7<sup>th</sup> day of June, 2017.

The Law Office of Denise M. Quinterri,  
PLLC



\_\_\_\_\_  
Denise M. Quinterri  
Counsel for Respondent

Approved as to form and content

\_\_\_\_\_  
Maret Vessella  
Chief Bar Counsel

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this \_\_\_ day of June, 2017.

Copy of the foregoing emailed  
this 7<sup>th</sup> day of June, 2017, to:

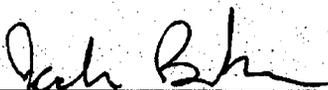
The Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

Copy of the foregoing mailed/emailed  
this 7<sup>th</sup> day of June, 2017, to:

Denise M. Quinterri  
The Law Office of Denise M Quinterri, PLLC  
5401 Fm 1626 Ste 170-423  
Kyle, Texas 78640-6043  
Email: [dmq@azethicslaw.com](mailto:dmq@azethicslaw.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 7<sup>th</sup> day of June, 2017, to:

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> St., Suite 100  
Phoenix, Arizona 85016-6266

by:   
DLS: jlb

**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Peter G. Schmerl, Bar No. 013400, Respondent

File No. 16-1292

### 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

**EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**PETER G. SCHMERL,**  
**Bar No. 013400,**

Respondent.

**PDJ 2017-9029**

**FINAL JUDGMENT AND  
ORDER**

State Bar No. 16-1292

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, **Peter G. Schmerl**, is hereby admonished for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order or \_\_\_\_\_.

**IT IS FURTHER ORDERED** that Respondent is placed on probation for 18 months during which he shall participate with the State Bar's Law Office Management Assistance Program.

**IT IS FURTHER ORDERED** that Respondent shall contact the State Bar's Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order. Respondent shall submit to a LOMAP examination of his office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.

**WARNING RE: NONCOMPLIANCE WITH PROBATION**

If Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, 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 impose 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 \$ \_\_\_\_\_, within 30 days from the date of service of this Order.

**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 \_\_\_\_\_, within 30 days from the date of service of this Order.

**DATED** this \_\_\_\_\_ day of June, 2017.

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**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 June, 2017.

Copies of the foregoing mailed/mailed  
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Denise M. Quinterri  
The Law Office of Denise M Quinterri, PLLC  
5401 Fm 1626 Ste 170-423  
Kyle, Texas 78640-6043  
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David L. Sandweiss  
Senior Bar Counsel  
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4201 N 24<sup>th</sup> Street, Suite 100  
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