

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

MICHAEL L. FREEMAN,
Bar No. 010237

Respondent.

PDJ-2015-9020

FINAL JUDGMENT AND ORDER

[State Bar Nos. 13-2233, 14-2139,
14-3278]

FILED NOVEMBER 17, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on October 29, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED Respondent, **Michael L. Freeman**, is hereby suspended for sixty (60) days, effective thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED upon reinstatement, Mr. Freeman shall be placed on one (1) year of probation for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents. Probation shall be effective the date of the reinstatement order and shall conclude one year from that date.

IT IS FURTHER ORDERED Mr. Freeman shall participate in the State Bar's Member Assistance Program ("MAP"), obtain continuing legal education ("CLE"), and attempt reconciliation with those whom Respondent offended by his conduct (Judges

Daniel Martin, Cynthia Bailey, Warren Granville, Teresa Sanders, Gary Scales, Timothy Wright, and attorneys Bradley Beauchamp, Shawn Fuller, Jessica Oortman, Barbara Marshall and April Sponsel), as outlined in the parties' consent agreement. The MAP terms will require that Mr. Freeman attend 15 counseling sessions for one year with Rabbi Yossi Bryski, Chief Rabbi at Young Israel Synagogue of Phoenix. The counseling sessions shall focus on anger management and respect for others. Mr. Freeman completed in advance the CLE component of his probation by obtaining eight (8) hours of CLE in ethics and professionalism since July 1, 2015; however, those eight (8) hours are in addition to and are not included in his annual CLE requirement. Mr. Freeman shall also complete twenty (20) hours of Pro Bono legal services and eight (8) hours of Community Service during his probation period.

IT IS FURTHER ORDERED Mr. Freeman shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00 within thirty (30) days from the date of this Order.

DATED this 17th day of November, 2015.

William J. O'Neil

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

Copies of the foregoing mailed/emailed
this 17th day of November, 2015, to:

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by: JAlbright

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

MICHAEL L. FREEMAN,
Bar No. 010237

Respondent.

PDJ-2015-9020

**ORDER ACCEPTING AGREEMENT
FOR DISCIPLINE BY CONSENT**

[State Bar Nos. 13-2233, 14-2139,
14-3278]

FILED NOVEMBER 17, 2015

The parties first submitted an Agreement for Discipline by Consent on March 9, 2015 ("First agreement"). For reasons stated in an April 15, 2015 decision, the First Agreement was rejected. However, the parties were offered an opportunity to modify that First Agreement by addressing the stated reasons resulting in its rejection. The parties declined to timely modify the First Agreement and under Rule 57(a)(4)(B),¹ after thirty days, it became formally rejected.

The parties filed a new Agreement for Discipline by Consent-Modified ("Second Agreement") on June 17, 2015, under Rule 57(a)(3). The Second Agreement was reached after the Attorney Discipline Probable Cause Committee (ADPCC) found probable cause for the authorization to file a formal complaint, but prior to the issuance of its' formal written probable cause orders. However, the Second Agreement was ambiguous regarding the required Rule 53(b)(3) notice to the

¹ All references herein to rules are to the Arizona Rules of the Supreme Court unless expressly stated otherwise.

complainants. The PDJ, on June 29, 2015, ordered clarification from the parties regarding the required notice to the complainants. This resulted in the belated notice of Second Agreement being provided to the complainants. Complainants were notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) days of notice. Notably, there is no record of objection by any of the complainants.² On July 1, 2015, the parties also stipulated to amend the Second Agreement, attaching two letters of apology written by Mr. Freeman. One to Gila County Attorney Beauchamp, the other to Superior Court Judge Teresa Sanders. For reasons stated in an order dated July 29, 2015, the Second Agreement was rejected.

On October 29, 2015, the parties submitted a new agreement ("Third Agreement") for discipline by consent reached through a settlement conference. Under Rule 53(b)(3), complainants were notified by letter on October 29, 2015, of the new opportunity to file a written objection to the Third Agreement with the State Bar within five business days. No objections have been filed.

Under Rule 57, 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. Rule 57(a)(4)(C), Ariz. R.

² Ms. Marshall responded to the effect that the Maricopa County Attorney's Office does not agree with characterizations contained in pages 17-23 of the Agreement. However, there is no record of objection to the Agreement.

Sup. Ct. The PDJ draws no firm conclusions from any statement within the agreement, unless the agreement is accepted.

The Third Agreement reflects the positive identifiable steps Mr. Freeman has taken to address his behavioral trait that has created a discipline history which “reflects disrespect for others.” It further demonstrates Mr. Freeman is “coming to grips” with that trait and actively striving to overcome it. He is undergoing meaningful counseling. The Third Agreement attached evidence of the multiple hours of CLE Mr. Freeman completed to better understand his failings. Moreover, Mr. Freeman’s letters, provided as exhibits to the Third Agreement, demonstrate genuine sincerity. All of these are demonstrable evidence of remorse.

Based on these conditional admissions, the PDJ agrees the proposed sanctions are within the range of reasonableness of sanctions for similar misconduct and will fulfill the purposes of discipline.

Now Therefore,

IT IS ORDERED incorporating the Third Agreement and any supporting documents by this reference. The agreed upon sanctions are: sixty (60) days of suspension and one (1) year of probation upon reinstatement (MAP) and other terms. Mr. Freeman shall also attempt reconciliation as outlined in the parties agreement, shall complete eight (8) CLE hours on ethics and professionalism (completed at time Third Agreement submitted), shall continue counseling, and shall complete 20 hours of Pro Bono legal services and eight (8) hours of community service. In addition, Mr. Freeman shall pay the costs and expenses of the disciplinary proceedings totaling \$1,200.00, within thirty (30) days from this Order. These financial obligations shall bear interest at the statutory rate.

IT IS FURTHER ORDERED the Third Agreement is accepted. All case management conference orders are vacated, including the hearing. Costs as submitted are approved for \$1,200.00, and shall be paid within thirty (30) days of the final judgment and order. Now therefore, a final judgment and order is signed this date.

DATED this 17th day of November, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
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BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

MICHAEL L. FREEMAN,
Bar No. 010237

Respondent.

State Bar File Nos. 13-2233,
14-2139, and 14-3278

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Michael L. Freeman, who is represented in this matter by counsel, Michael R. Perry, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.¹ 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.

¹ All references herein to rules are to the Arizona Rules of the Supreme Court unless expressly stated otherwise.

Pursuant to Rule 53(b)(3), notice of this agreement was provided to the complainants by letter on March 3, 2015. 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 41(c) and (g), and Rule 42, ERs 1.3, 3.1, and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand with Probation for one year to include six (6) Continuing Legal Education (CLE) hours on professionalism. Those hours are to be in addition to the annual CLE requirement. 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.² The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

NON-COMPLIANCE LANGUAGE

If Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5). The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether 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

² 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.

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.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on November 9, 1985.

COUNT ONE (File No. 13-2233/Maricopa County Attorney's Office)

2. This charge is based on Respondent's conduct defending Harvey Roper in a criminal case that Deputy Maricopa County Attorney April Sponsel prosecuted.

3. Mr. Roper was indicted on felony and misdemeanor charges in April 2012, CR2012-117023 ("023 case"). While released on bail, he was indicted on several felony charges committed in May 2012, CR 2012-124245 ("245 case").

4. Attorney Anca Jacob was appointed to represent Mr. Roper.

5. On September 17, 2012, Judge Martin granted Ms. Jacob's Motion to Continue Trial in both cases in part to conduct DNA analysis, and in a minute entry set both cases for trial on December 11, 2012, at 8:00 a.m.

6. In open court on September 17, 2012, though, after a discussion with counsel for both sides in Mr. Roper's presence, and with the parties' agreement, Judge Martin announced that they would try the 023 case on December 11 to be followed by a Final Trial Management Conference ("FTMC") in the 245 case.

7. Mr. Roper retained Respondent to represent him in both cases. Respondent filed a notice of appearance in each case on September 25, and stated in both that he would be prepared for the next court matter on December 11.

8. On December 3, 2012, Respondent filed a motion to continue the 023 case for 45 days and stated that he was prepared to try the 245 case although Mr. Roper preferred to continue that case, too.

9. Respondent argued that he had not obtained from the state certain DNA evidence and witness statement transcripts, and that since October Ms. Sponsel failed to cooperate in making certain witnesses available for interviews.

10. Respondent also contended that he was waiting for the Office of Public Defense Services to allocate funds for Mr. Roper to retain a DNA expert (even though Respondent was his private counsel), and several victims had refused to be interviewed.

11. Ms. Sponsel opposed Respondent's motion.

12. At a December 4 Trial Management Conference, Judge Martin reminded the parties that he had continued an earlier trial date in order to conclude DNA analysis and that Respondent stated in his notices of appearance that he would be ready for trial in December.

13. Judge Martin ordered Ms. Sponsel to make all witnesses available for interviews and ordered Respondent to focus on and be ready to try the 023 case on December 11.

14. Respondent told the court that he was ready to try the 245 case that was set to begin on the same date and at the same time as the 023 case. Judge Martin replied: "I know that it is, but at the 17th we talked about that and agreed that the 023 matter, which was the prior in time, would be the first one to be tried to be followed by the 245 case. So we had actually set that for a status conference

today to see where we were on the DNA, but that was never going to impact the order of the trials.”

15. Respondent answered that nothing to that effect is reflected on the minute entries. He correctly observed that all of the minute entries in both cases from and after September 17 state that the cases would go to trial on December 11, 2012, at 8:00 a.m., with neither specified as having priority.

16. On December 5 Respondent filed a motion to appoint a DNA expert in the 023 case. Ms. Iacob had hired Chromosomal Labs to conduct a preliminary evaluation but Respondent decided, after interviewing the state’s DNA expert, to have the lab do more work.

17. On December 10 Respondent filed another motion to continue the 023 case because he needed funding to hire Chromosomal Labs to conclude its work, witness interviews had not been transcribed, he learned new information from the police officers, and Mr. Roper’s daughter needed heart surgery. Ms. Sponsel opposed the motion.

18. On December 11 Judge Martin ruled that he and the parties already had discussed all of those issues other than the new police information and the new information gave insufficient cause to warrant a continuance.

19. Respondent asked the court to approve DNA analysis funding to which Judge Martin responded, “[T]he trial is now. You’re not going to have an expert, at least not in the current case.” Judge Martin announced that the “argument is over” and denied the motion for funding as moot.

20. Respondent wrote a detailed letter to Mr. Roper advising him in the matter. The content of Respondent's letter is protected against public disclosure by the attorney/client privilege and a Protective Order entered in this matter.

21. During the course of the representation Respondent and Mr. Roper discussed whether to include prosecutorial vindictiveness in Mr. Roper's defenses. The vindictiveness theory was based on the court's 2009 dismissal of a case against Mr. Roper, CR2008-173326, due to dilatoriness by the state. The court remedied the infraction by precluding the state from using DNA evidence at trial. Ms. Sponsel was the prosecutor. Mr. Roper and his family believed that Ms. Sponsel and the Phoenix Police Gang Unit sought retribution against him.

22. In the 023 and 245 cases, Mr. Roper changed his plea on December 12, 2012. In his sentencing memorandum, Respondent wrote:

The State has disclosed they intend to seek aggravation by offering unsworn testimony, as part of a show done in many of Ms. Sponsel's cases, of supposed gang contact by the police. This case highlights the inordinate power of the prosecutor April Sponsel and the Phoenix Police Gang Squad to manipulate and eviscerate justice through intimidation, perjury and mandatory sentencing. Three years ago, Ms. Sponsel promised retribution after a case was dismissed by the Court against Mr. Roper after Ms. Sponsel had problems with a DNA analysis and the court refused to accept her excuses, threats of special actions and other measures. Ms. Sponsel even taunted the defendant in this case by claiming she had been driving in front of the defendant's mother's home and seen her one night before court. The officers promised Mr. Roper that they would see him again and they would have DNA the next time. In this case, the same officers with the Phoenix Gang Squad apparently gathered the DNA from a handgun that was removed from the scene, within minutes, and prior to the Evidence technicians who appeared on the scene, took photos of the other evidence and took DNA samples and blood samples. Ms. Sponsel intentionally delayed arranging interviews until days before the trial date to preclude the defense from showing the problems in this procedure. Judge Martin denied the defense request for additional time and the defense request for independent DNA testing of the handgun and sample based on an off-the-record agreement with prior counsel that was not reflected in

the minute entry setting two trials. Undersigned counsel was ready for one trial and the Court said there had been a secret agreement that the matter was not being set for trial but only a status hearing.

23. In his response to the bar's screening investigation, Respondent said that Ms. Sponsel told him that she drove past Mr. Roper's mother's home and saw her sitting out front. Respondent interpreted this as Ms. Sponsel's effort to intimidate by displaying her dedication and preparedness to prosecute Mr. Roper. If Ms. Sponsel "taunted" Mr. Roper with this information it was by expecting Respondent to pass it along to Mr. Roper; she did not tell this to Mr. Roper directly.

24. Respondent's statements that there was an "off-the-record agreement with prior counsel" and "a secret agreement that the matter was not being set for trial but only a status hearing" are wrong.

25. The in-court discussion on September 17 to which Judge Martin alluded during the FTMC on December 4 was on the record. There was no secret agreement; whatever was stated was in the presence of counsel for both sides.

26. What was "off the record" or "secret" to Respondent was that he did not obtain the record of the September 17 hearing to see what Judge Martin said. Neither Ms. Sponsel nor Ms. Iacob told him that the parties agreed to set the 023 case for trial and the 245 case for an FTMC thereafter. Judge Martin's verbal case management order simply echoed the parties' agreement.

27. Prior to sentencing, Respondent filed a motion on Mr. Roper's behalf to withdraw from the plea and appoint new counsel. Respondent explained that Mr. Roper accused Respondent of making false assertions that created a conflict between him and Mr. Roper rendering Respondent unable to represent him with either the sentencing or motion to withdraw from the plea.

28. At a continued sentencing hearing before Judge Bailey, Mr. Roper told the court, "All this about April Sponsel when they was going back and forth. I was supposed to get sentenced last month. Some of that stuff . . . I wish he didn't say it, because it's all falling back on me. I never said any of them things about her." The court and Ms. Sponsel assured Mr. Roper that Respondent's comments would not be held against him.

29. Mr. Roper did not expressly authorize Respondent to criticize Ms. Sponsel in the sentencing memorandum. During the case, however, Respondent discussed with Mr. Roper and his family using prosecutorial vindictiveness as part of Mr. Roper's defense strategy, and Mr. Roper agreed.

30. Judge Bailey allowed Respondent to withdraw.

31. Mr. Roper said he did not want to withdraw from the pleas and wanted to be sentenced. The court re-appointed Ms. Iacob to represent Mr. Roper. However, on March 6, 2013, she filed a motion to permit Mr. Roper to withdraw from the plea in the 023 case on the ground that Respondent coerced Mr. Roper into entering into the plea, and due to Respondent's alleged false representations.

32. Ms. Iacob argued that Mr. Roper did not understand he could be sentenced to 15 years in prison and that Respondent told him that accepting the plea was his only option.

33. Ms. Sponsel opposed the motion, arguing that Respondent provided Mr. Roper adequate representation.

34. Judge Bailey ruled that the court taking Mr. Roper's change of plea conducted a detailed hearing, Respondent explained the plea terms to Mr. Roper,

the pleas were reasonable, no manifest injustice had occurred, and Mr. Roper knowingly, intelligently, and voluntarily waived his rights.

35. Judge Bailey authorized the appointment of a psychologist to examine Mr. Roper. The examiner concluded that Mr. Roper suffers from moderate mental retardation and dysthymia with a Verbal, Performance, or Full Scale IQ of 59 or less.

36. After more proceedings the court sentenced Mr. Roper in June 2014 in the 023 case to ten years in prison with credit for two years already served, and probation in the 245 case thereafter.

COUNT TWO (File No. 14-2139/Maricopa County Attorney's Office)

52. In *State v. Valdez*, Maricopa County Superior Court cause no. CR2013-430235, Mr. Valdez rejected two plea offers, one for a five year sentence and the other for six years. On February 11, 2014, at the time set for trial, Mr. Valdez changed his mind and entered into a plea calling for a stipulated sentence of 7.5 years. Sentencing was set for March 11.

53. On February 21, Respondent filed his notice of appearance and on March 9 filed a request for rejection of the plea agreement or, in the alternative, a motion to withdraw from the plea. Respondent advanced various legal and factual arguments, and filed a report showing that the sentence to which Mr. Valdez stipulated put him in the top 4% of all offenders. The report reflected that more than 60% of those sentenced on the same charges received less than five years.

54. Judge Teresa Sanders denied Respondent's request and motion, and accepted the 7.5 year stipulated sentence. On May 8, 2014, the parties appeared for the sentencing. Respondent and Judge Sanders had the following dialogue:

Respondent: I can see that value if the parties are negotiating evenly, but I certainly see that view of life. I saw it with slavery was permitted and approved by courts. I saw when women couldn't vote approved by courts. I think you're approving this type of sentence where he's getting the maximum 7-1/2, which based on the matrix I submitted to you showing other cases in Maricopa County, he is now, he is getting 90 months. I suppose you can go back to the judicial coffee room and say today I gave this guy 90 months, and out of the 300 people that were in a similar situation to him . . .

The Court: I can tell you I will not be going to any judicial coffee room and talking about giving somebody a sentence that he stipulated to that is, you know, perhaps greater than what you think is fair. And, you know, as far as when women couldn't vote and slavery, I don't believe you were alive when that was going on.

Respondent: But I read the arguments. It's judges and judges like you uphold those type of rules, and you have now-

The Court: Judges like me upheld slavery and women not being able to vote? Is that what you're saying to me?

Respondent: Your Honor, there were decisions by judges appointed to the bench, and judges who were voted on the bench. Yes, absolutely.

The Court: So, judges like me?

Respondent: Your Honor, you were appointed. You have gone through the election process the way it is. Judges like you.

The Court: Let's order this CD. Keep talking.

* * *

Respondent: If you like, I can apologize if I offended you by "judges like you"-not personally you, but I'm talking about-it was the 1800's, 1900's. When I say "judges like you," I mean these are judges that were respected, they are intelligent-all the right things. But they still upheld certain things, because that's the way the system went.

The Court: So you were equating slavery and women not being able to vote with your client getting a maximum sentence that he agreed to in a plea agreement, as a jury was waiting outside getting ready to start his trial, after having previously turned down two other plea agreements. You're equating a stipulated 7½-year sentence to slavery and not being able to vote?

Respondent: Your Honor, I am, because I think the argument, when you look at the debates-I've listened to those debates or the re-creation of those debates. The slaves agreed to their position. They agreed to live in the South. These were arguments that judges used to say we're going to uphold the slavery. And that's the United States Supreme Court-the Dred Scott decision. Of the women's rights-that was something that was fought for in the 20th Century. But prior to that time it had been raised by able advocates. And part of the argument was look, if the women wanted to vote, they could live in Canada. They could live elsewhere. The fact that they're living in the States, they've agreed to it, that they've stipulated to it-somehow goes along with this. This was in, they must have thought it was in their best interest. Why else would someone come to this country under those rules. And judges said well, under the laws, that's fine.... It's not personal or offensive. That's how the system was made with Court of Appeals that the Supreme Court -

The Court: Well, the only thing that I found personal or offensive was your comment that judges like you are the type of judges that supported slavery and women not being able to vote. I found that clearly unprofessional and personal.

Respondent: And I apologize. I did not mean it as personal. I meant it as I tried to explain later. Judges that are appointed, are qualified-this was in general. This wasn't you. This isn't a personal slur on you. But when I say judges, these are professional judges. These were people in the 1800's that were the judge for the day that you might see in a movie. These were United States Supreme Court judges, Your Honor. And that's how I meant it-the judicial profession. Again, I think that you have the judicial discretion to reject the plea at any time. . . .

55. Respondent continued his argument regarding the sentence. Respondent said at one point, "Again, I will apologize profusely. We've known each other a long time. I did not mean that you, to be a personal slur. I meant the bench, the judges--" The court responded, "I'm not gonna hold that against him [defendant]. He didn't say it."

56. Afterward, Respondent asked to approach the bench:

Respondent: And again, if I offended you personally, I can apologize.

The Court: How could you not think that I wouldn't [*sic*]?

Respondent: 'Cause the way that played it in my mind, I didn't think it would. I apologize. . . . When I said it, it clicked the other way. I apologize and will apologize louder, in writing, but that's-

The Court: Thank you.

57. Respondent explained to the State Bar that he intended no disrespect for Judge Sanders. Rather, he was trying to persuade the judge to reject conventional thinking that the court should accept a maximum, stipulated sentence just because it was stipulated. In *United States v. One Parcel*, 956 F. Supp. 349 (D. Conn. 2013), the court lauded an attorney for alluding to historical examples of evolving legal standards. It once was legal to own slaves, deny women the right to vote, compel sterilization of the mentally deficient, and forbid inter-racial marriage, he argued. "All these signposts of a less enlightened time in the nation's past . . . have been washed away . . . and so it should be recognized by this court with respect to laws prohibiting the cultivation of marijuana in one's home."

COUNT THREE (File No. 14-3278/Beauchamp)

58. Respondent represented the defendant in *State v. Misty Rivers*, Gila County Superior Court cause no. CR2011-493.

59. Ms. Rivers was arrested in 2008 for alleged possession of a minute amount of what was suspected to be marijuana. She was indicted in 2011 and charged in 2014.

60. The case prosecutor communicated a plea offer of a substantial fine, community service, and deferred prosecution.

61. In an October 29, 2014 email to the prosecutor, Respondent wrote: "Six years later for possibly a minute amount of marijuana. She can go to trial and

get a misdemeanor without jail and 24 hours community service. What if the testing shows nothing. What will your office do. She has proposed just making a straight campaign contribution to your office for a dismissal. Thanks, Michael.”

62. The next day, Gila County Attorney Bradley Beauchamp filed this charge with the State Bar of Arizona. Mr. Beauchamp alleged that Respondent’s conduct “is a serious matter and gives rise to potential criminal charges.” Mr. Beauchamp also stated that his office was in the process of filing a motion to remove Respondent as counsel of record.

63. At a November Case Management Conference, Deputy County Attorney Shawn Fuller called Respondent’s email to the court’s attention and stated that he did not know if Respondent was joking or serious. Mr. Fuller claimed that the email was inappropriate, and while he was not accusing Respondent of doing anything improper the email created an appearance of impropriety. Mr. Fuller wanted to go on record that if his office dismissed the case it would not be in exchange for a campaign donation, and announced that Mr. Beauchamp referred the matter to the State Bar.

64. Addressing Respondent, the judge said, “Well, I know that’s not what you meant. Do you have any response?”

65. Respondent expressed his frustration over the County Attorney’s handling of the case and confided that he made the campaign contribution remark in jest. The judge replied, “Well, I’m not going to take any action on this at all. What do you want to do with the case management?”

66. At the next case management conference on December 8, the court was reminded that this was the case with the controversial email. Before discussing

a trial date, Respondent told the court that the state filed a bar charge saying that it would pursue criminal charges, and would file a motion to force Respondent to withdraw as counsel. The judge answered, "Well, it's all pretty ridiculous to me. It's pretty clear that the e-mail you sent, it looks to me like it was your usual sarcastic manner at times. So when do you want it to be set to?"

67. Respondent told the Bar that his email was, with hindsight, a failed attempt at sarcastic humor. It was a joke bred of frustration that fell flat; he did not intend to demean anyone in the County Attorney's office.

68. Respondent assured the Bar that he did not counsel Misty to make a campaign contribution, or even discuss the subject with her, and she did not offer or propose one; the comment was his alone without consulting her.

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 41(c) and (g), and Rule 42, ERs 1.3, 3.1, and 8.4(d).

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar agree that the following sanctions are appropriate: Reprimand with Probation for one year to include six (6) CLE hours on professionalism, and costs as described above. The CLE hours are to be in addition

to the annual CLE requirement. 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)*, as required by Rule 57(a)(2)(E). The *Standards* provide guidance with respect to an appropriate sanction. *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. *Standard 3.0; Peasley*, 208 Ariz. at 35, 90 P.3d at 772.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent acted both knowingly and negligently.

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, the legal profession, and the legal system.

The parties agree that *Standards* 4.43, 6.14, and 6.23 are the relevant and appropriate *Standards* given the facts and circumstances of this matter:

Standard 4.43 - Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

Standard 6.14 - Admonition is generally appropriate when a lawyer engages in an isolated instance of neglect in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

Standard 6.23 - Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

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—

- 2009, 06-2029, censure (currently, reprimand) and probation for two years, ER 4.4(a) (violation of Victim's Rights laws)
- 1996, 95-1502, informal reprimand (currently, admonition) and probation, ER 3.4(c) (violation of Victim's Rights laws)
- 1994, 94-0049, informal reprimand, ER 3.4(c) (violation of Victim's Rights laws)

(c) a pattern of misconduct;

(d) multiple offenses;

(i) substantial experience in the practice of law.

In mitigation: *Standard 9.32--*

(b) absence of a dishonest or selfish motive;

(e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings;

(l) remorse.

Discussion

The parties conditionally agree that, upon application of the aggravating and mitigating factors to the facts of this case, probation should be added to the presumptive sanction of reprimand. Respondent's discipline history reflects disrespect for others, similar to that which he displayed in these cases, to a greater extent than what might be tolerated as necessary to effective client representation. In two of the cases, judges had to assure Respondent's client that they would not hold Respondent's remarks against them. Probation in the form of CLE on professionalism addresses that conduct.

For the foregoing reasons, the parties conditionally agree that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. A reprimand with probation is within the range of appropriate sanctions and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of reprimand with probation and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this _____ day of March 2015.

STATE BAR OF ARIZONA

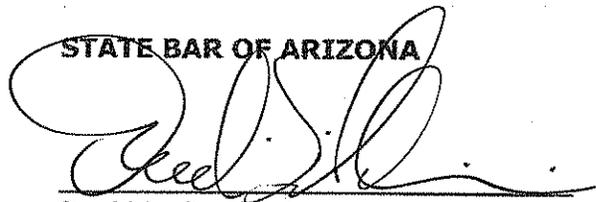
hold Respondent's remarks against them. Probation in the form of CLE on professionalism addresses that conduct.

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DATED this _____ day of March 2015.

STATE BAR OF ARIZONA

David L. Sandweiss
Senior Bar Counsel

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

DATED this 4th day of March, 2015.


Michael L. Freeman

Respondent

DATED this 6th day of March, 2015.

Perry Childers Hanlon & Hudson PLC


Michael R. Perry
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 9th day of March 2015.

Copies of the foregoing mailed/emailed
this 9th day of March 2015 to:

Michael R. Perry
Perry Childers Hanlon & Hudson PLC
722 E. Osborn Rd., Ste. 100
Phoenix, AZ 85014-5275
mrperry@pchhlaw.com
Respondent's Counsel

Copy of the foregoing emailed
this 9th day of March, 2015, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov

Copy of the foregoing hand-delivered
this 9th day of March, 2015, to:

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

by: Jackie Drenter
DLS:jld

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Current Member of the State Bar of Arizona,
Michael L. Freeman, Bar No. 010237, Respondent

File Nos. 13-2233, 14-2139, and 14-3278

Administrative Expenses

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

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

General Administrative Expenses for above-numbered proceedings

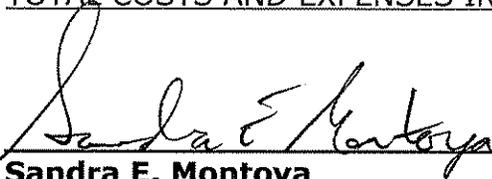
\$1,200.00

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

Staff Investigator/Miscellaneous Charges

Total for staff investigator charges \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED \$1,200.00


Sandra E. Montoya

Lawyer Regulation Records Manager

3-5-15
Date

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**Michael L. Freeman,
Bar No. 010237,**

Respondent.

State Bar Nos. 13-2233, 14-2139, and
14-3278

FINAL JUDGMENT AND ORDER

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

IT IS HEREBY ORDERED that Respondent, **Michael L. Freeman**, is hereby reprimanded and placed on one year of probation for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order or _____.

IT IS FURTHER ORDERED that Respondent shall attend six (6) hours of Continuing Legal Education (in addition to the annual requirement) on professionalism as a term of that probation.

NON-COMPLIANCE LANGUAGE

If Respondent fails to comply with any of the foregoing probation terms and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to

recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ _____, 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 March, 2015.

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

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of March, 2015.

Copies of the foregoing mailed/mailed
this _____ day of March, 2015, to:

Michael R. Perry
Perry Childers Hanlon & Hudson PLC
722 E. Osborn Road, Suite 100
Phoenix, AZ 85014-5275
Email: mrperry@pchhlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of March, 2015, to:

David L. Sandweiss
Senior 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 March, 2015, to:

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

by: _____