

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

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

Respondent.

**PDJ 2014-9041**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 13-0734, et al.]

**FILED NOVEMBER 8, 2016**

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on October 26, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct.,<sup>1</sup> accepts the parties' proposed agreement. Accordingly:

**IT IS ORDERED** Respondent, **David R. Wroblewski**, is suspended from the practice of law for four (4) years, retroactive to January 10, 2016,<sup>2</sup> as outlined in the consent documents, for conduct in violation of the Arizona Rules of Professional Conduct.

**IT IS FURTHER ORDERED** Mr. Wroblewski is placed on probation for two (2) years during the period of suspension. Mr. Wroblewski shall participate in fee arbitration with all former clients mentioned in the complaint and supplemental complaint who file or reactivate petitions for fee arbitration with the State Bar or Arizona within sixty (60) days of this judgment and order. In addition, Mr. Wroblewski shall pay all fee arbitration awards entered against him, except to the extent that those clients are fully or partially

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<sup>1</sup> All rules referenced herein are to the Rules of the Supreme Court.

<sup>2</sup> The effective date of the vacated order of disbarment.

reimbursed for unearned attorney's fees and unexpended filing fees by the bankruptcy court, a bankruptcy trustee or the State Bar's Client Protection Fund. Mr. Wroblewski shall be responsible for reimbursing the Client Protection Fund for any payments made.

**IT IS FURTHER ORDERED** as a condition of reinstatement, Mr. Wroblewski shall provide evidence that he fully complied with all orders entered by the U.S. Bankruptcy Court for the District of Arizona, including any restitution orders.

**IT IS FURTHER ORDERED** Mr. Wroblewski shall be subject to an additional period of probation upon reinstatement, with terms to be determined by a hearing panel during reinstatement proceedings.

#### **NON-COMPLIANCE WITH TERMS OF PROBATION**

If Respondent violates 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). 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 impose an appropriate sanction. If there is an allegation that Respondent violated any of the foregoing terms, the burden of proof will be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

**IT IS FURTHER ORDERED** Mr. Wroblewski shall immediately comply with the requirements of Rule 72, including notification to clients and others.

**IT IS FURTHER ORDERED** Mr. Wroblewski shall pay \$24,265.00 to the State Bar of Arizona for the costs and expenses associated with this matter, with no accrual of pre- or post-judgment interest. 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 8th day of November, 2016.

*William J. O'Neil*

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

Copies of the foregoing emailed this 8<sup>th</sup> day of November, 2016, and mailed November 9, 2016, to:

James D. Lee  
Senior Bar Counsel  
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4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6266  
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David R. Wroblewski  
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Respondent

Fee Arbitration Coordinator  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

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

Respondent.

**PDJ-2014-9041**

**DECISION AND ORDER ACCEPTING  
DISCIPLINE BY CONSENT**

[State Bar Nos. 13-0734, et al.]

**FILED NOVEMBER 8, 2016**

A Probable Cause Order issued on March 14, 2014. The State Bar filed its initial complaint on May 20, 2014, and supplemental complaint on March 5, 2015. A Decision and Order imposing disbarment was filed on December 11, 2015. Mr. Wroblewski appealed and the Supreme Court of Arizona vacated the order of disbarment and remanded the matter. See Supreme Court Order filed September 6, 2016. Following the remand, a Case Management Conference was held on September 13, 2016 and orders issued. By Order of the PDJ filed September 30, 2016, Count One Hundred and Two was dismissed.

A Notice of Settlement was filed by the parties and an Agreement for Discipline by Consent (Agreement) was timely filed on October 26, 2016, and submitted pursuant to Rule 57(a)(3), of the Rules of the Arizona Supreme Court. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate".

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.

Under Rule 53(b)(3), notice of the agreement was provided to the complainant(s) by letter on October 11, 2016 and they were notified of their opportunity to file a written objection to the agreement. On October 26, 2016 two objections were filed. See Notice of filing Objections to Agreement for Discipline by Consent. On November 2, 2016 a third objection was filed. The complainants find the agreed upon sanctions insufficient for the harm caused and request fee arbitration and or restitution for fees paid regarding their bankruptcy.

This court recognizes the merit to their concerns and the injuries they suffered. They are not minimized by this Agreement. The Agreement provides fee arbitration. It also requires Mr. Wroblewski to comply with any bankruptcy court orders regarding restitution, and to reimburse the client protection fund. Restitution is not appropriate here because the amount of earned fees that should be refunded is unliquidated/unexpended filing fees and are under the jurisdiction of the Bankruptcy Court.

The Agreement further details a factual basis for the admissions to the charge in the Agreement and the conditional admissions reflect the findings and conclusions of law found in the Decision and order Imposing Sanctions filed on December 11, 2015. Mr. Wroblewski's transgressions arose from his mismanagement of his law firm, David Wroblewski and Associates ("DWA"). In multiple counts, Mr. Wroblewski's improper handling of his bankruptcy law practice resulted actual injury to his clients, the administration of justice, and the profession. Overall, Mr. Wroblewski failed to

adequately communicate and diligently represent clients and sometimes little or no work was performed on behalf of clients who had paid for the firm's legal services. He further failed to adequately supervise his staff attorney and non-lawyer assistants and to take sufficient remedial steps or corrective action to mitigate the firm's inability to properly represent clients. Mr. Wroblewski continued to accept new clients knowing he did not have the resources available to represent the clients.

Mr. Wroblewski admits his conduct violated Rule 42, ER 1.1 (competence), ER 1.2(a) (scope of representation), ER 1.3 (diligence), ER 1.4(a) and (b) (communication), ER 1.15(d) (safekeeping property), ER 1.16(d) (terminating representation), ER 3.2 (expediting litigation), ER 5.1(a) and (b) (responsibilities of partners, managers, and supervisory lawyers), ER 5.3(a) and (b) (responsibilities regarding nonlawyer assistants), ER 8.4(d) (conduct prejudicial to the administration of justice), and Rule 54(d) (violation of any obligation pursuant to rules in a disciplinary investigation or proceeding). The agreed upon sanctions include a four (4) year suspension retroactive to January 10, 2016, probation for two years during the period of suspension (participation in fee arbitration) and subject to an additional period probation upon reinstatement, and the payment of the State Bar's costs and expenses totaling \$24,265.00 with no pre-judgment or post-judgment interest.

*Standard 4.4, Lack of Diligence* applies to Mr. Wroblewski's violations of ERs 1.2, 1.3 and 1.4. *Standard 4.41* provides:

- Disbarment is generally appropriate when:
- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client: or
  - (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

- (c) lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

*Standard 4.42* provides:

- Suspension is generally appropriate when:
- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
  - (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

*Standard 4.5, Lack of Competence* is applicable to applies to Mr. Wroblewski's violation of ER 1.1 and provides:

Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

*Standard 6.2, Abuse of the Legal Process* applies to Mr. Wroblewski's violation of ER 3.2 and provides:

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

The parties agree the presumptive sanction is between disbarment and suspension and that a four (4) year suspension and probation is within the range of reasonable sanctions. Although some of Mr. Wroblewski's misconduct was negligent, in part based on a lack of education, training and experience, the harm in this matter was significant. Mr. Wroblewski knowingly failed to take sufficient steps to ensure he reasonably and adequately supervised his staff and knowingly failed to modify his law firm structure and operations to ensure his clients were properly represented.

The parties agree the following aggravating factors 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(e) (bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the rule or orders or the disciplinary agency), 9.22(h) (vulnerability of victims), and 9.22(i) (substantial experience in the practice of Law). The bankruptcy proceedings were also adversely affected by Mr. Wroblewski's misconduct. The parties further agree the following mitigating factors are supported by the record: 9.32(e) (full and free disclosure to disciplinary Board or cooperative attitude towards proceedings), 9.32(f) (inexperience in bankruptcy law), 9.32(k) (imposition of other penalties and sanctions), and cooperation with the Bankruptcy Court and trustees in settling claims.

While the Court has considered the objection of complainant(s), we are reminded that the object of lawyer discipline is not to punish the lawyer. *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). Nor is its purpose to resolve fee arbitration or restitution issues being litigated in another court such as the Bankruptcy Court. The Presiding Disciplinary Judge finds the proposed sanctions of suspension, probation, and participation in fee arbitration 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 retroactive to January 10, 2016 (the effective date of the vacated order of disbarment) probation including participation in fee arbitration, and the payment of costs and expenses of the disciplinary proceeding totaling \$24,265.00 with no pre-or post-judgment interest to accrue on any unpaid balance.

**IT IS FURTHER ORDERED** the Agreement is accepted. Costs as submitted are approved for \$24,265.00. Now therefore, a final judgment and order is signed this date.

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

*William J. O'Neil*

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

Copies of the foregoing emailed this 8<sup>th</sup> day of November, 2016, and mailed November 9, 2016, to:

James D. Lee  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
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Respondent

by: AMcQueen

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Respondent

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

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

Respondent.

**PDJ 2014-9041**

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

[State Bar File Nos. 13-0734, et al.]

The State Bar of Arizona, through undersigned bar counsel, and Respondent, David R. Wroblewski, who is not represented by counsel, submit this Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.<sup>1</sup> Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests made or raised, or could be asserted, if the conditional admissions and proposed forms of discipline are approved.

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<sup>1</sup> All references to rules herein are to the Rules of the Supreme Court.

Pursuant to Rule 53(b)(3), notice of this agreement was provided to the complainants by letter on October 11, 2016.<sup>2</sup> The complainants were notified of their right to file a written objection to the agreement with the State Bar within five business days of bar counsel's notice. Copies of objections will be provided to the Presiding Disciplinary Judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, specifically ER 1.1, ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.15(d), ER 1.16(a)(1), ER 1.16(d), ER 3.2, ER 5.1(a), ER 5.1(b), ER 5.3(a), ER 5.3(b), and ER 8.4(d), and Rule 54(d).<sup>3</sup> Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: suspension from the practice of law for four years, retroactive to January 10, 2016, (the effective date of the vacated order of disbarment); and probation for two years during the period of suspension (see below). Respondent also agrees to pay \$24,265.00 for the costs and expenses of the State Bar,<sup>4</sup> with no pre- or post-judgment interest.<sup>5</sup> The terms of probation during the period of suspension will require Respondent to participate in fee arbitration through the State Bar and pay all awards entered against him based upon fee

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<sup>2</sup> Letters were not sent to those complainants whose mail from the State Bar has been returned by the U.S. Postal Service as undeliverable.

<sup>3</sup> These are the same ethical rules that a hearing panel found in its *Decision and Order Imposing Sanctions* entered on December 11, 2015.

<sup>4</sup> The State Bar, for purposes of settling this matter, agreed to reduce the costs and expenses that would have resulted from strict compliance with the schedule of general administrative expenses set forth in Arizona Supreme Court Administrative Order 2011-17. Good cause for the reduction, which is permitted by Rule 60(b), includes: (a) Respondent's willingness to enter into this consent agreement, which greatly reduces the work that State Bar staff must undertake to conclude this matter (substantial additional work would be required to properly represent the State Bar in a contested hearing); and (b) the reduction was a consideration in reaching a consent agreement.

<sup>5</sup> The parties agree, pursuant to A.R.S. § 44-1201, that no pre- or post-judgment interest will accrue on any unpaid balance.

arbitration petitions filed or reactivated with the State Bar within 60 days of entry of a judgment and order in this matter by former clients of Phillips & Associates Bankruptcy Law Center (P&ABLC) and David Wroblewski & Associates (DW&A)<sup>6</sup> who were named in the complaint or supplemental complaint.

The State Bar's Statement of Costs and Expenses is attached as Exhibit A.

## **FACTS**

### General Allegations

1. The general allegations in the complaint and supplemental complaint are incorporated by this reference.

### Counts One through One Hundred Ninety-One

2. The factual allegations in Counts One through One Hundred Ninety-One in the complaint and supplemental complaint are incorporated by this reference.<sup>7</sup>

### Additional Stipulated Facts

3. The parties stipulate to the admissibility and consideration of the testimony presented and the exhibits admitted into evidence during the aggravation/mitigation hearing held on September 10, 2015.<sup>8</sup>

4. For purposes of this consent agreement, the parties adopt and stipulate to the admissibility and consideration of all factual statements in this consent agreement, including facts not alleged in the complaint or supplemental complaint and are not specifically set forth in the "Facts" section of this consent agreement.

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<sup>6</sup> Respondent used several law firm names for his bankruptcy practice (see footnote 2 of the complaint). For purposes of this consent agreement, Respondent's bankruptcy firm will be referred to as "David Wroblewski & Associates," "DW&A," "Respondent's firm" or "his firm," regardless of the firm's actual name at the time specified conduct occurred.

<sup>7</sup> The conditional admissions do not include any factual allegations set forth in Counts 21 and 102, and paragraphs 1886 through 1888 of Count 121, all of which have been dismissed or stricken.

<sup>8</sup> A copy of the hearing transcript will be provided upon request.

### **CONDITIONAL ADMISSIONS**

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

Respondent conditionally admits that his conduct violated Rule 42, specifically ER 1.1, ER 1.2(a), ER 1.3, ER 1.4(a), ER 1.4(b), ER 1.15(d), ER 1.16(a)(1), ER 1.16(d), ER 3.2, ER 5.1(a), ER 5.1(b), ER 5.3(a), ER 5.3(b), and ER 8.4(d), and Rule 54(d).

### **RESTITUTION**

A restitution order is not appropriate because the amount of unearned fees that should be refunded is unliquidated and unexpended filing fees, and are being refunded through proceedings before the U.S. Bankruptcy Court for the District of Arizona. The probation terms of this consent agreement, however, require Respondent to participate in fee arbitration through the State Bar during the period of his suspension.

### **SANCTION**

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth herein, the following sanctions are appropriate: four-year suspension, retroactive to January 10, 2016, (the effective date of the vacated disbarment order); two years of probation during the period of suspension, with the following terms: (1) Respondent will participate in fee arbitration through the State Bar of Arizona with those former clients of P&ABLC and DW&A identified in the complaint or supplemental complaint and who file or reactivate fee

arbitration petitions within 60 days of entry of a final judgment and order in this matter; and (2) Respondent will pay all fee arbitration awards entered against him.<sup>9</sup>

In addition to the aforementioned sanctions, Respondent will pay \$24,265.00 to the State Bar for its costs and expenses associated with this matter, with no pre- or post-judgment interest.

Respondent understands that if he violates any of the terms of this agreement, further discipline proceedings may be brought.

As a condition of reinstatement, Respondent agrees he must provide the assigned hearing panel with evidence that he has complied with all orders entered by the U.S. Bankruptcy Court for the District of Arizona, including any restitution orders.

Respondent understands he will be subject to an additional period of probation upon reinstatement, with terms to be determined by the assigned hearing panel.

#### **STATE BAR AGREEMENT RE: SIMILAR CHARGES**

The State Bar agrees not to seek the imposition of diversion or a disciplinary sanction for misconduct similar to that set forth herein and which arose from Respondent's bankruptcy practice between January 1, 2011 (the date Respondent assumed responsibility for P&ABLC's practice) and November 27, 2013 (the date that Chief Bankruptcy Judge Daniel Collins removed Respondent, his law firms and his attorneys as counsel of record in all pending bankruptcy proceedings in Arizona).

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<sup>9</sup> Fee arbitration awards may be reduced by payments made to former clients by order of the U.S. Bankruptcy Court for the District of Arizona, by a bankruptcy trustee's office or by the State Bar's Client Protection Fund. Respondent, however, will be responsible for reimbursing the Client Protection Fund for any payments made.

## LEGAL GROUNDS IN SUPPORT OF SANCTIONS

In determining the appropriate sanctions, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)*, as directed by Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in imposing 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 regarding the imposition of an appropriate sanction 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 appropriate sanctions, 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.

When the ethical violations are so numerous that a substantial number of the ABA *Standards* apply, making an extensive review of the applicable *Standards* would be superfluous. *In re Feeley*, 180 Ariz. 41, 44, 881 P.2d 1146, 1149 (1994); *In re Struthers*, 179 Ariz. 216, 219, 877 P.2d 789, 792 (1994). See also *In re Rantz*, 169 Ariz. 56, 817 P.2d 1 (1991); *In re Peartree*, 178 Ariz. 114, 871 P.2d 235 (1994); *In re Woltman*, 181 Ariz. 525, 875 P.2d 781 (1994) ("Woltman's conduct was so egregious that virtually every standard [was] applicable.").

### A. Relevant Standards

The parties have determined that the following *Standards* are most relevant:

*Standard* 4.41 – Disbarment is generally appropriate when: (a) a lawyer abandons the practice and causes serious or potentially serious injury to a

client; or (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or (c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

*Standard 4.42* – Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

*Standard 4.52* – Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.

*Standard 6.22* – Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

#### B. The Duties Violated

Respondent violated his duty to his clients by failing to ensure, through reasonable supervision, that their bankruptcy matters were promptly and thoroughly addressed, that his staff adequately communicated with them, and that unearned attorney's fees and unexpended filing fees were promptly refunded.

Respondent violated his duty to the legal system by failing to ensure, through reasonable supervision, that his staff expedited litigation and competently represented his clients in bankruptcy proceedings.

Respondent violated his duty to the legal profession by failing to ensure, through reasonable supervision, that unearned attorney's fees and unexpended filing fees were promptly refunded to his clients upon termination of representation.

Respondent provided bar counsel with written responses to all charges of misconduct, as directed, but violated his duty to the legal profession by failing to *timely* provide bar counsel with those responses in a number of instances.

### C. The Lawyer's Mental State

Respondent acted with a "negligent" state of mind in some instances and with a "knowing" state of mind in others. Although Respondent was initially negligent regarding the operation of his firm, he was informed by his staff, bar counsel, bankruptcy trustees and the bankruptcy court that his staff was not timely and adequately representing his firm's clients. Despite that knowledge, Respondent failed to take sufficient steps to ensure that he reasonably and adequately supervised his staff. He further failed to modify his law firm structure and operation to ensure proper representation of clients.

### D. The Extent of the Actual or Potential Injury

Respondent's misconduct resulted in substantial harm in some cases and less harm in others. One or more clients lost possession and ownership of their homes or vehicles, several clients had their wages garnished, and the operation of the bankruptcy court was adversely affected. The bankruptcy court conducted hearings that should have been unnecessary and addressed numerous issues that arose from Respondent's failure to ensure that his staff properly represented and adequately communicated with clients and complied with court rules and bankruptcy trustees' requests. The bankruptcy trustees' offices were also adversely affected. For example, bankruptcy trustees found it necessary to file additional—and normally unnecessary—pleadings and documents, and attend additional—and normally unnecessary—hearings because Respondent failed to ensure that his staff was promptly and properly representing and adequately communicating with his firm's clients. The bankruptcy court's "Self Help Center" was adversely affected as well. Due to the large number of clients represented by Respondent's firm, approximately 10 to 12

bankruptcy lawyers volunteered to work with the Self-Help Center and consult with Respondent's current and former clients in order to mitigate the harm caused by Respondent's misconduct. Volunteer lawyers spent numerous *pro bono* hours consulting with Respondent's clients and former clients when they could have used that time to represent paying clients.

#### E. Aggravation and Mitigation

Aggravating and mitigating factors need only be supported by reasonable evidence to be used in determining an appropriate sanction. *In re Varbel*, 182 Ariz. 451, 897 P.2d 1337 (1995).

Because even under our criminal jurisprudence (except in death penalty cases), aggravating circumstances need only be "supported by reasonable evidence," *State v. Turner*, 141 Ariz. 470, 475, 687 P.2d 1225, 1230 (1984) (citing *State v. Meador*, 132 Ariz. 343, 347, 645 P.2d 1257, 1261 (Ct.App. 1982)), it is difficult to believe that a higher standard of proof could or should be required in attorney discipline cases.

*Varbel* at 455, 897 P.2d at 1341.

#### *1. Applicable Aggravating Factors*

*Standard 9.22(a)* – Prior disciplinary offenses. Respondent was reprimanded and placed on probation on January 10, 2012, by consent, for violation of ER 1.5(a), ER 5.1(a) and ER 5.3(a). In that case, Respondent charged an unreasonable amount for administrative fees and failed to make reasonable efforts to ensure that his firm had in effect measures giving reasonable assurance that all lawyers conformed to the Rules of Professional Conduct and that his nonlawyer assistants' conduct was compatible with his professional obligations. Despite those sanctions, Respondent continued to accept new clients and attorney's fees, having reason to know it was unlikely that he and his staff could diligently represent and adequately communicate

with additional clients because of the number of clients his firm was already representing. A number of clients that Respondent's firm agreed to represent after he was reprimanded received little or no legal services for the fees they paid. The misconduct in this case is similar to the misconduct in that earlier matter. Due to Respondent's failure to modify the operation of his bankruptcy law firm after he was reprimanded, this aggravating factor should be given great weight.

*Standard 9.22(b)* – Selfish motive. Respondent continued accepting new clients and attorney's fees, which he placed into his operating account, even after he had reason to know that he and his staff could not diligently represent and adequately communicate with all of his current clients.

*Standard 9.22 (c)* – A pattern of misconduct. Respondent has been reprimanded for similar wrongdoing and his misconduct arose during his firm's representation of multiple clients. See *In re Levine*, 174 Ariz. 146, 171-72, 847 P.2d 1093, 1118-19 (1993) (“[A] ‘pattern’ has been found in the past under circumstances in which a respondent either faces us with a prior disciplinary record involving the same or similar wrongdoing, or when a respondent's misconduct involves multiple clients.”).

*Standard 9.22(d)* – Multiple offenses. Respondent's misconduct occurred during the representation of numerous clients and involved multiple matters and ethical violations.

*Standard 9.22(e)* – Bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent provided bar counsel with written responses to all charges of misconduct,

as directed, but failed to *timely* provide bar counsel with those responses in a number of instances.

*Standard 9.22 (h) – Vulnerability of the victims.* Despite numerous clients' attempts by telephone, email and, in some cases, office visits, to ensure their matters were promptly being addressed, Respondent and his staff failed to comply with their requests and ensure proper representation. Respondent also failed to promptly refund unearned attorney's fees and unexpended filing fees. Some clients were harmed by their inability to hire another lawyer to represent them because Respondent failed to promptly provide refunds. Other clients hired subsequent counsel by paying additional attorney's fees, despite the lack of a refund from Respondent. Respondent's clients were vulnerable because they did all they could to get Respondent's firm to properly represent them and provide prompt refunds; there was nothing further they could do to force Respondent and members of his firm to comply with their ethical responsibilities.

*Standard 9.22 (i) – Substantial experience in the practice of law.* Respondent was admitted to practice law in Illinois on November 5, 1998, and in Arizona on October 25, 1999. Respondent primarily represented criminal defendants and had never managed a large law practice prior January 1, 2011. Therefore, he did not have the expertise to manage a bankruptcy practice with hundreds of active clients. This aggravating factor should be given reduced weight.

*Non-ABA Aggravation* – Bankruptcy proceedings were adversely affected by the failure of Respondent's firm to properly represent clients. Chief Bankruptcy Judge Collins scheduled order to show cause hearings to address the failure of Respondent's firm to promptly and properly represent clients. In addition, he imposed monetary

sanctions against Respondent for violating orders that he promptly complete Chapter 13 cases.

## *2. Applicable Mitigating Factors*

*Standard 9.32(e)* – Full and free disclosure to bar counsel and cooperative attitude toward the disciplinary proceedings. Respondent has generally been cooperative with and respectful to undersigned bar counsel. In addition, he voluntarily entered into this consent agreement. This mitigating factor should be given limited weight, however, because Respondent failed to timely submit written responses to a number of charges of misconduct, as directed by bar counsel during screening investigations, and failed to admit numerous allegations in the complaint and supplemental complaint regarding documents filed with the bankruptcy court, which could have been made based upon research at the bankruptcy court clerk's office.

*Standard 9.32(f)* – Inexperience in the practice of law. Respondent had no education, training or experience in bankruptcy matters prior to January 1, 2011.

*Standard 9.32(k)* – Imposition of other penalties or sanctions. Chief Bankruptcy Judge Collins imposed financial sanctions against Respondent, which he paid, for violating orders that he promptly complete various Chapter 13 cases. In addition, Judge Collins eventually removed Respondent, his law firms and his attorneys as counsel of record for numerous bankruptcy clients.

*Non-ABA Mitigation* – Respondent provided information to the bankruptcy court so it could determine which former clients were entitled to a refund of unexpended filing fees, which Respondent held in his client trust account (Chief Bankruptcy Judge Collins had entered an order precluding Respondent from

distributing those funds without a court order). With bankruptcy court approval, Respondent has distributed some of the approximately \$115,000.00 in unexpended filing fees to his former clients. Respondent also researched and identified an insurance policy that resulted in an offer of policy limits of \$100,000.00 to settle bankruptcy claims. Those funds were turned over to a bankruptcy trustee for possible distribution to some of Respondent's former bankruptcy clients.

In addition to the foregoing mitigation, Respondent's willingness to enter into this consent agreement will, if accepted, greatly reduce the work that the Presiding Disciplinary Judge, the Disciplinary Clerk's Office and bar counsel must undertake if this matter proceeds to a four-week, contested hearing. Although Respondent's agreement to enter into this consent agreement should not be the overriding factor in determining the propriety of this consent agreement, it is a factor that should be considered. *Cf. People v. Young*, 377 Ill.Dec. 529, ¶ 39, 2 N.E.3d 445, 454 (Ill.App.Ct. 2013) ("Defendant has received the benefit of his plea agreement, a significantly lower sentence. The State benefitted from the plea agreement by being spared the time and expense of trial."); *State v. Mick*, 19 Neb.App. 521, 527, 808 N.W.2d 663, 668 (2012) ("[A]t the sentencing hearing, in addition to other factors, the district court specifically indicated that it had taken into consideration the plea agreement and that Mick had saved the State the time and expense of the trial."); *State v. Comstock*, 168 Wis.2d 915, 934, 485 N.W.2d 354, 361 (1992) ("Finally, implicit in the parties' and circuit court's decision to accept the plea agreement was the knowledge that the plea agreement would save the expense and uncertainty of a trial, while still accomplishing the state's goals of convicting the defendant of a serious crime and supervising the defendant through probation."); *Buzbee v. State*,

199 Md.App. 678, 685, 24 A.3d 153, 157 (2011) (in discussing the fourth element of the collateral order doctrine, the court stated in part, “[A]n important purpose of making a plea agreement is to avoid the expense, inconvenience, and uncertainty of a trial.”).

Additional Information that is neither Aggravating nor Mitigating

Bankruptcy trustees have settled claims with various attorneys for a substantial sum, some of which may be available to Respondent’s former clients who submit a claim. It is expected that Chief Bankruptcy Judge Collins will set a claims bar date of December 30, 2016. Upon the bankruptcy court’s entry of an “Order of Notice” setting the date by which former clients must file a claim, the State Bar will forward a copy of that order to all former P&ABLC and DW&A clients set forth in the complaint and supplemental complaint for whom the State Bar has valid addresses. Undersigned bar counsel has been informed by an attorney for a Chapter 7 trustee that Respondent’s former bankruptcy clients may file a claim, even if no bankruptcy petition was ever filed on their behalf. The bankruptcy court and/or bankruptcy trustees will determine which claimants/former clients will receive compensation.

**DISCUSSION**

Attorney discipline serves various purposes.

“Attorney discipline serves to protect the public, the legal profession, and the legal system, and to deter other attorneys from engaging in unprofessional conduct.” *In re White-Steiner*, 219 Ariz. at 325 ¶ 9, 198 P.3d at 1197 (citing *In re Scholl*, 200 Ariz. 222, 227 ¶ 29, 25 P.3d 710, 715 (2001)). Another purpose is to instill public confidence in the Bar’s integrity. *In re Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994) (citing *In re Loftus*, 171 Ariz. 672, 675, 832 P.2d 689, 692 (1992)).

*In re Phillips*, 226 Ariz. 112, 117, ¶28, 244 P.3d 549, 554 (2010). An additional purpose is to “assist[ ], if possible, in the rehabilitation of an errant lawyer.” *In re*

*Scholl*, 200 Ariz. 222, 224 ¶8, 25 P.3d 710, 712 (Ariz. 2001). “Perhaps more important than rehabilitation of an individual attorney, however, is the value of discipline as a deterrent to other attorneys and as a process that maintains ‘the integrity of the profession in the eyes of the public.’” *In re Alcorn*, 202 Ariz. 62, 75, ¶48, 41 P.3d 600, 613 (2002) (quoting *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993) (citation omitted)). See also *Board of Professional Responsibility, Wyoming State Bar v. Custis*, 2015 WY 59 ¶56 (2015) (“Although attorney discipline can serve to improve the performance of attorneys who have strayed in performing their ethical obligations, when an attorney continues to engage in professional and ethical misconduct in spite of previous sanctions, our concern weighs more heavily toward deterrence, maintaining the integrity of the legal system, and protecting the public.”).

Respondent’s prior discipline resulted from his operation of DW&A. Based upon Respondent’s failure to take sufficient corrective or remedial steps to prevent further violation of the ethical rules, the primary focus of discipline in this case shifts from rehabilitative efforts to protection of the public, the legal profession and the legal system, and its deterrent effect on other lawyers.

While Respondent’s initial misconduct was primarily a result of neglect, due in part to a lack of education, training and experience, the numerous violations and extent of client harm must be considered. The public must be protected not only from attorneys who engage in deliberate acts of misconduct but also those who fail to fulfill their day-to-day ethical responsibilities, including supervision of lawyer and nonlawyer staff. Neglect, as seen from this case, can be as harmful to clients as deliberate misconduct.

Respondent continued to accept new clients even after he became aware he did not have the staff or funds to diligently represent and adequately communicate with his current clients.

Respondent understands he is responsible for his staff attorneys' violations of the Rules of Professional Conduct, including ER 1.1, ER 1.2, ER 1.3, ER 1.4 and ER 3.2, and the conduct of his nonlawyer staff. He was the sole owner of the firm and, as such, had managerial authority in the law firm and direct supervisory authority over his staff attorneys and nonlawyer assistants. When Respondent had notice of his staff's failure to properly represent his firm's clients, he failed to take sufficient remedial or corrective steps to mitigate or avoid the consequences of his staff's inability to properly represent his firm's clients. Respondent further understands he cannot escape responsibility for providing proper representation to his clients by claiming that the lack of diligence and communication were his staff's fault.

Respondent and his staff failed to notify many of the firm's clients that he and his staff were too busy with other matters to diligently represent them. In some cases, no work was performed for clients who paid the contracted attorney's fees, and in some cases the filing fee. By failing to ensure that his staff attorneys diligently represented his firm's clients, Respondent understands he betrayed the trust that his clients placed in him when they hired his firm or allowed his firm to represent them after initially hiring P&ABLC.

The presumptive sanction is disbarment or a long-term suspension. Based upon the aggravating and mitigating factors, a four-year suspension is within the range of reasonable disciplinary sanctions. The parties have conditionally agreed that a lesser sanction would not be appropriate under the facts and circumstances of this

matter. A four-year suspension will, just as with disbarment, require Respondent to undergo formal reinstatement proceedings and prove rehabilitation. The interests of justice and consideration of the adverse impact on the Presiding Disciplinary Judge and the State Bar if this matter were to proceed to a contested hearing warrant the imposition of a four-year suspension.

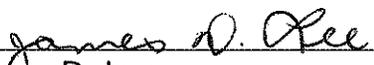
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanctions set forth above will serve the purposes of lawyer discipline.

### **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 proposed resolution of this matter, as set forth above: a retroactive four-year suspension, two years of probation during the period of suspension, and payment of the costs and expenses of this disciplinary proceeding. A proposed form order is attached as Exhibit B.

**DATED** this 25<sup>th</sup> day of October, 2016.

### **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. 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.**

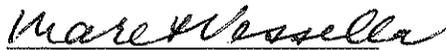
**DATED** this 25<sup>th</sup> day of October, 2016.



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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 26<sup>th</sup> day of October, 2016.

Copy of the foregoing emailed  
this 26<sup>th</sup> day of October, 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/mailed  
this 26<sup>th</sup> day of October, 2016, to:

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

Copy of the foregoing hand-delivered  
this 26<sup>th</sup> day of October, 2016, to:

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

by: Jalene Stone  
JDL/ts

# **EXHIBIT A**

## Statement of Costs and Expenses

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

File Nos. 13-0734, et al.

### 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, there is an assessment for the general administrative expenses 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**

Total Costs and Expenses for each matter over 5 cases where a violation is admitted or proven.

\$22,200.00

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 investigation charges

\$ 865.00

TOTAL COSTS AND EXPENSES INCURRED

\$24,265.00

  
Sandra E. Montoya

Legal Administration Manager

10-14-16  
Date

## **EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

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

Respondent.

**PDJ 2014-9041**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 13-0734, et al.]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on October \_\_\_\_\_, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct.,<sup>1</sup> hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** that Respondent, David R. Wroblewski, is hereby suspended from the practice of law for four years, retroactive to January 10, 2016, as outlined in the consent documents, for conduct in violation of the Arizona Rules of Professional Conduct.

**IT IS FURTHER ORDERED** that Respondent is placed on probation for two years during the period of suspension. Respondent shall participate in fee arbitration with all former clients mentioned in the complaint and supplemental complaint who file or reactivate petitions for fee arbitration with the State Bar or Arizona within 60 days of this judgment and order. In addition, Respondent shall pay all fee arbitration awards entered against him, except to the extent that those clients are fully or partially reimbursed for unearned attorney's fees and unexpended filing fees by the bankruptcy

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<sup>1</sup> All rules referenced herein are to the Rules of the Supreme Court.

court, a bankruptcy trustee or the State Bar's Client Protection Fund. Respondent will be responsible for reimbursing the Client Protection Fund for any payments made.

**IT IS FURTHER ORDERED** as a condition of reinstatement that Respondent provide the assigned hearing panel with evidence that he fully complied with all orders entered by the U.S. Bankruptcy Court for the District of Arizona, including any restitution orders.

**IT IS FURTHER ORDERED** that Respondent will be subject to an additional period of probation upon reinstatement, with terms to be determined by a hearing panel during reinstatement proceedings.

#### **NON-COMPLIANCE WITH TERMS OF PROBATION**

If Respondent violates 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). 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 impose an appropriate sanction. If there is an allegation that Respondent violated any of the foregoing terms, the burden of proof will be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

**IT IS FURTHER ORDERED** that Respondent shall immediately comply with the requirements of Rule 72, including notification to clients and others.

**IT IS FURTHER ORDERED** that Respondent pay \$24,265.00 to the State Bar of Arizona for the costs and expenses associated with this matter, with no accrual of pre- or post-judgment interest.

**IT IS FURTHER ORDERED** that Respondent 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 October, 2016.

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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 October, 2016.

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

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

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

James D. Lee  
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

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Phoenix, Arizona 85016-6266

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