

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

BILL E. PONATH,
Bar No. 009543

Respondent.

PDJ 2018-9114

**AMENDED
FINAL JUDGMENT AND ORDER**

[State Bar No. 17-2563, 17-2870, 18-
0088 & 18-1020]

FILED APRIL 24, 2019

The Presiding Disciplinary Judge accepted the Agreement for Discipline by Consent filed by the parties on April 1, 2019. Accordingly:

IT IS ORDERED Respondent, **BILL E. PONATH, Bar No. 009543** is suspended for fifteen (15) months 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 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 if reinstated, Respondent shall be placed on probation for two (2) years which terms of probation shall include successful participation and completion of the State Bar Law Office Management Assistance

Program (LOMAP) and a State Bar Membership Assistance Program (MAP) assessment, compliance of all terms imposed and the payment of all associated costs.

IT IS FURTHER ORDERED that if reinstated, Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge resulting from any reinstatement hearings held.

IT IS FURTHER ORDERED Respondent shall pay the costs and expenses of the State Bar of Arizona for \$1,202.80 within thirty (30) days. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

DATED this 24th day of April, 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 24th day of April, 2019, to:

Counsel for State Bar
Rebecca Nicole Kennelly
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: LRO@staff.azbar.org

Respondent
Bill E. Ponath
29830 N. 49th Place
Cave Creek, AZ 85331
Emails: bill@billponath.com & bill@azlegal.net

by: MSmith

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

BILL E. PONATH,
Bar No. 009543

Respondent.

PDJ 2018-9114

**AMENDED
DECISION AND ORDER
ACCEPTING CONSENT
AGREEMENT**

[State Bar No. 17-2563, 17-2870,
18-0088 & 18-1020]

FILED APRIL 24, 2019

On April 1, 2019, the parties filed an Agreement for Discipline by Consent (Agreement). The State Bar was represented by Staff Bar Counsel Rebecca Nicole Kennelly. Mr. Ponath represented himself. The complaint was filed November 28, 2018.

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. Ponath 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. Under Rule 53(b)(3), the complainant

was notified by letter dated March 26, 2019 of the opportunity to file an objection with the State Bar. No objection has been filed.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Mr. Ponath admits to violating Rule 42, ERs 1.1 (Competence), 1.2 (Scope of Representation), 1.3 (Diligence), 1.4 (Communication), ER 1.5 (Fees), 3.1 (Meritorious Claims) 3.2 (Expediting litigation) 3.3 (Candor Toward Tribunal), 4.1 (Truthfulness), 5.5 (Unauthorized Practice of Law), 8.4(c) (Conduct Involving Dishonesty, Fraud, Deceit, or Misrepresentation), 8.4(d) (Conduct Prejudicial to the Administration of Justice) and Rule 72 (Notice to Clients). Upon acceptance of the Agreement the parties stipulate to a fifteen (15) month suspension followed by two (2) years of probation, if reinstated. The term of probation shall include successful participation and completion of the State Bar Law Office Management Assistance Program (LOMAP) and an assessment by the State Bar Membership Assistance Program (MAP) and compliance of all terms imposed and the payment of costs of \$1,202.80 within thirty (30) days from the date of this order. The facts are briefly summarized.

Count 1

On November 14, 2017, in PDJ 2017-9036, Respondent was suspended from the practice of law for four months effective November 17, 2017. He could have

been reinstated on October 4, 2018 but remained suspended for a time due to his failure to pay his State Bar dues and file his MCLE affidavit.

Mr. Ponath represented a client in bankruptcy court, failed to timely pay the filing fee, failed to forward a reaffirmation agreement from a client's car loan creditor, and failed to cause the home mortgage of the client to be reaffirmed. He sent an improper form to the second mortgage holder who rejected it as a result. He failed his client in multiple ways.

Count 2

Mr. Ponath represented a second client in a bankruptcy matter. He misrepresented the attorney fees paid him to the court. He failed to timely file a declaration of electronic filing resulting the Court dismissing the matter. When he reopened the case he still had not cured the prior deficiency. He failed his client in multiple ways which endangered the remaining assets of client. He promised his client a refund but never paid it.

Count 3

Clients retained Mr. Ponath in 2016 to assist with their bankruptcy petition. During this process his suspension became effective. He contracted with a coverage attorney, but that attorney withdrew from the agreement. Mr. Ponath then engaged in the unauthorized practice of law as he practiced while suspended. The bankruptcy court held an OSC and Mr. Ponath admitted he engaged in "fraudulent, unfair, or

deceptive acts.” Mr. Ponath also misrepresented to the court the amount he had been paid. He was ultimately permanently enjoined from providing bankruptcy petition preparer services. Mr. Ponath admitted he violated various provisions of the U.S.C. and was reported to the State Bar. He further made misrepresentation to the State Bar.

Count 4

At the time of his suspension, Mr. Ponath had over one hundred (100) cases pending in the bankruptcy court. He prepared no motions to withdraw until the day before his suspension went into effect. Those motions were incomplete, yet he filed them anyway. He then attempted to circumvent his suspension by hiring a newly admitted attorney with no bankruptcy experience to appear and to take over his cases and she was paid \$10.00 per hour. As attorney fees came into her trust account, Mr. Ponath withdrew almost all those fees. Multiple clients suffered potential injury.

Analysis

The parties agree Mr. Ponath acted knowingly, violated his duty to his clients, the profession, and the legal system. He caused potential injury to his clients and actual injury to the legal profession. The parties stipulate that *Standards* 6.12 and 7.2 apply and that the presumptive sanction is suspension.

The following factors are present in aggravation: *Standard* 9.22(a) prior disciplinary offenses. Mr. Ponath has five prior sanctions including a four-month

suspension; *Standard 9.22(b)* dishonest or selfish motive; *Standard 9.22(c)* pattern of misconduct; *Standard 9.22(d)*, multiple offenses; and *Standard 9.22(i)* substantial experience in the practice of law. In mitigation, the parties offer *Standard 9.32 (d)*, timely good faith effort to make restitution. This factor is rejected. Offering to withdraw pleadings and being ordered to pay restitution is not mitigation. The absence of this factor does not affect the outcome.

Decision

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

DATED this 24th day of April 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
on this 24th day of April 2019, to:

Counsel for State Bar
Rebecca Nicole Kennelly
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: LRO@staff.azbar.org

Respondent
Bill E. Ponath
29830 N. 49th Place
Cave Creek, AZ 85331
Emails: bill@billponath.com
bill@azlegal.net

by: MSmith

Rebecca Nicole Kennelly, Bar No. 025597
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

APR 01 2019

FILED
BY 

Bill E. Ponath, Bar No. 009543
Law Offices of Douglas B Price PC
2101 E Broadway Road
Tempe, AZ 85282-1879
Telephone 480-345-8100
Email: bill@billponath.com
Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**BILL E. PONATH
Bar No. 009543**

Respondent.

PDJ 2018-9114

State Bar File Nos. 17-2563, 17-2870,
18-0088, and 18-1020

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Bill E. Ponath, 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. 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 complainants by email on February 1, 2019. Complainants 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. Complainants have not submitted any objections or indicated any intent to object.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.1, 1.2, 1.3, 1.4, 1.5, 3.1, 3.2, 3.3, 4.1, 5.5, 8.4(c), 8.4(d), and Rule 72, Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline:

- A. Respondent shall be suspended from the practice of law in Arizona for a period of fifteen months effective the date of entry of the final judgment and order;
- B. Upon reinstatement, Respondent shall be placed on probation for a period of two years, under terms and conditions to be determined at the time of reinstatement and to include participation in the State Bar's Law Office

Management Assistance Program (LOMAP) and obtain a Member Assistance Program (MAP) assessment; and

C. 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. Until November 17, 2017, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on May 12, 1984.

2. On November 14, 2017, in PDJ 2017-9036 and State Bar File No. 16-1105, the Presiding Disciplinary Judge (PDJ) entered a final judgment and order suspending Respondent from the practice of law for four (4) months effective November 17, 2017. Respondent was reinstated from that suspension by Court

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.

Order on October 4, 2018, but remained suspended for a period of time for his failure to pay dues and his failure to file his MCLE affidavit.

COUNT ONE (File No. 17-2563/Joyce)

3. Denise Joyce retained Respondent on August 12, 2015, to assist her with a Chapter 7 bankruptcy petition.

4. Respondent advised Ms. Joyce that she could reaffirm her mortgage and car loan in the bankruptcy.

5. The representation agreement, dated August 12, 2015, reflects a legal fee of \$1,149.00, filing fee of \$335.00, and background and credit check fee of \$54.00, for a total due before filing of \$1,537.00. Ms. Joyce made payments to Respondent, and as of October 1, 2015, her remaining balance owed to Respondent was \$0.00.

6. On October 4, 2015, Respondent filed a Chapter 7 bankruptcy petition for Ms. Joyce and filed an application to pay the filing fee in installments. Respondent proposed on the application to pay the \$335 fee in four installments to begin on October 19, 2015, and conclude on January 11, 2016. The application states, "by signing here, you state that you are unable to pay the full filing fee at

once ...” Respondent electronically signed the application for himself and for Ms. Joyce. However, Ms. Joyce had provided the full filing fee as of October 1, 2015.

7. On October 5, 2015, the Bankruptcy Court granted the request to pay the filing fee according to the schedule proposed by Respondent.

8. On October 6, 2015, Respondent notified Complainant that he “erred and did not pay the filing fee at the time of the filing. I will pay that the next time I am in Court.”

9. Respondent provided the State Bar of Arizona (SBA) with a photocopy of a check drawn from his law office bank account in the amount of \$335.00 made out to the United States Bankruptcy Court. The check is dated October 4, 2015, but it was not presented to the Bankruptcy Court for payment until October 8, 2015.

10. On October 6, 2015, Ms. Joyce’s car loan creditor sent a reaffirmation agreement to Respondent. Respondent did not forward the car loan reaffirmation agreement to Ms. Joyce until November 9, 2015. On November 10, 2015, Ms. Joyce’s car loan creditor filed the reaffirmation agreement in Court.

11. Ms. Joyce’s first mortgage was held by Bayview. Respondent spoke to a representative from Bayview on November 9, 2015, and was informed that a

reaffirmation agreement would be forthcoming. Respondent did not follow up with Bayview and the first mortgage was not reaffirmed.

12. Ms. Joyce's second mortgage was held by Wells Fargo. On December 24, 2015, Wells Fargo filed an agreement in Court to reaffirm the second mortgage. On December 28, 2015, the Court rejected the agreement for improper form and set a deadline for filing a corrected document of January 11, 2016.

13. On January 5, 2016, Wells Fargo faxed and mailed an amended reaffirmation agreement for Ms. Joyce's second mortgage to Respondent with a note that the agreement must be filed by January 11, 2016. Respondent told the SBA that he received the agreement on January 13, 2016; however, the agreement was received by fax on January 5, 2016, at 12:55 p.m., and the "Certification by Debtor's Attorney" is signed by Respondent on January 10, 2016.

14. On January 13, 2016, Respondent forwarded the second mortgage reaffirmation agreement to Ms. Joyce. On January 14, 2016, Ms. Joyce returned the signed agreement to Respondent. Respondent did not forward the signed agreement to Wells Fargo until January 20, 2016.

15. On January 19, 2016, the Court entered the Order of Discharge.

16. On January 20, 2016, Wells Fargo advised Respondent that the reaffirmation agreement for the second mortgage could not be processed because it was untimely, and a discharge had already been ordered.

17. On January 23, 2016, Respondent filed a motion to keep the case open to allow for the reaffirmation agreement. Respondent noted in his motion that Ms. Joyce “wishes to reaffirm her second mortgage loan from Wells Fargo and an agreement has been prepared and is ready for filing before this court.” Ms. Joyce had previously informed Respondent that her intention was to reaffirm her first mortgage.

18. On February 9, 2016, the Court ordered the case to remain open until April 30, 2016, “in order to allow for the filing and processing of a reaffirmation agreement concerning the second mortgage loan by Wells Fargo Bank.”

19. On March 3, 2016, Wells Fargo filed the properly formatted reaffirmation agreement for Ms. Joyce’s second mortgage. The Court entered an order closing Ms. Joyce’s case on March 15, 2016, and noted that the “further administration of the reopened case having been completed, or the case reopened for the filing of further proceedings which ... have been filed and no further court action is required ... IT IS ORDERED that the case is closed ...”

20. Respondent emailed Ms. Joyce a copy of the reaffirmation agreement that Wells Fargo had filed in Court for the second mortgage and noted that the case had been closed despite that he had motioned to reopen the case.

21. On May 6, 2016, Respondent emailed Ms. Joyce with the subject line "Bayview" and indicated that he sent the company "a letter asking that they properly report [Ms. Joyce's] payments based on the fact that the reaffirmation agreement is meaningless under AZ law." Respondent said that if the company would not properly report the payments, he asked that they send him an agreement and he would reopen the case to get it entered.

22. On May 10, 2016, Respondent emailed Ms. Joyce to say that he believed that Bayview was only the servicer for Wells Fargo for the first mortgage. Respondent did not verify that statement with Bayview or Wells Fargo. Instead, what he received on May 10, 2016, was a fax from Bayview of the March 3rd Reaffirmation Agreement as filed by Wells Fargo on Ms. Joyce's second mortgage.

23. Respondent acknowledged to Ms. Joyce that the reaffirmation agreement that Wells Fargo entered in Court only referred to the second mortgage, not the first mortgage. Respondent concluded that he would move to reopen the

bankruptcy case to process the first mortgage reaffirmation agreement with Wells Fargo.

24. On May 23, 2016, Ms. Joyce emailed Respondent to ask if he had filed a motion to reopen her case. Respondent replied that it was not an emergency, but he would attempt to file the motion by the end of the week.

25. On May 29, 2016, Respondent filed a motion with the Court to reopen Ms. Joyce's case. In the motion, Respondent requested that the "case be reopened in order to allow this Court to enter an Order reaffirming her second mortgage through Wells Fargo as serviced by Bay View." Respondent then specifically referenced reopening the case in order to address the "reaffirmation agreement as filed on March 3, 2016." The reaffirmation agreement filed by Wells Fargo on March 3, 2016, related to the second mortgage.

26. On May 31, 2016, the Court entered an order to reopen the case to allow for reconsideration of the reaffirmation agreement "for the second mortgage" on Ms. Joyce's real property "as was submitted before this Court on March 3, 2016." The Court noted in the minute entry that the case was previously closed "due to administrative error."

27. On June 1, 2016, Ms. Joyce informed Respondent that she contacted Bayview and was instructed to have Respondent call Bayview's bankruptcy attorney to get a reaffirmation agreement. Ms. Joyce forwarded Respondent the Bayview attorney information, including the name and phone number. Respondent did not contact the Bayview attorney as requested by his client.

28. On June 7, 2016, Ms. Joyce emailed Respondent to report that she was confused after reviewing the paperwork to reopen her case because it referred to her second mortgage, and she needed "the reaffirmation with [her] first mortgage Bayview." Ms. Joyce noted that Bayview was still waiting to speak to Respondent. Respondent did not respond to Ms. Joyce and did not contact the Bayview attorney.

29. On May 29, 2016, and June 8, 2016, Respondent emailed representatives from Wells Fargo to inform them of Ms. Joyce's case being reopened and to request a reaffirmation agreement on Ms. Joyce's first mortgage as well as her second mortgage.

30. The emails to the Wells Fargo representatives were returned to Respondent as undeliverable. Respondent did not provide proof of any other attempts to contact Wells Fargo or Bayview.

31. Ms. Joyce was copied on one of the emails to Wells Fargo, and she responded to Respondent on June 9, 2016, to express her confusion because she had previously requested that Respondent contact Bayview. There is no record that Respondent responded to Ms. Joyce's email.

32. On June 13, 2016, Ms. Joyce emailed Respondent to report that she had been in contact with Bayview and was told that they would not reaffirm her first mortgage. There is no record that Respondent contacted Bayview to verify that they were unwilling to reaffirm Ms. Joyce's first mortgage.

33. On July 7, 2016, Ms. Joyce emailed Respondent after receiving a Notice of Hearing on Reaffirmation Agreement set for August 15, 2016. The notice specified that at the time of the hearing, the Court would consider and act upon a reaffirmation agreement with Wells Fargo Bank. Respondent said he would move to vacate the hearing and that "the case should close in short order", but Respondent did not file a motion to vacate the hearing.

34. On July 24, 2016, Respondent emailed Ms. Joyce to say that the agreement was filed in Court with necessary signatures. Respondent did not clarify what that meant. Respondent concluded "we need to complete it." Respondent did not inform Ms. Joyce that he had failed to file a motion to vacate the hearing.

35. On August 15, 2016, Respondent appeared in Court without Ms. Joyce. During the hearing, Respondent urged the Court to reaffirm Ms. Joyce's second mortgage with Wells Fargo, but the request was denied based on Ms. Joyce's failure to appear. Respondent did not address Ms. Joyce's first mortgage with the Court.

36. On August 21, 2016, Respondent filed a motion to reset the reaffirmation hearing. In the motion, Respondent requested that the Court vacate the prior order denying the approval of the reaffirmation agreement; however, Respondent incorrectly stated that the Court's denial was of the first mortgage on Ms. Joyce's residence. Respondent moved the Court to reset the hearing "in order to allow the Debtor to appear before this Court and plead for this Court's approval of said agreement." Respondent did not draft or possess a reaffirmation agreement for the first mortgage.

37. Respondent noted in his motion to reset the reaffirmation hearing that Ms. Joyce failed to appear at the hearing because she was confused about her two mortgage debts on the subject residence. Respondent said he had discussed the matter with Ms. Joyce "and she now understands the facts and circumstances." However, on August 22, 2016, Ms. Joyce filed her own request to reset the

hearing, saying that her attorney failed to tell her that she needed to be present. Respondent emailed Ms. Joyce on August 24, 2016, to say that he reviewed her pleading and it “wasn’t necessary. Please see attached. The hearing has not yet been reset but I believe he will do so.”

38. On August 23, 2016, the Court vacated the order denying the reaffirmation and reset the hearing. Respondent and Ms. Joyce appeared at the reset hearing on September 26, 2016, and the Court entered an order denying the reaffirmation agreement.

39. The bankruptcy case was closed again on October 11, 2016. On January 4, 2017, Ms. Joyce emailed Respondent to ask for his assistance with Bayview because they would not accept her payments online due to the bankruptcy reporting as “active” instead of closed. Respondent provided Ms. Joyce with a copy of the minute entry with the order closing the case.

40. Respondent filed a motion to withdraw as attorney of record for Ms. Joyce on February 12, 2017, and the motion was granted on February 13, 2017.

COUNT TWO (File No. 17-2870/Sesma)

41. Rene Sesma retained Respondent on December 15, 2014, to assist him with the bankruptcy process. The representation agreement lists legal fees in the

amount \$4,000.00, filing fees in the amount of \$310.00, and a background and credit check fee of \$53.00. Mr. Sesma ultimately paid Respondent \$3,200.00.

42. Mr. Sesma was current on the payments of his second mortgage, but he was behind on the payments of his first mortgage and a trustee sale was pending.

43. Respondent printed an estimate of the value of Mr. Sesma's home from Chase Bank's home valuation website on December 8, 2014. With the square footage listed as 3,119 square-feet, Mr. Sesma's home was estimated by Chase to be valued at \$94,000.00.

44. Respondent advised Mr. Sesma that based on the estimated value of his home, his second mortgage could be "stripped" through the bankruptcy. Mr. Sesma stopped making payments on his second mortgage in preparation for stripping this debt in his bankruptcy.

45. Respondent prepared Mr. Sesma's Chapter 13 bankruptcy petition but held off on filing it so that Mr. Sesma could modify his first mortgage to avoid the trustee sale.

46. Respondent connected Mr. Sesma with Cyndee Rae at Corporate Capital & Consulting to complete the loan modification, which was finalized in or around June 2015.

47. Before filing the Chapter 13 bankruptcy petition, Respondent ran another report on Mr. Sesma's home using Chase Bank's home valuation website. As of January 13, 2016, the estimated value of Mr. Sesma's home was determined to be \$99,000.00, so Respondent used the \$99,000.00 estimate in Mr. Sesma's Schedule A/B: Property.

48. On February 15, 2016, Respondent filed a Chapter 13 bankruptcy petition for Mr. Sesma. Respondent reported in the Disclosure of Compensation of Attorney that his total legal fee was \$4,500.00; however, the representation agreement reflects a total legal fee of \$4,000.00. Respondent also reported that he was paid \$2,093.00 in legal fees prior to filing; however, Respondent had been paid \$3,200.00. Respondent listed on the petition that he was owed a balance of \$2,407.00. Respondent told the SBA that he listed the legal fees in this manner because he planned to pay Ms. Rae from the legal fees distributed to him from the Chapter 13 bankruptcy trustee.

49. On March 14, 2016, the Court emailed Respondent a deficiency notice because Respondent had failed to file a Declaration of Electronic Filing. The Court included a copy of the form as a "courtesy reminder." Respondent had a signed copy of the Declaration in the file dated December 14, 2014. Respondent did not file the Declaration, and the Court dismissed the case on March 31, 2016.

50. Respondent moved to reopen the case on April 4, 2016. The Court sent Respondent another deficiency notice because Respondent had failed to file a Notice to Lodge Order. Respondent cured the deficiency and the case was reopened on April 12, 2016.

51. On April 14, 2016, the Court sent out the Notice of Meeting of Creditors for May 4, 2016. On May 3, 2016, Respondent emailed a group of attorneys "OOPS!!!! I have a 341 tomorrow in Tucson, and so do each of you. I need someone to cover for me as I have an 11:00 hearing in Phoenix." Respondent emailed Mr. Sesma the evening before the hearing to inform him that a coverage attorney would be in attendance.

52. On May 4, 2016, the coverage attorney contacted Respondent to report that Mr. Sesma was not aware that Respondent had arranged for coverage counsel. The coverage attorney also informed Respondent that corrections and

additions would need to be made to the bankruptcy schedules based on statements made during the meeting and an incorrect reporting of debtor income.

53. Mr. Sesma's creditor for his second mortgage filed an objection to the Chapter 13 bankruptcy plan, alleging that Mr. Sesma's home was valued at \$145,000.00 instead of \$99,000.00, and alleging that the plan was not feasible given the reported incomes.

54. Respondent emailed Mr. Sesma and advised that Mr. Sesma could either pay for a competing professional appraisal or Respondent could file to convert the case to a Chapter 7 bankruptcy. Respondent said he would update the income to address the feasibility objection. Respondent copied Ms. Rae to the email with a suggestion that the issue with the second mortgage could be resolved with a quiet title action or adversary proceeding.

55. Respondent also emailed the creditor for the second mortgage to report that the estimate in 2016 remained the same as the estimate obtained by Respondent in 2014, so Mr. Sesma would either acquire a competing appraisal or would move to convert his case to a Chapter 7 bankruptcy. The attorney for the creditor responded to say, "Please let me know what you decide with respect to conversion or going forward with the valuation proceeding."

56. Ms. Rae emailed Respondent and questioned why there would be a challenge from the mortgage creditor considering that Mr. Sesma had modified his loan and had no arrearage. Respondent replied “SHRUG!!!!!!!!!!!!!! All I know is that there is a first and second mortgage. We are trying to strip the second.” Ms. Rae compared the Proof of Claim filed by the first mortgage creditor with that of Mr. Sesma’s Loan Statement and informed Respondent that the creditor underreported the amount owed by approximately \$28,000.00. Respondent replied, “absolutely nothing makes sense” and opined that both mortgages could be affirmed if the case was converted to a Chapter 7.

57. On May 26, 2016, the Chapter 13 Trustee filed an objection to the plan with a notice of potential dismissal, noting that there were discrepancies with the proofs of claim submitted by creditors with those stated in the plan, income information was still missing, and there was an improper attempt to “scrape off” the second mortgage when the proper method of determining the validity of the lien was through the filing of an adversary proceeding.

58. Respondent emailed the Chapter 13 Trustee to express his intention to convert Mr. Sesma’s case to a Chapter 7. The Trustee replied that trustees did “not look favorably on cases filed without a sincere intent to complete the plan of

reorganization” due to the increase of administrative costs to other debtors. Following a response from Respondent about the price of doing business, the Trustee forwarded Respondent educational materials about the bankruptcy process and urged Respondent to “do the conversion sooner rather than later.”

59. On June 26, 2016, Respondent filed to convert Mr. Sesma’s Chapter 13 bankruptcy to a Chapter 7 bankruptcy. After filing the notice, Respondent emailed Mr. Sesma to say that the Trustee had requested that he file the conversion “immediately.”

60. Respondent emailed the attorney representing the second mortgage creditor to request a payment plan for Mr. Sesma to catch up on his arrearage. The attorney responded that a payment plan was unavailable due to Mr. Sesma filing a Chapter 7 bankruptcy. Respondent replied that he would consider converting the case back to Chapter 13.

61. Respondent copied Ms. Rae on the email to the mortgage creditor, and he received a response that Mr. Sesma had an outstanding balance. Respondent said payment would not be an issue.

62. Mr. Sesma previously paid Ms. Rae \$800.00 of the \$1,500.00 owed to her before being instructed by Respondent to stop making payments because

Respondent intended for Ms. Rae to be paid through the chapter 13 distributions. Respondent did not list Ms. Rae or her company as a creditor in the Chapter 13; instead, Respondent intended to pay her from the distributions he was to receive from the bankruptcy plan. Ms. Rae has still not received the remainder of the funds owed to her.

63. The Chapter 13 Trustee filed an application and order for trustee expenses and fees and distribution of funds in a converted pre-confirmed case.

64. On August 4, 2016, the second mortgage creditor filed a motion for relief from automatic stay.

65. After learning that Ms. Rae had no intention of assisting Mr. Sesma with his second mortgage due to lack of payment, Respondent replied, without copying Mr. Sesma, that the case “has just graduated to insanity” because the motion from the creditor alleged that the home was “upside down on the first mortgage. That is exactly the opposite of their initial pleadings. On that basis I need to reconvert back to 13 and do a lien-strip on the second mortgage.”

66. On August 7, 2016, the day before the Meeting of Creditors, Respondent emailed the Chapter 7 Trustee to inform him that he was advising Mr. Sesma not to appear for the Meeting of Creditors because the case was to be

converted back to a Chapter 13 due to lack of cooperation on the part of the second mortgage creditor. Respondent copied Mr. Sesma on the email and informed him that he would file to convert the case soon.

67. Respondent attempted several times to engage the services of Ms. Rae, but she refused to take Mr. Sesma on as a client. Ms. Rae did note that Mr. Sesma's home was valued based on the square footage, putting his 3,100 square-foot home at approximately \$170,000.00.

68. On August 12, 2016, Respondent filed a motion to convert Mr. Sesma's case from a Chapter 7 to a Chapter 13, stating that there was an agreement reached with the mortgage creditor for a proposed payment plan but the creditor was refusing to cooperate. There is no record of any agreement.

69. The Court sent Respondent another deficiency notice for his failure to file a Notice of Lodging Order. Respondent cured the deficiency on August 13, 2016, and the Court set the matter for a hearing on September 13, 2016.

70. On September 11, 2016, Respondent emailed Mr. Sesma and explained that he moved to convert the case back to a chapter 13 to protect Mr. Sesma's home from the mortgage creditor's motion to lift the stay. Respondent suggested that the best solution would be a conversion back to a Chapter 7 and for

Mr. Sesma to work with Ms. Rae to modify his second mortgage. Respondent noted that Ms. Rae would need to be paid directly by Mr. Sesma if the case converted to a Chapter 7.

71. On September 12, 2016, Respondent received a Joint Stipulation for Substitution of Counsel. Another attorney took over the case and moved to withdraw the motion to convert the case from Chapter 7 to Chapter 13.

72. In December 2016, Mr. Sesma requested a refund from Respondent, and while Respondent offered to reimburse Mr. Sesma based on how his case had progressed, Mr. Sesma did not receive a refund.

COUNT THREE (File No. 18-0088/State Bar of Arizona)

73. Christopher and Elizabeth Geist (“Debtors”) retained Respondent in 2016 to assist them with a Chapter 7 bankruptcy petition.

74. Debtors paid Respondent \$900.00 between July and September 2016. Debtors paid Respondent \$1,250.00 on February 13, 2017.

75. Respondent filed Debtors’ Chapter 7 bankruptcy petition on February 27, 2017. Debtors emailed Respondent in May 2017 to ask if their case was on track to be dismissed because of an objection to their ability to pass the means test

and if the plan was to refile in December 2017. Respondent confirmed that plan with Debtors, and the case was dismissed on June 28, 2017.

76. Respondent was suspended from the practice of law for four months effective November 17, 2017.

77. In preparation for Respondent's suspension, Respondent entered into a contract with Attorney Velisima N. Guzman with the agreement that Ms. Guzman work out of Mr. Ponath's office, sign all pleadings, appear in Court with clients, and substitute in as counsel for Mr. Ponath's clients until he could reinstate his license. However, Ms. Guzman withdrew from the arrangement with Respondent in December 2017.

78. On December 5, 2017, Debtors emailed Respondent to report that they were ready to send in updated documentation and meet with Respondent about filing another chapter 7 petition. Respondent replied the same day "I will get back to you soon. We need to go over everything to be sure we pass the test."

79. On December 7, 2017, Respondent emailed Debtors "Ms. Guzman will no longer be here but we can pretty much prepare everything for filing before the end of the month."

80. On December 22, 2017, Debtors emailed paystubs to Respondent and asked questions about their draft petition. Respondent responded that he had reviewed everything and it would not be an emergency to file.

81. While suspended, Respondent conferred with Debtors regarding their petition and opined on whether it would face challenges by the Office of the United States Trustee ("UST"). Respondent suggested that Debtors wait to file their bankruptcy for two or three months "if the facts get better and better" and that a delay in filing until 2018 "would be a benefit for you."

82. Debtors asked Respondent if their creditors would hold off much longer from suing. Debtors also asked Respondent if it was possible to be refunded the money they paid Respondent because they were concerned that Respondent's suspension could be having an "adverse effect" on their case.

83. Respondent informed Debtors that he would file their petition in December if needed. When Debtors reported that filing their petition in January would mean more income reported, Respondent stated, "that settles it; it needs to be filed in December."

84. On December 25, 2017, Respondent emailed Debtors "OK; you are the ONLY people that are having the slightest inconvenience of my suspension. I

have had to redraft this as a pro se filing. That means you are filing without an attorney until I know for sure that I have a substitute. He will tell me tomorrow morning. He will then file a notice of appearance. Either way you will get the case filed in December. The ONLY inconvenience is that I need you to sign all of the attached sign pages and get them to me for filing. I will then file them for you in court and I will pay the filing fee with the trust money in the trust account.”

85. On December 27, 2017, Respondent filed a Chapter 7 voluntary petition and other documents on behalf of Debtors in Case Number 2:17-bk-15142-DPC.

86. Respondent also filed the “Official Form 119: Bankruptcy Petition Preparer’s Notice, Declaration, and Signature,” which Debtors signed, the “Declaration and Signature of the Bankruptcy Petition Preparer,” which Respondent signed, and the “Disclosure of Compensation of Bankruptcy Petition Preparer,” which Respondent signed.

87. In the Disclosure of Compensation of Bankruptcy Petition Preparer, Respondent disclosed that he was paid \$1,500.00 by Debtors.

88. According to the Supreme Court of Arizona, Respondent is not a certified bankruptcy petitioner preparer (“BPP”). Even if he was a BPP,

Respondent charged an amount above the presumed reasonable amount of \$200.00, without filing a motion for approval of fees.

89. The Court set an Order to Show Cause hearing to determine if Respondent engaged in the unauthorized practice of law and “engaged in fraudulent, unfair, or deceptive acts by holding himself out as a certified BPP when he is not and charging excessive amounts for preparing and filing documents.”

90. At the Order to Show Cause hearing on January 18, 2018, Respondent admitted that he violated the local rule by signing as a certified BPP when he holds no such certification.

91. Respondent signed Debtors’ petition under penalty of perjury reporting that he accepted \$1,500.00 as a BPP to file the documents.

92. Respondent falsely declared in Debtors’ petition that he had only been paid \$1,500.00 by Debtors in the twelve months before filing the second petition.

93. Within one year of filing the second petition, Respondent was paid approximately \$915.00, not including the filing fee, to file Debtors’ first petition. Respondent was then paid \$1,500.00 to file the second petition on December 27, 2017.

94. Respondent had previously deposited Debtors' filing fees into his law firm trust account. The bankruptcy code prohibits BPPs from collecting filing fees from debtors.

95. The Court determined that Respondent filed Debtors' petition when he was not a licensed attorney or certified bankruptcy petition preparer, in violation of Local Bankruptcy Rule 2090-2, and that Respondent's § 110(h) statement was false.

96. The Court set out another hearing to give the UST time to file a formal complaint.

97. On March 27, 2018, the attorney for the UST filed "United States Trustee's Complaint for an Injunction Permanently Enjoining Defendant from Providing Bankruptcy Petition Preparer Services, Disallowance and Turnover of Fees, and Other Relief."

98. The Complaint filed by the UST noted that Respondent failed to report that he was paid at least \$915.00 for the first filing within one year of filing the second case. Respondent also collected fees from Debtors after his Order of Suspension was issued on October 17, 2017, to include \$200.00 on October 27, 2017, \$200.00 on November 21, 2017, and \$635.00 on December 8, 2017, bringing

the total he collected on the second filing to \$1,835.00, which included the court filing fees.

99. Debtors did not have a fee agreement with Respondent for the second filing, but an agreement with Ms. Guzman, whom Debtors had never met and who was not present at their meeting with Respondent on December 12, 2017.

100. Ms. Guzman signed the agreement but never met Debtors, never provided legal services to them, never appeared in their case, and never received any of the funds paid by Debtors.

101. On May 31, 2018, the UST filed a “Stipulated Order Resolving United States Trustee’s Complaint for Injunctive Relief, Disallowance of Fees and Other Fines Pursuant to 11 U.S.C., § 110.” Respondent stipulated that Debtors paid him \$1,035.00 after he knew of his sanctions and order of suspension, he provided Debtors’ with a fee agreement to be signed by Ms. Guzman with a provision for payment equal to fees already paid to Respondent, he collected and paid Debtors’ filing fee, and he designated himself a BPP when he is not.

102. According to the Stipulation, Respondent agreed to: (1) pay a fine of \$1,000.00 to the UST for violating 11 U.S.C. §§ 110(e) [Legal Advice as to Bankruptcy Forms Chosen and Completed] and 110(g) [Collecting or receiving

any payments from Debtor for Court Fees in Connection with the Filing of Petition]; (2) disgorge his fees in the amount of \$1,500.00 to Debtors' trustee for violating 11 U.S.C. § 110(h)(1) [Collection of Fees in Excess of Maximum Fee Allowed]; (3) pay a fine of \$2,000.00 to Debtors for the alleged fraudulent, unfair or deceptive conduct of 11 U.S.C. §110(i) in connection with attempting to file bankruptcy petition and schedules as a BPP; and (4) be permanently enjoined from directly or indirectly acting as a BPP under 11 U.S.C. § 110.

103. The UST agreed not to pursue any potential violation for Respondent's failure to disclose fees within 12 months of filing.

104. The Court had continued the Order to Show Cause hearing for June 11, 2018, but Respondent failed to appear.

105. At the 2nd Order to Show Cause hearing on July 2, 2018, the Court ordered that "if and when [Respondent] is ever reinstated to the practice of law in the State of Arizona, he shall be barred from practicing before the U.S. Bankruptcy Court for the District of Arizona for a period of 60 calendar days beginning the first day of his reinstatement by the State Bar of Arizona."

106. The Court forwarded all of the minute entries to the SBA.

107. In response to the initial screening letter, Respondent inaccurately reported that Debtors paid legal fees in 2016 in the amount of \$1,500.00, more than a year before they paid his second fee.

108. Respondent specifically stated that he had “checked his records, and confirmed that [Debtors’] first fee was more than a year before the second filing.”

109. While Debtors paid Respondent \$900.00 between July and September 2016, which is more than a year before the second filing, Debtors paid an additional \$1,250.00 on February 13, 2017, which was within a year of the second filing.

110. Respondent inaccurately claimed that he re-drafted the petitions and other schedules in anticipation of the second filing well in advance of his license suspension.

111. Respondent erroneously asserted that the \$1,500.00 fee was for legal work done before Respondent’s suspension though the petition was filed after.

112. The email correspondence between Debtors and Respondent in December 2017 contradict Respondent’s inaccurate claims to the SBA that the legal work was done and therefore his legal fee was earned before his suspension date of November 17, 2017.

113. While suspended for four months, Respondent sent and received emails from his account bill@ponathlaw.com. Respondent told the SBA that he was working to change his email address and internet identities but had not completed this task until after the suspension went into effect.

COUNT FOUR (File No. 18-1020/Bernatavicius)

114. Edward K. Bernatavicius is an attorney for the Office of the United States Trustee (“UST”), and in that capacity, he became aware of Respondent’s suspension from the practice of law, effective November 17, 2017. At the time of his suspension, Respondent had over one hundred cases pending in the Bankruptcy Court for the District of Arizona.

115. Respondent was provided with notice of the effective date of his four-month suspension, but he did not prepare any motions to withdraw until the day before his suspension went into effect.

116. Respondent was aware that the motions he drafted were incomplete, but he still filed them.

117. Respondent attempted to circumvent his suspension by employing a newly admitted attorney, Velisima N. Guzman, to temporarily take over his cases while Respondent would seemingly work as her paralegal.

118. Respondent posted an advertisement on LawCrossing.com stating, "I need a newly admitted attorney in Arizona for at least 4 months," and noting, "if you want to learn how to manage your own practice this will be an incredible opportunity."

119. Respondent's sought out a newly admitted attorney for the exact period of his suspension.

120. Respondent met with Ms. Guzman in the beginning of November 2017. Ms. Guzman was admitted to the State Bar of Arizona in April 2017, and was not admitted to practice before the District Court of Arizona until November 20, 2017.

121. Ms. Guzman had no prior experience in bankruptcy, had never represented a debtor in any bankruptcy case, had no experience running a law office or supervising staff in a bankruptcy practice, and only consulted with Respondent.

122. Ms. Guzman did not possess the requisite skill, knowledge, and competency to represent hundreds of clients.

123. On November 10, 2017, before Ms. Guzman was admitted to the Federal Bar, Ms. Guzman and Respondent entered a Substitution of Attorney Contract.

124. According to the terms of the Contract, Ms. Guzman was to substitute in for Respondent's cases during his four-month suspension, with Respondent to substitute back in as counsel for record upon his reinstatement.

125. The Contract reflected that Ms. Guzman would attend all hearings with Respondent and Ms. Guzman would be the signatory on all pleadings. Respondent said that it was necessary for him to attend hearings with Ms. Guzman because Ms. Guzman did not have a vehicle; however, Ms. Guzman did not request or require assistance with transportation. Instead, Respondent told the SBA that he believed it would be prudent to attend all hearings with Ms. Guzman.

126. Ms. Guzman agreed to work out of Respondent's law office and opened "Guzman Legal Services, PLLC."

127. Ms. Guzman used the email address of vguzman@ponathlaw.com after the effective date of Respondent's suspension and used Respondent's law office phone number. Ms. Guzman eventually established guzmanlegalservices.com.

128. Respondent acknowledged that he and Ms. Guzman used the “ponathlaw” email account during the time of his suspension.

129. The Contract with Respondent purports that Ms. Guzman will have a supervisory role by stating, “whether or not she is in the office, Guzman will oversee all work of [Respondent].”

130. According to the Contract, Ms. Guzman was to be compensated at a rate of \$10.00 per hour for work done in the office, court, or travel.

131. Respondent in fact paid Ms. Guzman \$10.00 per hour. Respondent charged and retained all other fees, which included attorney fees for legal representation, during the time of his license suspension.

132. Ms. Guzman did not supervise Respondent. Instead, Ms. Guzman relied on Respondent for advice and wages.

133. On December 8, 2017, Ms. Guzman and Respondent opened an attorney trust account and operating account for Guzman Legal Services, with Respondent having access to the trust and operating accounts.

134. Respondent acknowledged that he had access to Ms. Guzman’s trust account. Respondent erroneously believed that all funds were moved into Ms. Guzman’s trust account but they were not.

135. Respondent acknowledged that he accepted funds for Guzman Legal Services and placed the funds into his account.

136. On December 8, 2017, a check for attorney fees in the amount of \$883.00 was deposited into Ms. Guzman's trust account from a bankruptcy client. On December 9, 2017, Respondent withdrew all but \$25.00 and told Ms. Guzman that he was transferring the fees into his operating account. Ms. Guzman did not file the petition for the client.

137. On December 19, 2017, attorney fees in the amount of \$550.00 were deposited into Ms. Guzman's trust account from a perspective client, Debtor Seville. On December 20, 2017, Respondent withdrew all but \$25.00.

138. Ms. Guzman was not present when Respondent withdrew funds from Ms. Guzman's trust account, and Ms. Guzman did not direct or control the transactions. Respondent and Respondent's wife were responsible for handling all expenses.

139. In addition to the Geist case, which is discussed in Count 3, Mr. Bernatavicius identified at least four other bankruptcy cases with issues relating to Respondent's employment of Ms. Guzman and/or Respondent's unauthorized practice of law during his license suspension as set forth below.

Blankenship:

140. Ms. Guzman appeared on behalf of Debtor Blankenship on November 20, 2017, the day Ms. Guzman was admitted to the Federal Bar, for an adversary proceeding in a confirmed Chapter 13 case.

141. Chief Judge Collins stated on the record that it appeared as though Ms. Guzman did not know anything about the case. Chief Judge Collins cautioned Ms. Guzman that it was “risky business” to take on a case without being fully informed about the case.

142. Respondent was also present at the hearing and was informed by Judge Collins that his motions to withdraw failed to comply with the local rules and could not be granted in the current form. Respondent never amended his motions to withdraw.

143. Ms. Guzman appeared at the scheduling conference on December 11, 2017, and Judge Collins expressed concern that the discovery plan submitted by the parties proposed far out dates, at the behest of Ms. Guzman, which looked like an effort to delay the proceedings until Respondent could be reinstated. During this hearing, Ms. Guzman admitted she had no experience in the practice of

bankruptcy, Respondent was the only individual with whom she consulted, and Respondent paid her wages.

Williams v. Bank of New York Mellon:

144. On October 18, 2017, Respondent filed an adversary proceeding in bankruptcy court against Bank of New York Mellon seeking a ruling that any secured lien by the bank in relation to the debtor's residence was, in fact, unsecured.

145. Respondent moved to withdraw on November 17th and Ms. Guzman filed her notice of substitution on November 27th. On November 16th, the bank filed a motion to dismiss the adversary complaint with prejudice. Any objection would be due no later than November 30th, yet no objection was filed. On December 14th, Ms. Guzman filed a Motion to Extend Time to Answer the Motion to Dismiss and Objection to Motion to Dismiss.

146. Respondent drafted the motions without the direction or supervision of Ms. Guzman or any other licensed attorney.

147. Ms. Guzman signed the pleading at the request of Respondent.

Modica:

148. On December 11, 2017, Debtor Modica filed a voluntary petition under Chapter 7, with Ms. Guzman listed as the attorney of record. Respondent, not Ms. Guzman, prepared the bankruptcy schedules and statements.

149. The Statement of Financial Affairs reported that Respondent's law office was paid \$850.00 on December 22, 2017, but the Disclosure of Compensation of Attorney represents that Ms. Guzman was paid \$467.00 and was owed \$383.00.

150. Neither the Statement nor the Disclosure were accurate. Instead, Debtor Modica paid Respondent \$400 in cash on September 5, 2017, and paid Respondent \$383 in cash on December 14, 2017.

151. Respondent accepted the \$383.00 in cash directly from Debtor Modica and deposited the funds into his personal or operating account.

Sebille:

152. In a 341 hearing on August 14, 2018, Debtor Sebille testified that she paid Respondent \$550.00 after meeting with him on December 5, 2017.

153. Debtor Sebille said the \$550.00 was a partial payment, and Respondent drafted her petition and schedules at their meeting and gave her a

copy. Debtor Seville returned some time later to pay the remainder of her fees so that her bankruptcy could be filed, but Respondent's office was closed down.

154. Debtor Seville stated she was unaware of what became of her \$550.00, but she was later contacted by Douglas Price who offered to complete her case for additional funds. Debtor Seville declined and filed her own bankruptcy petition in June 2018 but used the petition that erroneously listed Ms. Guzman as her attorney. Debtor Seville had never met or communicated with Ms. Guzman.

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 in Count 1 (File No. 17-2563/Joyce) violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.2, 1.3, 1.4, 1.5, 3.1, 3.2, 3.3, 4.1, 8.4(c), and 8.4(d).

Respondent conditionally admits that his conduct in Count 2 (File No. 17-2870/Sesma) violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.2, 1.3, 1.4, 3.1, 3.2, 3.3, 4.1, 8.4(c), and 8.4(d).

Respondent conditionally admits that his conduct in Count 3 (File No. 18-0088/State Bar of Arizona) violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 3.3, 4.1, 5.5, 8.1, 8.4(c), and 8.4(d).

Respondent conditionally admits that his conduct in Count 4 (File No. 18-1020/Bernatavicius) violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.5, 3.3, 4.1, 5.5, 8.1, 8.4(c), 8.4(d), and Rule 72.

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:

- A. Respondent shall be suspended from the practice of law in Arizona for a period of fifteen months effective the date of entry of the final judgment and order; and
- B. Upon reinstatement, Respondent shall be placed on probation for a period of two years, with terms to be determined at the time of reinstatement and to include participation in the State Bar's Law Office Management Assistance

Program (LOMAP) and obtain a Member Assistance Program (MAP) assessment.

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 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 *Standard* 6.12 and *Standard* 7.2 are the appropriate *Standards* given the facts and circumstances of these matters.

The parties agree that Respondent violated his duty to the legal system which implicates *Standard* 6.1. *Standard* 6.12 provides that suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes and adverse or potentially adverse effect on the legal

proceeding. Respondent filed Debtor Geist's bankruptcy petition as a bankruptcy petition preparer when he held no such certification, he listed that he was paid \$1,500.00 as a BPP when he was paid as an attorney, and he incorrectly reported that he did not receive any payments in the last twelve months when he had been paid \$915.00 within the last twelve months. As discussed above, Respondent's conduct caused potential injury to his clients, the Geists.

Standard 7.2 provides: "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 parties agree that Respondent knowingly engaged in conduct that is a violation of his duty owed as a professional, including by knowingly engaging in the practice law after the November 17, 2017, effective date of his suspension. Specifically, in File No. 18-0088, Respondent consulted with his clients while he was suspended and accepted payment that was not reflected in the petition. In File No. 18-1020, Respondent entered a substitution of counsel contract with Ms. Guzman and had her sign and file all client pleadings during the time of his suspension, but Respondent was the one to meet with clients, answer client questions and draft bankruptcy petitions, and Respondent retained the bulk of the

legal fees. Respondent's unauthorized practice of law caused potential injury to his clients and the profession, and actual injury to the legal system.

The duty violated

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

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent knowingly engaged in the unauthorized practice of law, 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 potential harm to Respondent's clients and the profession, and actual harm to the legal system.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(a), Prior disciplinary history. On May 12, 1992, Respondent was informally reprimanded in File No. 97-0844 for violating ERs 8.1(b) and 7.1, Ariz. R. Sup. Ct.

On March 18, 1994, in File No. 93-0775, Respondent was informally reprimanded and ordered to pay restitution for violating ERs 1.4, 1.15, and 8.4.

On August 12, 1996, in File Nos. 91-1440, 92-1582, 93-0088, Respondent was censured for violating ERs 1.3, 1.4, 1.15(a), 8.1(b), and Rules 43(a) & (d), 44(b)(3), and 51(h) and (k).

On December 9, 2015, in File No. 14-1419, Respondent was reprimanded with a term of probation to include CLE for violating ERs 1.3, 1.8(a), and 8.4(d).

On November 14, 2017, in File No. 16-1105, Respondent was suspended for four months and ordered to a two-year term of probation to include LOMAP and MAP for violating ERs 1.1, 1.2, 1.3, 3.1, 3.2, 8.4(c), and 8.4(d).

Standard 9.22(b), dishonest or selfish motive. Respondent engaged in the unauthorized practice of law despite knowing that he was suspended effective November 17, 2017.

Standard 9.22(c), a pattern of misconduct. Respondent's unauthorized practice of law was not isolated to one case or one client.

Standard 9.22(d), multiple offenses.

Standard 9.22(i), substantial experience in the practice of law. Respondent has been licensed since 1984.

In mitigation:

Standard 9.32(d), timely good faith effort to make restitution or to rectify consequences of misconduct. Respondent offered to withdraw his BPP pleadings and was ordered to pay restitution to the Geist Debtors following his Order to Show Cause hearing.

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. This agreement was based on the following: Respondent's conduct demonstrates that he failed to serve the needs of his clients and engaged in a pattern of practicing law while he was suspended and, therefore, a long-term suspension is appropriate.

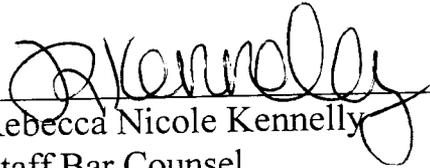
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

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 Long-Term Suspension and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this 29th day of March 2019.

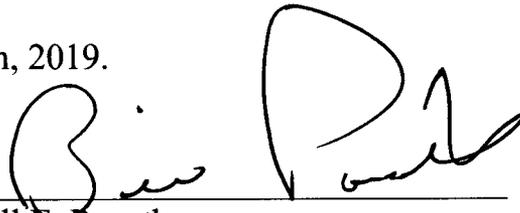
STATE BAR OF ARIZONA



Rebecca Nicole Kennelly
Staff Bar Counsel

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

DATED this 30th day of March, 2019.

A handwritten signature in black ink, appearing to read "Bill E. Ponath", written over a horizontal line.

Bill E. Ponath
Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

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

DATED this _____ day of March, 2019.

Bill E. Ponath
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 1st day of April, 2019.

Copy of the foregoing emailed
this 1st day of April, 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 1st day of April, 2019, to:

Bill E. Ponath
Law Offices of Douglas B. Price, P.C.
2101 E. Broadway Road
Tempe, Arizona 85282-1879
Email: bill@billponath.com
Respondent

Copy of the foregoing hand-delivered
this 1st day of April, 2019, to:

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

by:

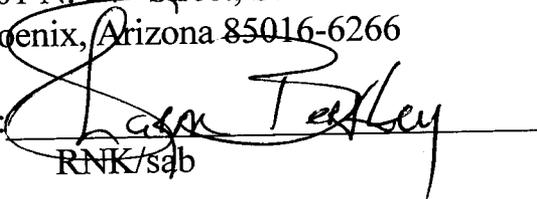

RNK/sjb

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
BILL E. PONATH, Bar No. 009543, Respondent

File Nos. 17-2563, 17-2870, 18-0088, 18-1020

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

1/29/18 PACER Charge for FTR Recording \$ 2.80

TOTAL COSTS AND EXPENSES INCURRED **\$1,202.80**

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**BILL E. PONATH,
Bar No. 009543,**

Respondent.

PDJ 2018-9114

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 17-2563, 17-2870,
18-0088, and 18-1020]

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on April 1, 2019, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS ORDERED that Respondent, **Bill E. Ponath**, is hereby suspended for a period of fifteen months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of entry of the final judgment and order. A period of suspension of more than six months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona.

IT IS FURTHER ORDERED upon reinstatement, Respondent shall be placed on probation for a period of two (2) years with terms and conditions of

probation to be determined upon reinstatement but to include participation in the State Bar's Law Office Management Assistance Program (LOMAP) and obtain a Member Assistance Program (MAP) assessment.

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.

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

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,202.80, within 30 days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within 30 days from the date of service of this Order.

DATED this _____ day of April, 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 April, 2019.

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

Bill E. Ponath
Law Offices of Douglas B. Price, P.C.
2101 E. Broadway Road
Tempe, Arizona 85282-1879
Email: bill@billponath.com
Respondent

Copy of the foregoing emailed/hand-delivered
this _____ day of April, 2019, to:

Rebecca Nicole Kennelly
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 April, 2019, to:

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

by: _____
RNK/sab