

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**JOHN M. RHUDE, JR.,  
Bar No. 022263**

Respondent.

**PDJ-2015-9090**

**FINAL JUDGMENT AND ORDER**

[State Bar File Nos. 14-1646, 14-2609,  
14-2699, 14-2831]

**FILED OCTOBER 5, 2015**

---

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

**IT IS HEREBY ORDERED** Respondent, **John M. Rhude, Jr.**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this Order.

**IT IS FURTHER ORDERED** Mr. Rude shall be placed on probation for a period of two (2) years, subject to early termination solely at the discretion of the State Bar if it is determined that Probation is no longer necessary.

**IT IS FURTHER ORDERED** Mr. Rhude shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this Order. Mr. Rhude shall submit to a LOMAP examination of his office procedures. Mr. Rhude shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. The probation period is effective the date of this Order

and shall conclude two (2) years from that date, subject to early termination solely at the discretion of the State Bar. Mr. Rhude shall be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** Mr. Rhude shall initiate fee arbitration with clients in Count One through Count Four, within thirty (30) days from the date of this Order and shall timely pay any fee arbitration award.

**IT IS FURTHER ORDERED** Mr. Rude 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. 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 5<sup>th</sup> day of October, 2015.

*William J. O'Neil*

---

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

Copies of the foregoing mailed/emailed  
this 5<sup>th</sup> day of October, 2015.

Russell Yurk  
Jennings Haug & Cunningham  
2800 North Central Avenue, Suite 1800  
Phoenix, Arizona 85004-1049  
Email: rry@jhc-law.com  
Respondent's Counsel

Hunter F. Perlmeter  
Staff Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: LRO@staff.azbar.org

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

by: MSmith

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**JOHN M. RHUDE, JR.,  
Bar No. 022263**

Respondent.

**No. PDJ-2015-9090**

**DECISION AND ORDER  
ACCEPTING AGREEMENT FOR  
DISCIPLINE BY CONSENT**

[State Bar File Nos. 14-1646,  
14-2609, 14-2699, 14-2831]

**FILED OCTOBER 5, 2015**

An Agreement for Discipline by Consent ("Agreement") was filed on September 2, 2015, and submitted under Rule 57(a)(3), of the Rules of the Arizona Supreme Court. A Probable Cause Order was filed on June 23, 2015, and the Agreement was reached before a formal complaint was filed. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate."

Rule 57(a)(2) requires admissions be tendered solely "...in exchange for the stated form of discipline...." Under that rule, the right to an adjudicatory hearing is waived only if the "...conditional admission and proposed form of discipline is approved...." If the agreement is not accepted those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

Under Rule 53(b)(3), complainant(s) were notified of this Agreement by letter on July 29, 2015, and given the opportunity to file any objections within five (5) business days. No objection was filed. The misconduct is briefly summarized.

Mr. Rhude was a managing partner in the law firm of Corso and Rhude. Mr. Rhude was responsible for supervising attorneys at the firm. In Count One, the firm was hired on April 24, 2014, by Ms. Hoefer to represent her husband in a criminal matter. Ms. Hoefer signed an earned upon receipt flat fee agreement for pretrial work totaling \$12,000.00. She paid \$9,000.00 to the firm with \$3,000.00 due. The fee agreement stated that if early termination occurred, legal fees would be assessed at \$350.00 per hour.

On April 26, 2013, Ms. Hoefer retained the firm to represent her in a potential criminal matter for failing to report her husband's alleged conduct. The fee agreement was for an earned upon receipt flat fee of \$10,000.00 for all pretrial work. The fee was paid in cash and associate Ryan Cummings was initially assigned to the matter, and then associate Robert Gruler was assigned. The husband signed no written waiver and on October 7, 2013, the prosecutor raised a possible conflict of interest as the clients' interests were no longer aligned. The firm billed for a subsequent meeting with the client regarding the conflict of interest.

In Count Two, Mr. Rhude's firm represented a client, who lived in Nevada, in a misdemeanor traffic matter. Associate Robert Gruler was assigned to the matter. Both the firm and client failed to appear for two hearings because the firm failed to review the court docket upon accepting representation and failed to notify the Court it deactivated two firm e-mail addresses previously provided to the Court, and therefore, the assigned firm attorneys did not receive notice and did not appear for

scheduled hearings. After the second failure to appear, the court set a contempt hearing. Managing partner, Mr. Corso, in a motion filed with the Court, blamed court staff for the firm's failure to appear and ultimately was admonished and fined by the Court. Mr. Rhude was not fined. The Court noted it was not the responsibility of court staff to remind attorneys of hearing dates. Moreover, the court noted the firm's staff had called the court several times to check on pending motions related to the client's appearance. The firm provided the Court with a valid e-mail address to ensure receipt of future notices and minute entries.

In Count Three, the firm was hired by client's mother (Complainant) to represent client in a criminal matter in 2012 for a flat fee of \$25,000.00. Associate Ryan Cummings was assigned to the matter. The client was arrested for a subsequent criminal matter in 2013, and the firm was retained for the new charges for a flat fee of \$10,000.00. The client paid \$2,000.00 towards the new charges. Thereafter, the client terminated the representation and the client's mother requested, on two occasions, an accounting and refund of unused fees. The firm maintained it did not receive the letters. After Complainant filed a bar complaint, the firm responded and invoices were provided with the first matter totaling \$37,780.00 and \$3,916.00 in the second matter. The invoices failed to differentiate between attorney and non-attorney work. The invoices were subsequently updated to reflect the distinction between attorney and non-attorney work and the total fees in both matters were greater than the flat fees collected by the firm.

In Count Four, the firm was hired in a criminal matter in March 2013. Associate James Palestini was initially assigned to the matter and then Robert Gruler. Both left the firm by March 2014. A trial date was set for May 8, 2014. The client was

contacted on April 8, 2014, and told to arrive early to speak to his "new attorney." The attorney arrived on the day of trial and said that he had just received the case but could handle it.

The client requested a continuation from the judge to obtain better representation, which was granted. The trial was scheduled for September 11, 2014. The client requested a meeting with managing partner, Mr. Corso, but when the client appeared for the scheduled meeting, Mr. Corso was not present and instead another attorney appeared for the meeting. On the day of trial, associate Jeffrey Kegler appeared three minutes before trial. During trial and unbeknownst to the client, Kegler informed the Court he would call no witness in his client's defense. The client was found guilty of disorderly conduct based on an undisputed fact that the sheriff's office called the SWAT team to the scene caused by the client.

Mr. Rhude conditionally admits violations of Rule 42, ERs 1.1 (competence), 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.7 (conflict of interest/current clients), 1.15(a) (safekeeping client property), 1.16(d) (terminating representation), 5.1(a) and (b) (responsibility of partners, managers and supervisory lawyers), 5.3(a) (responsibilities of a subordinate lawyer) and 8.4(d) (conduct prejudicial to the administration of justice).

The parties stipulate to a sanction of reprimand and two (2) years of probation with the State Bar's Law Office Management Program (LOMAP), subject to early termination, the initiation of fee arbitration in all counts within thirty (30) days, and the payment of costs within thirty (30) days. The parties agree that *Standard 4.42, Lack of Diligence*, of the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* applies to Mr. Rhude's misconduct. Mr. Rhude negligently

violated his duty to his clients, the profession, the legal system, and the public. His misconduct caused actual harm to his clients and the legal system and potential harm to the profession. Aggravating factors include: 9.22(c) (pattern of misconduct) and 9.22(d) multiple offenses. In mitigation is factor 9.32(e) full and free disclosure to disciplinary Board or cooperative attitude toward proceedings.

The Agreement recognizes that some of the transgressions arose from the actions of other lawyers at the firm; however, Mr. Rhude admits he had supervisory authority and responsibility over those lawyers. Many of the firm's associates were recently admitted attorneys who had practiced less than one year. The firm of Corso and Rhude dissolved in the spring of 2015. The Agreement acknowledges that Mr. Rhude is currently a sole practitioner with a small practice that does not require the use of trust account or employ associate attorneys, making this misconduct unlikely to reoccur.

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

Now Therefore,

**IT IS ORDERED** incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: reprimand and two (2) years of probation (LOMAP) effective the date of this Order. Mr. Rhude shall also initiate fee arbitration, timely pay any arbitration award, and 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 Agreement is accepted. 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.

Mr. Rhude is reprimanded.

**DATED** this 5th day of October, 2015.

*William J. O'Neil*

---

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

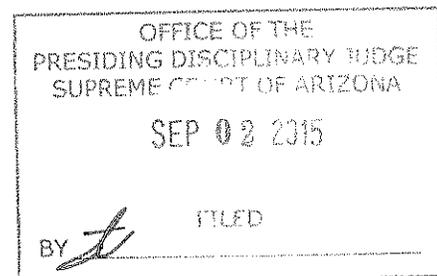
Copies of the foregoing mailed/emailed  
this 5th day of October, 2015.

Russell Yurk  
Jennings Haug & Cunningham  
2800 North Central Avenue, Suite 1800  
Phoenix, AZ 85004-1049  
Email: ryy@jhc-law.com  
Respondent's counsel

Hunter F. Perlmeter  
Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6266  
Email: lro@staff.azbar.org

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

by: MSmith



Hunter F. Perlmeter, Bar No. 024755  
Staff Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602)340-7278  
Email: LRO@staff.azbar.org

Russell Yurk, Bar No. 019377  
Jennings, Haug & Cunningham  
2800 North Central Avenue, Suite 1800  
Phoenix, Arizona 85004-1049  
Telephone 602-234-7800  
Email: rry@jhc-law.com  
Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**JOHN M. RHUDE JR,  
Bar No. 022263**

Respondent.

**PDJ 2015 - 9090**

State Bar File Nos. [14-1646, 14-2609,  
14-2699, 14-2831]

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, John M. Rhude Jr, who is represented in this matter by counsel, Russell Yurk, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on June 23, 2015, but no formal complaint has been filed in this matter. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant(s) by letter on July 29, 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. No objections have been received.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.1, 1.3, 1.4, 1.5, 1.7, 1.15(a), 1.16(d), 5.1(a), 5.1(b), and 5.3(a). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand with two years' probation, subject to early termination solely at the discretion of the State Bar, and to initiate fee arbitration in all counts. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.<sup>1</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

## **FACTS**

### **GENERAL ALLEGATIONS**

1. Respondent was licensed to practice law in Arizona on May 23, 2003. At all times relevant, he was a managing partner in the law firm of Corso and Rhude ("the firm"). Within the firm, Christopher P. Corso was exclusively responsible for the firm's trust account. Both Mr. Corso and Mr. Rhude were responsible for supervising attorneys at the firm.

---

<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 ONE (File no. 14-1557/«MAT\_Cmplntt\_Last»)**

2. On April 24, 2013, Bernice Hoefler ("Bernice") hired the firm to represent her husband on charges of sexual conduct with a minor. Bernice signed an earned upon receipt flat fee agreement for pretrial work for \$12,000. \$9,000 of the fee was paid up-front and a \$3,000 balance remained. The fee agreement indicated that, in the event of early termination, legal fees would be charged at \$350/hr.

3. Two days later, on April 26, 2013, Bernice retained the firm on potential criminal charges she faced for failing to report her husband's alleged conduct. The fee agreement in that matter was for an earned upon receipt flat fee of \$10,000 for all pretrial work. Bernice paid the full amount in cash. The firm assigned associate Ryan Cummings to Bernice's husband's case.

**Conflict of Interest**

4. On May 7, 2013, a firm attorney called the ethics hotline and left a voicemail concerning the potential conflict of interest related to the representation of both husband and wife. The call was returned on May 9, 2013, and the firm was informed that representation of both husband and wife was permissible if the clients' interests were aligned and informed consent was obtained.

5. Firm notes from May 9, 2013, state: "If even a HINT of misaligned interests, firm must withdraw from both."

6. On May 14, 2013, firm associate Robert Gruler filed a notice of appearance for Bernice. Gruler had been admitted to the State Bar on January 15, 2013, four months earlier, but had worked as an intern at the firm through his three years in law school, regularly attending staff meetings. Bernice has indicated that she

was surprised Gruler was assigned to her case because she left her initial meeting with John Rhude, believing that he would be handling her case, "not a first year attorney."

7. The firm's policy and practice was to assign supervising attorneys to associates and conduct weekly case management meetings. The firm explained that Gruler was supervised by managing attorney Courtney Boyd, a former prosecutor and experienced criminal defense attorney. Weekly case management meetings included not only Boyd, but also Respondents Christopher Corso and John Rhude, both of whom are former Deputy County Attorneys for the Maricopa County Attorney's Office.

8. The Firm's position is that Bernice's husband provided verbal informed consent to the joint representation shortly after May 9, 2013, but acknowledges that he did not sign a written waiver until July 2, 2013, more than two months after the start of the representation.

9. The firm's position is that Bernice provided verbal informed consent to the joint representation shortly after May 9, 2013, but acknowledges that she was never presented with a written waiver.

10. On October 7, 2013, the prosecutor, who had been assigned to prosecute both cases, emailed attorney Robert Gruler and stated, "I think Bernice Hoefer's plea would at a minimum include a stipulated FB [factual basis] about her knowledge of her husband's conduct." The email created a likely unwaivable conflict of interest, but no immediate action was taken by the firm.

11. On October 11, 2013, an attorney for the firm attended a pretrial conference in Bernice's husband's case and billed 1.5 hours.

12. On October 15, 2013, in Bernice's case, a staffing meeting attended by both Respondent and Rhude took place regarding a case management hearing that had taken place on October 2, 2013. The meeting was billed at .5 hours.

13. On October 22, 2013, in Bernice's husband's case, an attorney staffing with Respondent and Rhude took place and was billed at .3 hours.

14. On October 29, 2013, a staffing took place in Bernice's husband's case with Rhude and Respondent regarding "case plan." The meeting was billed at .4 hours.

15. On October 30, 2013, in Bernice's case, the firm billed 2 hours for attending a pretrial conference.

16. On October 30, 2013, an attorney for the firm contacted the ethics hotline to inquire whether withdrawal was necessary in light of the prosecutor's email. A State Bar employee returned the call on November 4, 2013, indicating that the situation presented an unwaivable conflict of interest and would require the firm to withdraw from representing both clients. The firm billed 1 hour for the phone calls with the State Bar.

17. On November 4, 2013, Rhude and Respondent met to discuss "possible conflict and result of communication with State Bar prior to attorney staffing." The meeting was billed at .5 hours.

18. On November 5, 2013, Respondent and Rhude met regarding the conflict and possibly withdrawing from the matter. The meeting was billed at .5 hours.

19. Billing records indicate that on November 6, 2013, a firm attorney spent .5 hours reviewing the case.

20. The same day, November 6, 2013, associate Ryan Cummings met with Bernice's husband and explained the conflict and the need for the firm to withdraw.

21. On November 7, 2013 an associate attorney billed 2.5 hours for an appearance at a case management conference in Bernice's husband's case at which he orally moved to withdraw based upon the conflict.

22. The firm's position is that there were no representations or positions taken by the firm between October 7, 2013 and November 7, 2013 where the interests of Bernice and her husband were not aligned.

23. On November 12, 2013, an attorney for the firm billed 1.5 hours for attending a status conference in Bernice's case. During the hearing, the court granted the firm's motion to withdraw from the case and appointed new counsel.

24. The firm has provided an accounting to the bar indicating that in Bernice's husband's case, the firm billed 44.9 lawyer hours at \$350/hr and 2.4 paralegal hours at \$95/hr. The firm's billing amounted to \$15,917.50.

25. The Firm's accounting in Bernice's case amounts to \$13,948.

### **Rule Violations**

26. In Count One, Respondent conditionally admits to a violation of ERs 1.1, 1.3, 1.4, 1.5, 1.7, 1.15(a), 1.16(d), 5.1(a), and 5.3(a).

### **COUNT TWO (File no. 14-2077 Judicial Referral)**

27. On March 3, 2014, the firm was hired by client Yasmin Norman, a Nevada resident, after she was charged with a misdemeanor following her failure to appear for a hearing related to a criminal traffic ticket in Seligman Justice Court.

28. Associate Robert Gruler was assigned to the case.

29. On March 5, 2014, the firm filed a Notice of Appearance/Motion to Waive Defendant's Presence and Set Telephonic Pretrial Conference and a Motion to Quash Arrest Warrant.

30. On April 2, 2014, the Court denied the Motion to Quash Arrest Warrant.

31. On April 4, 2014, the firm and client failed to appear for a telephonic status conference that had been set prior to the beginning of the representation. This resulted because the firm had failed to review the court docket upon taking on the case.

32. On April 8, 2014, the firm learned that the Court had denied the Motion to Quash when firm staff called the Court. During this call, Court staff stated that no hearing date had been set and that the Court had not yet ruled on the Motion to Waive Defendant's Presence and Set Telephonic Pretrial Conference. Firm staff called the Court again on April 10, 11, and 15 to ask whether the Court had ruled on the Motion to Waive Defendant's Presence and Set Telephonic Pretrial Conference. On April 15, 2014, Court staff advised that the Court had not yet ruled on the pending motion, and also stated that the Court had issued an Order to Show Cause because Defendant had not appeared for the April 4, 2014 hearing. Firm staff advised the Court that they had not been aware of the hearing and requested that the Court reset the hearing.

33. As a result, the Court set an April 28, 2014, hearing requiring both the client and an attorney from the firm to appear telephonically to show cause as to why sanctions should not be imposed. The firm, however, failed to appear for that hearing because it did not receive actual notice. This occurred because the firm had not

notified the Court that it had deactivated two email addresses that it had previously provided to the Court.

34. The firm appeared before Judge Kulp for three other matters on April 28, 2014, but was unaware that the Court had set the Order to Show Cause hearing. Neither the Court nor Court staff referenced any other hearing during those appearances.

35. On April 30, 2014, firm staff again called the Court regarding the status of the pending Motion to Waive Defendant's Presence and Set Telephonic Pretrial Conference and their April 15, 2014 request to reset the hearing on an Order to Show Cause. Judge Kulp's clerk advised that the firm and Defendant had failed to appear for the Order to Show Cause hearing. It is at this point that Judge Kulp's clerk explained that the Court had been emailing notices to the email addresses the firm had deactivated. The firm subsequently activated one of those email addresses to ensure receipt of future notices.

36. On May 9, 2014, the Court issued an order setting a contempt hearing for June 11, 2014, requiring the client and either Respondent or Corso to appear in person.

37. The firm filed a Motion to Vacate Contempt Order on May 30, 2014. The firm's motion, drafted and signed by Corso, argued that during phone calls with the court "Counsel was not informed by any of the staff at the Court that an appearance was also required in relation to an Order to Show Cause for the matter pending against Ms. Norman." In later addressing this argument on the record, the Court admonished

Respondent and Corso that it is not Court staff's responsibility to remind attorneys of hearing dates.

38. Respondent appeared for the June 11, 2014, contempt hearing. The client did not. According to Respondent, the client, a Nevada resident, told the firm that she could not attend the hearing in person because of employment and familial obligations.

39. The Court voiced concern that Corso's motion blamed court staff for its failures and noted on the record: "The problems aren't going away and that's a concern."

40. During the same hearing, the Court pointed out that a firm associate, William Parven had previously called court staff four times to find the phone number for the State in advance of a status conference, even though the number was listed in the order. Parven had been admitted to practice a few months earlier on January 24, 2014.

41. The Court waived the \$250 fine with respect to Respondent, but not with respect to Corso.

42. A plea agreement was signed by the State on June 25, 2014 and provided to the firm.

43. On June 27, 2014, the firm mailed a copy of the plea agreement along with instructions to the client.

44. The Court scheduled a contempt hearing for the client to occur on August 13, 2014.

45. On August 13, 2014, the client appeared with an associate for the firm named Jeffrey Kegler, who had been admitted to practice on January 24, 2013.

46. The Court also inquired as to whether the client had been advised of the June 11, 2014, hearing prior to June 5, 2014. The client indicated that the firm told her that the Court had not gotten back to it concerning whether she needed to appear at the hearing. She indicated that the firm told her it would appear for her and let the Court know that she could not be present. The client also indicated that she was given the impression that it was not imperative to appear.

47. The client indicated that she had never been informed by the firm that she could appear telephonically for the hearings that preceded the June 11, 2014, contempt hearing. Respondent's position is that the firm did not inform the client that she could appear telephonically because it did not have actual notice of the hearings as a result of failing to obtain or receive relevant minute entries.

48. When the Court attempted to have the State and the defendant discuss a possible plea agreement, Kegler informed the Court that he did not have a copy of the plea agreement. He stated, "I was not provided with one, I apologize. It was my firm's bad, I just started there." The Court responded, "And now we are sitting here today with a client who has come all the way from Las Vegas with children, a job, a hardship, and no file, no original plea agreement."

49. The Court took a recess to allow Mr. Kegler to go over the plea agreement with the client and the client signed the agreement.

### **Rule Violations**

50. In Count Two, Respondent conditionally admits to violating ERs 1.1, 1.3, 1.4, 1.5, 5.1(a), 5.1(b), 5.3(a), and 8.4(d).

### **COUNT THREE (File no 14-2610/Swarm)**

51. In March of 2012, Complainant Mary Swarm's daughter, Holly Kast, was arrested and charged with manslaughter as a result of an auto accident that took place while she was under the influence of alcohol.

52. Kast's mother hired the firm to represent her daughter, and paid a flat fee of \$25,000. Firm associate Ryan Cummings entered his appearance for Kast on March 25, 2012. At the time he had been practicing law for approximately 9 months, having been admitted to the State Bar in June of 2011. Cummings had been the initial contact for Kast as he had specifically been recommended to Kast by a friend.

53. In June of 2013, Kast was arrested for a second DUI accident involving her children and another vehicle with children in it. She retained the firm on the new charges and paid \$2,000 on a \$10,000 flat fee in the new matter.

54. In August of 2013, Kast terminated the representation.

55. On November 12, 2013, Kast's mother wrote a letter to the firm requesting a detailed billing statement and a refund of unused money within 7 days. The firm alleges that they never received the letter.

56. When the firm failed to respond to the letter, on December 17, 2013, Kast's mother sent the firm a certified letter renewing the request for a detailed billing statement and a refund of unused money. When the firm failed to respond, she filed the subject bar charge. The firm alleges that it never received the certified letter, and that it was signed by an individual unknown to the firm. The address on the certified mail receipt was inaccurate with respect to the final four digits of a nine digit zip code.

57. After the bar charge was submitted, the firm provided Kast's mother with billing records in the two cases. The invoice for the first case totaled \$31,780. Hourly rates included in the draft billing record did not differentiate between work performed by lawyers and work performed by non-lawyers.

58. The billing record for the second matter totaled \$3,916. Hourly rates included in the draft billing record did not differentiate between work performed by lawyers and work performed by non-lawyers.

59. The firm later provided the State Bar with billing records in both matters differentiating between attorney and non-attorney work. The total in both matters was greater than the flat fee collected in the matters.

### **Rule Violations**

60. In Count Three, Respondent conditionally admits to violating ER 1.5.

### **COUNT FOUR (File no. 14-2946 Browning)**

61. Complainant Danny Browning was arrested in March of 2013 and charged with disorderly conduct and resisting arrest. On March 6, 2013, he hired the firm to represent him. Browning paid \$4,000 for the representation.

62. The firm assigned James Palestini, a firm associate, to represent Browning. Palestini had been admitted to practice approximately four months earlier in November of 2012. Palestini was supervised by managing attorney, Courtney Boyd.

63. In February of 2014, Browning was contacted by the firm and told that Palestini no longer worked for the firm, and that Browning could either continue with Palestini as his lawyer at a new firm, remain with the firm, or seek representation by another lawyer. Browning elected to stay with the firm and attorney Robert Gruler was assigned to represent him.

64. Gruler left the firm the following month.

65. On April 8, 2014, Browning received a call informing him of a trial date of May 8, 2014, and informing him that one of the owners of the firm would represent him.

66. Browning's matter was set for trial in May of 2014. Shortly before trial, Browning was contacted by a firm staff member and told to arrive early to speak to his "new attorney."

67. On the day of trial, an attorney Browning had never met showed up a few minutes before court and informed him that he had just received the case, but was capable of handling it. Browning told him that he was unhappy with being

assigned to an attorney he had never met and requested that the judge grant him additional time to retain "better representation." The trial was continued until September 11, 2014.

68. The day that the continuance was granted, Browning called the firm and scheduled a meeting with Corso.

69. When he appeared for the meeting, Corso was not present. Instead, an attorney Browning had never met appeared and told him that he thought he could get the case thrown out on First Amendment grounds.

70. On July 30, 2014 Browning got a call from the firm telling him that all charges had been dropped after the court granted the firm's Motion to Dismiss. Browning later received a call from the firm indicating that the Court had misidentified the case and that the Motion to Dismiss had not been granted.

71. On September 11, 2014, the day of trial, Complainant was met at the court house by an associate of the firm, Jeffrey Kegler, whom he had talked to on several occasions, but had never met in person. Kegler had been admitted to practice on January 24, 2014, less than eight months earlier. When Kegler informed Browning that he was his lawyer, Browning made a comment about how it would have been nice to meet before trial.

72. The firm's position is that it was unable to meet personally with Browning because Browning was working out of State prior to the trial.

73. Kegler arrived at Court early to meet Browning before trial, but Browning chose to remain outside the courthouse until three minutes before trial.

74. According to Browning he was frustrated and surprised when, during trial, Kegler indicated to the Court that he was not going to call any witnesses in Browning's defense. Mr. Kegler has testified by affidavit that he advised Browning to not testify because it would likely be more harmful than helpful to his case and Browning agreed to not testify. Kegler, after consultation and advice from the firm's managing attorneys, chose to not call any witnesses in Browning's defense.

75. Kegler defended the charges against Browning through cross examination of the State's witnesses, eliciting evidence of bias and inconsistency, and through closing argument.

76. Browning was found guilty of disorderly conduct because of an undisputed fact – that Maricopa County Sheriff's Officers called a SWAT team to the scene of the disturbance caused by Browning.

### **Rule violations**

77. In Count Four, Respondent conditionally admits to violating ERs 1.1, 1.3, 1.4, 5.1(a) and 5.1(b).

### **CONDITIONAL ADMISSIONS**

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

### **RESTITUTION**

Respondent will initiate fee arbitration with the clients in all four of the above referenced counts within 30 days of the effective date of the Judgment and Order in this matter. Respondent will also timely pay any fee arbitration award entered against him or against the firm.

### **SANCTION**

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Reprimand and two years of probation to LOMAP.

### **PROBATION (LOMAP)**

Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Agreement. Respondent shall submit to a LOMAP examination of his office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. The probation period will begin at the time this agreement is served on Respondent and will conclude two years from that date, subject to early termination solely at the discretion of the State Bar. Respondent will be responsible for any costs associated with LOMAP.

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

### **NON-COMPLIANCE LANGUAGE**

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a

hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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

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

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

The parties agree that *Standard* 4.42 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.42 provides that Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

#### **The duty violated**

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

**The lawyer's mental state**

For purposes of this agreement the parties agree that Respondent negligently engaged in the misconduct described above and that his conduct was in violation of the Rules of Professional Conduct.

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

For purposes of this agreement, the parties agree that there was actual harm to clients and the legal system and potential harm to the profession.

**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(c):* pattern of misconduct

*Standard 9.22(d):* multiple offenses

**In mitigation:**

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

**Discussion**

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

Moreover, although Respondent undertook some of the acts at issue, many of the acts described in this Consent Agreement were undertaken by other lawyers at the firm over whom Respondent had supervisory responsibility. It is also noted that while negotiating a settlement in this matter, the State Bar was made aware that during the spring of 2015, the firm of Corso and Rhude broke up and is no longer an ongoing entity. Respondent is now a sole practitioner with a small practice that does not require the use of a trust account, and he has no associate attorneys.

### **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 two years of Probation and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

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

### **STATE BAR OF ARIZONA**



---

Hunter F. Perlmeter  
Staff Bar Counsel

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

**DATED** this 31 day of August, 2015.



John M. Rhude, Jr.  
Respondent

**DATED** this 1<sup>st</sup> day of August, 2015.

*September*

Jennings Haug & Cunningham



Russell Yurk  
Counsel for Respondent

Approved as to form and content

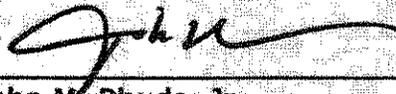
\_\_\_\_\_  
Maret Vessella  
Chief Bar Counsel

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this \_\_\_\_\_ day of August, 2015.

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

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

DATED this 31 day of August, 2015.



John M. Rhude, Jr.  
Respondent

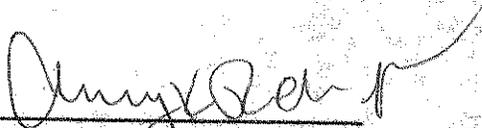
DATED this 1<sup>st</sup> day of ~~August~~, 2015.  
*September*

Jennings Haug & Cunningham



Russell Yurk  
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 2<sup>nd</sup> day of ~~August~~, 2015.  
*September*

Copies of the foregoing mailed/emailed  
this 2<sup>nd</sup> day of September 2015 to:

Copies of the foregoing mailed/emailed  
this 2nd day of September 2015 to:

Russell Yurk  
Jennings Haug & Cunningham  
2800 North Central Avenue, Suite 1800  
Phoenix, Arizona 85004-1049  
rry@jhc-law.com  
Respondent's Counsel

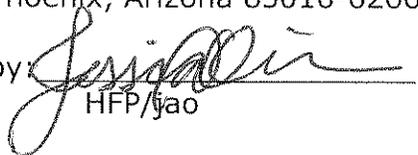
Copy of the foregoing emailed  
this 2nd day of September, 2015, to:

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

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

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

by:

  
HFP/jao

**FILED**

JUN 23 2015

STATE BAR OF ARIZONA  
BY *[Signature]*

**BEFORE THE ATTORNEY DISCIPLINE  
PROBABLE CAUSE COMMITTEE  
OF THE SUPREME COURT OF ARIZONA**

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

**JOHN M. RHUDE, JR.  
Bar No. 022263**

Respondent.

Nos. 14-1646, 14-2609, 14-2699, and  
14-2831

**PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 12, 2015, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File Nos. 14-1646, 14-2609, 14-2699, and 14-2831.

**IT IS THEREFORE ORDERED** pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

**DATED** this 23 day of June, 2015.

*Lawrence F. Winthrop*  
\_\_\_\_\_  
Judge Lawrence F. Winthrop, Chair  
Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona

<sup>1</sup> Committee member Bill J. Friedl did not participate in this matter.

Original filed this 23<sup>rd</sup> day  
of June, 2015, with:

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

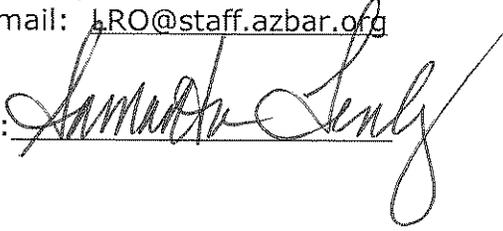
Copy mailed this 24<sup>th</sup> day  
of June, 2015, to:

Russell Yurk  
Jennings Haug & Cunningham  
2800 N. Central Avenue, Suite 1800  
Phoenix, Arizona 85004-1049  
Respondent's Counsel

Copy emailed this 24<sup>th</sup> day  
of June, 2015, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

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

by: 

**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
John M. Rhude Jr, Bar No. 022263, Respondent

File No(s). 14-1646, 14-2609, 14-2699, and 14-2831

### 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***

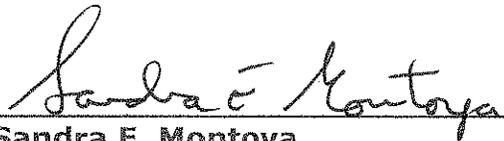
**\$1,200.00**

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

7-30-15  
\_\_\_\_\_  
Date

**EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**JOHN M. RHUDE JR,**  
**Bar No. 022263,**

Respondent.

**PDJ 2015-\_\_\_\_\_**

**FINAL JUDGMENT AND ORDER**

[State Bar File Nos. 14-1646, 14-2609,  
14-2699, 14-2831]

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, **John M. Rhude, Jr.**, is hereby Reprimanded 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 be placed on probation for a period of two years, subject to early termination solely at the discretion of the State Bar if it is determined that Probation is no longer necessary.

**IT IS FURTHER ORDERED** that Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order. Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. The probation period will begin at

the time this Order is served on Respondent and will conclude one year from that date. Respondent will be responsible for any costs associated with LOMAP.

**NON-COMPLIANCE LANGUAGE**

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

**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 September, 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 September, 2015.

Copies of the foregoing mailed/emailed  
this \_\_\_\_\_ day of September, 2015.

Russell Yurk  
Jennings Haug & Cunningham  
2800 North Central Avenue, Suite 1800  
Phoenix, Arizona 85004-1049  
Email: rry@jhc-law.com  
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_\_ day of September, 2015, to:

Hunter F. Perlmeter  
Staff Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered  
this \_\_\_\_\_ day of September, 2015 to:

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

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