

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**NATHANIEL J. CARR, III,**  
**Bar No. 018753**

Respondent.

**PDJ 2016-9041**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 12-2482 & 15-0328]

**FILED DECEMBER 8, 2016**

The Presiding Disciplinary Judge of the Supreme Court of Arizona accepted the Agreement for Discipline by Consent filed by the parties pursuant to Rule 57(a)(4)(A), Ariz. R. Sup. Ct., on December 2, 2016.

Now Therefore,

**IT IS ORDERED** Respondent, **Nathaniel J. Carr, III, Bar No. 018753**, is suspended for four (4) years for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective January 1, 2017.

**IT IS FURTHER ORDERED** Mr. Carr shall be subject to any additional terms imposed if reinstated.

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

**IT IS FURTHER ORDERED** Mr. Carr shall pay the costs and expenses of the State Bar of Arizona for \$1,532.28 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 with these disciplinary proceedings.

**DATED** this 8<sup>th</sup> day of December, 2016

*William J. O'Neil*

---

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

COPY of the foregoing e-mailed on December 8, 2016, and mailed December 9, 2016, to:

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

Nancy Greenlee  
821 E. Fern Dr., North  
Phoenix, AZ 85014-3248  
Email: nancy@nancygreenlee.com  
Respondent's Counsel

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**NATHANIEL J. CARR, III,**  
**Bar No. 018753**

Respondent.

**No. PDJ-2016-9041**

**DECISION AND ORDER ACCEPTING  
DISCIPLINE BY CONSENT**

[state Bar Nos. 12-2482 & 15-0328]

**FILED DECEMBER 8, 2016**

The State Bar of Arizona, by Senior Bar Counsel, Shauna R. Miller and Respondent, Nathaniel J. Carr, III, who is represented by counsel, Nancy A. Greenlee, filed on December 2, 2016 their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. The complaint was filed on May 10, 2016 and an amended complaint on June 3, 2016.

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. Carr has voluntarily waives the right to an adjudicatory hearing, and waives all motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline.

The State Bar is the complainant in these matters therefore no notice to clients of the Agreement as required by Rule 53(b)(3), Ariz. R. Sup. Ct. The Agreement details a factual basis to support the conditional admissions. Upon acceptance of this

Agreement, Mr. Carr stipulates to the imposition of a four (4) year suspension beginning on January 1, 2017. He agrees to pay the costs as reflected in Exhibit A, for \$1,532.28, within thirty (30) days of this order. There are no costs from the Office of the Presiding Disciplinary Judge.

Mr. Carr conditionally admits he violated Rule 42, ERs 1.1 (competence), 1.5 (fees), 1.6 (confidentiality of information), 5.5 (unauthorized practice of law), and 8.4(c) (conduct involving dishonesty, deceit, fraud or misrepresentation). The agreed upon sanctions include a four (4) year suspension. Mr. Carr had a contract with the Office of Public Defense Services (OPDS) to provide representation to indigent criminal defendants. He was first chair on two separate death penalty cases and advisory counsel on a third case. His billings for those services were replete with statements of client confidences. Such billings are open to the public. Mr. Carr billed for services specifically excluded by his contract including, but not limited to, scanning documents and non-substantive motions. He also billed for work not performed. As first chair, he also failed to oversee the work of the mitigation expert to assure the work for the mitigation phase of trial was performed. These shortcomings regarding his oversight of mitigation partially led to petitions for post-conviction being granted and his clients being returned for re-sentencing.

Additionally, Mr. Carr was summarily suspended from the practice of law for failing to submit proof of his mandatory continuing legal education. He received actual notice of his suspension but continued to practice law. Mr. Carr stipulates his conduct violated his duty to the profession, the legal system and the public. These failings were admitted to be knowingly done.

Rule 58(k) provides sanctions shall be determined in accordance with the *American Bar Association Standards for Imposing Lawyer Sanctions*, (“Standards”). “The standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations.” See *Standards*, page 7. The parties stipulate, “Because the billing statements containing misrepresentations were not submitted to the court, but rather to the OPDS, *Standard 7.2*, Violation of Other Duties Owed as a Professional), is more applicable to his violation of ER 8.4(c), than *Standard 6.12*.” That standard calls for suspension.

The parties agree the following aggravating factors under the *Standards* are present in the record: 9.22(a) (prior disciplinary offenses), 9.22(b) (selfish or dishonest motive), 9.22(c) (pattern of misconduct), 9.22(d) (multiple offenses), 9.22(h) (vulnerability of victims), and 9.22(i) (substantial experience in the practice of Law). In mitigation, the parties stipulate *Standards* 9.32(a) (absence of a prior disciplinary record), 9.32(c) (personal or emotional problems), and 9.32(i) (delay in disciplinary proceedings) apply.

The Presiding Disciplinary Judge finds the proposed sanction of a four (4) year suspension meets the objectives of attorney discipline. The Agreement is therefore accepted.

**IT IS ORDERED** incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: a four (4) year suspension beginning January 1, 2017 and the payment of costs and expenses of the disciplinary proceeding of \$1,532.28 to be paid within thirty (30) days from the date of the final judgment and order. There are no costs of the office of the presiding disciplinary

judge. Mr. Carr shall be subject to any additional terms imposed by the Presiding Disciplinary Judge because of any reinstatement hearing held.

**IT IS FURTHER ORDERED** the Agreement is accepted. Costs as submitted are approved for \$1,532.28. A final judgment and order is signed this date.

Dated this December 8, 2016.

*William J. O'Neil*

---

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

COPY of the foregoing e-mailed on December 8, 2016, and mailed December 9, 2016, to:

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

Nancy Greenlee  
821 E. Fern Dr., North  
Phoenix, AZ 85014-3248  
Email: nancy@nancygreenlee.com  
Respondent's Counsel

by: AMcQueen

Shauna R. Miller, Bar No. 015197  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602)340-7278  
Email: LRO@staff.azbar.org

Nancy A. Greenlee, Bar No. 010892  
821 E. Fern Dr. North  
Phoenix, AZ 85014-3248  
Telephone 602-264-8110  
Email: [nancy@nancygreenlee.com](mailto:nancy@nancygreenlee.com)  
Respondent's Counsel

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

DEC 2 2016

FILED  
BY 

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**NATHANIEL J. CARR III**  
**Bar No. 018753**

Respondent.

**PDJ 2016-9041**

[State Bar File Nos. 12-2482 and 15-0328]

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Nathaniel J. Carr III, who is represented in this matter by counsel Nancy A. Greenlee, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A formal complaint was filed on May 10, 2016, and an amended complaint was filed on June 3, 2016. 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.1, 1.5, 1.6, 5.5, and 8.4(c). Upon acceptance of this agreement,

Respondent agrees to accept imposition of the following discipline: **four-year suspension**, beginning on January 1, 2017. 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 as Exhibit A.

## FACTS

### GENERAL ALLEGATIONS

1. At all times relevant, Nathaniel J. Carr III (Respondent) was a lawyer licensed to practice law in the state of Arizona, having been admitted on May 16, 1998.

2. At all times relevant in Counts One<sup>2</sup> and Three, Respondent had a contract with the Office of Public Defense Services (OPDS) to provide representation to indigent criminal defendants.

3. At all times relevant in Count One, Respondent was first chair on the Naranjo death penalty case, *State v. Israel Naranjo*, CR2007-119504 and CR2008-007163.

4. At all times relevant in Count Three, Respondent was first chair on the Kuhs death penalty case, *State v. Ryan Wesley Kuhs*, CR2005-138481.

5. At all times relevant in Count Three, Respondent was advisory counsel on the Dixon death penalty case, *State v. Clarence Wayne Dixon*, CR2002-019595.

---

<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.

<sup>2</sup> Count Two relates to Respondent Johnson, who is not part of this consent agreement.

## **CONDITIONAL ADMISSIONS**

### **COUNT ONE (File no. 12-2482/ State Bar)**

6. On August 29, 2012, Maricopa County Superior Court Judge Douglas Rayes forwarded to the State Bar a Phoenix New Times article that alleged that Respondent falsely billed the County for services provided under his indigent criminal defendants contracts.

7. The State Bar focused its investigation on Israel Naranjo CR2007-119504 and CR2008-007163. The allegations contained in this count deal solely with the Naranjo case.

8. Bills submitted to public agencies are public records subject to the freedom of information act (FOIA). The billing records submitted to OPDS by Respondent were replete with client confidences. If the matter were to proceed to a contested hearing, Respondent would testify that he did not know that his billing statements to OPDS were public records. He believed that the information contained in the billing statements to OPDS was still confidential information. Prior to his handling of the Naranjo case, Respondent's contract with OPDS provided that he was paid on a flat fee basis; he did not have to submit detailed billing statements. When OPDS switched to requiring lawyers to provide billing statements, Respondent had never previously had to prepare billing statements. He never received any training about the correct way to prepare billing statements or document his time. Respondent admits that he should have educated himself about correct billing procedure.

9. The State Bar alleged in its complaint that Respondent had numerous entries regarding team meetings. However, many of these "team meetings" were not

recorded by either the second-chair Taylor Fox (Mr. Fox) or the mitigation specialist Respondent Johnson.

10. Art Hanratty (Mr. Hanratty) was the investigator in the Naranjo case. The State Bar alleged in its complaint that other than one 30 minute meeting at the outset of the case, Mr. Hanratty was never part of any of the team meetings Respondent included on his billing statements to OPDS. If the matter were to proceed to a contested hearing, Respondent would testify that he used the description "team meeting" inconsistently in his billings and did not mean to imply that all members of the team were present. If one or more members were present, Respondent might have described this as a team meeting.

11. Maricopa County uses a Request for Qualifications (ROQ) to solicit qualified attorneys to apply for contracts to provide legal representation for indigent defendants. "Submission of an application in response to [the] solicitation shall signify full understanding and agreement with the terms and conditions of the solicitation." Respondent was working under such a contract.

12. The OPDS contract excludes payment for such things as:

- a. non-substantive motions,
- b. support services or overhead items, or
- c. any activity that does not "substantially advance the Client's case...."

13. Respondent billed \$9,437.50 for scanning in the Naranjo case; 75.5 hours at \$125 an hour from October 04, 2007, to December 20, 2008. If this matter were to proceed to a contested hearing, Respondent would testify that on December 20, 2008, he was notified by OPDS that charges for scanning file information would no longer be paid and after that date, Respondent never included another billing entry

for "scanning" copies of file materials. Prior to that date, Respondent's billing entries clearly noted time entries for "scanning" and those entries were paid by OPDS. If this matter were to proceed to a contested hearing, the State Bar would put on evidence that Respondent should have been aware of what activities were allowed to be charged under the contract and that the billing statements were not being reviewed by OPDS for improper billings at the time Respondent submitted the invoices for payment. Respondent would testify that he knew that Jim Logan, director of OPDS, was reviewing billing statements because Mr. Logan told him to include a description of the tasks done. After that conversation, Respondent began including the descriptive information that constituted a violation of ER 1.6.

14. The State Bar alleged in its complaint that Respondent submitted an invoice for payment to Maricopa County in the death-penalty case of Israel Naranjo that included false billings. In particular, Respondent billed 14.5 hours preparing for and attending interviews of Naranjo's step-brothers; only Respondent never attended the interviews; Mr. Fox did.

15. Respondent billed OPDS for 2.5 hours "Witness Prep" on November 14, 2010, "Going to see Israel [Naranjo's] brothers on the 17th, trying to prep as much as possible working on Willie today." The State Bar alleged in its complaint that Respondent was not notified until November 16, 2010, that the interviews were set to take place November 17, 2010. At a contested hearing, Respondent would testify that his assistant provided Mr. Fox's secretary with dates on which he was available and thus he knew that he needed to prepare for the interviews.

16. Respondent billed OPDS for 4.0 hours "Witness Prep" on November 16, 2010, "Adolph prep he is the guy for us, carries a lot of baggage but is HUGE for us in mitigation."

17. Respondent billed OPDS for 8.0 hours on November 17, 2010, for "Brother Interviews". Florence interviews Willie and Adolph, "we got trouble." Respondent was not present for the interviews of Willie or Adolph. If this matter were to proceed to a contested hearing, Respondent would testify that because of a personal family emergency that occurred on November 16, 2010, on the morning of November 17, 2010, Respondent did not leave to drive to Florence until the first brother interview that began at 8 a.m. was underway. Respondent planned to arrive for the second brother interview that began at 10 a.m., however, by the time he arrived at the prison in Florence the 10 a.m. interview had begun. Respondent decided not to interrupt the interview and drove back to Phoenix. In the afternoon, he met with mitigation specialist Steven Johnson who told him of the damaging testimony from the interview. While on its face Respondent's billing entry might suggest that Respondent had attended the interviews, Respondent never meant to state that he had; only that the interviews had occurred and damaging information was received. Respondent believed that he could charge for the time spent driving to and from Florence. When questioned by OPDS in 2012 about entries related to the brother interviews, after explaining what had occurred, Respondent and OPDS agreed that Respondent would refund payment for 6 hours of work billed on that date.

18. The State Bar alleged in its complaint that Respondent billed for work he did not perform, inflated the time he on spent on certain tasks, charged for work that

was not compensable under the OPDS contract, and made material misrepresentations to the OPDS about actual work he did on the Naranjo case.

19. The State Bar alleged that Respondent accepted payment from OPDS based on the false billings he submitted to OPDS.

20. The State Bar alleged in its complaint that OPDS was unaware of Respondent's material misrepresentations in his billing statements at the time it made payment to Respondent.

21. Over the course of several years, from 2007 to 2011, Respondent's billing entries lacked sufficient explanation of the actual tasks completed on any given day and therefore, on their face, constitute misrepresentations. If this matter were to proceed to a contested hearing, Respondent would testify that while his billing entries included the total amount of time for all work that Respondent did on the case for any particular day, his description of the work done on that particular day listed only one, not all of the tasks that he completed.

22. The State Bar alleged in its complaint that Respondent never attempted to correct the false billing records he provided to OPDS; Respondent never offered to return, or returned, any of the funds he received related to the Naranjo case.

23. Other than the explanations above, to which Respondent would testify at a contested hearing, he admits that his billing entries contained knowing misrepresentations.

### **COUNT THREE (CARR File no. 15-0328/ State Bar)**

*STATE of ARIZONA v. RYAN WESLEY KUHS*, CR2005-138481-001 DT

24. Respondent was lead counsel during defendant Ryan Wesley Kuhs's (defendant) 2005 trial. Respondent's co-counsel was Leo Valverde. The defendant

was convicted of first-degree murder and sentenced to death. In his Rule 32 petition, defendant raised claims alleging the ineffective assistance of counsel at the sentencing and guilt phases of the trial.

25. The Court found that defendant raised colorable claims for relief that during the sentencing phase Respondent failed to: (1) sufficiently support or supervise the mitigation specialist; (2) prepare for mitigation with the degree of thoroughness necessary for effective representation; (3) ask Dr. Walter to prepare a report in sufficient time for the defense team to request more testing if necessary, and to prepare him for trial testimony; (4) engage a psychologist to identify and interpret the risk factors reflected in the defendant's background; and (5) find a psycho pharmacologist to tell the jury about meth-induced psychosis.

26. On October 2, 2014, Respondent testified at the post-conviction relief hearing (PCR hearing) that his "major function was to get the guilt phase set for trial or do a plea; Leo's [Valverde] role was to do/discuss mitigation." He added, "I should have overseen, I didn't." Respondent admits that as first chair he was responsible to ensure that his second chair was appropriately preparing for and attending to the work assigned to him. Respondent admits that he did not adequately ensure that Mr. Valverde was attending to work necessary for the mitigation phase at trial.

27. Respondent also testified that he left supervision of the mitigation specialist, Connie Curtin (Ms. Curtin), to Mr. Valverde, and he had little contact with her.

28. In her affidavit, Ms. Curtin said in part that there were no defense team meetings, that "Mr. Valverde spent literally two minutes with me. Given their lack of involvement, I frankly gave up trying to do an adequate job...."

29. Despite Respondent's testimony and Ms. Curtin's affidavit, time sheets submitted by Respondent to OPDS identify specific times that he says he spent with Ms. Curtin.

30. The State Bar alleged in its complaint that either Respondent's testimony at the PCR hearing was false, or his billing statements to OPDS were false. If the matter were to proceed to a contested hearing, Respondent would testify that his time sheets showed two meetings with Ms. Curtin which he believes is consistent with his testimony at the PCR hearing. In addition, the total time stated on his billing statements did not correspond with the description of the tasks done on that date as Respondent listed one, but not all tasks performed on that date.

31. In a May 3, 2013 affidavit, Respondent testified that he was not involved in the mitigation preparation. However, Respondent's time sheets reflect significant time that he billed as being spent addressing mitigation matters. At a contested hearing, Respondent would testify that while Mr. Valverde was primarily responsible for the mitigation phase, they did have numerous discussions about the mitigation evidence throughout the representation.

32. On September 13, 2007, the first day of the penalty phase, Respondent told the Court that the defense was claiming that defendant had ADHD, not schizophrenia or any other mental illness. "Based on arguments preserved in the record, [Respondent] entered the trial anticipating that no mental health information would be presented." While this was the court's finding, if this matter proceeded to a contested hearing, Respondent would testify that ADHD was mental health information that was to be presented at trial.

33. Respondent's testimony at the PCR hearing was that at the time of trial he had a minimal understanding of schizophrenia and thought that neuropsychologists looked for damage to the brain and could do psychological testing, such as an IQ test, but the decision about the type of testing to perform was the expert doctor's. Respondent's understanding, that it is up to the expert to decide the area of testing, is not supported by the expert testimony or the standard of practice in Maricopa County at or around the time of trial. Respondent testified that he relied on Valverde to select the doctor and communicate with him.

34. Respondent testified that he did not read Dr. Walter's report until sometime in August, during the trial; he did not talk to Dr. Walter after reading the report and before he was called to testify. Acknowledging that the Rule 11 evaluations had identified "psychosis NOS" resulting in defendant being sent for restoration to competency (RTC), Respondent testified that he did not seek a personality assessment because he "left it to [Valverde] for the mitigation aspect."

35. Respondent was unaware that the evaluation request made of Dr. Walter was limited in scope to a neurological evaluation, and that only tests designed to identify the presence (or absence) of traumatic brain injury (TBI) were administered. Dr. Walter found no TBI. However, when writing his report, Dr. Walter referenced "ADHD" and "psychosis NOS," which he gleaned from the records provided, for the purpose of historical corroboration. Respondent focused on these references as "findings" made by Dr. Walter, and made a last-minute determination that the doctor's report would be extremely helpful.

36. Respondent never discussed the scope of Dr. Walter's work before trial, "leading to a disastrous — for Defendant — cross-examination of the doctor on

personality testing, the possibility of malingering, the DSM-IV, and resulting in the doctor falling-back from 'psychosis NOS'<sup>3</sup> to 'psychosis RO.'<sup>4</sup>''

37. In its ruling dated October 16, 2014, the court found that "[N]either Valverde nor [Respondent] appeared to have anticipated the State would critically challenge what Dr. Walter did, or did not do, in reaching his 'NOS' diagnosis. And while Valverde and [Respondent] knew about schizophrenia generally, neither lawyer today understands the significance of the Rule 11 diagnoses as it ultimately related to the determination that Defendant suffered from schizophrenia. These lawyers had three experts tell them that Defendant suffered from 'psychotic disorder NOS' and they took no action to determine what that meant, nor investigate further. As a result, the jury was misinformed regarding the fact that Defendant suffers from the serious mental illness of schizophrenia."

38. The court granted the petition for post-conviction relief and ordered that the defendant be resentenced.

*CLARENCE WAYNE DIXON v. CHARLES L. RYAN ET AL.*, CV-14-258-PHX-DJH,  
Petition for Writ of Habeas Corpus

39. In November 2002, Clarence Wayne Dixon (Dixon) was serving a life sentence in an Arizona state prison for a 1986 sexual assault conviction. That is when police found new DNA evidence that connected Dixon to the January 7, 1978 murder of 21-year-old Deana Bowdoin.

40. In March 2006, Dixon decided to represent himself during his trial. In July 2006, Respondent and Ken Countryman were appointed as advisory counsel.

---

<sup>3</sup> Not otherwise specified.

<sup>4</sup> Ruled out.

41. The matter is currently before the District Court on a Petition for Writ of Habeas Corpus. Dixon's present counsel noted in the petition that she did not find any prepared mitigation exhibits in the file. Consistent with this lack of documentation, the mitigation specialist, Tyrone Mayberry (Mr. Mayberry) confirmed that he had not prepared any exhibits for presentation at the penalty phase of Dixon's trial and that if Respondent had prepared any such exhibits, he was not aware of them. If this matter were to proceed to a contested hearing, Respondent would testify that because he was not counsel of record, he could only offer advice to Mr. Dixon about preparing for the trial. Mr. Dixon made the ultimate decision about what evidence to present at trial.

42. The State Bar alleged in its complaint that Respondent's billing records show that he misrepresented the work he performed—or failed to perform—on this case. Respondent received a total of \$129,475.00 for his work as advisory counsel on Dixon's case. The State Bar alleged that Respondent requested and received payments for work that he never performed, and exaggerated the amount of time required for the minimal work he did perform. For example:

- a. Respondent billed 81 hours for "trial day" on days when there was no trial. If the matter were to proceed to a contested hearing, Respondent would testify that these entries should have been "trial preparation."
- b. Respondent billed for a total of 40 trial days, even though Dixon's trial lasted only 27 days. At a contested hearing, Respondent would testify that these entries should have been described as "trial preparation."
- c. Respondent billed 12 hours for trial on January 14, 2008, but the court transcript reveals that he was not in court that day. At a contested

hearing, Respondent would testify that this entry should have been "trial preparation."

- d. Respondent billed 2 hours for a hearing on January 21, 2007, when no hearing took place. At a contested hearing, Respondent would testify that he listed the wrong hearing date due to a typographical error.
- e. Respondent billed for 9.5 hours for five hearings where he was not actually present. At a contested hearing, Respondent would testify that on those dates, he arrived after the start of the hearing due to scheduling conflicts, however, the proceedings were not interrupted to specifically note his appearance.
- f. Respondent billed 18 hours for reviewing jury questionnaires on November 5, 6, and 7, even though the court had not yet given the questionnaires to prospective jurors. At a contested hearing, Respondent would testify that he should have described the time as "preparing jury questionnaires."
- g. Respondent billed for conversations with prosecutor Juan Martinez on August 13, 2006 (2 hrs.), October 4, 2006 (3 hrs.), June 3, 2007 (.5 hrs.), June 5, 2007 (2 hrs.), and June 28, 2007 (1 hr.). On August 30, 2007, Mr. Martinez informed the court that he had "never spoken to [Respondent] about this case." At a contested hearing, Respondent would testify that having a conversation with the prosecutor was only one of the tasks performed on the date of his billings; the length of time noted on the billing entry did not relate solely to the telephone conversation.

h. Dixon researched and wrote all of his own motions; nevertheless, Respondent billed excessive time for purportedly reading these motions. He billed four hours for reading Dixon's motion to produce documentation on White Pants that consisted of two paragraphs. Respondent billed three hours for reading the State's one-paragraph response. Respondent similarly billed many hours for reading other short motions and responses:

- i. November 29, 2006 billing entry (3 hours to review a two-page motion);
- ii. February 26, 2007 billing entry (2 hours to review a one-page motion);
- iii. June 8, 2007 billing entry (claiming to research case law "in motion from yesterday" when there was no motion filed the previous day);
- iv. June 17, 2007 billing entry (4 hours to read Dixon's one-page request that the court take judicial notice);
- v. October 29, 2007 billing entry (2 hours to read Dixon's two-page motion to compel court reporter provide July 3rd transcript).

With regard to the above entries, if this matter were to proceed to a contested hearing, Respondent would testify that he reviewed not only the client's motion but any case law cited in the motion or relevant to the motion to ensure the client had not missed anything vital.

- i. Respondent billed 37.5 hours for preparing witness summaries and compiling eleven "trial notebooks." The eleven trial notebooks and witness summaries were never found. If the matter were to proceed to

a contested hearing, Respondent would testify that he had originally purchased the notebook binders for use in his practice, and thus at the conclusion of the trial, he removed the material from the binders so that he could re-use the binders. Respondent shredded the information that he considered work product and transmitted any other information to subsequent counsel. If this matter were to proceed to a contested hearing, the mitigation specialist, Mr. Mayberry, would testify that he sat directly behind Dixon and Respondent during the trial, and he does not recall seeing Respondent refer to any such notebooks.

- j. On December 14, 2007, Respondent billed eight hours for transcript review and "mitigation discussion" and on December 15, 2007, he billed another eight hours for "serious mitigation discussion." Neither Mr. Countryman nor Mr. Mayberry billed for any such discussion, nor did Respondent visit Dixon on either of these days.
- k. On January 21, 2008, Respondent billed seven hours for mitigation with "team and Aiken." James Aiken<sup>5</sup>, however, billed nothing for that day and did not even travel to Phoenix until the next day. At a contested hearing, Respondent would testify that he listed the date of the meeting inaccurately due to a typographical error; the date should have been January 22, 2008.
- l. Respondent billed eight hours on January 25, 2008, for "prepping client for death verdict," even though Dixon had been sentenced to death the

---

<sup>5</sup> Ex-federal prison warden who would discuss the prisons ability to maintain Dixon and protect society.

previous day, January 24, 2008. If the matter proceeded to a contested hearing, Respondent would testify that this entry contained the wrong date for meeting with the client to prepare for the death verdict. On January 26, 2008, two days after the verdict, Respondent again billed six hours for "[v]erdict of death, talked with client and team for quite some time." At a contested hearing, Respondent would testify that during this meeting they discussed how to work with the family to deal with the verdict; and appellate issues.

43. Over the course of several years, in both the Kuhs and Dixon matters, the State Bar alleged that Respondent billed for work he did not perform, inflated the time he spent on certain tasks, and made material misrepresentations to the OPDS about actual work he did perform. Respondent acknowledges that because of the way that he prepared his billing statements, his billing entries lacked sufficient explanation of the actual tasks completed on any given day and therefore, on their face constituted knowing misrepresentations.

44. Respondent accepted payment from OPDS without performing the services he falsely alleged he performed. If the matter were to proceed to a contested hearing, Respondent would testify that he did perform the services described on his billing statements, but that the total amount of time for all work that Respondent did on the case for any particular day did not correspond with the description of the work because he listed only one, not all tasks that he completed. In addition, Respondent's billing statements contained many inaccurate descriptions as noted above in paragraph 21.

45. OPDS was unaware of Respondent's material misrepresentations at the time it made payment to Respondent.

46. Respondent never attempted to correct the false billing records he provided to OPDS; Respondent never offered to return, or returned, any of the funds he received related to either the Kuhs or Dixon case.

**COUNT FOUR (CARR File no. 15-0328/ State Bar)**

47. On December 29, 2014, the State Bar notified Respondent by certified mail, return receipt signed by Respondent, that there was no record of his mandatory continuing legal education (MCLE) affidavit for educational year July 1, 2013 to June 30, 2014. The letter also stated in part that "this letter serves as the required 30 day notice prior to summary suspension, pursuant to Ariz. R. Sup. Ct. Rules 45 and 62."

48. On February 27, 2015, Respondent was summarily suspended from the practice of law under Rule 45(i), Ariz. R. Sup. Ct. A letter advising of the suspension was sent to his address of record, certified mail, return receipt requested. If this matter were to proceed to a contested hearing, Respondent would testify that he moved his office on February 25, 2015, and as a result, he did not receive the letter advising him of his summary suspension.

49. Respondent continued to practice law and "handle[d] his caseload throughout the month of March 2015." If this matter were to proceed to a contested hearing, Respondent would testify that he learned of his suspension from his counsel on March 25, 2015, and then took steps to get reinstated. Respondent was reinstated on April 7, 2015.

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 1.1, 1.5, 1.6, 5.5, and 8.4(c).

### **CONDITIONAL DISMISSALS**

The State Bar has conditionally agreed to dismiss Rule 42, Ariz. R. Sup. Ct., specifically ER 3.2, and ER 8.4(b).

### **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: **four-year suspension**, beginning January 1, 2017.

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

### **LEGAL GROUNDS IN SUPPORT OF SANCTION**

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

When an attorney faces discipline for multiple charges of misconduct, the most serious charge serves as the baseline for the punishment. *In re Moak*, 205 Ariz. 351, 353, ¶ 9, 71 P.3d 343, 345 (2003) (citing *In re Cassalia*, 173 Ariz. 372, 375, 843 P.2d 654, 657 (1992) (adopting Commission report); *ABA Standards* at 6. Consideration is then given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. *In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772; Standard 3.0.

Because the billing statements containing misrepresentations were not submitted to the court, but rather to the OPDS, *Standard 7.2, Violation of Other Duties Owed as a Professional*, is more applicable to Respondent's violations of ER 8.4(c), than *Standard 6.12*. 7.2 provides:

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system.

#### **The duty violated**

Respondent's conduct in Count One violated his duty to the profession, the legal system, and the public.

Respondent's conduct in Count Three violated his duty to his clients, the profession, the legal system, and the public.

Respondent's conduct in Count Four violated his duty to the profession and the legal system.

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

For purposes of this agreement the parties agree that Respondent knowingly engaged in conduct involving misrepresentations when he prepared billing statements

that did not accurately detail the work that was done in relationship to the amount of time noted for billing entry. With regard to the disclosure of confidential information in the billing statements, the parties agree that Respondent's conduct was negligent. The parties agree that Respondent's conduct in practicing law while suspended for failure to comply with his CLE obligations was negligent. The parties agree that Respondent's competency failures related to the representation of Mr. Kuhs (Count Three) were negligent.

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

For purposes of this agreement, the parties agree that in Count One, there was actual harm to the profession, the legal system, and the public. The parties agree that in Count Three, there was actual harm to the client (Mr. Kuhs) and potential harm to client, Mr. Dixon, and actual harm to the profession, the legal system, and the public. The parties agree that in Count Four, there was potential 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)* dishonest or selfish motive;
- *Standard 9.22(c)* a pattern of misconduct;
- *Standard 9.22(d)* multiple offenses;
- *Standard 9.22 (e)* vulnerability of victim;
- *Standard 9.22 (i)* substantial experience in the practice of law;

**In mitigation:**

- *Standard 9.32 (a) absence of a prior disciplinary record;*
- *Standard 9.32(c) personal or emotional problems.* Respondent missed the brother interviews in Naranjo because of a personal family situation as detailed in his response dated October 26, 2012, for which a protective order was granted.
- *Standard 9.32 (i) delay in disciplinary proceedings.* The State Bar began its investigation in 2012 for Counts One and Three. Respondent's representation in the underlying cases at issue began in or about 2007 and ended in or about 2011.

**Discussion**

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the agreed upon four-year suspension is appropriate. This agreement was based on the following: Respondent's conduct occurred during the time period of 2007 to 2011. In 2012, as a result of the New Times article, Respondent changed his billing practices and procedures and no further inquiries have been made about his billing practices. In addition, Respondent ceased handling death penalty cases in 2011.

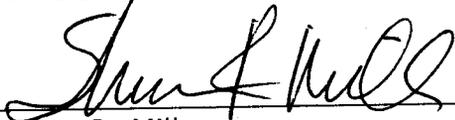
Based on the *ABA Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

**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 suspension for four years and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

**DATED** this 2nd day of December 2016

**STATE BAR OF ARIZONA**

  
\_\_\_\_\_  
Shauna R. Miller  
Senior 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 December, 2016.

\_\_\_\_\_  
Nathaniel J Carr III  
Respondent

**DATED** this \_\_\_\_\_ day of December, 2016.

\_\_\_\_\_  
Nancy A. Greenlee  
Counsel for Respondent

**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 suspension for four years and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

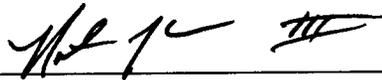
**DATED** this \_\_\_\_\_ day of December 2016

**STATE BAR OF ARIZONA**

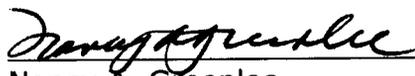
\_\_\_\_\_  
Shauna R. Miller  
Senior Bar Counsel

**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 2<sup>nd</sup> day of December, 2016.

  
\_\_\_\_\_  
Nathaniel J Carr III  
Respondent

**DATED** this 2<sup>nd</sup> day of December, 2016.

  
\_\_\_\_\_  
Nancy A. Greenlee  
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, 2016.

Copy of the foregoing emailed  
this 2nd day of December, 2016, to:

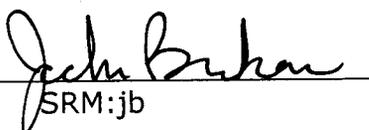
The Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

Copy of the foregoing mailed/emailed  
this 2nd day of December, 2016, to:

Nancy A. Greenlee  
821 E. Fern Dr. North  
Phoenix, AZ 85014-3248  
Email: [nancy@nancygreenlee.com](mailto:nancy@nancygreenlee.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 2nd day of December, 2016, to:

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

by:   
SRM:jb

**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Nathaniel J. Carr, Bar No. 018753, Respondent

File Nos. 12-2482 & 15-0328

### **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.

<b><u>Staff Investigator/Miscellaneous Charges</u></b>		
09/16/16	Transcript of Connie Curtin Testimony	\$ 252.50
09/23/16	Copy of Hearing Transcript Held on 8/30/07	\$ 70.00
05/08/15	Investigator Mileage and Parking	\$ 9.78
Total for staff investigator charges		\$ 332.28
<b><u>TOTAL COSTS AND EXPENSES INCURRED</u></b>		<b><u>\$1,532.28</u></b>

**EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**NATHANIEL J CARR III,  
Bar No. 018753,**

Respondent.

**PDJ 2016-9041**

**FINAL JUDGMENT AND ORDER**

[State Bar File Nos. 12-2482 and 15-0328]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on December 2, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** that Respondent, **Nathaniel J Carr III**, is hereby suspended for four years for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, beginning January 1, 2017.

**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 \$1,532.28, 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.

**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.

**DATED** this \_\_\_\_\_ day of December, 2016

---

**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 December, 2016.

Copies of the foregoing mailed/mailed  
this \_\_\_\_\_ day of December, 2016, to:

Nancy A Greenlee  
821 E. Fern Dr. North  
Phoenix, AZ 85014-3248  
Email: [nancy@nancygreenlee.com](mailto:nancy@nancygreenlee.com)  
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_\_ day of December, 2016, to:

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

Copy of the foregoing hand-delivered  
this \_\_\_\_\_ day of December, 2016 to:

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

by: \_\_\_\_\_