

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**JAMES ROGER WOOD,  
Bar No. 018948**

Respondent.

**PDJ-2015-9094**

**FINAL JUDGMENT AND ORDER**

[State Bar No. 13-2165, 13-2617, 13-2837, 14-0331, 15-0099, 15-0280, 15-0726]

**FILED OCTOBER 7, 2015**

The Presiding Disciplinary Judge, having reviewed the Agreement for Discipline by Consent filed on September 9, 2015, under Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** Respondent, **James Roger Wood**, is suspended for sixty (60) days effective thirty (30) days from this order

**IT IS FURTHER ORDERED** Mr. Wood shall participate in the State Bar's Fee Arbitration Program regarding the client, Douglas Herbert (Count Seven) and shall timely pay any arbitration award.

**IT IS FURTHER ORDERED** Mr. Wood shall make restitution to the following clients in the following amounts:

\$2,500.00 to Lisa Norris (Count One)

\$1,000.00 to Donald Moldermaker (Count Four)

\$2,250 to Donald Stoker (Count Five)

**IT IS FURTHER ORDERED** all restitution shall be paid before the conclusion of the suspension period, which shall be effective thirty (30) days from this order.

**IT IS FURTHER ORDERED** upon reinstatement, Mr. Wood shall be placed on probation for a period of one (1) year.

**IT IS FURTHER ORDERED** upon reinstatement, Mr. Wood shall participate in the State Bar's Law Office Management Program (LOMAP). Mr. Wood shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from that date. Mr. Wood 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. The probation period shall be effective upon reinstatement and shall conclude one (1) year from that date. Mr. Wood shall be responsible for any costs associated with LOMAP.

#### **NON-COMPLIANCE LANGUAGE**

if Mr. Wood 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, under Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within thirty (30) days to determine whether a term of probation has been breached and, if so, to recommend a sanction. If there is an allegation that Mr. Wood 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** under Rule 72, Ariz. R. Sup. Ct., Mr. Wood shall immediately comply with the requirements relating to notification of clients and others.

**IT IS FURTHER ORDERED** Mr. Wood shall pay the costs and expenses of the State Bar of Arizona for \$1,680.00, within thirty (30) days from this order. There are

no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

**DATED** this 7th day of October, 2015.

*William J. O'Neil*

---

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

Copies of the foregoing mailed/emailed  
this 7th day of October, 2015.

James Roger Wood  
The Law Firm of J. Roger Wood PLL  
4700 S. Mille Avenue, Suite 3  
Tempe, Arizona 85282-6736  
Email: Roger@jrogerwoodlaw.com  
Respondent

Stacy L Shuman  
Staff Bar Counsel  
State Bar of Arizona  
4201 N 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 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by: JAlbright

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**JAMES ROGER WOOD,**  
**Bar No. 018948**

Respondent.

**No. PDJ-2015-9094**

**DECISION ACCEPTING  
CONSENT FOR DISCIPLINE**

[State Bar File Nos. 13-2165,  
13-2617, 13-2837, 14-0331, 15-  
0099, 15-0280, 15-0726]

**FILED OCTOBER 7, 2015**

An Agreement for Discipline by Consent ("Agreement") was filed September 9, 2015, and submitted under Rule 57(a)(3), of the Rules of the Arizona Supreme Court. Orders of Probable Cause were filed on April 20, 2015 and June 23, 2015. A stipulated supplement was filed on September 18, 2015. The Agreement was reached before the authorization to file a formal complaint. 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 the Agreement and one objection was filed by the client in Count Five, File No. 15-0099, who is seeking further reimbursement in restitution for a judgment filed against his company due to Mr. Wood's misconduct. The Agreement provides for restitution for fees paid by the client to Mr. Wood; however, recouping any monetary damages from a judgment is best left to the civil courts or by filing a malpractice action. The PDJ, therefore, declines to issue any additional restitution order in Count Five beyond the attorney fees paid to Mr. Wood. Discipline proceedings are neither civil nor criminal, but are *sui generis*, and the ethical rules are not designed to be a basis for civil liability nor as a procedural weapon.

The proposed Agreement details a factual basis for the admissions. In multiple counts, Mr. Wood, after accepting retainers from clients, failed to perform services on behalf of clients and overall, engaged in a pattern of neglect. Mr. Wood conditionally admits to violating ERs 1.1 (competence), 1.2 (scope of representation), 1.3 (diligence), 1.4 (communication), 1.5(b) (fees), 1.16(d) (declining/terminating representation), 3.2 (expediting litigation), and 8.4(d) (conduct prejudicial to the administration of justice).

The parties agree that *Standards 4.42, Lack of Diligence*, of the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* is most applicable to Mr. Wood's misconduct and suspension is the presumptive sanction.

*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.

Mr. Wood admits he violated his duty to his client, the profession and the legal system. He knowingly failed to provide competent representation, failed to adequately communicate with and to act with reasonable diligence, and failed to keep clients informed on the status of their matters. He failed to expedite litigation, failed to provide an accounting after his representation was terminated and his misconduct was prejudicial to the administration of justice.

The parties agree aggravating factors include: 9.22(c) (pattern of misconduct) and (d) (multiple offenses) and 9.22(i) (substantial experience in the practice of law). In mitigation are factors: 9.32(a) (absence of prior disciplinary offenses), (b) (absence of selfish or dishonest motive), (c) personal or emotional problems, (d) (timely good faith effort to make restitution or rectify consequences of misconduct), (e) (full and free disciplinary to disciplinary board or cooperative attitude toward proceedings, and (l) (remorse). The parties agree these factors warrant no deviation from the presumptive sanction of suspension. The PDJ agrees.

We are reminded the purpose of lawyer discipline is not to punish a respondent, but to protect the public and the administration of justice from attorneys either unable or unwilling to discharge their professional obligations to clients, the public and the profession. *Matter of Rivkind*, 164 Ariz. 154, 157, 791 P.2d 1037, 1040; see also *Standard* 1.1.

Accordingly:

**IT IS ORDERED** incorporating by this reference the Agreement and any supporting documents. The agreed upon sanction is a sixty (60) day suspension effective thirty (30) days from this Order, one (1) year of probation (LOMAP) upon reinstatement, participation in fee arbitration, restitution, and costs and expenses of

the disciplinary proceedings totaling \$1,680.00. This financial obligations shall bear interest at the statutory rate.

**IT IS FURTHER ORDERED** the Agreement is accepted. Costs as submitted are approved for \$1,680.00, and shall be paid within thirty (30) days of the final order. Now therefore, a final judgment and order is signed this date.

**DATED** 7<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 7th day of September, 2015.

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

James Roger Wood  
The Law Firm of J. Roger Wood, PLLC  
4700 S. Mill Avenue, Suite 3  
Tempe, AZ 85282-6736  
Email: roger@jrogerwoodlaw.com

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: JAlbright

SEP 09 2015

BY  FILED

Stacy L Shuman, Bar No. 018399  
Bar Counsel - Litigation  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602)340-7247  
Email: LRO@staff.azbar.org

J. Roger Wood, Bar No. 018948  
The Law Firm of J. Roger Wood PLL  
4700 S. Mill Avenue, Suite 3  
Tempe, Arizona 85282-6736  
Respondent

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**JAMES ROGER WOOD,  
Bar No. 018948**

Respondent.

**PDJ 2015-9094**

State Bar File Nos. **13-2165, 13-  
2617, 13-2837, 14-0331, 15-0099,  
15-0280, 15-0726**

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

The State Bar of Arizona (SBA), through undersigned Bar Counsel, and Respondent, James Roger Wood, who has chosen to not be represented by counsel herein, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on April 20, 2015, with respect to SBA file nos. 13-2165, 13-2617, 13-2837, 15-0099 and 15-0280. A probable cause order was entered on June 23, 2015 in SBA File no. 14-0331. No formal complaint has been filed in this matter. This consent also resolves SBA file no. 15-0726, which is still in screening. 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 mail on July 7, 2015. Complainant(s) 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. The Complainant in Case No. 15-0099 has submitted an objection to the agreement, a copy of which is being filed with the Court contemporaneously herewith.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.1, 1.2, 1.3, 1.4, 1.16(d), 3.2 and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: a 60-day Suspension, Restitution as detailed below, Fee Arbitration in SBA File No. 15-0726, and Probation. 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.

---

<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.

## FACTS

### GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on May, 16, 1998.

#### **COUNT ONE (File no. 13-2165/ Norris)**

2. On July 10, 2013, Complainant Lisa Norris (Norris)'s homeowner's association filed a lien foreclosure complaint with the Maricopa County Superior Court, *The Pines Homeowners Association v. Lisa Norris, a single woman, and known heir and devisee to Marion G. Anderson, deceased; the Unknown Heirs and Devisees of Above Named Defendant, If Deceased*, Case No. CV 2013-093931 (the Litigation).

3. In July 2013, Norris retained Respondent to defend her in the Litigation and paid him a \$2,500 flat fee for the representation.

4. The HOA caused Norris to be served with the complaint on July 10, 2013. Under Rule 12(a)(1), the answer was due on July 30, 2014. Respondent did not file an answer to the complaint or otherwise seek an extension of time within which to do so.

5. On August 5, 2013, the HOA filed an application for entry of default (the Application), along with a supporting affidavit. The Application sought entry of a default judgment if Norris did not take action within 10 days, which would have been August 15, 2013.

6. Respondent "believed" that the answer to the complaint was due on August 15, 2013. However, he did not file an answer by that date. Respondent "believed the answer was filed," but there was an "inadvertent oversight." Respondent states that on August 15<sup>th</sup>, he gave the answer to an assistant to file, but he later discovered that the document had been prepared, but not filed.

7. On August 23, 2013, Respondent revised the draft answer to the complaint after having learned that it had not been filed.

8. On August 26, 2013, Respondent finally filed an answer to the complaint. The document is 3 pages long and does not specifically dispute the allegation that certain HOA dues had not been paid. Respondent emailed opposing counsel and obtained an agreement that the parties would stay the litigation to discuss settlement.

9. By email dated September 4, 2013, Respondent assured Norris that he intended to "see [her case] through" and expressed his desire to speak with her about the next steps to be taken.

10. On September 9, 2013, Respondent met with Norris to discuss how to proceed with the case. After the meeting, Respondent emailed Norris setting forth his "steps of action," which included obtaining a copy of the HOA's payment ledger.

11. Respondent states that from that time through mid-October 2013, he tried to obtain documents that supported Norris's claims, but that he continued to have difficulty opening Norris's emails and attached documents. Respondent states that his computer system did not like "cox.net" emails or their attachments.

12. On October 15, 2013, Respondent and Norris exchanged emails regarding the need for documents relating to a new defense theory and the possibility of filing a motion for summary judgment. Respondent told Norris that he would serve discovery requests on the HOA.

13. On October 16, 2013, Respondent forwarded to Norris a draft motion for summary judgment and request for production of documents to serve on the HOA. He asked Norris to review and approve them. Respondent asserts that he did

not serve the discovery request because Norris never approved it and he did not believe that Norris "understood the strategy regarding this situation."

14. In a later email, Respondent advised Norris that the HOA's disclosure was "forthcoming" and that additional documentation would be received at that time. Respondent made this statement notwithstanding that he and opposing counsel had agreed to an informal "stay."

15. On October 23, 2013, Norris sent Respondent an email detailing her questions about the case. According to Respondent, the email went into his spam filter and he did not receive it until November 16, 2013. Respondent maintains that he "still does not understand" how the email was diverted by the spam filter.

16. By letter dated November 15, 2013, Bar Counsel sent Respondent a screening letter and asked him to respond to the allegations set forth in the bar charge. It was only then that Respondent search his spam filter to try to find any emails from Norris that he may have missed. Respondent acknowledges that he found several emails from Norris at that time and that those emails were from different email accounts maintained by Norris.

17. On November 22, 2013, Norris emailed Respondent about the proposed summary judgment motion. Respondent replied the next day that he now believed that he could file a motion to dismiss.

18. On November 26, 2013, Respondent and Norris spoke and she authorized him to move forward with the motion to dismiss and his discovery efforts.

19. Respondent did not take any action on Complaint's case thereafter and on February 14, 2014, he filed a motion to withdraw as counsel. The motion was

not granted until April 2, 2014. In the interim, the HOA filed a motion for summary judgment. Respondent took no action to protect Norris's interests in response to that motion, which was ultimately granted.

20. On December 11, 2013, the court filed a 150 Day Order setting various deadlines for the conduct of the litigation, as well as a 100 Day Notice advising that parties that a motion should be filed if either party was interested in scheduling a pretrial conference. Respondent did not advise Norris of same, nor did he take any action on her behalf.

21. Respondent never filed a motion to dismiss, nor did he serve discovery requests on the HOA. It should be noted that the draft request for production of documents included only 2 requests. It sought account ledgers and filings by counsel for the HOA seeking attorney fees in an unrelated justice court matter. The draft motion for summary judgment did not reference any facts and it does not appear that Respondent ever drafted a proposed statement of facts in support of the motion.

**COUNT TWO (File No. 13-2617/Broussal)**

22. On April 26, 2013, Complainant John Broussal (Broussal) retained Respondent to represent him in a dispute with Keystone Homeowners Association (the HOA) regarding tree and water damage incurred due to the HOA's failure to maintain certain property. An undated representation letter states that Respondent would review Broussal's documents, send a demand letter to the HOA and then communicate with the HOA about the demand letter. Broussal paid Respondent a non-refundable flat fee of \$750 on that date.

23. On May 6, 2013, Respondent sent Broussal a draft demand letter. Broussal responded by email that day and pointed out some items to be included in the letter. Broussal understood that the letter would be sent out that day.

24. According to Respondent, he received Broussal's comments to the draft and instructed his assistant to make the changes, send the revised letter to Broussal for approval and then to send it out. However, Respondent's time entry for that date references only that he sent the draft letter to Broussal. There are no other time entries indicating that the letter was ever put into final or sent to the HOA. And, when Broussal later asked Respondent on several occasions if the HOA had responded to the demand letter, Respondent never responded.

25. On June 10, 2013, the HOA advised Broussal that it had not received any communication from Respondent. When Broussal contacted Respondent, he learned that not only had the demand letter not included a "reply by" date, but it had not been sent by certified mail so there was no way to track it. Respondent sent another demand letter to the HOA that day, although his time records do not reflect any activity.

26. By email dated July 4, 2013, Broussal advised Respondent that the HOA had sent him a written notice of alleged violations of the CC&Rs.

27. On July 5, 2013, Respondent drafted a response to the notice letter. While Broussal received a copy of the draft letter, Respondent never sent a finalized letter to the HOA.

28. Between July 5 and July 23, 2013, Broussal experienced "sporadic" and "untimely" communication from Respondent, who failed to provide Broussal with any information regarding his case.

29. On July 23, 2013, Respondent advised Broussal that it was time to move forward with litigation. An undated letter identified as "Amended Fee Agreement Regarding Litigation Dispute with Mountain Park Ranch/Keystone" states that Respondent agreed to litigation the dispute "to its completion" for a \$3,500 non-refundable flat-fee. However, the letter then goes on to suggest a "hybrid" flat fee arrangement by which the Respondent would be entitled to seek attorney fees beyond the \$3,500 if successful at trial. The signature block does not indicate which fee agreement Broussal agreed to by signing the letter.

30. Respondent's time records for July 23<sup>rd</sup> reflect activity related to the response letter. However, according to Respondent, the letter had been sent to the HOA on July 5, 2013.

31. Between July 23 and August 16, 2013, Broussal again had trouble communicating with Respondent. Respondent failed to provide Broussal with any information regarding his case or the status of the case. When Broussal was finally able to reach Respondent, he was told that it was time to file the complaint.

32. On August 20, 2013, Respondent sent Broussal a draft complaint, which Broussal corrected and returned to Respondent that day.

33. By email dated September 13, 2013, Broussal asked Respondent about the status of the case, but did not receive a response until September 18<sup>th</sup>. At that time, Broussal expressed his concerns over the lack of communication or progress on his case. Respondent told him that the complaint had been filed and that the HOA would be served either Friday, September 20, 2013 or the following Monday or Tuesday.

34. On September 26, 2013, Broussal emailed Respondent's assistant, Jessica Salow and asked for the case number and the date that that complaint had been served on the defendants. Salow did not respond to the email.

35. By invoice dated October 1, 2013, Respondent billed Broussal for the filing fee incurred to file the complaint. However, Respondent previously advised Broussal that the complaint had been filed on or before September 18, 2013.

36. On October 1, 2013, Broussal called Respondent to pay the Superior Court filing fee and asked when the complaint was served. Respondent told him that the process server had not called back regarding the date of service. Respondent recalls the telephone call, but denies that they discussed the status of the complaint.

37. On October 3, 2013, Broussal called the Maricopa County Superior Court and the Justice Courts to try to find the case number for the complaint and learned that the complaint had not been filed. He then tried to contact Respondent, but reached the answering service. Broussal left an "urgent" message, but he did not receive a return call.

38. Then, Broussal sent Respondent a second "urgent" email message detailing the "many problems" that he had been experiencing regarding communication and diligence. He noted that communication had been "sporadic" and that return calls could take more than 2 weeks. And, he noted the lack of diligence in moving the case forward and "the questionable honesty of where things are at." He demanded documentation of the services provided by Respondent, the dates of services and the corresponding billings. As of that date, Broussal had paid

Respondent \$4,569 for "little more than a demand letter—which was sent largely delayed."

39. Respondent replied to the email and explained that he had learned the day before that the Superior Court "had an issue with our filing as their pagination was not accurate." Respondent stated that he expected to have a case number the next day and promised to send Broussal copies of the file stamped documents. He also provided Broussal with "a transaction listing" of all time spent on the case, apologized for any miscommunication, and stated that the case was moving forward. Respondent did not dispute Broussal's statement that he told Broussal that the complaint had been filed on September 18, 2013.

40. By email dated October 4, 2013, Respondent responded to questions that Broussal raised regarding "questionable" billing practices. In response, Broussal terminated the representation and retained successor counsel, Mark Bainbridge.

41. By emails dated November 1, 2013, Complainant demanded first a refund of \$1,283 and then, after further review of the time records, \$2,500. Respondent agreed to refund the \$2,500, which he did.

**COUNT THREE (File No. 13-2837/Oddo)**

42. On or about March 30, 2012, Complainant Carolyn Oddo (Oddo) retained Respondent to represent her family's trust in a dispute with a condominium association, the Anasazi Condominium Association, Inc. (Association). She paid Respondent a flat fee of \$750 to write a letter to the Association's counsel regarding the dispute.

43. On or about May 2, 2012, Respondent sent a demand letter to the Association. According to Oddo, while Respondent did not move very quickly, he did perform the services for which he was initially retained.

44. On or about May 15, 2012, Respondent discussed with Oddo the possibility of moving forward with litigation when the Association did not respond to the demand letter. While Oddo believes that she signed a fee agreement, she does not recall ever receiving a copy of the agreement from Respondent.

45. The next day, the Association, through its counsel, responded to the demand letter. Respondent emailed Oddo that day and advised her that it was largely unresponsive to her complaints.

46. On May 22, 2012, Oddo paid Respondent \$3,000 in fees and \$500 to cover court costs. Complainant and Respondent agree that the \$3,000 was a flat fee, which would be reimbursed if the trial court ultimately awarded Oddo her attorney's fees.

47. By late June 2012, Respondent had prepared a draft complaint, which he reviewed with Oddo on June 29<sup>th</sup>. Oddo provided Respondent with the additional documents and information that Respondent requested.

48. On June 30, 2012, Respondent signed the complaint, but he did not file it. There is no evidence that Respondent took any action on the case until late October 2012.

49. By email dated September 14, 2012, Oddo advised Respondent that she would be out of town for 2 weeks; gave him her cell phone number in case he needed to reach her; asked for a status update on the lawsuit; and expressed her desire to "finish this."

50. In late October 2012, Respondent emailed Oddo to schedule a conference call on November 1<sup>st</sup> to discuss finalizing and filing the complaint. Respondent states that he "inadvertently" missed the scheduled call and "did not follow up with [Oddo] to reschedule."

51. On November 8, 2012, Oddo emailed Respondent to express her frustration with the representation and threatened to file a bar charge. Respondent responded the next day and asked to reschedule the call. According to Respondent, he then spoke with Oddo and assured her that he was moving forward and asked for patience "as he had just hired a new legal assistant that week."

52. Notwithstanding his assurances, Respondent did not file the complaint until January 18, 2013, which he filed with the Maricopa County Superior Court, Case No. CV2013-000600. The complaint set forth claims for declaratory and injunctive relief, among others, and appears to be missing factual allegations at paragraphs 24 and 25, which were left blank as was Paragraph 64(b). Respondent did not file an application for injunctive relief or otherwise comply with the rules relating to seeking extraordinary relief. Respondent states that he did not serve the complaint when it was filed because he was engaged in discussions with opposing counsel.

53. By email dated February 15, 2013, Association President Karl Mortensen advised the Association's counsel that the Association would not pay the firm to defend the prior president, Mike Landis, in the lawsuit filed by Oddo. Oddo forwarded a copy of the email to Respondent.

54. On March 4, 2013, Oddo emailed Respondent about a request that she received from Mr. Mortensen to participate in a conference call with him and the

Association's counsel. According to Oddo, she did not know what to do and it was "REALLY, REALLY important that [she] talk to [him]." Respondent did not respond for two days and then he told her only that she was free to participate and asked her to call his assistant to set up a time for the two of them to talk.

55. According to Respondent, when he spoke with Oddo later that day, she told him to "cease any further work until she told him otherwise." Respondent asserts that he "confirmed that, pursuant to her instruction, he would not do any further work unless and until she told him otherwise." However, Oddo denies that she ever told Respondent to cease working on her case. Instead, she believed that the case was "going to court" and that Respondent was trying to get a hearing date scheduled.

56. By email dated March 15, 2013, Oddo asked Respondent if he had heard from the Association's lawyers. He replied that day stating: "They were checking and were to get back to me. I'll send another follow-up email."

57. By minute entry dated March 19, 2013, the trial court advised Respondent that he had failed to file an application for an order to show cause hearing, along with a supporting affidavit, as required by Rule 6(d) A.R.Civ.P, when he filed Oddo's complaint. According to the minute entry, the trial court had contacted Respondent regarding the application, but he had not filed one. The trial court noted that it would take no action until Respondent filed the appropriate application. Respondent did not advise Oddo about the minute entry.

58. On April 24, 2013, the trial court filed a notice of intent to dismiss the complaint if it was not served on the defendants by May 20, 2013. Respondent did not advise Oddo about the notice, nor did he take any action in response to same.

59. On June 26, 2013, the trial court issued a 150 Day Order setting certain procedural deadlines for the prosecution of the case. Respondent did not advise Oddo about the order, nor did he take any action in response to same.

60. On July 17, 2013, the trial court dismissed Oddo's complaint, without prejudice. There is no evidence that Respondent advised Oddo of same.

61. By letter dated October 28, 2013, Oddo demanded that Respondent return the \$3,500 flat fee because he had "consistently failed in [his] contractual obligations . . . The case has never been brought before a judge. You have never followed through on any of your promises despite numerous phone calls and emails, I have not had any communication from you since last February, the case has never been resolved and the situation continues to this day. You simply took my money and disappeared."

62. By letter dated November 4, 2013, Respondent advised Oddo that he believed that there had been a "grand miscommunication" between them. He continued, noting that his records reflected that they had last spoken in March 2013, but that the lawsuit "was on hold." He advised Oddo that the complaint had been dismissed for lack of prosecution, but that he had already "re-filed the action." He concluded by apologizing again for the "miscommunication in March" and claimed that he "had truly believed that [Oddo] had fully resolved the matter without moving forward with litigation."

63. Oddo agreed to continue with the representation and Respondent was ultimately able to resolve the case successfully.

**COUNT FOUR (File No. 14-0331/Moldermaker)**

64. In 2012, Montana Del Sol Condominium Association (HOA) filed a complaint against Complainant Donald Moldermaker with the Maricopa County Justice Court, Case No. CC2012-047163 RC (Small Claims Court Action) seeking judgment for unpaid association dues. Complainant had withheld certain payments because he had paid to resolve a bee infestation problem in a common area, which was the HOA's responsibility.

65. On June 14, 2012, the HOA obtained a default judgment against Moldermaker in the Small Claims Court Action (the Default Judgment). Thereafter, he contacted Respondent for help. Pursuant to the terms of a July 10, 2012 representation letter, Respondent agreed to represent Complainant for an earned-upon-receipt, flat fee of \$1,500. The scope of the representation was to negotiate the release of the judgment or to file a motion to set aside the Default Judgment on the ground of defective service of process.

66. Respondent contacted the HOA's counsel and was able to secure reimbursement of the \$725 that Moldermaker spent to eradicate the bees. But, the HOA would not agree to any of the other demands. Respondent prepared a demand letter, which Moldermaker approved before it was sent out.

67. By letter dated August 13, 2012, Respondent attempted to resolve the dispute with the HOA. The letter detailed Moldermaker's claim against the HOA and his demand that 1) the Default Judgment be vacated; 2) the case be dismissed with prejudice; 3) reparative letters sent to the credit agencies; and 4) payment of \$1,500 by the HOA to reimburse Moldermaker for his attorney fees. The letter included the first pages, only, of a Motion to Set Aside the Default Judgment and a

Complaint. Counsel for HOA immediately asked for the documents so that the HOA could consider the demand.

68. By email dated August 13, 2012, Respondent advised Moldermaker that the HOA was "calling our bluff." He promised to "finish working on the Motion" and send a copy to opposing counsel.

69. Almost two months later, on October 10, 2012, Respondent filed a Motion to Set Aside Default Judgment (the Motion) with the Justice Court.

70. On November 16, 2012, the Justice Court granted the Motion and vacated the Default Judgment.

71. On November 19, 2012, the Justice Court set the case for mediation on January 8, 2013 at 8:30 am.

72. On November 28, 2012, the HOA filed a motion to vacate the ruling setting aside the default judgment. Respondent did not file a responsive pleading. Respondent's time records do not reflect that he communicated with Complainant regarding the motion or about filing a responsive pleading.

73. By letter dated December 2, 2012, Complainant and Respondent modified that terms of the representation. Complainant agreed to pay Respondent an additional flat fee of \$2,000 to file and prosecute a counter-claim against the HOA. According to the letter if the case "settled in a way that does not see a payment of your legal fees at the upcoming January 2013 settlement conference," Respondent agreed to reimburse Complainant "half of the flat \$2,000 fee."

74. On December 21, 2012, and no responsive pleading having been filed, the Justice Court granted the HOA's motion to vacate its November 16th order by which it had vacated the Default Judgment.

75. By order dated January 4, 2013, the trial court vacated the January 8th mediation because it had granted the HOA's motion on December 12th. There is no evidence that Respondent advised Moldermaker that the mediation had been cancelled. Moldermaker flew to Phoenix for the mediation only to find that it had been cancelled after having incurred approximately \$2,000 in travel expenses.

76. On January 22, 2013, Respondent filed a motion to vacate the Justice Court's January 4th order. The motion actually seeks an order striking the HOA's November 28, 2013 motion to vacate the ruling setting aside the Default Judgment. The motion ignores that the Justice Court had granted the November 28th motion—to which Respondent never responded—on December 21, 2013.

77. On February 7, 2013, the Justice Court granted Respondent's January 22nd motion, effectively vacating the Default Judgment for the moment.

78. On March 4, 2013, the HOA filed a motion to vacate the February 7th order and requested oral argument.

79. On March 7, 2013, Respondent filed an Answer and Counterclaim with the Justice Court.

80. On April 18, 2013, the Justice Court heard oral argument on the pending motions. Instead of issuing a ruling on the merits, the court "stayed" enforcement of the Default Judgment pending resolution of the Counterclaim and set the matter for trial.

81. On May 1, 2013, the HOA filed a Motion to Dismiss Counterclaim. Respondent did not file a responsive pleading. Respondent's time records reflect that he received the motion on that date, but they do not reflect that he advised Complainant of same or that he discussed filing a responsive pleading. According to

the time records, Respondent next spoke with Complainant on June 10, 2013 on other matters.

82. On August 15, 2013, the HOA filed a motion for summary disposition on its motion to dismiss counterclaim for failure to respond. Alternatively, the HOA asked to continue the trial date and order the parties to a settlement conference.

83. On August 29, 2013, Respondent filed a motion to remove the case to Superior Court, which was granted by the Justice Court. The Court ordered Respondent to file a responsive pleading by September 13th or within 10 days of the Superior Court Clerk initiating the electronic filing process. Respondent failed to do so.

84. Thereafter, the parties filed a series of competing motions.

85. On December 10, 2013, the Superior Court denied Respondent's various motions seeking to set aside the Default Judgment as a horizontal appeal from the Justice Court order. The Court declined to find that the Default Judgment was void for defective service.

86. On December 17, 2013, the parties mediated the case and executed a "Memorandum of Settlement Terms" was signed on that date. The agreed that the litigation would be dismissed with prejudice, with each to bear its own fees/costs; the HOA would vacate the judgment against Moldermaker; the parties would mutually release each other; the attorneys for the parties would each pay \$1,500 in mediation expenses; and Moldermaker would not be responsible for any portion of the mediation expenses.

87. By email dated January 7, 2014, Respondent provided Moldermaker with a copy of the settlement agreement for his signature. All other parties had done so.

88. On January 17, 2014, the HOA advised the Superior Court of the settlement and on March 13th, the Court dismissed the case with prejudice pursuant to the stipulation of the parties.

89. On December 11, 2014, Moldermaker signed the formal "Settlement Agreement and Mutual Release of All Claims." The settlement agreement did not provide for the payment of Moldermaker's attorney fees and Respondent has not reimbursed him the \$1,000 as required under the terms of the December 2, 2012 representation letter, which was never modified.

**COUNT FIVE (File No. 15-0099/Stoker)**

90. Complainant Donald Stoker (Stoker) is a certified Public Accountant and an inactive member of the State Bar.

91. On June 21, 2013, Stoker filed a collection complaint with the Maricopa County Superior Court, Case no. CV 2013-009003 (the Lake Litigation) seeking fees owed by a former client for financial services rendered. Thereafter, Stoker retained Respondent to represent him in the Lake Litigation.

92. On August 2, 2013, Stoker paid Respondent a \$2,250 retainer. Stoker does not recall signing a fee agreement for the representation or receiving any confirmatory writing regarding the scope and fees relating to the representation. Although he could not produce a copy of any writing, Respondent states that the parties agreed to a \$2,000 flat fee for the Lake Litigation and \$250 for Respondent to send a demand letter in another collection case. He claims that the parties

"agreed to a new fee for a new scope of work and presumably the other terms of the agreement remained the same."

93. On August 19, 2013, the defendants filed a Motion to Strike, for Declaratory Relief and for Attorney Fees and Costs (the Motion). The Motion sought an order from the Court 1) striking the complaint because Stoker filed it on behalf of his corporation, while an inactive attorney; 2) declaring the complaint *void ab initio*; and 3) awarding the defendants their attorney's fees. Stoker forwarded a copy of the Motion to Respondent.

94. On August 21, 2013, Respondent filed a notice of appearance in the Lake Litigation. Respondent "did not begin his work to respond to the Lake's Motion to Strike, believing that his appearance had cured the defective pleadings." Respondent did not file anything in response to the Motion.

95. On August 21, 2013, Respondent advised Stoker that he had been in contact with the defendants' counsel about the case.

96. On September 21, 2013, the Court issued a Notice of Intent to Dismiss for Lack of Service if the complaint was not served by October 21, 2013. Respondent did not secure service of the complaint or file a responsive pleading.

97. By Minute Entry filed October 10, 2013, the Court granted the unopposed Motion, dismissed the complaint and awarded the defendants the relief requested.

98. By email dated Friday, October 11, 2013, Respondent's assistant, Jessica Salow advised Stoker that she was forwarding a copy of the order, but she did not attach the order. Respondent also emailed Stoker that day, promised to call

him to discuss the order, and assured Stoker that "[w]e will get this fixed." Respondent did not call Stoker as he promised to do.

99. Stoker emailed Respondent and told him that the order had not been attached and asked "what were the reasons that [the Court] granted [the] motion." Respondent did not respond to the email.

100. On October 17, 2013, defendants filed an affidavit of attorney fees, a statement of costs and a form of judgment. Respondent did not a responsive pleading. Respondent admits that he received a notice of filing, but denies that he actually received the documents until after the Court had entered judgment.

101. By email dated October 22, 2013, Stoker asked Respondent, "where do we stand." Respondent did not respond to the email.

102. By email dated October 30, 2013, Stoker asked Respondent if he could "get a copy of the ruling or is it only accessible online?" Respondent did not respond to the email.

103. By email dated November 5, 2013, Stoker asked Respondent, "are you in town?" Respondent did not respond to the email.

104. By email dated November 6, 2013, Stoker asked Respondent, "can you please send me the motion. what is the status." Respondent did not respond to the email.

105. By email dated November 7, 2013, Stoker asked Respondent, "can you please get back to me?" This time, Respondent replied and advised that he had been "out of the office," and that he would "get some documents to [Stoker] tomorrow."

106. Complainant responded and asked what would be the next step and noted that there might be a statute of limitations problem with refiling the complaint. Respondent did not respond, nor did he send Stoker the promised documents.

107. On December 5, 2013, the Court's final judgment was entered against Stoker for attorney fees of \$5,092.50, plus costs and interest. Respondent denies that he received the final judgment from either opposing counsel or the Court and claims to have been as surprised as Stoker to learn of it in February 2014.

108. By emailed dated February 12, 2014, Stoker told Respondent that "WE NEED TO TALK." After exchanging emails about meeting later that day, Stoker emailed Respondent: "since I didn't hear from you, I am assuming that we are not meeting today. Please advise when we can meet this week. I want to be able to sleep at nights."

109. On February 13, 2014, Stoker met with Respondent to discuss the matter. Respondent assured Stoker that he would "handle the problem."

110. Starting on February 15, 2014, Stoker began asking to see a copy of the motion to set aside judgment that Respondent was supposedly drafting to file with the Court. Respondent did not respond to the email.

111. Also on that date, Stoker emailed Respondent a few times asking why Respondent had not filed a response to the Motion and couldn't Respondent have "at least said that [Stoker] was now represented by counsel." Respondent did not respond to the email.

112. By email dated February 18, 2014, Stoker asked Respondent if he had found "a way to overturn" the judgment and stated that he did not "want to worry about getting money taken out of my account on a garnishment action."

113. This time, Respondent responded to the email and claimed that he had found a way to overturn the judgment and stated that he was "still working on it" and that he was "also working on the new complaint."

114. By email dated February 22, 2014, Stoker told Respondent he needed to know if the judgment had been overturned because if not, Stoker would need to seek permission from the Arizona State Accountancy Board, which meets only once a month, to set up a new entity. Respondent did not respond to the email.

115. By email dated February 24, 2014, Respondent's assistant finally responded to Stoker's February 14th email in which Stoker asked how to send in a filing fee so that Respondent could re-file the complaint. Stoker responded and asked again if Respondent had filed the motion to set aside and whether it was successful. Stoker asked for a copy of the motion and reiterated the need for him to move quickly to set up a new entity, if one were necessary.

116. Ms. Salow responded the next day and advised Stoker that she had spoken with Respondent, who was "still working on the motion" and assured him that "we should have a draft to you shortly."

117. By email dated February 26, 2014, Stoker told Ms. Salow that he still had not received any documents despite having requested them at least 10 days earlier. He continued: "If [Respondent] is too busy, please give me a referral for someone [who] can handle the matters at hand." Ms. Salow responded that

Respondent had "assured me that he was working on completing the motion for your review before filing." She promised to "speak with [Respondent] again."

118. By email dated March 3, 2013, Complainant asked Ms. Salow, "is it SOUP yet. It has been five days."

119. Stoker finally terminated the representation and hired successor counsel, who has been unable to get the judgment vacated. Stoker also believes that due to Respondent's inaction, the statute of limitations has passed for certain of the fees that he sought in the initial complaint.

120. There is no evidence that Respondent took any action to collect the \$17,000 owed to him by Dial Industries, despite having been retained to do so.

**COUNT SIX (File No. 15-0280/Needham)**

121. On November 21, 2014, Complainant Charlotte (Needham) signed an engagement letter by which she retained Respondent to help her deal with her Home Owners Association (HOA) regarding the placement of pickleball courts in the development. Needham paid Respondent a \$750 flat fee and understood that Respondent would allow her to review and approve a demand letter before it was sent out.

122. The next day, Needham completed a new client intake form on Respondent's website. The form asks for specific information regarding the dispute with the HOA and the representation. Needham also communicated with Respondent's assistant, Jessica Salow, regarding additional information that Respondent needed as part of the representation.

123. By early December 2014, Needham had provided the requested information and she continued to timely respond to Ms. Salow's requests for information.

124. On December 11, 2014, Respondent's part-time associate worked on a draft of the letter and gave it to him to review the next day.

125. Respondent sent the letter to the HOA without first sending it to Needham for her review and approval. He assumed that the draft had already been sent to Needham because that was "generally the case" and attributes the failure to do so to the "rush before the holidays or a simple oversight."

126. Needham received the letter after Christmas and found that it was replete with errors. The letter referenced an upcoming board meeting that had already taken place by the time the letter was sent out. And, the letter stated that Complainant had lived in the home for "several years," when she was the original owner of the home, having purchased it 14 years earlier.

127. Needham attempted to reach Respondent to discuss the letter, but he did not return her telephone calls.

128. Respondent closed his firm for a half day on Christmas Eve, all day on December 25th and 26th, and for two days during the week of New Year's. During the week of December 29th, the firm's phones were answered by an answering service.

129. On December 20, 2014, Needham called and left a message for Respondent with the receptionist service and expressed her frustration with the errors in the letter and the fact that it had been sent out without her review and approval.

130. It was during this time that Respondent's father became gravely ill and was hospitalized. Respondent spent much time out of the office at the beginning of January attending to family matters and visiting his ailing father at the hospital.

131. Respondent did not try to call Needham until January 14<sup>th</sup>. He was unable to reach her, but sent her an email at the end of the day.

132. By that time, Respondent believes that he had received a letter from the HOA's counsel, but then his father passed away on January 15<sup>th</sup>. Respondent was out-of-the office for part of that day and all of the next week.

133. Respondent was in and out of the office over the next few days and did not review the HOA's letter until January 20, 2015, at which time he asked a staff member to email a copy to Needham and ask about a good time them to discuss it.

134. On January 20, 2015, Needham filed a Consumer Complaint Form with the Arizona Attorney General's Office seeking a refund of the \$750 fee and a letter of apology to the HOA board explaining that the letter had been sent without her approval.

135. By letter dated February 9, 2015, Respondent apologized to Needham for any communication concerns and proposed that she contact the office to discuss the HOA's letter or Respondent would refund the \$750 to Needham.

136. On or about March 8, 2015, Respondent provided Needham with the refund and sent an apology letter to the HOA.

**COUNT SEVEN (File No. 15-0726/Hebert)**

137. On April 10, 2103, Complainant Douglas Hebert and his wife (Complainant) retained Respondent to represent them in a case involving a change to the Sunset Vista HOA by-laws that disallowed rentals. At that time, Hebert was

renting out a home that was subject to the by-laws. Hebert paid Respondent a total of \$4,050 in fees/costs for the representation.

138. In September 2013, Hebert advised Respondent that his tenants were moving out and asked for advice and an update on the case. At that time, Respondent advised Hebert that he had initially filed the complaint incorrectly, but that he had already re-filed it. However, the court docket reflects that the complaint was filed on November 7, 2013.

139. By email dated March 31, 2014, Hebert asked for a status update and questioned Respondent's ability to handle the representation. Respondent was apologetic and assured Hebert that he would improve his communication. It was only at that time that Respondent provided Hebert with copies of all of the court filings up to that time.

140. By email dated April 28, 2014, Hebert asked for a status update. Respondent advised that the HOA had been served with the complaint, but had not yet filed an answer.

141. On May 5, 2014, Respondent filed a Motion for Leave to File an Amended Complainant. However, he did not consult with or advise Hebert of his intention to do so.

142. On May 19, 2014, the HOA filed a motion to dismiss the complaint. Respondent did not advise Hebert of same at that time.

143. On June 30, 2014, Respondent filed a response to the motion to dismiss. He did not consult with or advise Hebert regarding his intention to do so.

144. On July 15, 2014, Hebert met with Respondent. Only then did Respondent advise Hebert about the motion to dismiss.

145. On August 14, 2014, the court held oral arguments on HOA's motion to dismiss. Hebert was unaware of the hearing.

146. By minute entry filed August 19, 2014, the trial court granted the HOA's motion to dismiss and denied the motion for leave to amend the complaint. Respondent had argued that the amendment to the by-laws was invalid because it passed with less than the majority required by statute. The trial court found that the statute of repose and ARS 33-1227(B) ["An action to challenge the validity of an amendment adopted by the association pursuant to this section shall not be brought more than one year after the amendment is recorded."] were dispositive and the claim was futile.

147. On September 4, 2014, the HOA filed an application for an award of attorney's fees, to which Respondent filed an objection. The Court entered a judgment awarded the defendants their attorney's fees in the amount of \$6,672.10.

### **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, Ariz. R. Sup. Ct., as follows:

**Count I:** ERs 1.2, 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.16(d), and 3.2.

**Count II:** ERs 1.3, 1.4(a)(3), 1.4(a)(4.), 1.5(b), and 3.2.

**Count III:** ERs 1.1, 1.2, 1.3, .1.4(a)(2), 1.4(a)(4), 3.2, and 8.4(d).

**Count IV:** ERs 1.2, 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.16(d), 3.2, and 8.4(d).

**Count V:** ERs 1.2, 1.3, 1.4(a)(2), 1.4(a)(3), and 1.4(a)(4).

**Count VI:** ERs 1.2, 1.3, and 1.4.

### **CONDITIONAL DISMISSALS**

The State Bar has conditionally agreed to dismiss ER 8.4(c) in Count IV because of evidentiary issues. And, the State Bar believes that the conduct is sufficiently addressed in response to the violations of ERs 1.2, 1.3, and 1.4.

### **RESTITUTION**

Restitution is not an issue in Counts II, III, VII because Respondent has either already made restitution, agreed to participate in fee arbitration or successfully completed the representation. Respondent agrees to pay restitution in the remaining cases as follows:

**Count I:** Respondent shall pay Norris \$2,500.

**Count IV:** Respondent shall pay Moldermaker \$1,000.

**Count V:** Respondent shall pay Stoker \$2,250.

### **FEE ARBITRATION**

With respect to SBA File No. 15-0726, Respondent and Complaint Hebert have agreed to participate in the State Bar of Arizona's Fee Arbitration Program in SBA File No. 15-0726. Respondent and Hebert executed an Agreement to Arbitrate in File No. 15-B066. Respondent shall timely pay any award entered against him by as a result of the arbitration.

### **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: Suspension for 60 days. Upon reinstatement, Respondent shall be placed on probation for 1 year during which time he will participate in LOMAP.

Respondent shall also pay restitution and participate in fee arbitration, as set forth above.

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

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

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

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 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.

### **The duty violated**

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

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

For purposes of this agreement the parties agree that Respondent knowingly failed to provide competent representation to a client; failed to abide by a client's decisions concerning the objective of representation; failed to act with reasonable diligence and promptness in representing a client; failed to keep the client reasonably informed about the status of the matter; failed to promptly comply with reasonable requests for information; failed to provide a final accounting upon the termination of the representation; failed to make reasonable efforts to expedite litigation consistent with the interests of the client; and engaged in conduct that is prejudicial to the administration of justice. Respondent's 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 the clients, the profession and the legal system.

### **Aggravating and mitigating circumstances**

The presumptive sanction in this matter is suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

#### **In aggravation:**

*Standard 9.22(c)* a pattern of misconduct

*Standard 9.22(d)* multiple offenses

*Standard 9.22(i)* substantial experience in the practice of law

**In mitigation:**

*Standard 9.32(a)* absence of a prior disciplinary record

*Standard 9.33(b)* absence of a dishonest or selfish motive

*Standard 9.33(c)* personal problems. The parties intend to file, under separate cover, documentation in support of this mitigating factor, along with a request for a protective order.

*Standard 9.33(d)* timely good faith effort to make restitution or to rectify consequences of misconduct

*Standard 9.33(e)* full and free disclosure to disciplinary board or cooperative attitude toward proceedings

*Standard 9.33(l)* remorse

**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.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: Taken as a whole, the aggravating and mitigating factors are of relative comparative weight and do not support a deviation from the presumptive sanction.

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.

## 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 Restitution, Probation and Short-Term Suspension and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 9<sup>th</sup> day of September 2015

STATE BAR OF ARIZONA

*Stacy L. Shuman*

Stacy L Shuman  
Staff Bar Counsel

**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. [I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.]**

DATED this \_\_\_\_\_ day of September, 2015.

\_\_\_\_\_  
James Roger Wood  
Respondent

**CONCLUSION**

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

**DATED** this \_\_\_\_\_ day of September 2015

**STATE BAR OF ARIZONA**

\_\_\_\_\_  
Stacy L Shuman  
Staff 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 21 day of September, 2015.

\_\_\_\_\_  
James Roger Wood  
Respondent

Approved as to form and content

  
Maret Vessella  
Chief Bar Counsel

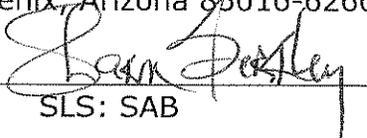
Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 9<sup>th</sup> day of September 2015.

Copy of the foregoing emailed  
this 9<sup>th</sup> 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 9<sup>th</sup> 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:   
SLS: SAB

# **EXHIBIT A**

**Statement of Costs and Expenses**

In the Matter of a Member of the State Bar of Arizona,  
James Roger Wood, Bar No. 018948, Respondent

File No(s). 13-2165, 13-2617, 13-2837, 14-0331,  
15-0099, 15-0280, and 15-0726

**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**

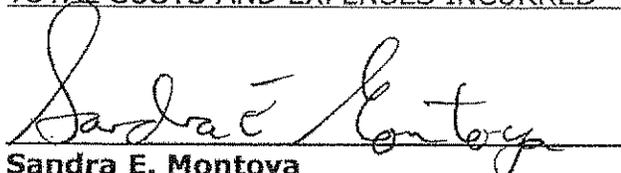
Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

**Staff Investigator/Miscellaneous Charges**

Total for staff investigator charges \$ 0.00

Total Costs and Expenses for each matter over 5 cases where a violation is admitted or proven. (2 over 5 x (240.00)):  
\$ 480.00

**TOTAL COSTS AND EXPENSES INCURRED** **\$ 1,680.00**

  
**Sandra E. Montoya**  
**Lawyer Regulation Records Manager**

7-27-15  
**Date**

# **EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**James Roger Wood,  
Bar No. 018948,**

Respondent.

**PDJ**

**FINAL JUDGMENT AND ORDER**

[State Bar No. 13-2165]

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, **James Roger Wood**, is hereby suspended for 60 days, ordered to participate in the State Bar's Fee Arbitration Program with respect to Count VII; make restitution in Count I for \$2,500; make restitution in Count IV for \$1,000; and make restitution in Count V for \$2,250, for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents. All restitution shall be paid before the conclusion of the suspension period, which shall be effective 30 days from the date of this order or \_\_\_\_\_.

**IT IS FURTHER ORDERED** that, upon reinstatement, Respondent shall be placed on probation for a period of 1 year.

**IT IS FURTHER ORDERED** that, upon reinstatement, Respondent shall participate in LOMAP. Respondent shall contact the State Bar Compliance Monitor at

(602) 340-7258, within 10 days from that date. 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 upon Respondent's reinstatement and shall 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, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ \_\_\_\_\_, 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/mailed this \_\_\_\_\_ day of September, 2015.

J Roger Wood  
The Law Firm of J. Roger Wood PLL  
4700 S. Mille Avenue, Suite 3  
Tempe, Arizona 85282-6736  
Email: Roger@jrogerwoodlaw.com  
Respondent

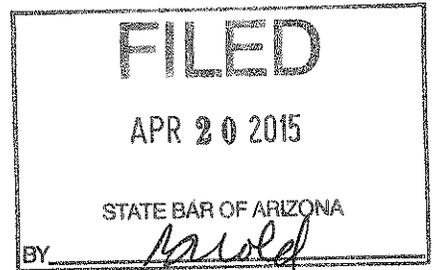
Copy of the foregoing emailed/hand-delivered this \_\_\_\_\_ day of September, 2015, to:

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

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

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

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



**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,**

**JAMES ROGER WOOD  
Bar No. 018948**

Respondent.

Nos. 13-2165, 13-2617, 13-2837,  
15-0099, 15-0280

**PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 10, 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 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File Nos. 13-2165, 13-2617, 13-2837, 15-0099, and 15-0280.

**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 20 day of April, 2015.

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

Original filed this 22nd day  
of April, 2015, with:

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

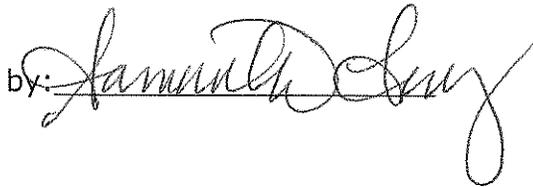
Copy mailed this 22nd day  
of April, 2015, to:

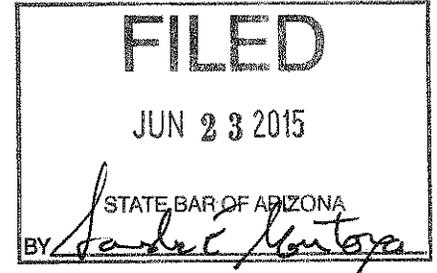
J. Scott Rhodes  
Jennings Strouss & Salmon, PLC  
One East Washington Street, Suite 1900  
Phoenix, Arizona 85004-2554  
Respondent's Counsel

Copy emailed this 22nd day  
of April, 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 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by: 



**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,**

**JAMES ROGER WOOD  
Bar No. 018948**

Respondent.

No. 14-0331

**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.

By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 14-0331.

**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.

  
\_\_\_\_\_  
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 24<sup>th</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:

James Roger Wood  
The Law Firm of J. Roger Wood PLLC  
4700 S. Mill Avenue, Suite 3  
Tempe, Arizona 85282-6736  
Respondent

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: 