

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**JACK B. SCHIFFMAN,**  
**Bar No. 007131,**

Respondent.

**PDJ 2018-9057**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 17-0919]

**FILED OCTOBER 22, 2018**

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement.

Accordingly:

**IT IS ORDERED** Respondent, **Jack B. Schiffman**, is reprimanded 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** that Mr. Schiffman is placed on probation for two (2) years with the State Bar's Trust Account Ethics Enhancement Program (TAEEP) and Law Office Management Assistance Program (LOMAP) and Member Assistance Program (MAP), and obtain continuing legal education (CLE) under the following terms and conditions:

1. Respondent shall attend the State Bar's TAEPP, a half-day program. Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this Order, to schedule attendance at the next available class. Respondent shall be responsible for the cost of attending the program.
2. Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date 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 shall be responsible for any costs associated with LOMAP.
3. Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this order, to schedule a MAP assessment. The Compliance Monitor shall develop terms and conditions of participation based on that assessment and the terms, including reporting requirements, shall be incorporated herein. Respondent shall be responsible for any costs associated with participation with compliance.
4. In addition to annual MCLE requirements, Respondent shall complete the following Continuing Legal Education ("CLE") program(s): within ninety (90) days from the date of this order. Respondent shall provide the State Bar

Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes. Respondent shall contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent shall be responsible for the cost of the CLE.

### **NON-COMPLIANCE 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 thirty (30) days to determine whether Respondent breached a term of probation and, if so, whether to assess an appropriate sanction. If Bar Counsel alleges 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** Respondent 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. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

**DATED** this 22nd day of October, 2018.

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

Copies of the foregoing emailed  
this 22nd day of October, 2018, and  
mailed October 23, 2018, to:

Jack B. Schiffman  
Jack B. Schiffman PC  
888 E. Clinton St., Unit 1091  
Phoenix, AZ 85020-5844  
Email: [jschiffman45@gmail.com](mailto:jschiffman45@gmail.com)  
Respondent

David L. Sandweiss  
Senior Bar Counsel  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: [AMcQueen](#)

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

IN THE MATTER OF A SUSPENDED<sup>1</sup>  
MEMBER OF THE STATE BAR OF  
ARIZONA,

**JACK B. SCHIFFMAN,**  
**Bar No. 007131**

Respondent.

**PDJ-2018-9057**

**DECISION ACCEPTING  
DISCIPLINE BY CONSENT**

[State Bar Nos. 17-0919]

**FILED OCTOBER 22, 2018**

A Probable Cause Order issued on June 25, 2018 and the formal complaint was filed on July 5, 2018. Under Rule 57(a), Ariz. R. S. Ct.,<sup>2</sup> an Agreement for Discipline by Consent (“Agreement”), was filed. Jack B. Schiffman is *pro per* and the State Bar of Arizona is represented by Senior Bar Counsel David L. Sandweiss.

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. Mr. Schiffman has voluntarily waived the right to an adjudicatory hearing, and waived all

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<sup>1</sup> Respondent was summarily suspended for failure to comply with mandatory continuing legal education requirements effective January 26, 2018 and remains suspended.

<sup>2</sup> Unless otherwise stated all Rule references are to the Ariz. R. Sup. Ct.

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 within five (5) days pursuant to Rule 53(b)(3), was sent to the Complainant by letter and email on October 12, 2018. No objections have been filed.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Mr. Schiffman was retained in July 2012 to file suit regarding a real estate matter and to assert Arizona's anti-deficiency statute as it applies to home equity loans used for construction as an affirmative defense. Thereafter, Mr. Schiffman failed to competently and diligently represent his client by not researching the issues, failing to serve a disclosure statement, failing to respond to motions for summary judgment, and conduct discovery. He further failed to adequately communicate with the client and failed to inform them of a significant judgment entered against them and any post judgment rights, failed to respond to the arbitrator, failed to adhere to the scope of services, failed to safekeep client funds, and failed to respond to the State Bar inquiries and requests for information. In 2015, the client sued Respondent for malpractice and obtained a settlement.

Mr. Schiffman admits his conduct violated Rule 42, ER1.1 (competence), 1.2 (scope of representation), 1.3 (diligence), 1.4 (communication), 1.15 (safekeeping client property), 8.1(b) (respond to lawful demand for information) and Rules 43 (trust account) and 54(d) (failure to furnish information from bar counsel).

The parties stipulate to a sanction of reprimand with two years of probation, the terms of which shall be participation in the Arizona State Bar's Trust Account Enhancement Program (TAEEP), Law Office Management Assistance Program Member Assistance Program (LOMAP), Member Assistance Program (MAP), obtain continuing legal education (CLE), and the payment of the State Bar's costs of \$1,200.00 within thirty (30) days.

For purposes of the agreement, the parties stipulate Mr. Schiffman knowingly violated his duty to his clients and to the legal profession regarding management of his trust account (ER 1.15 and Rule 43) and bar cooperation violations (ER 8.1(b) and Rule 54(d)). His misconduct caused actual harm to clients, the legal profession, and his liability insurer. He negligently violated ERs 1.1, 1.2, 1.3, and 1.4. The presumptive sanction is suspension.

*Standards 4.12, Failure to Preserve the Client's Property* is applicable to Mr. Schiffman's violations of ER 1.15 and Rule 43 and provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

*Standard 7.2, Violations of Other Duties Owed as a Professional* is applicable to Mr. Schiffman's violation of ER 8.1(b) and Rule 54(d) and provides that 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.

The parties agree that aggravating factors 9.22(d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders, 9.22(g) refusal to acknowledge nature of conduct, 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(c) personal or emotional problems, and 9.32(k) imposition of other penalties or sanction. The parties stipulated that upon application of the aggravating and mitigating factors, the presumptive sanction of suspension should be mitigated to reflect reprimand and two (2) years of probation.

**IT IS ORDERED** accepting the Agreement and incorporating it with any supporting documents by this reference. A final judgment and order is signed this date.

**DATED** this 22nd day of October, 2018.

*William J. O'Neil*

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

Copies of the foregoing emailed this 22nd day of October, 2018,  
And mailed October 23, 2018, to:

David L. Sandweiss  
Senior Bar Counsel  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: LRO@staff.azbar.org

Jack B. Schiffman  
Jack P. Schiffman, PC  
888 E. Clinton Street, Unit 1091  
Phoenix, AZ 85020-5844  
Email: jschiffman45@gmail.com  
Respondent

by: AMcQueen

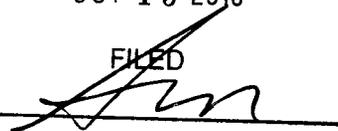
David L. Sandweiss, Bar No. 005501  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602)340-7250  
Email: LRO@staff.azbar.org

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

OCT 15 2018

FILED

BY



Jack B. Schiffman, Bar No. 007131  
Jack B. Schiffman PC  
888 E CLINTON ST Unit 1091  
PHOENIX, AZ 85020-5844  
Telephone 602-481-5523  
Email: jschiffman45@gmail.com  
Respondent

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**JACK B. SCHIFFMAN,  
Bar No. 007131,**

Respondent.

**PDJ 2018-9057**

State Bar File Nos. 17-0919

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

The State Bar of Arizona through undersigned Bar Counsel, and Respondent Jack B. Schiffman who has chosen not to seek the assistance of counsel, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R.

Sup. Ct.<sup>1</sup> A probable cause order was entered on June 25, 2018, the State Bar filed a formal complaint on July 5, 2018, and Respondent filed his answer on August 15, 2018. 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) notice of this agreement was provided to the complainant by letter and email on October 12, 2018. Complainant has 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 Complainant's 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, ERs 1.1, 1.2, 1.3, 1.4, 1.15, and 8.1(b); Rule 43; and Rule 54(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand with Probation. The probationary terms are:

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

1. TAEPP: Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEPP). Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to schedule attendance at the next available class. Respondent will be responsible for the cost of attending the program.
2. LOMAP: Respondent shall contact the State Bar 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.
3. LRO MAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to schedule an assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Respondent will be responsible for any costs associated with participation with compliance.

4. CLE: Respondent shall complete the following Continuing Legal Education ("CLE") programs within 90 days from the date of service of this Order: At least three hours each on the topics of residential real estate and the rules of civil procedure with emphasis on motions and discovery. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the programs by furnishing a copy of his handwritten program notes. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

#### **CAUTION RE NON-COMPLIANCE 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 Respondent breached a term of probation and, if so, whether to assess an appropriate sanction. If Bar Counsel alleges 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.

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.

## FACTS

### COUNT ONE of ONE (File no. 17-0919/ Charland)

1. Respondent was licensed to practice law in Arizona on November 27, 1981. He was administratively suspended on January 26, 2018, for violating Mandatory Continuing Legal Education rules.

2. In 2003, Salah and Faten Ramel bought a house at 7028 E. Thunderbird Rd., in Scottsdale ("7028 home"). In 2005, the Ramels bought another house, at 6025 E. Thunderbird Rd., in Phoenix ("6025 home"). In 2006, the Ramels obtained a \$75,000 home equity line of credit (HELOC) from Compass Bank secured by a second deed of trust on the 7028 home. The Ramels signed a note for the \$75,000 HELOC to finance a room addition to their 7028 home.

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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.

3. Later, the Ramels defaulted on their first position loan and the HELOC note, both of which were secured by deeds of trust on the 7028 home. Based on Arizona's anti-deficiency statute, Compass Bank's exclusive remedy was to instigate a foreclosure sale. In 2009 Compass Bank obtained an appraisal and determined that after the first position loan was paid following a foreclosure sale, there would be no remaining proceeds with which to pay its HELOC loan. Hence, Compass Bank "charged off" the HELOC.

4. In 2010, the 7028 home was sold at a trustee's sale. In 2012, a company called Koranda, L.L.C. sued the Ramels on the HELOC note, claiming damages of \$74,642.42 plus interest and attorney's fees. Koranda asserted that Compass Bank sold the HELOC note to Absolute Resolution Corp., and Absolute sold it to Koranda, leaving Koranda as the authorized successor to Compass Bank and beneficiary of the HELOC note.

5. In July 2012, the Ramels retained Respondent to defend them in the suit. Respondent charged the Ramels \$300/hr. and collected a \$1,500 "initial retainer." Through a series of checked boxes on a written fee agreement, Respondent and the Ramels agreed that the scope of services was:

Review of Documentation and Advice;

Research specific issues requested by client in order to provide an opinion (advice);

Representing client in litigation. Koranda, LLC v. Salah Z. Ramel and Faten N. Ramel: Maricopa County Superior Court Cause No. CV2012053735;

Office conferences;

Telephone calls, written correspondence and meetings with client;

and

Telephone calls, written correspondence and meeting with clients' CPA or other advisors.

6. The Ramels expressly instructed Respondent to assert Arizona's anti-deficiency statute as an affirmative defense and claim that Koranda is in no different position than Compass Bank would have been had Compass Bank not sold the note.

7. Respondent knew or soon after learned of *Helvetica Servicing, Inc. v. Pasquan*, 229 Ariz. 493, 277 P.3d 198 (2012), which held that the anti-deficiency statute applies to home equity loans used for construction. Respondent filed an answer for the Ramels and listed the anti-deficiency statute as an affirmative defense, but took no further timely, substantive action in the case.

8. For example, Respondent did not research whether Koranda had any legitimate cause of action against the Ramels other than foreclosure; whether Koranda was a legitimate corporation; whether Koranda was licensed to do business in Arizona; or whether Koranda had the right to sue as the purported buyer of the Compass Bank note.

9. Respondent did not serve a disclosure statement or propound any discovery. Koranda's counsel served a request on Respondent that the Ramels (through Respondent) serve a disclosure statement. Respondent did not tell the Ramels that he did not prepare or serve a disclosure statement, or that Koranda specifically requested that he do so. Respondent also did not tell the Ramels that he would conduct no discovery for them.

10. Shortly after filing the answer, Respondent sent the Ramels a bill reflecting a \$491.00 credit after charging fees and costs against the \$1,500 advance deposit.

11. When Koranda filed the suit, it certified – erroneously -- that the case qualified for arbitration. According to the Local Rules of Practice for Superior Court in Maricopa County, civil cases involving no more than \$50,000 in controversy were subject to compulsory arbitration. The amount in controversy in

the Koranda suit against the Ramels was over \$74,000. The court appointed an arbitrator, and the arbitrator asked counsel to help select an arbitration date. Respondent did not respond to the arbitrator, file a controverting certificate, or mention anything about arbitration to the Ramels. The arbitrator set a date without Respondent's participation.

12. Having heard nothing from Respondent, Koranda's counsel thought Respondent no longer represented the Ramels so he copied a letter he wrote to the arbitrator regarding the arbitration directly to them. The Ramels tried to reach Respondent to ask about arbitration but Respondent did not respond to them.

13. The Ramels contacted the arbitrator to ask about the status of the arbitration, so the arbitrator told Respondent to contact the Ramels. By that point, the court already entered judgment for Koranda (see below) so Respondent told the Ramels there would be no arbitration. Rather, he advised them to share their income tax returns with Koranda and ask for a reduced payoff on the judgment.

14. Koranda filed two motions for summary judgment, one on March 29, 2013 regarding its right to sue, and the other on April 2, 2013, regarding liability and damages. Respondent did not respond to either motion.

15. On May 16, 2013, the court granted both motions, expressly finding “Defendants’ failure to respond to be consent to the granting of the motion.”

16. Respondent later told the Ramels that Koranda produced paperwork showing that it owned the original Compass Bank debt, the motions established their liability to Koranda, and their best bet was to let Koranda take a judgment and save their money to negotiate a settlement.

17. Koranda’s statement of facts, however, included conclusory allegations that its personnel “reviewed the file” and “they owned the paper.” Those statements did not meet applicable standards of proof to establish the truth of an alleged fact and were not admissible in evidence. And, the anti-deficiency statute furnished a complete defense to the merits of the suit.

18. On June 14, 2013, the court entered judgment for Koranda against the Ramels for \$74,642.42, plus interest at 7.7% starting March 25, 2009, plus attorney’s fees of \$1,020.00 and costs of \$371.00 with interest at 4.25% from the date of judgment. Respondent did not tell the Ramels that the court entered judgment against them, or advise them of any post-judgment rights or procedures including but not limited to filing a motion for new trial, filing an appeal, posting

cost and *supersedeas* bonds, garnishment, execution, debtors exams, or bankruptcy.

19. The Ramels learned of the judgment against them from other sources and complained to Respondent about the lack of representation and communication. In a letter to the Ramels dated September 4, 2013, in which he referred to several properties in Arizona and California that the Ramels owned, Respondent stated:

Let me be clear, Koranda L.L.C. is taking the position that you are not judgment proof and have sufficient equity or value in these properties to enter into a payment arrangement to pay off the judgment amount owed to them. If you contend you are judgment proof, you will need to supply sufficient information which would allow the creditor to verify your inability to pay off the judgment.

20. Respondent did not write a letter to the Ramels, however, expressly stating that Koranda obtained a judgment or enclosing a copy of it, and did not advise them of their appeal rights or any of the other rights and procedures identified above.

21. Respondent's billing entries reflect that Respondent didn't even begin to investigate or research issues related to Koranda's motions for summary judgment until May 27, 2013, 11 days after the motions already were granted.

Respondent's billing statement shows that Respondent "fell asleep at the switch" or unilaterally decided -- without telling the Ramels -- not to oppose Koranda's suit because it was hopeless to do so, or both.

22. Koranda recorded the judgment and, in 2016, applied for a Writ of General Execution. The Ramels obtained a private loan and paid Koranda \$120,434.00, and Koranda filed a Satisfaction of Judgment in January 2017.

23. In 2015, with Complainant as their lawyer, the Ramels sued Respondent for malpractice. In response to a request for production of documents in which Complainant asked for an accounting of the Ramels' funds, Respondent stated in an affidavit: "I deposited the retainer into my Trust Account. When funds are transferred from my Trust Account to my Operating Account, the funds transferred are not identified by particular client."

24. During the State Bar's screening investigation, bar counsel asked Respondent to furnish copies of his trust account client ledger for the Ramels; his trust account general ledger for the entire time beginning when he deposited funds for the Ramels to when he zeroed out their account; trust account checks (front and back) or disbursements pertaining to the Ramels; and duplicate deposit slips pertaining to the Ramels. Respondent failed to produce any ledgers. The only trust

account records Respondent produced were copies of the Ramels' check for \$1,500.00 and the corresponding deposit slip. Respondent distributed the Ramels' trust account funds to himself in payment of his fees but he failed to produce copies of the checks.

25. In the Ramels' malpractice suit, Robert Berk of Jones, Skelton & Hochuli represented Respondent. The case settled on confidential terms. Bar counsel asked Respondent to furnish the factual particulars of the settlement (Complainant and Mr. Berk did not mind revealing the terms as long as Respondent consented to disclose them). Respondent did not consent -- he stated: "You have my permission to contact Mr. Berk for any information that you deem necessary that does not violate the terms of the confidentiality provision of the settlement agreement."

26. In response to the bar charge, Respondent "quoted" language setting forth the scope of representation: "'research ... and represent clients. Representing clients was limited to filing the Ramels' Answer and setting forth affirmative defenses, if any, were available.'" (See fee Agreement, Ex. 5)." Bar counsel told Respondent:

I am unable to locate the quoted language on the version of the fee agreement you attached to your response as Ex. 5. Please direct me to the precise locations in your fee agreement, by page number and number of lines up from the bottom or down from the top, at which I can find the quoted language. Alternatively, you may send me a copy of the fee agreement with the quoted language conspicuously circled or highlighted.

Respondent clarified that he mistakenly identified the language “Representing clients was limited to filing the Ramels’ Answer and setting forth affirmative defenses, if any, were available” as a quote from his fee agreement. Rather, the above-quoted limitation was how Respondent described what he agreed to undertake for the Ramels. This limitation is contrary to the language that does appear in Respondent’s fee agreement (noted above) that included, among other provisions, “Representing client in litigation. Koranda, LLC v. Salah Z. Ramel and Faten N. Ramel: Maricopa County Superior Court Cause No. CV2012053735.”

27. Respondent denied that he failed to respond to Koranda’s discovery because Koranda never propounded any discovery in the first place. Koranda did not propound interrogatories, requests for production, or requests for admissions, but it did request Respondent to serve a disclosure statement, something he was obligated to do without being specially requested to do so, and which he did not do.

28. On February 20, 2018, bar counsel asked Respondent to furnish a complete copy of his entire client file. Rather than take responsible steps to provide it, he responded on April 10, 2018: "I do not have the Ramel file. I gave my entire file to my attorney, Robert R. Berk. See address in Paragraph No. 2. Any documentation you require can be obtained from him." Over five months later, on September 24, 2018, Respondent delivered to the State Bar a CD of his client file.

29. In his response to the State Bar's screening investigation, Respondent asserted a defense never mentioned in either *Koranda v. Ramel* or *Ramel v. Schiffman*. He claimed for the first time that the anti-deficiency statute would not have availed the Ramels in the Koranda suit because they used the Compass Bank HELOC loan, secured by their 7028 home, to improve their 6025 home.

30. Respondent claimed that the Ramels admitted using the Compass Bank HELOC loan, secured by their 7028 home, to improve their 6025 home. The Ramels deny making that admission, and nothing in the documentation Respondent furnished corroborates his version of events.

31. Respondent did provide some public records showing that the Ramels obtained a work permit in May 2006 for improvements at the 6025 home. In the malpractice suit, however, Mr. Berk did not assert this defense in his answer or

disclosure statement, and not in the motion for summary judgment he filed for Respondent that the court denied in October 2016.

32. Respondent furnished a printout from the City of Phoenix public records database dated February 13, 2017. Respondent obtained home improvement information related to the Ramels' 6025 home after the Koranda suit was over, and after the court denied his motion for summary judgment in the malpractice suit, in order to find a new defense to the latter suit and, later, to this bar charge.

### **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 1.1, 1.2, 1.3, 1.4, 1.15, and 8.1(b); Rule 43; and Rule 54(d).

### **CONDITIONAL DISMISSALS**

The State Bar conditionally agrees to dismiss the charges that Respondent violated ERs 8.1(a) and 8.4(c). Complainant charged that Respondent recorded his time and activities in the Ramels' case long after the fact to create a justification

for additional billings or to create the appearance that he exercised diligence for the Ramels. Respondent's billing documents, which Complainant produced, on the surface corroborated Complainant's charge. During the State Bar's screening investigation Respondent, in conclusory fashion, denied any dishonesty associated with his billing but failed to explain why Complainant misinterpreted his billing documents. As part of Respondent's late disclosure, he and his legal assistant offered bar counsel a plausibly benign explanation for his billing practices causing bar counsel to believe that the State Bar will not prove the dishonesty charges by clear and convincing evidence.

### **RESTITUTION**

Restitution is not an issue in this matter. To the extent that the Ramels claimed that Respondent owed them any money, their claims were resolved in the malpractice case settlement. To the extent that Respondent claims the Ramels owe him any money, his claim was extinguished in the malpractice case since it would have to have been raised as a compulsory counterclaim.

### **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 and probation as outlined above. 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.

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. *In re Peasley*, 208 Ariz. 27,35, 90 P.3d 764,772 (2004); *Standard* 3.0.

#### **The duty violated**

As described above, Respondent's conduct violated his duty to his clients and to the legal profession.

### **The lawyer's mental state**

Respondent acted knowingly with respect to his trust account and bar cooperation violations, and negligently with respect to the rest of his violations.

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

There was actual harm to Respondent's clients, the legal profession, and to his liability insurer.

The following *Standards* are relevant:

#### ER 1.1. Competence

*Standard 4.53* - Reprimand is generally appropriate when a lawyer:  
(a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or  
(b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

#### ER 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

#### ER 1.3. Diligence

#### ER 1.4. Communication

*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 1.15. Safekeeping Property  
Rule 43, Trust Accounts

Standard 4.12 - Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

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ER 8.1. Bar Admission and Disciplinary Matters  
Rule 54(d), failure to cooperate, etc.

Standard 7.2-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.

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### **Aggravating and mitigating circumstances**

The presumptive sanction in this matter is suspension. “The Standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations.” *Standards*, “II. Theoretical Framework.” The parties conditionally agree that the following aggravating and mitigating factors should be considered:

#### **In aggravation:**

*Standard 9.22* - Factors which may be considered in aggravation.

(d) multiple offenses;

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency – Respondent failed to furnish information that bar counsel requested, either timely in some cases or at all in others; filed a late answer; and did not timely serve a disclosure statement;

(g) refusal to acknowledge wrongful nature of conduct;

(i) substantial experience in the practice of law;

*Standard 9.32 - Factors which may be considered in mitigation.*

(a) absence of a prior disciplinary record;

(c) personal or emotional problems – Respondent is 73 years old and claims he is hearing impaired and suffers from essential tremor and high blood pressure. His legal assistant's bad health impaired his practice, and it takes him twice as long as before to do ordinary tasks;

(k) imposition of other penalties or sanctions (malpractice suit and settlement).

### **Discussion**

The parties conditionally agree that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction should be mitigated to reprimand with probation. For many years Respondent limited his practice to taxation. He was out of his comfort zone representing the Ramels. His legal assistant's bad health and his own creeping health issues added to his troubles in the underlying, unfamiliar civil legal matter, in the manner he responded to the

discipline charges, and in the manner he defended these formal proceedings. Respondent was admitted to practice law in Missouri in 1970 before his Arizona admission in 1981 and enjoyed a blemish-free career in both states from a discipline standpoint until this case. *In RE: Jack Levine*, 174 Ariz. 146, 847 P.2d 1093 (1993), stands for the proposition (among many others) that a lack of discipline over a long career gets considerable weight in bar proceedings. Respondent's probation, coupled with a reprimand, will help protect the public from any further harm. 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.

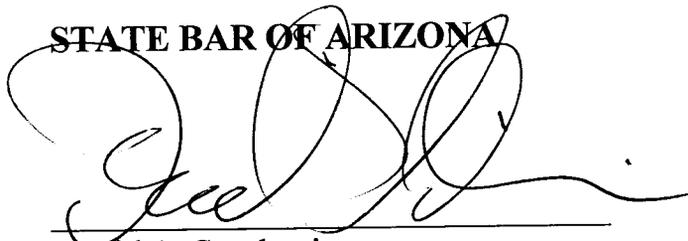
### CONCLUSION

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 of order is attached hereto as Exhibit B.

**DATED** this 15<sup>th</sup> day of October 2018.

**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 \_\_\_\_\_ day of October, 2018.

\_\_\_\_\_  
Jack B. Schiffman  
Respondent

Approved as to form and content



Maret Vessella  
Chief Bar Counsel

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

DATED this \_\_\_\_\_ day of October 2018.

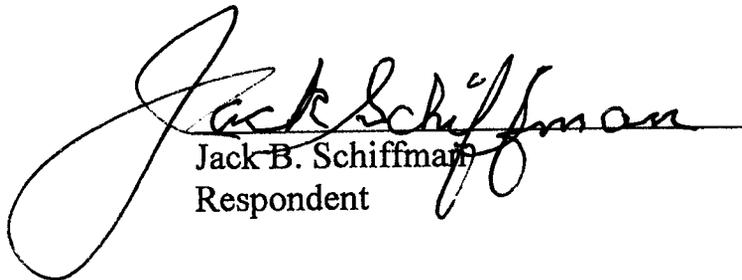
**STATE BAR OF ARIZONA**

---

David L. Sandweiss  
Senior Bar Counsel

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

DATED this 11th day of October, 2018.



Jack B. Schiffman  
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 15<sup>th</sup> day of October, 2018.

Copy of the foregoing emailed  
this 15<sup>th</sup> day of October, 2018, to:

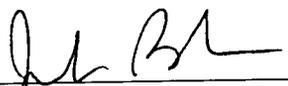
The Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

Copy of the foregoing mailed/emailed  
this 15<sup>th</sup> day of October, 2018, to:

Jack B. Schiffman  
Jack B. Schiffman PC  
888 E. Clinton St., Unit 1091  
Phoenix, AZ 85020-5844  
Email: [jschiffman45@gmail.com](mailto:jschiffman45@gmail.com)  
Respondent

Copy of the foregoing hand-delivered  
this 15<sup>th</sup> day of October, 2018, 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 suspended member of the State Bar of Arizona,  
Jack B. Schiffman, Bar No. 007131, Respondent

File No. 17-0919

### 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* \$1,200.00  
*for above-numbered proceedings*

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  
SUSPENDED MEMBER OF  
THE STATE BAR OF ARIZONA,**

**JACK B. SCHIFFMAN,  
Bar No. 007131,**

Respondent.

**PDJ 2018-9057**

**FINAL JUDGMENT AND  
ORDER**

State Bar No. 17-0919

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

**IT IS ORDERED** Respondent, **Jack B. Schiffman**, is reprimanded 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 a period of two (2) years.

**IT IS FURTHER ORDERED** Jack B. Schiffman shall participate in the following programs:

5. TAEPP: Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEPP). Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to schedule attendance at the next available class. Respondent will be responsible for the cost of attending the program.
6. LOMAP: Respondent shall contact the State Bar 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 their 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.
7. LRO MAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to schedule an assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Respondent will be responsible for any costs associated with participation with compliance.

8. CLE: In addition to annual MCLE requirements, Respondent shall complete the following Continuing Legal Education ("CLE") program(s): within 90 days from the date of service of this Order. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

**CAUTION RE NON-COMPLIANCE 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 Respondent breached a term of probation and, if so, whether to assess an appropriate sanction. If Bar Counsel alleges 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 thirty (30) days from the date 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 October, 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 October, 2018.

Copies of the foregoing mailed/emailed  
this \_\_\_\_\_ day of October, 2018, to:

Jack B. Schiffman  
Jack B. Schiffman PC

888 E. Clinton St., Unit 1091  
Phoenix, AZ 85020-5844  
Email: jschiffman45@gmail.com]  
Respondent

Copy of the foregoing emailed/hand-delivered  
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David L. Sandweiss  
Senior Bar Counsel  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
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