**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

| | |
|---|---|
| IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,<br><br>**CRISS E. CANDELARIA, Bar No. 010179**<br><br>Respondent. | **PDJ 2017-9110**<br><br>**FINAL JUDGMENT AND ORDER**<br><br>[State Bar Nos. 16-3338 & 17-0943]<br><br>**FILED JANUARY 17, 2018** |

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on December 18, 2017, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepted the parties' proposed Agreement. Accordingly:

**IT IS ORDERED** Respondent, **Criss E. Candelaria**, is reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this order.

**IT IS FURTHER ORDERED** Mr. Candelaria, is placed on probation for a period of two (2) years. Mr. Canelaria's probation shall include participation in the Law Office Management Program (LOMAP), and utilization of a practice monitor.

**IT IS FURTHER ORDERED** Mr. Candelaria shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this Order. Mr. Candelaria shall submit to a LOMAP examination of his office

procedures. Mr. Candelaria shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Mr. Candelaria's LOMAP terms shall include utilization of a practice monitor obtained by him. Mr. Candelaria shall be responsible for any costs associated with LOMAP.

**NON-COMPLIANCE WITH PROBATION**

If Mr. Candelaria 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, whether 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** Mr. Candelaria shall pay the costs and expenses of the State Bar of Arizona in the amount of $ 1,200.00, within thirty (30) days from the date of this order.

**DATED** this 17th day of January, 2018.

*William J. O'Neil*

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

COPY of the foregoing e-mailed
on this 17th day of January 2018, and
mailed January 18, 2018, to:

Bradley F. Perry
Senior Bar Counsel
*State Bar of Arizona*
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Peter Akmajian
*Schmidt Sethi & Akmajian, PC*
1790 East River Road, Suite 300
Tucson, Arizona 85718-5958
Email: pakmajian@azinjurylaw.com
Respondent's Counsel

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

| | |
|---|---|
| IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,<br><br>**CRISS E. CANDELARIA, Bar No. 010179**<br><br>Respondent. | **PDJ 2017-9110**<br><br>**DECISION AND ORDER ACCEPTING DISCIPLINE BY CONSENT**<br><br>[State Bar Nos. 16-3338 & 17-0943]<br><br>**FILED JANUARY 17, 2018** |

Probable Cause Orders issued on September 6, 2017. The formal complaint was filed October 5, 2017, and an Answer was filed October 27, 2017. Under Rule 57(a), Ariz. R. Sup. Ct.,[1] an Agreement for Discipline by Consent ("Agreement"), was filed on December 18, 2017 by Criss E. Candelaria ("Candelaria") who is represented by counsel, Peter Akmajian, *Schmidt Sethi & Akmajian, PC,* and the State Bar of Arizona by Staff Bar Counsel Bradley F. Perry.

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

[1] Unless otherwise stated all rule references are to the Ariz. R. Sup. Ct.

proceeding. Candelaria has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. Notice of the Agreement and an opportunity to object as required by Rule 53(b)(3), Ariz. R. Sup. Ct., was sent by mail to the complainant on December 18, 2017. No objections have been received.

The Agreement details a factual basis to support the conditional admissions. Candelaria admits he violated Rule 42, ERs 1.3 (diligence), 1.4 (communication), 3.2 (expediting litigation) and 8.4(d) (conduct prejudicial to the administration of justice). Allegations of violations of ERs, 1.1, 1.7, and 1.9 in Count Two are dismissed. The agreed upon sanctions include a reprimand and two (2) years of probation with the State Bar's Law Office Management Assistance Program ("LOMAP") and a practice monitor, and payment of costs totaling $1,200.00 within thirty (30) days from this order. The conditional admissions are briefly summarized.

In Count One, Candeleria represented a client in a wrongful death action. Candeleria filed the complaint but knowingly failed to file a response to the Motion for Summary Judgment, did not contact opposing counsel to request more time, and did not file a Civil Rule 56(f) motion requesting more time. The motion for summary judgment was granted. He moved for reconsideration and negligently made misrepresentations to the Court. Candeleria further failed to communicate with his client regarding the ruling on the summary judgment.

In Count Two, Candeleria represented a client in challenging an informal probate of a will. Candelaria filed a notice of appearance on behalf of his client, the decedent's cousin, and an objection and request for formal proceedings. The objection did not comply with A.R.S. 14-3401 or 14-3402. He filed an amended objection. That objection also did not comply with A.R.S. 14-3401 or 14-3402. Candelaria filed a petition to remove personal representative for cause and requested an appointment of successor personal representative, which was denied.

Candelaria entered another notice of appearance of behalf of client (decedent's sister) and request for formal proceedings. That objection did not comply with A.R.S. 14-3402. Opposing counsel filed an objection and request for sanctions. Candelaria filed a response and an evidentiary hearing was held. Although the Court found the filings deficient, the client was permitted to file compliant pleadings.

Rule 58(k) provides sanctions shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, ("*Standards*"). The parties agree *Standard* 4.42 *Lack of Diligence* applies to the admitted violation of ERs 1.3 and 1.4. *Standard* 4.42(a) provides suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client.

Candeleria admits he knowingly violated his duty to his clients and the legal system. In Count One, he knowingly failed to respond to the Motion for Summary Judgement. It is stipulated that all additional misconduct was negligent. His misconduct caused harm to his client and slight harm to the legal profession. Under the *Standards* the parties agree there are no aggravating factors. Factors present in mitigation are: 9.32(b) absence of dishonest or selfish motive, 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings, 9.32(g) character and reputation [Exhibit B], and 9.32(l) remorse [Exhibit C.]

The presumptive sanction is suspension. The parties stipulated that upon review of the aggravating and mitigating factors, a reduction in the presumptive sanction is justified. It is stipulated that Candelaria has taken positive steps to improve his office policies and procedures including consulting with former ethics counsel to ensure the misconduct does not reoccur. The parties agree to a reprimand, probation, (including LOMAP and the utilization of a practice monitor) and payment of costs. The PDJ determined the objectives of discipline are met by imposing reprimand and probation.

Now therefore,

**IT IS ORDERED** accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are reprimand, two (2) years of probation with LOMAP, utilization of a practice monitor and

payment of State Bar costs and expenses of $1,200.00 within thirty days. There are no costs incurred by the Office of the Presiding Disciplinary Judge. A final judgment and order is signed this date.

**DATED** this 17th day of January, 2018.

*William J. O'Neil*

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

COPY of the foregoing e-mailed
on this 17th day of January 2018, and
mailed January 18, 2018, to:

Bradley F. Perry
Senior Bar Counsel
*State Bar of Arizona*
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Peter Akmajian
*Schmidt Sethi & Akmajian, PC*
1790 East River Road, Suite 300
Tucson, Arizona 85718-5958
Email: pakmajian@azinjurylaw.com
Respondent's Counsel

by: AMcQueen

Bradley F. Perry, Bar No. 025682
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7247
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

DEC 18 2017

FILED

BY

Peter Akmajian, Bar No. 009593
Schmidt Sethi & Akmajian, PC
1790 East River Road, Suite 300
Tucson, Arizona 85718-5958
Telephone 520-790-5600
Email: pakmajian@azinjurylaw.com
Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

| | |
|---|---|
| **IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,**<br><br>**CRISS E. CANDELARIA, Bar No. 010179**<br><br>Respondent. | **PDJ 2017-9110**<br><br>State Bar File Nos. 16-3338, 17-0943<br><br>**AGREEMENT FOR DISCIPLINE BY CONSENT** |

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Criss E. Candelaria, who is represented in this matter by counsel, Peter Akmajian, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order in both 16-3338 and 17-0943 was entered

on September 6, 2017. A formal Complaint in both matters was filed on October 5, 2017, and an Answer was filed on October 27, 2017. 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 admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this Agreement was provided to the Complainant(s) by mail on December 18, 2017. Complainant(s) have been 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. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 3.2, and 8.4(d). Upon acceptance of this Agreement, Respondent agrees to accept imposition of the following discipline: reprimand with two (2) years of probation, the terms of which shall include participation in the Law Office Management Program (LOMAP) and utilization of a practice monitor. Respondent also agrees to pay the costs and expenses of the

disciplinary proceeding, within thirty (30) days from the date of this Order, and if costs are not paid within the thirty (30) days, interest will begin to accrue at the legal rate.[1] The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

## FACTS

## GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on November 9, 1985.

## COUNT ONE (File No. 16-3338/ Brewer)

2. Respondent represented Tod Brewer as Plaintiff in a wrongful death action arising from a police shooting. The Complaint was filed July 1, 2013.

3. On June 3, 2016, Defendant filed a Motion For Summary Judgment. The response was due July 8, 2016.

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[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.

4. Respondent did not file a response to the Motion For Summary Judgment, did not contact opposing counsel to request more time, and did not file a motion requesting the Court provide him more time to respond.

5. On August 3, 2016, the Court granted Defendant's Motion For Summary Judgment.

6. On August 17, 2016, Respondent filed a Motion To Reconsider. The motion stated: "At the time the Defendant's [sic] submitted the motion for summary judgment, Plaintiff's [sic] had not received the report from its expert witness Ben Tisa" and alleged that a genuine issue of fact existed. Respondent asked the Court to allow him to respond to the motion for summary judgment.

7. Respondent received his expert's report on June 22, 2016. While the expert's report was not in Respondent's possession when the Motion For Summary Judgment was filed, Respondent received the report prior to the response deadline.

8. Respondent failed to contact Mr. Brewer between June and October, 2016.

9. On October 7, 2016, Mr. Brewer had a 3:30 telephonic appointment with Respondent to discuss the status of the case. Respondent failed to contact him for the meeting.

10. Mr. Brewer sent Respondent an email the same day to express his displeasure with the continuous and recurring issue of Respondent's failure to communicate.

11. Respondent replied the same day, stating, "[t]he granting of the motion for summary judgment is under review. As you recall, we got the report from Mr. Tisa well after the motion was filed. Once I received the report from him, I was in the process of preparing the response when the judge's ruling came in, I immediately filed a request for the court to reconsider the ruling because we had not received the experts [sic] report."

12. If Respondent was "in the process of preparing the response when the judge's ruling came in," Respondent was working on the response 46 days after he received the expert report and 30 days after the response was due.

13. The October 7, 2016, email was the first time Respondent informed Mr. Brewer of the status of the motion for summary judgment.

14. Respondent's Motion For Reconsideration was denied because Respondent failed to comply with the Arizona Rules of Civil Procedure by failing to file a motion pursuant to Civil Rule 56(f) requesting additional time to respond to the motion for summary judgment based on the unavailability of evidence and by

failing to attach an affidavit to the motion requesting reconsideration giving a valid reason for the failure to file a response or the failure to request relief under Rule 56(f).

15. Respondent's conduct in this count violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 3.2, and 8.4(d).

**COUNT TWO (File No. 17-0973/Pillard)**

16. DuWayne Pillard was the alleged heir to the estate of Randolph Hagwood. Mr. Pillard, through his attorney, filed an application for "informal probate of will" on October 12, 2015.

17. On May 13, 2016, Respondent entered a Notice of Appearance on behalf of Dianne Hagwood Douglas. On the same day, Respondent filed an "objection and request for formal proceeding" alleging the will was forged and Ms. Douglas was a rightful intestate heir because she was the decedent's great niece.

18. The objection did not comply with A.R.S. 14-3401, which governs commencing formal testacy proceedings, or A.R.S. 14-3402, which governs the content of petitions for formal testacy proceedings.

19. On June 17, 2016, Respondent filed an amended "objection and request for formal proceeding," stating Ms. Douglas was the decedent's first cousin, once removed. The amended objection did not comply with A.R.S. 14-3401 or 3402.

20. On July 12, 2016, Respondent filed a "petition to remove personal representative for cause and appointment of successor personal representative." The petition did not comply with A.R.S. 14-3402.

21. The Court ultimately denied Ms. Douglas's claim.

22. On February 6, 2017, Respondent entered a Notice of Appearance and "objection and request for formal proceeding" on behalf of Ann Nastasi, the decedent's sister. The objection was drafted in a manner that did not comply with the requirements of A.R.S. 14-3402.

23. On February 13, 2017, Mr. Pillard filed an objection to Ms. Nastasi's claim and a request for sanctions pursuant to A.R.S. 14-1105, which alleged, in part, that all of Respondent's "objections" and "petitions" failed to comply with the notice provisions of A.R.S. 14-1401, interested person provisions of A.R.S. 14-1201(28), and the applicable content provisions of A.R.S. 14-3402 and 14-3301.

24. Respondent responded to the motion and the Court held an evidentiary hearing. The Court found that Respondent's filings on behalf of both Ms. Douglas

and Ms. Nastasi were deficient insomuch as they did not comply with comply with the notice provisions of A.R.S. 14-1401, interested person provisions of A.R.S. 14-1201(28), and the applicable content provisions of A.R.S. 14-3402 and 14-3301.

25. Ms. Nastasi was given an opportunity to file compliant pleadings.

26. Ultimately, the Court found that while Respondent's pleadings were "unartful," they served to protect his client's interests.

27. Respondent's conduct in this count violated Rule 42, Ariz. R. Sup. Ct., ER 8.4(d).

## 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, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.4, 3.2, and 8.4(d).

## CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss the allegations of violating ERs 1.1, 1.7, and 1.9, in Count Two (Pillard 17-0943).

## 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: reprimand with two years of probation, the terms of which shall include participation in LOMAP and utilization of a practice monitor.

If Respondent violates any of the terms of this Agreement, further discipline proceedings may be brought.

## 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 thirty (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 parties agree that for Count One, *Standard 4.42* is the appropriate *Standard* given the facts and circumstances of this matter. *Standard 4.42* provides

that "suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client."

The parties agree that for Count Two, *Standard 6.23* is appropriate. *Standard 6.23* states that "admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in complying with a court...rule, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with a legal proceeding."

**The duty violated**

As described above, Respondent's conduct violated his duty to his client in Count One and his duty to the legal system in Count Two.

**The lawyer's mental state**

Count One: For purposes of this Agreement, the parties agree that Respondent knowingly failed to respond to a motion for summary judgment and negligently failed to adequately communicate with his client. Respondent's conduct was in violation of the Rules of Professional Conduct.

Count Two: For the purposes of this Agreement, the parties agree that Respondent negligently failed to comply with the applicable family court rules and that his conduct was in violation of the Rules of Professional Conduct.

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

Count One: For purposes of this Agreement, the parties agree that there was actual injury to Tod Brewer. Respondent's failure to respond to the Motion For Summary Judgment denied Mr. Brewer the ability to defend his claim. However, it is unknown whether Mr. Brewer would have succeeded in defending against the Motion For Summary Judgment.

Count Two: For the purposed of this Agreement, the parties agree that there was no harm to Respondent's clients and only slight harm to the legal proceeding. Respondent's failure to comply with the family court rules generated unnecessary litigation.

**Aggravating and mitigating circumstances**

The presumptive sanction is suspension in Count One and admonition in Count Two. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

**In aggravation:**

None.

**In mitigation:**

1. Absence of dishonest or selfish motive.

2. Full and free disclosure to the disciplinary board and cooperative attitude toward proceedings.

3. Character and reputation. [Exhibit B].

4. Remorse. Respondent has not just expressed remorse, he took affirmative steps to avoid situations such as the circumstances in this case from arising again by doing the following:

   a. Months before the formal charges were brought in this case, Respondent retained former bar counsel Lynda Shely to conduct a review of his practice and to advise Respondent on methods to improve his practice techniques. Ms. Shely produced a memorandum dated September 19, 2017, setting forth her work with Respondent and her advice to him. [Exhibit C]. Mr. Candelaria has implemented Ms. Shely's advice.

   b. One of the most important aspects of Ms. Shely's advice was that Mr. Candelaria limit his practice to areas in which he is most familiar, specifically criminal defense and family law. Respondent has done so.

c. Respondent has also set forth in writing the specific steps he has taken to prevent similar problems in the future. [Exhibit D]. These steps include limiting his practice areas as recommended by Ms. Shely and by adopting recommended practices to properly track deadlines.

**Discussion**

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, a mitigated sanction is appropriate. 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.

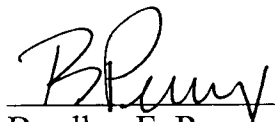
## CONCLUSION

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 reprimand with probation and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit E.

**DATED** this 18 day of December 2017.

**STATE BAR OF ARIZONA**



Bradley F. Perry
Staff Bar Counsel

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

**DATED** this _____ day of December, 2017.

_____
Criss E. Candelaria
Respondent

**DATED** this _____ day of December, 2017.

Schmidt Sethi & Akmajian, PC

_____
Peter Akmajian
Counsel for Respondent

sanction of reprimand with probation and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit E.

**DATED** this 18 day of December 2017.

**STATE BAR OF ARIZONA**

Bradley F. Perry
Staff Bar Counsel

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

**DATED** this 18th day of December, 2017.

For Criss E. Candelaria
Respondent

**DATED** this 18th day of December, 2017.

Schmidt Sethi & Akmajian, PC

Peter Akmajian
Counsel for Respondent



16-9093

Approved as to form and content

Maret Vessella

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 18th day of December, 2017.

Copy of the foregoing emailed
this 18th day of December, 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

Copy of the foregoing mailed/emailed
this 18th day of December, 2017, to:

Peter Akmajian
Schmidt Sethi & Akmajian PC
1790 East River Road, Suite 300
Tucson, Arizona 85718-5958
Email: pakmajian@azinjurylaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 18th day of December, 2017, to:

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

by: _____
BFP: sab

# EXHIBIT A

**Statement of Costs and Expenses**

In the Matter of a Member of the State Bar of Arizona,
Criss E. Candelaria, Bar No. 010179, Respondent

File Nos. 16-3338 & 17-0943

**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

House of Onions

A home for HIV/AIDS children & orphans

December 11, 2017

To Whom it may Concern:

RE: Mr. Criss Candelaria
Letter of Recommendation

I have known Mr. Candelaria for just over 17 years, both as a friend, fellow Knight of Columbus, Apache County Attorney and currently as a practicing defense attorney. Because of our long relationship, Criss was asked to be a Board Member of "The House of Onions" 501(c)(3) Foundation as a co-founding member in July 2014.

I have always know Criss to be a man of solid principles and good faith. To the best of my knowledge, his work as an attorney throughout his 30+ years of practice, both as a prosecutor and now as a defense lawyer has been exemplary.

Sincerely,

Carl E. Dye
President and Co-founder
House of Onions

Dec 11, 2017

To whom it may concern:

I have known Criss Candelaria for close to 20 years. In my dealings with Criss I have found him of good character.

Criss is involved in his church with great dedication. He has been the sole music director at St. Raphel's Catholic Church since before I knew him. He very rarely misses a Sunday.

Criss is not afraid to stand behind his beliefs. Criss is involved in his community, he is the local irragation water board. I sincerely believe the board is better because of him.

I have great confidence in Criss. I believe him to be a man of integrity. He is a friend you can depend on.

Sincerely Yours,

Josie A. Murphy

Kelly Palmer, AZ-CCR #50298
P.O. Box 601
Taylor, Arizona 85939
kellplmr@gmail.com

December 8, 2017

Recipient Name

To Whom it May Concern,

My name is Kelly Palmer. I have worked as a court reporter for 31 years. I came to Navajo County Superior Court in 1988. I met Criss Candelaria soon after when he came to work in the Navajo County Attorney's Office. I have worked with Mr. Candelaria in grand jury, have been involved in many trials that he handled as a prosecutor, and more recently as a defense attorney.

I have always admired the work ethic that Mr. Candelaria possesses, and his desire to zealously prosecute for the state and now in defending his clients. He has always been very professional and respectful with the Courts and also with myself. He has definitely been an asset for Navajo County Judiciary.

Sincerely,

Kelly Palmer, Court Reporter

# EXHIBIT C

THE SHELY FIRM, PC

*6501 E. Greenway Parkway*
*Suite 103-406*
*Scottsdale, AZ 85254*
*480-905-7237*
*Lynda@Shelylaw.com*

# MEMORANDUM

**TO:** **Peter Akmajian** **DATE: September 19, 2017**

**FROM:** **Lynda C. Shely** **RE: Criss Candelaria Office Consult**

---

I am providing this memorandum at your request, with Mr. Candelaria's permission and informed consent that this will waive confidentiality regarding my recommendations to him. On July 13, 2017 I spoke with Mr. and Mrs. Candelaria, as well as Mr. Candelaria's new assistant, Jennifer. Mr. Candelaria explained that his wife provides office assistance only as a back-up and that his new assistant is being trained on office procedures. All three appeared eager to enhance the office's existing procedures and willing to implement changes.

I reviewed my standard checklist for law office management procedures, focusing on the following areas:

1. Communication Policies and Procedures.

We spent a significant amount of time reviewing the requirements for communicating information promptly and acknowledging communications from outside of the firm (whether by phone, email, or paper mail) in a timely manner. I encouraged Mr. Candelaria to have his staff return all calls within 24 hours to schedule times when he could speak with clients, to use an auto response on email if he is not able to have someone respond within 48 hours, and to provide copies of all documents to clients as their matters proceed.

His new assistant Jennifer and Mrs. Candelaria both understood the importance in acknowledging client communications promptly, as well as conveying information to clients in a timely manner.

2. New client intake (including fee agreements and non-engagement letters)

The office does use an intake process to gather basic information about prospective new clients and opposing parties. They maintain an updated document with all current and former client names to check for conflicts (I suggested adding opposing parties to their computer database, once they have a manageable case management system). I also suggested that every intake sheet include

confirmation that someone has checked the firm's conflict system before the prospective client speaks with Mr. Candelaria.

I encouraged them to consider using an intake form that explains that the consults do not create an ongoing attorney/client relationship and the fee for the hour consult only covers that one meeting. Mr. Candelaria understands that non-engagement letters should be sent to all individuals who consult with him but for whom he declines representation. He also will send closing letters when client matters are completed, to assure that clients understand when the attorney/client relationship ends.

Mr. Candelaria reviews fee agreement terms with all new clients and assures that each receives a written fee agreement, which the office will calendar to confirm that they receive back a signed copy of the fee agreement from each client.

We discussed the importance of clarifying the scope of the representation in each fee agreement to assure that Mr. Candelaria is engaged only to perform the services he agrees to handle.

3. Docketing/Processing of all Mail, Email, and Telephone messages.

We discussed the processing of mail and email to assure that there is a procedure everyone follows for opening mail, scanning, emailing to clients, and docketing. They currently use a system of stamping the back of documents to identify that it has been sent to the client and any deadlines listed in the document are calendared (they mark the deadline on the document in yellow). Mr. Candelaria confirms deadlines.

I suggested some additional steps to assure that all emailed communications also are docketed and sent to clients in a timely manner, as more courts are sending Minute Entries by email. In order to avoid a delay in getting time-sensitive documents to clients after Mr. Candelaria has had an opportunity to review them, there will be a procedure to scan and email them to clients within 48 hours of Mr. Candelaria's review. Jennifer will then note in the client the date when the communication has been transmitted to the client. Mr. Candelaria will have a "to be reviewed" inbox to assure that he reads mail daily and it can then be processed to clients.

4. Backups for calendar

In order to provide everyone in the office with a backup for all upcoming deadlines and to have a visual reminder, I suggested that the office either print out the weekly calendar for the upcoming week or have a large dry erase calendar in the break room where deadlines can be posted. While the office does use an online calendar, it is useful to have a physical calendar posted to review daily with everyone. I reminded everyone that the large calendar should not be visible to people in the waiting room or conference room, to assure that client information remains confidential.

5. Calculating litigation deadlines in criminal defense, civil litigation, probate, and family law matters.

Mr. Candelaria is purchasing publications that summarize all relevant court rule deadlines in each of the practice areas he handles, he is going to purchase a docketing software that will help calculate relevant response deadlines, and I encouraged his new assistant to take an online docketing course, to become familiar with the importance of properly calculating deadlines. Mr. Candelaria also was receptive to taking a CLE course on updates in court rules, to stay current on changes in such hard deadlines.

6. Workload management

Mr. Candelaria's office is located in a very small rural town where his office sometimes becomes the local meeting location for civic groups (given that he and his wife serve on several local boards) or simply where people drop in just to chat. His new assistant and Mrs. Candelaria are working with Mr. Candelaria to encourage him to not come out to the reception area to speak with everyone who stops by, both because it interrupts his completing his scheduled work and it is disruptive to the office. They are considering various options to minimize the work flow disruptions.

Mr. Candelaria recognizes that he needs to reduce his case load, and focus his practice on only criminal defense and family law (eliminating general civil litigation matters), to manage his workload, as well as to keep up-to-date on local rule changes.

7. Staff Supervision

We discussed the importance of Mr. Candelaria being available in the office or by telephone to provide active supervision of his assistant. We also discussed what nonlawyer personnel can and cannot do under Supreme Court Rule 31, which both Mrs. Candelaria and Jennifer understood. In order to assure that constructive supervision occurs, I encouraged both Mrs. Candelaria and Jennifer to ask questions of Mr. Candelaria whenever clients seek legal advice. They both appeared well-informed about the need to use their titles when communicating with anyone on behalf of the firm and avoiding engaging in UPL.

Mr. Candelaria reviews all documents before they leave the office and seems to have appropriate procedures in place to supervise his office.

8. Weekly case management review

As part of appropriate staff supervision and workload management, even though it usually will only be Mr. Candelaria and his assistant Jennifer in the office, it is useful to schedule a time each week, or first thing Monday mornings and last thing Friday afternoons to go over what has been accomplished, what must be accomplished, and what additional tasks should be handled in the next day/week/month.

I also provided Mr. and Mrs. Candelaria with the Bar LOMAP Assessment Checklist, my new firm checklist, a form for client intake information, and several sample clauses for fee agreements covering file retention and communicating by email.

# EXHIBIT D

**Criss Candelaria Law Office, P. C.**

**Equal Justice**

**Date: September 26, 2017**

To whom it may concern:

We have made certain changes in the office procedures to avoid the possibility that important matters are overlooked.

1. Ms. Shely advised that all telephone and electronic correspondences must be answered within 48 hours as a matter of policy and to schedule return calls more frequently-within 24 hours. We have implemented a procedure whereby my assistant and I will go over all mail and a phone messages first thing in the mornings absent a call to court or the necessity to travel for business.

   We have a Voxer application that enables us to notify me immediately about communications between clients. She is able to retrieve my instructions more promptly. There are some areas where I work that have poor cell phone reception. The Voxer program remains functional with very little cell phone signal. This should enhance our communication with our clients.

2. We have decided to take less cases so that we can spend more time working on the ones that are most important. I mentioned to her that I want to assist people who may not have money. Ms. Shely suggested that I take less cases for which there is some doubt I will get paid. That will enable me to spend more time on the others.

3. Our office has always been small. We have only one legal assistant who works in the office. Although new, Jennifer seems to be very efficient and willing to please and stay organized. Our earlier assistants were either very inexperienced or hid work that was provided to them. I was made aware that some of the work that I had assigned was not getting done.

4. I have made the decision not to take personal injury cases any longer because we do not have the logistical support to supervise such litigation. We are sticking primarily with criminal and family law practice.

5. Jennifer and I have implemented a procedure to enhance calendaring accuracy. She is also instructed to put periodic reminders on the calendar to remind of looming deadlines. She is also instructed on the response time limits to pleadings that are received in the office and to calendar reviews as we approach the deadlines. She also contacts opposing counsel to notify and obtain consent for any extensions of time necessary to complete the work.

**P.O. Box 614 ▪ Concho, Arizona 85924**
**Phone: 928 367-4766 ▪ Fax: 928 367-4768 ▪ admin@ctcandelaria.com**

6. All documents are sent to the client. That has been our procedure. However, we have added to our initial consultation discussion that we send all the documents that we have to them as we go and ask them to keep them arranged in an orderly manner, not only to assist our discussions but also encourage them to keep the documents in order.

7. At Ms. Shely's suggestion, I have advised Jennifer to keep me reminded and to task about deadlines and other time sensitive work. She is very meticulous about that assignment. I understand that I need to be nagged and she makes time so that the tasks can be done. I want to avoid missing any deadlines. Regretfully, I missed the deadline in one of the cases under the State Bar Review, it is not my practice to miss deadlines. I remain embarrassed about that incident.

8. There is an attorney that has agreed to do some of the work on the larger projects that I have. He works in another place but has agreed to assist with some of the work provided it does not interfere with his employment. He has been a big help and he is a good legal writer.

9. This firm does not have the financial resources to hire another attorney but we are seeking to find other lawyers who can assist in preparation of pleadings.

10. I hope to send Jennifer to Family Law Courses and Administrative assistance so she can thoroughly familiarize herself with document preparation and learn new skills to assist me more effectively.

Thank you for your consideration of this letter.

Sincerely yours,

*Criss E. Candelaria*

Mr. Criss E. Candelaria

# EXHIBIT E

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

| | |
|---|---|
| **IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,** | **PDJ 2017-9110** |
| **CRISS E. CANDELARIA, Bar No. 010179,** | **FINAL JUDGMENT AND ORDER** |
| Respondent. | [State Bar No. 16-3338, 17-0943] |

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, **Criss E. Candelaria**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this order or _____.

**IT IS HEREBY ORDERED** that Respondent, **Criss E. Candelaria,** is hereby placed on probation for a period of two (2) years. Respondent's probation shall include participation in the Law Office Management Program (LOMAP) and utilization of a practice monitor.

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

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $ _____, within thirty (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 thirty (30) days from the date of service of this Order.

**DATED** this _____ day of January, 2018.

_____

**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 January, 2018.

Copies of the foregoing mailed/emailed
this _____ day of January, 2018, to:

Peter Akmajian
Schmidt Sethi & Akmajian, PC
1790 East River Road, Suite 300
Tucson, Arizona 85718-5958
Email: pakmajian@azinjurylaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this _____ day of January, 2018, to:

Bradley F. Perry
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this ____ day of December, 2017 to:

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

by:_____