

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

JOHN BURTON,
Bar No. 012445

Respondent.

PDJ 2018-9102

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 17-2275]

FILED MARCH 15, 2019

The Presiding Disciplinary Judge accepted the parties Agreement for Discipline by Consent filed on March 5, 2019.

Accordingly:

IT IS ORDERED Respondent, **JOHN BURTON, Bar No. 012445**, 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 placing Mr. Burton on probation in accordance with the agreement for eighteen (18) months.

IT IS FURTHER ORDERED Mr. Burton shall participate in the following program:

Law Office Management Assistance Program (LOMAP): Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from 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 is incorporated. Respondent shall be responsible for any costs associated with LOMAP.

IT IS FURTHER ORDERED Mr. Burton shall pay restitution as stated in the agreement of \$750.00 to his former client within 120 days of this order.

NON-COMPLIANCE LANGUAGE

If 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, may enter an additional 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. Burton shall pay the costs and expenses of the State Bar of Arizona for \$1,200.00, within thirty (30) days from this order.

There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

DATED this 15th day of March, 2019

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 15th day of March, 2019, to:

Thomas Edward McCauley
ACAP Program Manager
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

John Burton
The Law Office of John Burton, PLLC
14802 N 47th PL
PHOENIX, AZ 85032-4856
Email: john@burtonlawpllc.com

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

JOHN BURTON,
Bar No. 012445

Respondent.

PDJ-2018-9102

**DECISION ACCEPTING
DISCIPLINE BY CONSENT**

[State Bar No. 17-2275]

FILED MARCH 15, 2019

Under Rule 57(a), Ariz. R. Sup. Ct.,¹ an Agreement for Discipline by Consent (“Agreement”), was filed on March 5, 2019. A Probable Cause Order issued on October 31, 2018, and the formal complaint was filed on November 14, 2018. Mr. Burton is self-represented, and the State Bar of Arizona is represented by Bar Counsel Thomas Edward McCauley.

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

¹ 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. Under Rule 53(b)(3), notice and an opportunity to object to the Agreement was given to the complainant by phone on February 6, 2019. The Complainant concurs with the settlement.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Mr. Burton admits violating Rule 42, ER 1.5(a) (fees), ER 1.15(c) (safekeeping property), and Rule 43(a) (trust accounts). Upon acceptance of the agreement the parties stipulate to the sanction of reprimand and eighteen (18) months of probation with the State Bar's Law Office Management Assistance Program (LOMAP) and the payment of costs totaling \$1,200.00 within thirty (30) days from this order.

The misconduct is briefly summarized. Mr. Burton represented a client in a small claim lawsuit. The client paid Respondent a \$1,000 advanced fee and entered into an hourly fee agreement at \$275.00 per hour. Thereafter, Respondent failed to deposit the client's payment of advanced fees into his firm's trust account. He provided limited services to the client which ultimately made the fees charged unreasonable. Respondent charged the client \$725.00 to review 33 pages of documents that included 7 pages of photographs, did not assist the client in trial preparation, and provided a one page hand written form answer to file in small claims court.

The parties agree *Standard 4.63, Lack of Candor* applies to Mr. Burton's violation of ER 1.5 and *Standard 4.13, Failure to Preserve the Client's Property* applies to his violation of ER 1.15. The parties further agree Mr. Burton's conduct negligently violated his duty to his client and caused actual harm to the client. The presumptive sanction is reprimand.

The parties stipulate factor one factor, 9.22(i) substantial experience in the practice of law is present in aggravation. In mitigation, factor 9.32(a) (absence of prior disciplinary offenses is present. The sanction of reprimand and probation is in accordance with the *Standards*.

Now Therefore,

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 15th of March 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
on this 15th day of March 2019, to:

Thomas Edward McCauley
ACAP Program Manager
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

John Burton
The Law Office of John Burton, PLLC
14802 N 47th PL
PHOENIX, AZ 85032-4856
Email: john@burtonlawpllc.com

by: AMcQueen

Thomas Edward McCauley, Bar No. 012274
Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7244
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAR 05 2019

John Burton, Bar No. 012445
The Law Office of John Burton PLLC
14802 N 47TH PL
PHOENIX, AZ 85032-4856
Telephone 602-617-8516
Email: john@burtonlawpllc.com
Respondent

FILED
BY 

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**JOHN BURTON
Bar No. 012445**

Respondent.

PDJ 2018-9102

State Bar File Nos. 17-2275

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, John Burton, 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. A probable cause order was entered on October 31, 2018, and a formal complaint was filed on November 14, 2018. The parties settled the matter on February 6, 2019, with the assistance of Settlement Officer Patricia Norris.

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 by phone on February 6, 2019, and Complainant concurred with the settlement.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER 1.5 and ER 1.15, and Rule 43, Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand with Probation. 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.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 June 6, 1989.
2. On May 31, 2017, Complainant retained Respondent for legal services related to a small claim lawsuit against him by a former employer.
3. Complainant signed an hourly fee agreement on June 5, 2017, with a \$275 hourly rate. Complainant also paid Respondent a \$1,000 advanced fee.
4. While the fee agreement required the advanced fee to be deposited in the trust account, Respondent did not deposit the advanced fee into the trust account.
5. Complainant provided Respondent with 33 pages of documents, which included 7 photographs of a car and several pages of little to no relevance.
6. Respondent billed Complainant 2.6 hours (\$725) for review of the 33 pages.

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.

7. Respondent also provided Complainant with a one-page handwritten form answer to file in small claims court.
8. Respondent did not assist Complainant with trial preparation.
9. By engaging in the above-described conduct, Respondent violated Rule 42, Ariz. R. Sup. Ct.:
 - a. ER 1.5(a) by charging Cooley an unreasonable fee;
 - b. ER 1.15(c) by failing to deposit Cooley's payment of advanced fees into the firm trust account; and
10. By engaging in the above-described conduct, Respondent also violated Rule 43(a), Ariz. R. Sup. Ct. by failing to deposit an advanced fee in his trust account.

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., ER 1.5(a), ER 1.15(c) and Rule 43(a), Ariz. R. Sup. Ct.

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss the allegations Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.3, ER 1.4, ER 1.16, ER 8.1(b), ER 8.4(c), and ER 8.4(d). During pre-filing investigation of this matter, Respondent was not as diligent as he should have been and only after a formal complaint was filed did Respondent provide additional information that diminished the State Bar's case on these particular ethical rules.

RESTITUTION

Respondent will pay \$750 restitution, as part of his probation, within 120 days of acceptance of this agreement.

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 18 months of probation. As terms of probation Respondent will participate in the State Bar's Law Office Management Assistance Program and pay restitution.

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

LEGAL GROUNDS IN SUPPORT OF SANCTION

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

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

The parties agree that the following *Standards* are the appropriate *Standards* given the facts and circumstances of this matter:

- Rule 42, Ariz. R. Sup. Ct., ER 1.5

Standard 4.63: Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to a client.

- Rule 42, Ariz. R. Sup. Ct., ER 1.15 and Rule 43, Ariz. R. Sup. Ct.

Standard 4.13: Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent negligently failed to deposit the advanced fee in his trust account and negligently charged an unreasonable fee and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual harm to the client.

Aggravating and mitigating circumstances

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

In aggravation

Standard 9.22 (i) substantial experience in the practice of law

In mitigation:

Standard 9.32 (a) absence of prior disciplinary record

Discussion

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

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: The presumptive sanction is Reprimand and the aggravating and mitigating circumstances cancel each other.

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 5th day of March, 2019.

STATE BAR OF ARIZONA


Thomas Edward McCauley
ACAP Program Manager

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

DATED this 5th day of March, 2019.



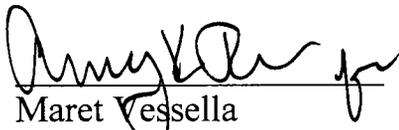
John Burton
Respondent

DATED this 5th day of March, 2019.

The Law Office of John Burton PLLC



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 5th day of March, 2019.

Copy of the foregoing emailed
this 5th day of March, 2019, 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 5th day of March, 2019, to:

John Burton
The Law Office of John Burton PLLC
14802 N 47TH PL
PHOENIX, AZ 85032-4856
Email: john@burtonlawpllc.com
Respondent

Copy of the foregoing hand-delivered
this 5th day of March, 2019, to:

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

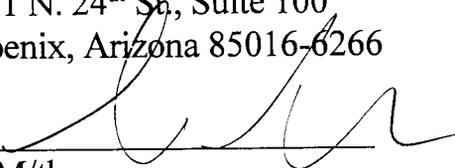
by: 
TEM/tb

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
John Burton, Bar No. 012445, Respondent

File No. 17-2275

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings

\$1,200.00

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

Total for staff investigator charges \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED \$ 1,200.00

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**JOHN BURTON
Bar No. 012445**

Respondent.

PDJ 2018-9102

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 17-2275]

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 that Respondent, **John Burton**, is Reprimand with Probation 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 Respondent shall be placed on probation for a period of eighteen (18) months.

IT IS FURTHER ORDERED John Burton shall participate in the following programs:

1. 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.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing

terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ _____, 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 March, 2019

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 March, 2019.

Copies of the foregoing mailed/emailed
this _____ day of March, 2019, to:

John Burton
The Law Office of John Burton PLLC
14802 N 47TH PL
PHOENIX, AZ 85032-4856
Email: john@burtonlawpllc.com]
Respondent

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this _____ day of March, 2019, to:

Thomas Edward McCauley
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by: _____
TEM/tb