

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

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

Respondent.

**PDJ 2015-9058**

**FINAL JUDGMENT AND ORDER**

State Bar No. 14-1419

**FILED DECEMBER 9, 2015**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on December 2, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** Respondent, **Bill E. Ponath**, 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** Mr. Ponath shall be placed on probation for a period of one (1) year. The period of probation shall commence upon entry of this final judgment and order and will conclude one (1) year from that date or upon Mr. Ponath's completion of the below continuing legal education course (CLE), whichever is earlier.

**IT IS FURTHER ORDERED** as a term of probation, Mr. Ponath shall complete the CLE "Ten Deadly Sins of Conflicts." Mr. Ponath shall contact State Bar of Arizona publications at 602-340-7318 to either obtain and listen to the CD or obtain and view

the DVD entitled "The Ten Deadly Sins of Conflict". Mr. Ponath may alternatively go to the State Bar website ([www.myazbar.org](http://www.myazbar.org)) and complete the self-study online version. Mr. Ponath shall provide the State Bar Compliance Monitor with evidence of completion of the program by providing a copy of handwritten notes. Mr. Ponath shall contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Mr. Ponath shall be responsible for the cost of the CLE.

**IT IS FURTHER ORDERED** Mr. Ponath shall pay the costs and expenses of the State Bar of Arizona in the amount of \$2,094.70, within thirty (30) days from the date of this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

**DATED** this 8<sup>th</sup> day of December, 2015.

*William J. O'Neil*

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

Copies of the foregoing mailed/emailed  
this 8<sup>th</sup> day of December, 2015, to:

Brian Holohan  
Broening Oberg Woods & Wilson PC  
PO Box 20527  
1122 E Jefferson  
Phoenix, AZ 85036-0527  
Email: [bh@bowwlaw.com](mailto:bh@bowwlaw.com)  
Respondent's Counsel

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

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

by: MSmith

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

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

Respondent.

**PDJ-2015-9058**

**DECISION ACCEPTING CONSENT  
FOR DISCIPLINE**

[State Bar No. 14-1419]

**FILED DECEMBER 9, 2015**

After a finding of probable cause, a formal complaint was filed on June 29, 2015. An Agreement for Discipline by Consent ("Agreement") was filed by the parties on December 2, 2015, and submitted under Rule 57(a)(3), Ariz. R. Sup. Ct<sup>1</sup>. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate."

Rule 57(a)(2) 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.

Under Rule 53(b)(3), notice of this Agreement was provided to the complainant(s) by letter dated October 29, 2015. Complainant(s) were notified of the

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<sup>1</sup> Unless stated otherwise, all rules referenced are the Arizona Rules of the Supreme Court.

opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. No objections were apparently filed.

Mr. Ponath conditionally admits his misconduct violated Rule 42, ERs 1.3 (diligence), 1.8(a) (conflict of interest), and 8.4(d) (conduct prejudicial to the administration of justice). Restitution is not an issue. Mr. Ponath acknowledges he engaged in a conflict of interest, failed to file the adversary complaint, and failed to timely respond to the Trustee's Evaluation and Recommendation(s) Report.

### **Presumptive Sanction**

The *American Bar Association's Standards for Imposing Lawyer Sanctions (Standards)* are utilized in consideration of the most serious ethical violations of Mr. Ponath. The parties agree *Standard* 4.33 and 4.43 apply and the presumptive sanction is reprimand, stated CLE with one (1) year probation plus the payment of costs.

Mr. Ponath conditionally admits he negligently violated his duties to his client, and the legal system, causing actual harm to his client and the legal system.

### **Aggravation and Mitigation**

The parties properly set forth the aggravating and mitigating factors. They have been balanced. There is no restitution. The object of lawyer discipline is to protect the public, the legal profession, the administration of justice, and to deter other attorneys from engaging in unprofessional conduct. *In re Peasley*, 208 Ariz. 27, 38, 90 P.3d 764, 775 (2004). Attorney discipline is not intended to punish the offending attorney, although the sanctions imposed may have that incidental effect. *Id.* In that context, the PDJ finds the proposed sanction meets the objectives of discipline.

**IT IS ORDERED** incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: reprimand, mandatory stated CLE besides his annual requirements, one (1) year probation and costs, which shall be paid within thirty (30) days of the final judgment and order. These financial obligations shall bear interest at the statutory rate.

**IT IS FURTHER ORDERED** the Agreement is accepted. Costs as submitted are approved for \$2,094.70 and are to be paid within thirty (30) days. A proposed judgment and order was submitted by the parties, reviewed and is approved. It was signed and entered this date.

**DATED** this 9<sup>th</sup> day of December, 2015.

*William J. O'Neil*

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

Copies of the foregoing were mailed/emailed this 9<sup>th</sup> day of December, 2015 to:

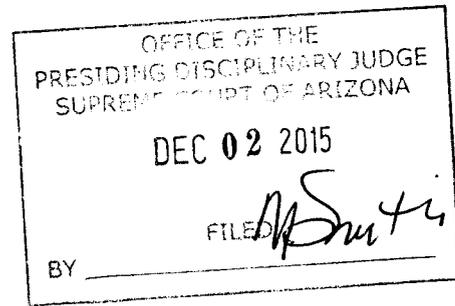
Nicole S. Kasetta  
Staff Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Brian Holohan  
Broening Oberg Woods & Wilson PC  
PO Box 20527  
Phoenix, Arizona 85036-0527  
Email: [bh@bowwlaw.com](mailto:bh@bowwlaw.com)  
Respondent's Counsel

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6266  
Email: [lro@staff.azbar.org](mailto:lro@staff.azbar.org)

by: MSmith

Nicole S. Kasetta, Bar No. 025244  
Staff Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602)340-7250  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)



Brian Holohan, Bar No. 009124  
Broening Oberg Woods & Wilson PC  
PO Box 20527  
Phoenix, Arizona 85036-0527  
Telephone 602-271-7713  
Email: [bh@bowwlaw.com](mailto:bh@bowwlaw.com)  
Respondent's Counsel

**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 2015-9058**

State Bar File Nos. **14-1419**

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Bill E. Ponath, who is represented in this matter by counsel, Brian Holohan, 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 letter on October 29, 2015. Complainant(s) have

been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.8(a), and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand with one (1) year of probation to include the Continuing Legal Education course ("CLE") "Ten Deadly Sins of Conflict." Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.<sup>1</sup> 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 May, 12, 1984.

#### **COUNT ONE (File no. 14-1419/Sabo/Nussbaum)**

2. On August 24, 2012, Daniel D. Luisi ("Dr. Luisi") retained Respondent to assist him with a chapter 13 bankruptcy.
3. Dr. Luisi was a dentist but could no longer practice dentistry because he suffered from neuralgia.
4. Because of his inability to practice dentistry, Dr. Luisi's income decreased significantly and Dr. Luisi was concerned about losing his home.

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<sup>1</sup> Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

5. Dr. Luisi had a first mortgage lien on his home in the amount of approximately \$390,000 with Bank of America and a second mortgage lien on it in the amount of approximately \$217,000 with JPMorgan Chase Bank ("Chase Bank").

6. Respondent advised Dr. Luisi that he could strip the second mortgage lien from his home if his home's value was less than what Dr. Luisi owed on his first mortgage.

7. Accordingly, in addition to filing the bankruptcy petition for Dr. Luisi, Respondent agreed to file an adversary complaint for Dr. Luisi to strip the lien if such a proceeding were necessary. Respondent told Dr. Luisi that an appraisal would be necessary before the adversary could be filed because they needed proof of the home's value as of the relevant valuation date.

8. Before he retained Respondent, Dr. Luisi had opened an Individual Retirement Account ("IRA") with Accuplan Benefit Services ("Accuplan") with approximately \$200,000 in it. Dr. Luisi transferred funds from another IRA to Accuplan in May or June of 2012 because he was interested in using funds from his IRA to purchase a dental practice. Those plans fell apart when Dr. Luisi developed career-ending neuralgia.

9. A brochure for the Accuplan IRA explains that the IRA (which was a so-called self-directed IRA) can make loans to individuals if the loan results "in a note receivable."

10. In conjunction with his Accuplan IRA, Dr. Luisi formed an limited liability company, Luisi Homes, LLC. The IRA, through the trustee, owned Luisi Homes, LLC. Luisi Homes, LLC was to be the vehicle by which loans or other investments were made by the LLC.

11. Even though Dr. Luisi did not purchase a dental practice, he kept approximately \$160,000 in the Accuplan IRA because he decided to try to make money by flipping homes.

12. The Accuplan transaction was done without Respondent's knowledge or input.

13. Respondent does not remember obtaining any documentation from Dr. Luisi regarding his IRAs prior to filing Dr. Luisi's bankruptcy petition.

14. On December 2, 2012, Respondent filed a chapter 13 bankruptcy petition for Dr. Luisi and a proposed plan. Although engaged in August, Respondent states that he did not file the bankruptcy petition until December because it takes a bankruptcy client time to provide documentation and information for the schedules. Respondent further states that the timing of the bankruptcy was also a function of the risk that the real estate market in Phoenix (especially in Dr. Luisi's neighborhood) was rising. If the home's value rose such that it was worth more than the first lien, a strip off would no longer be available.

15. Respondent listed in the bankruptcy petition Dr. Luisi's two mortgages. Additionally, in a schedule listing property claimed exempt, Respondent wrote that Dr. Luisi had an IRA account, had withdrew certain funds from this IRA account, but that he intended to redeposit these funds into the IRA account. The statements in the schedules were based upon information from Dr. Luisi.

16. Respondent believed that the relevant valuation date to determine if Dr. Luisi could strip off the second mortgage was the date of filing. For that reason, Respondent did not think the adversary had to be filed right away because the passage of time should not have changed the valuation.

17. There have been some instances of bankruptcy judges in Arizona using a different date of valuation, such as the date on which the debtor filed an adversary complaint. Respondent's belief that the date of valuation was the date the petition was filed, although perhaps not incorrect, nevertheless created a risk to Dr. Luisi that a delay in commencing the adversary might result in a judge using a later valuation (which could result in the strip off being denied). Respondent concedes that because he had a basis to think the home's value was less than the first lien when the petition was filed, he could have commenced the adversary while awaiting the appraisal, a step that might have reduced the risk that the lender would contest the strip off. Respondent also concedes he could also have contacted the second lender even before commencing the adversary to find out if they were even going to contest the strip off. In February or March of 2013, Respondent and Dr. Luisi met. During the meeting, they discussed a possible loan modification for Dr. Luisi's home. During this conversation, Respondent mentioned that he was in the process of trying to obtain a loan to pay off a second mortgage on his personal residence and some other debts.

18. Dr. Luisi told Respondent that he was willing to help him out. Dr. Luisi offered to lend money to Respondent. Dr. Luisi would testify that he thought the loan represented an opportunity to make a nice, short term return on some of the proceeds in his IRA. Dr. Luisi concedes that the loan was his idea; Respondent did not ask for it.

19. Respondent initially declined the loan because he did not believe that it would be ethical to accept a loan from a client.

20. Respondent subsequently researched ER 1.8, however, and decided that he could ethically obtain a loan from Dr. Luisi.

21. Respondent then informed Dr. Luisi that he could accept a loan from him and advised Dr. Luisi to consult with an attorney regarding providing him a loan.

22. Respondent did not discuss with Dr. Luisi any potential effects the loan could have on his bankruptcy proceedings, such as the loan delaying confirmation of the bankruptcy plan, because Respondent did not believe that the loan would affect Dr. Luisi's bankruptcy. Specifically, Respondent believed that Dr. Luisi would lend funds from his IRA, that these funds were exempt from the bankruptcy estate, and that they remained exempt from the bankruptcy estate because the IRA, not Dr. Luisi, was lending the funds to Respondent.

23. On March 8, 2013, Dr. Luisi delivered a check to Respondent in the amount of \$94,000. The check was drawn on Luisi Homes, LLC's account.

24. Respondent provided a promissory note that he drafted to Dr. Luisi on the same date. Both Dr. Luisi and Respondent executed the promissory note. The promissory note identifies the lender as Dr. Luisi.

25. Respondent originally included an interest rate of 9 percent in the promissory note but Dr. Luisi crossed this out and replaced it with a 7.5 percent interest rate.

26. The promissory note addresses ER 1.8 and states: "Lender acknowledges that Borrower has advised him that; according to Ethical Rule 1.8, Borrower has been provided with a legible copy of said Rule and reviewed it; and that he has been advised that he may seek advice from independent counsel concerning the agreement."

27. Dr. Luisi wrote on the promissory note: "I'd like the loan paid in 60 days, if possible." Dr. Luisi admits the "if possible" language necessarily implied that he knew the loan might not be paid within 60 days.

28. At the time the loan was made, Respondent believed that alternate financing (which he would use to repay Dr. Luisi) had been approved. Nevertheless, the loan was not approved for reasons outside Respondent's control.

29. The promissory note is unsecured. Respondent did not discuss with Dr. Luisi that the promissory note could be discharged if Respondent filed for bankruptcy at a later date.

30. Respondent did not obtain bankruptcy court approval for the loan because Respondent did not believe it was required. Respondent contends that his belief was not unreasonable even though the fact bankruptcy approval was not sought later caused some controversy in Dr. Luisi's bankruptcy which resulted in Dr. Luisi having to pay additional attorneys' fees.

31. Respondent did not repay the loan within 60 days. While Respondent made periodic payments to Dr. Luisi on the loan in 2013 and 2014, Respondent did not pay back the entirety of the loan until August of 2015.

32. Although he did not pay back the loan until August of 2015, Respondent frequently communicated with Dr. Luisi about his attempts to refinance his home and to obtain a private loan to pay back the loan to Dr. Luisi.

33. On February 21, 2013 (shortly before the loan was made to Respondent), the Trustee in Dr. Luisi's bankruptcy filed an Evaluation and Recommendation(s) Report with Notice of Potential Dismissal if Conditions Are Not Satisfied ("Evaluation").

34. In this Evaluation, the Trustee sought certain documentation from Dr. Luisi including documentation relating to Dr. Luisi's IRA account, Dr. Luisi's tax returns, and Dr. Luisi's bank account statements.

35. The Trustee argued that funds withdrawn from a retirement account were non-exempt and needed to be submitted to the bankruptcy estate. The Trustee wrote in the Evaluation: "The funds Debtor withdrew from his 401(k) is a non-exempt asset once it is removed from the account. The Trustee requires Debtor to provide documentation regarding the withdrawal, purchase contract(s), and documentation to verify the return of status of funds requested to be returned by the Debtor. These funds need to be submitted to the Estate towards the Chapter 7 obligation, as this case would not be feasible without the funds being submitted."

36. The Trustee further wrote that Dr. Luisi's proposed plan could not be confirmed due to certain objections filed.

37. The Evaluation provides that the Trustee may lodge an order of dismissal if Dr. Luisi does not address and provide documentation relating to the issues in the Evaluation, or does not request a hearing within 30 days.

38. On February 27, 2013, Respondent's assistant emailed Dr. Luisi informing Dr. Luisi of the information and documentation that the Trustee requested in his Evaluation.

39. On March 7, 2013, Dr. Luisi faxed Respondent's assistant certain documentation responsive to the Trustee's Evaluation.

40. Respondent did not timely provide the Trustee the information and documentation that the Trustee requested in his Evaluation. On April 29, 2013, the court dismissed Dr. Luisi's bankruptcy.

41. On the same date, Respondent emailed Dr. Luisi and an appraiser regarding obtaining an appraisal of Dr. Luisi's home for purposes of the adversary complaint. Respondent directed Dr. Luisi to contact the appraiser to schedule the appraisal.

42. Dr. Luisi did not obtain an appraisal of his home at this time, Respondent did not file the adversary complaint, and Dr. Luisi's home increased in value from the time that Respondent filed Dr. Luisi's bankruptcy petition.

43. On June 12, 2013, Respondent responded to the Trustee's Evaluation.

44. The court reinstated Dr. Luisi's bankruptcy on July 19, 2013.

45. On September 19, 2013, the Trustee filed a second Evaluation and Recommendation(s) Report ("Second Evaluation"). The Trustee again addressed Dr. Luisi's retirement funds and argued that the funds were non-exempt. The Trustee wrote: "At this time, the Trustee can not determine feasibility of this case as the large amount of funds withdrawn from Debtor's IRA remains a non-exempt asset and confirmation of this case does not appear to be possible."

46. The Trustee also addressed the lien strip on Dr. Luisi's home in its Second Evaluation: "Debtor(s) propose a strip/void lien(s) on their residential property. The Trustee requires Debtor(s) to submit a copy of the signed Court Order on the Stipulation or the adversarial procedure to the Trustee along with the Order Confirming. The Trustee notes that no action has been initiated on this process and objects to the language in the Plan which states that the adversarial proceeding will be completed prior to discharge. This action must be completed prior to confirmation." (emphasis in original).

47. On October 12, 2013, attorney Randy Nussbaum substituted in as counsel for Dr. Luisi in the bankruptcy proceedings.

48. On November 4, 2013, Mr. Nussbaum filed the adversary complaint against Chase Bank as Respondent had not yet filed it.

49. Although Mr. Nussbaum believed that he had a persuasive argument that the correct valuation date for Dr. Luisi's home was the date of the filing of the bankruptcy petition, Mr. Nussbaum contends that this was not a "perfect" argument as there are some bankruptcy judges who value the property on the date of the filing of the adversary proceeding.

50. Because of this and the fact that Dr. Luisi did not want to lose his home, Mr. Nussbaum settled the second lien for Dr. Luisi for \$33,000.

51. Although the Trustee initially alleged that the loan funds were not exempt from the bankruptcy estate, the Trustee eventually conceded the point by withdrawing the objection to the loan.

52. In October of 2015, the Trustee and Mr. Nussbaum stipulated to an Order Confirming Amended Chapter 13 Plan. The proposed plan provides for a lump sum payment in the amount of approximately \$87,000. Dr. Luisi intends to make this payment by using the funds that Respondent paid him in August of 2015. The lump-sum payment will be used to pay post-petition defaults to Bank of America, unsecured creditors, taxes, and attorneys' fees.

53. The fact of the loan and the issue of whether Dr. Luisi's retirement funds were exempt delayed confirmation of the bankruptcy plan.

54. In August of 2014, Dr. Luisi filed a malpractice complaint against Respondent in Maricopa County Superior Court. Dr. Luisi and Respondent's

malpractice insurer settled this matter. Dr. Luisi received a payment from Respondent's malpractice insurer.

### **CONDITIONAL ADMISSIONS**

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

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.8(a), and 8.4(d).

### **CONDITIONAL DISMISSALS**

The State Bar has conditionally agreed to dismiss the allegation that Respondent violated ER 1.1 because of evidentiary issues. The State Bar has also conditionally agreed to dismiss the allegation that Respondent violated ER 1.7 because this allegation was pled as an alternative to the alleged ER 1.8(a) violation that Respondent now conditionally admits.

### **RESTITUTION**

Restitution is not an issue in this matter. In August of 2015, Respondent paid back the loan to Dr. Luisi in full. Moreover, Dr. Luisi commenced a malpractice action against Respondent. This malpractice action has settled and Dr. Luisi is receiving funds as a result of the settlement.

### **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 sanction is appropriate: Reprimand and one (1) year of probation to include the CLE "Ten Deadly Sins of conflict."

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

**CLE**

Respondent shall contact State Bar of Arizona publications at 602-340-7318 to either obtain and listen to the CD or obtain and view the DVD entitled "The Ten Deadly Sins of Conflict". Respondent may alternatively go to the State Bar website ([www.myazbar.org](http://www.myazbar.org)) and complete the self-study online version. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program by providing a copy of handwritten notes. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

**NON-COMPLIANCE LANGUAGE**

In the event that Respondent fails to comply with any of the above probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within thirty (30) days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with 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* 4.33 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.33 provides: "Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client." The parties agree that Respondent negligently engaged in a conflict of interest by obtaining a loan from his client, Dr. Luisi. Specifically, Respondent initially declined the loan because he did not believe it was ethical for him to obtain a loan from his client. After reviewing ER 1.8, however, Respondent decided he could obtain the loan from his client. Respondent attempted to comply with ER 1.8 by including language regarding this rule in the promissory note. However, Respondent failed to fully comply with ER 1.8(a). He failed to inform Dr. Luisi of all consequences or issues that could arise in Dr. Luisi's bankruptcy as a result of the

loan because he did not believe that there were any consequences or issues that could arise because of the loan.

The parties further agree that *Standard 4.43* is the appropriate Standard given the facts and circumstances of this matter. *Standard 4.43* provides: "Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client." The parties agree that Respondent negligently failed to file the adversary complaint based on his belief that: (A) the date of the filing of the bankruptcy petition would govern the valuation date for any appraisal on Dr. Luisi's home; and (B) Dr. Luisi needed to obtain an appraisal of his home before Respondent filed the adversary complaint. The parties further agree that Respondent negligently failed to timely respond to the Trustee's February 21, 2013 Evaluation and Recommendation(s) Report given that he attempted to obtain the information the Trustee requested by contacting Dr. Luisi on February 27, 2013.

**The duty violated**

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

**The lawyer's mental state**

For purposes of this agreement, the parties agree that Respondent negligently engaged in a conflict of interest, negligently failed to file the adversary complaint, negligently failed to timely respond to the Trustee's February 21, 2013 Evaluation and Recommendation(s) Report, 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 Dr. Luisi and the legal system, including because the loan delayed confirmation of the bankruptcy plan, Dr. Luisi's bankruptcy petition was dismissed for a period of time, and because Dr. Luisi was denied use of the funds that he loaned Respondent until Respondent paid back those funds.

**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(a):* Prior disciplinary offenses. In State Bar File Nos. 92-1440, 92-1582, and 93-0088, Respondent was censured and placed on probation for two years (LOMAP) for violating ERs 1.3, 1.4, 1.15(a), 8.1(b), 8.4(d), and Rules 43(b)(3) and 51(h).

*Standard 9.22(i):* Substantial experience in the practice of law. Respondent has been licensed to practice law in the State of Arizona since 1984.

**In mitigation:**

*Standard 9.32(e).* Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

*Standard 9.32(m):* Remoteness of prior offense. Respondent's only attorney discipline occurred over 20 years ago.

**Discussion**

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction of a reprimand is appropriate. This agreement was based on the following: Although

Respondent did not fully comply with ER 1.8(a), he attempted to do so by including language in the promissory note regarding ER 1.8. Additionally, although Respondent did not file the adversary complaint, Respondent failed to do so based on his belief that the date of the filing of the bankruptcy petition would govern the valuation date for any appraisal on Dr. Luisi's home and his belief that Dr. Luisi needed to obtain an appraisal of his home before Respondent filed the adversary complaint. Regarding his failure to timely respond to the Trustee's February 21, 2013 Evaluation and Recommendation(s) Report, Respondent attempted to timely obtain the information the Trustee requested by contacting Dr. Luisi on February 27, 2013 regarding the same.

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 one (1) year of probation to include the CLE "Ten Deadly Sins of Conflict", and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

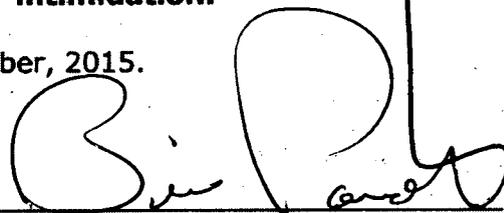
DATED this \_\_\_\_\_ day of December, 2015.

**STATE BAR OF ARIZONA**

\_\_\_\_\_  
Nicole S. Kaseta  
Staff Bar Counsel

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

DATED this 2nd day of December, 2015.

  
\_\_\_\_\_  
Bill E. Ponath  
Respondent

DATED this 2nd day of December, 2015.

Broening Oberg Woods & Wilson PC

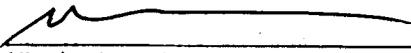
  
\_\_\_\_\_  
Brian Holohan  
Counsel for Respondent

Approved as to form and content

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

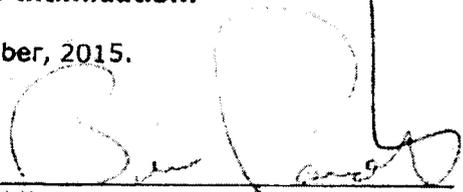
DATED this 2<sup>nd</sup> day of December, 2015.

**STATE BAR OF ARIZONA**

  
\_\_\_\_\_  
Nicole S. Kaseta  
Staff Bar Counsel

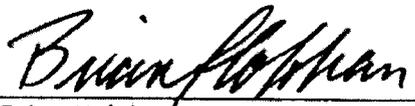
**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.**

DATED this 2<sup>nd</sup> day of December, 2015.

  
\_\_\_\_\_  
Bill E. Ponath  
Respondent

DATED this 2<sup>ND</sup> day of December, 2015.

Broening Oberg Woods & Wilson PC

  
\_\_\_\_\_  
Brian Holohan  
Counsel for Respondent

Approved as to form and content

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

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 2nd day of December, 2015.

Copy of the foregoing emailed  
this 2nd day of December, 2015, to:

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

Copy of the foregoing mailed/emailed  
this 2nd day of December, 2015, to:

Brian Holohan  
Broening Oberg Woods & Wilson PC  
PO Box 20527  
1122 E Jefferson  
Phoenix, AZ 85036-0527  
Email: [bh@bowwlaw.com](mailto:bh@bowwlaw.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 2nd day of December, 2015, to:

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

by:

  
NSK: jld

**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 No. 14-1419

### 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.

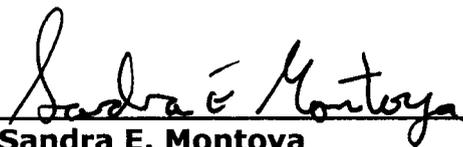
### **General Administrative Expenses for above-numbered proceedings**

**\$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

04/07/15	Computer investigation reports, PACER	\$	3.80
09/03/15	Computer investigation reports, PACER	\$	11.20
09/17/15	Deposition of Respondent	\$	632.00
10/17/15	Copy of transcript	\$	247.70
Total for staff investigator charges		\$	894.70
<b>TOTAL COSTS AND EXPENSES INCURRED</b>		\$	<b>2,094.70</b>

  
\_\_\_\_\_  
Sandra E. Montoya  
Lawyer Regulation Records Manager

10-28-15  
\_\_\_\_\_  
Date

**EXHIBIT B**