

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**DAVID R. WROBLEWSKI,  
Bar No. 020079**

Respondent.

**PDJ-2015-9061**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 13-3411 and 14-0921]

**FILED NOVEMBER 27, 2015**

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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 ORDERED** Respondent, **David R. Wroblewski**, is admonished for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this Order.

**IT IS FURTHER ORDERED** Mr. Wroblewski shall personally participate in the State Bar's Fee Arbitration Program if James Owens files a fee arbitration petition with the State Bar of Arizona within thirty (30) days of entry of this Order, and shall personally pay any fee arbitration award within thirty (30) days of entry.

**NON-COMPLIANCE LANGUAGE**

In the event that Respondent fails to comply with the fee arbitration or cost and expense provisions of this order, and information thereof is received by the State Bar

of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether Respondent has complied with this order and, if so, to impose an appropriate sanction. If there is an allegation that Respondent failed to comply with this order, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

**IT IS FURTHER ORDERED** Mr. Wroblewski shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00 at \$300.00 per month, beginning thirty (30) days from the date of this Order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

**DATED** this 27<sup>th</sup> day of November, 2015.

*William J. O'Neil*

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

Copies of the foregoing mailed/emailed  
this 27<sup>th</sup> day of November, 2015, to:

David R. Wroblewski  
P.O. Box 3505  
Gilbert, Arizona 85299-3505  
Email: wro1111@yahoo.com  
Respondent

James D. Lee  
Senior Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: LRO@staff.azbar.org

Lawyer Regulation Records Manager  
State Bar of Arizona  
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by: MSmith

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P.O. Box 3505  
Gilbert, Arizona 85299-3505  
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Email: wro1111@yahoo.com  
Respondent

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**DAVID R. WROBLEWSKI,**  
Bar No. 020079,  
  
Respondent.

**PDJ-2015-9061**

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

[State Bar Nos. 13-3411 and 14-0921]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, David R. Wroblewski, who is not represented by counsel, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.

A probable cause order was entered on January 16, 2015, in File No. 13-3411 and on May 6, 2015, in File No. 14-0921. The State Bar filed a formal complaint on June 30, 2015, and Respondent filed an answer on August 7, 2015.

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 hereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to complainant Jose Roche by mail on October 20, 2015, and to complainant James Owens by email on October 20, 2015. Complainants have been notified of the opportunity to file a written objection to the agreement with the State Bar within five business days of bar counsel's notice.

Respondent conditionally admits that his conduct, as set forth below, violated ER 5.1(a). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: admonition. Respondent also agrees to personally participate in fee arbitration through the State Bar if James Owens files a fee arbitration petition with the State Bar within 30 days of acceptance of this agreement by the Presiding Disciplinary Judge, and to personally pay any fee arbitration award within 30 days of the entry of any fee arbitration award. Respondent additionally agrees to pay the costs and expenses of the disciplinary proceeding, in four equal monthly payments beginning 30 days from entry of the court's order, and if costs are not paid within four months, interest will begin to accrue at the legal rate.<sup>1</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

## **FACTS**

### **COUNT ONE** **(File No. 13-3411/Roche)**

The charges associated with Count One are being dismissed as part of this consent agreement. See below.

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

**COUNT TWO**  
**(File No. 14-0921/Owens)**

On March 15, 2013, James Owens hired Respondent's law firm to represent him regarding an ongoing law enforcement investigation that could have resulted in criminal charges being filed against him. Owens paid \$5,200.00 in attorney's fees to Respondent's firm.

Respondent appointed attorney Michael Yucevicius, an experienced criminal defense attorney who was certified by the State Bar of Arizona as a criminal law specialist, to represent Owens. Respondent neither personally represented nor personally communicated with Owens.

In cases where criminal charges had not yet been filed against an assigned client, attorney Yucevicius's policy was to meet with the client, contact exculpatory witnesses, attempt to contact law enforcement to obtain the identity of the detective working on the case, attempt to determine the status of the investigation, obtain copies of any police reports, send a letter to the assigned detective to ensure that his client's right to counsel was respected, and communicate with the appropriate prosecuting attorney if a law enforcement agency had referred charges to a prosecuting attorney's office. In Owens's case, Yucevicius has no specific recollection of the representation. Owens asserts that at least some services were not performed.

Owens was never criminally charged based upon the investigation that led him to hire Respondent's firm.

Respondent failed to undertake reasonable efforts to ensure that attorney Yucevicius performed all of the requested services for Owens.

## **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.

### **COUNT ONE** **(File No. 13-3411/Roche)**

The charges associated with Count One are being dismissed as part of this consent agreement. See below.

### **COUNT TWO** **(File No. 14-0921/Owens)**

Respondent conditionally admits that his conduct violated ER 5.1(a) by failing to undertake reasonable efforts to ensure that attorney Yucevicius performed all of the requested services for Owens.

## **CONDITIONAL DISMISSALS**

The State Bar has conditionally agreed to dismiss Count One and ER 1.5(a) in Count Two. Regarding Count One, Respondent performed a number of services for Jose Roche and a review of the evidence that Respondent has offered in defense of the charges has led the State Bar to conclude that it would be unable to present clear and convincing evidence of the alleged rule violations. Regarding Count Two, the State Bar has concluded that it may not be able to prove by clear and convincing evidence that Respondent's firm did not earn all of the fee paid by James Owens (Respondent asserts that attorney Yucevicius performed services for Owens, but his access to records regarding the services performed are encrypted in a hard-drive or server that is in the possession of a Chapter 7 trustee or among thousands of files in storage that include some of attorney Jeffrey Phillips's clients). Owens's concern

about the fee he paid will be addressed through the State Bar's fee arbitration program.

### **RESTITUTION**

Restitution is not an issue in Count One, which the parties have agreed will be dismissed as part of this consent agreement. Possible restitution regarding Count Two cannot be determined at this time, so the parties have agreed that Respondent will personally participate in fee arbitration through the State Bar. See "Sanction" section below.

### **SANCTION**

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: admonition for violation of ER 5.1(a) (related to Count Two of the complaint). Respondent also agrees to personally participate in fee arbitration through the State Bar if James Owens files a fee arbitration petition with the State Bar within 30 days of acceptance of this consent agreement by the Presiding Disciplinary Judge, and that Respondent will personally pay any award within 30 days of entry of a fee arbitration award.

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. *Standard 1.3, Commentary*. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

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

#### A.B.A. Standards for Imposing Lawyer Sanctions (Standards)

The parties agree that *Standard 7.4* is the appropriate *Standard* given the facts and circumstances of this matter. *Standard 7.4* provides that "[a]dmonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system." Respondent's failure to undertake reasonable efforts to ensure that attorney Yucevicius performed all of the requested services for Owens resulted in no harm to Owens (e.g., Owens was never criminally charged based upon the investigation that led him to hire Respondent's firm).

#### The Duty Violated

Respondent violated a duty he owed as a professional by failing to undertake reasonable efforts to ensure that attorney Yucevicius performed all of the requested services for Owens.

#### The Lawyer's Mental State

Respondent's misconduct was a result of a negligent state of mind.

### The Extent of the Actual or Potential Injury

James Owens was not harmed as a result of Respondent's failure to undertake reasonable efforts to ensure that attorney Yucevicius performed all of the services he had requested (e.g., Owens was never criminally charged based upon the investigation that led him to hire Respondent's firm).

### Presumptive Sanction

The presumptive sanction for Respondent's misconduct is an admonition.

### Applicable Aggravating Factors

Standard 9.22(a) – prior disciplinary offenses (on January 10, 2012, Wroblewski was reprimanded and placed on two years of probation (LOMAP and fee arbitration) based upon a consent agreement that addressed 82 files; Wroblewski violated ER 1.5(a), ER 5.1(a) and ER 5.3(a) (Wroblewski violated ER 1.5(a) by charging an unreasonable amount for administrative fees; ER 5.1(a) by failing to make reasonable efforts to ensure that his firm had in effect measures giving reasonable assurance that all lawyers in the firm conformed to the Rules of Professional Conduct; and ER 5.3(a) by failing to make reasonable efforts to ensure that his firm had in effect measures giving reasonable assurance that his non-lawyer assistants' conduct was compatible with his professional obligations); and

Standard 9.22(i) – substantial experience in the practice of law (Wroblewski was admitted to practice law in Arizona on October 25, 1999, and was admitted in Illinois in 1998).

### Applicable Mitigating Factors

*Standard 9.32(b)* – absence of a dishonest or selfish motive;

*Standard 9.32(e)* – full and free disclosure to bar counsel or cooperative attitude toward the disciplinary proceedings (e.g., Respondent voluntarily agreed to enter into this consent agreement); and

*Standard 9.32(j)* – delay in the disciplinary proceedings (Roche's initial telephonic charge was made to the State Bar during December 2013).

### **Discussion**

The parties have conditionally agreed that based upon the *Standards*, including application of the aggravating and mitigating factors, and the facts and

circumstances of the misconduct, the presumptive sanction is appropriate and within the range of appropriate sanctions and will serve the purposes of lawyer discipline.

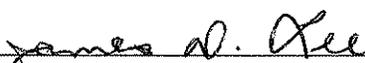
The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: Respondent's misconduct was based upon his firm's (but not his personal) representation of a single client. His failure to undertake reasonable efforts to ensure that attorney Yucevicius performed all of the services that client had requested did not result in any harm to the client.

### **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 the objectives of discipline will be met by the imposition of the proposed sanction of admonition. Respondent also agrees to pay the costs and expenses of this disciplinary proceeding, to personally participate in fee arbitration through the State Bar if James Owens files a fee arbitration petition with the State Bar within 30 days of acceptance of this consent agreement by the Presiding Disciplinary Judge, and to personally pay any fee arbitration award within 30 days of entry of an award. A proposed form order is attached hereto as Exhibit B.

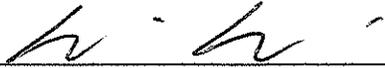
**DATED** this 27<sup>th</sup> day of October, 2015.

### **STATE BAR OF ARIZONA**

  
\_\_\_\_\_  
James D. Lee  
Senior Bar Counsel

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

**DATED** this 27<sup>th</sup> day of October, 2015.

  
\_\_\_\_\_  
David R. Wroblewski  
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 29<sup>TH</sup> day of October, 2015.

Copy of the foregoing emailed  
this 29<sup>TH</sup> day of October, 2015, to:

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

Copy of the foregoing mailed/emailed  
this 29<sup>TH</sup> day of October, 2015, to:

David R. Wroblewski  
PO Box 3505  
Gilbert, AZ 85299-3505  
Email: wro1111@yahoo.com  
Respondent

Copy of the foregoing hand-delivered  
this 29<sup>th</sup> day of October, 2015, to:

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

by: Jalisa Stone  
JDL/ts

# **EXHIBIT A**

**Statement of Costs and Expenses**

In the Matter of a Member of the State Bar of Arizona,  
David R. Wroblewski, Bar No. 020079, Respondent

File No. 14-0921  
PDJ-2015-9061

**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**

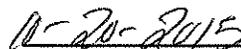
Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

**Staff Investigator/Miscellaneous Charges**

Total for staff investigator charges \$ 0.00

**TOTAL COSTS AND EXPENSES INCURRED** **\$1,200.00**

  
\_\_\_\_\_  
**Samantha Linley**  
**Lawyer Regulation Lead Legal Secretary**

  
\_\_\_\_\_  
**Date**

## **EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**DAVID R. WROBLEWSKI,**  
Bar No. 020079,

Respondent.

**PDJ-2015-9061**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 13-3411 and 14-0921]

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

**IT IS HEREBY ORDERED** that Respondent, **David R. Wroblewski**, is hereby admonished for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

**IT IS FURTHER ORDERED** that Respondent shall personally participate in the State Bar's Fee Arbitration Program if James Owens files a fee arbitration petition with the State Bar of Arizona within 30 days of entry of this order, and shall personally pay any fee arbitration award within 30 days of entry.

**NON-COMPLIANCE LANGUAGE**

In the event that Respondent fails to comply with the fee arbitration or cost and expense provisions of this order, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge. The Presiding Disciplinary Judge may conduct a

hearing within 30 days to determine whether Respondent has complied with this order and, if so, to impose an appropriate sanction. If there is an allegation that Respondent failed to comply with this order, 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 \$1,200.00 at \$300.00 per month, beginning 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 \_\_\_\_\_, 2015.

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**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 November, 2015.

Copies of the foregoing mailed/emailed  
this \_\_\_\_ day of November, 2015, to:

David R. Wroblewski  
P.O. Box 3505  
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by: \_\_\_\_\_