

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

DOUGLAS S. YOUNGLOVE,
Bar No. 012034

Respondent.

PDJ 2015-9041

FINAL JUDGMENT AND ORDER

[State Bar File Nos. 13-1767, 13-2016,
13-3342, and 14-2180]

FILED AUGUST 18, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on August 4, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED Respondent, **DOUGLAS S. YOUNGLOVE**, is hereby suspended for sixty (60) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective November 1, 2015.

IT IS FURTHER ORDERED Mr. Younglove shall be placed on probation for a period of one (1) year upon reinstatement. Probation shall conclude one (1) year from that date. Mr. Younglove shall enter into terms and conditions of participation with the SBA's Law Office Management Assistance Program ("LOMAP"), including reporting requirements, if deemed appropriate by the SBA's LOMAP officer which shall be incorporated herein; obtain a practice monitor; and view the SBA's CLE program entitled "Candor, Courtesy, and Confidences: Common Courtroom Conundrums." That CLE program shall be in addition to Mr. Younglove's annual CLE requirements.

Mr. Younglove shall provide the SBA with proof of viewing the program by furnishing copies of his Certificate of Attendance, and hand-written class notes. Mr. Younglove shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this Order, to initiate his probation. Mr. Younglove shall be responsible for any costs associated with LOMAP.

IT IS FURTHER ORDERED Mr. Younglove 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 18th day of August, 2015.

William J. O'Neil

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

Copies of the foregoing
mailed/emailed this 18th day of
August 2015, to:

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by: JAlbright

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

DOUGLAS S. YOUNGLOVE,
Bar No. 012034

Respondent.

PDJ-2015-9041

**DECISION ACCEPTING CONSENT
FOR DISCIPLINE**

[State Bar Nos. 13-1767, 13-2016,
13-3342, 14-2180]

FILED AUGUST 18, 2015

A Probable Cause Order was issued under Rules 55(c)¹ and 58(a) on April 20, 2015. The parties submitted an Agreement for Discipline by Consent on May 7, 2015 ("first agreement"). For reasons stated in a May 21, 2015 decision the first agreement was rejected. However, the parties were offered an opportunity to modify that first agreement by addressing the multiple issues and concerns resulting in its rejection. On June 5, 2015, Mr. Younglove made a motion to extend time to modify the agreement under Rule 57(a)(4)(B). On June 8, 2015, the PDJ granted a fourteen (14) day extension to submit a modified agreement.

On June 19, 2015, Mr. Younglove requested a hearing before the PDJ under Rule 57(a)(3)(B). On June 22, 2015, the State Bar filed a motion in opposition of the requested hearing, due in part to the inclusion of new facts and evidence not in

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

the first agreement nor disclosed to the State Bar during investigation. On June 23, 2015, the PDJ sent the parties an Order Striking Request for Hearing.

On June 29, 2015, the State Bar filed a formal complaint with the PDJ and provided Notice of Service of Complaint on July 7, 2015. On July 8, 2015, Notice of Assignment of PDJ was given to the parties. On July 24, 2015, Mr. Younglove moved to extend the time to file his answer. On July 29, 2015, the PDJ granted the motion, extending the time of effective default to August 10, 2015.

An Agreement for Discipline by Consent ("Agreement") was filed on August 4, 2015, and submitted under Rule 57(a)(3), Ariz. R. Sup. Ct. 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), notice of this Agreement was provided to the complainants by letter or email dated July 9, 2015. Complainants were notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) days of bar counsel's notice. The State Bar received a comment from one complainant and a question from another, but no objection to the Agreement was received.

Mr. Younglove was licensed to practice law in Arizona on May 21, 1988. The Agreement details a factual basis for the admissions to the four (4) counts in the agreement, arising out of Mr. Younglove's failure to adequately maintain his court calendar, resulting in multiple failures to appear at scheduled hearings, conferences, and other court-related proceedings. Further, the second count—beyond a late appearance for a scheduled court appearance—involved a false statement knowingly made to a judge. Mr. Younglove conditionally admits violations of Rule 42, ERs 1.3, 1.4, 5.1, 5.3, 8.4(d), and Rule 41(c). The parties stipulate to a sanction of sixty (60) days suspension² from the practice of law followed by one (1) year of probation.³ Further, Mr. Younglove has agreed to pay \$1,200⁴ in costs and expenses related to this disciplinary proceeding within 30 days from this order. Restitution is not an issue because no attorney's fees were ever directly received by Mr. Younglove.

Mr. Younglove represented clients in criminal law matters as an attorney in the law firm, Lerner and Rowe Law Group, P.C. ("Lerner and Rowe") during the time of all counts. As conditionally agreed upon, Mr. Younglove took on the role as supervising attorney sometime in June 2013.

Count One (File No. 13-1767/Brown)

Mr. Younglove represented a client charged with a DUI.⁵ In August 2012, the state filed a misdemeanor complaint against the client and the client retained Lerner and Rowe to defend the matter. After twice continuing pretrial conferences, a

² Start date of suspension will be November 1, 2015 to accommodate Mr. Younglove's existing clients. [Exhibit C.]

³ Included in the terms of probation is the participation in LOMAP and the CLE "Candor, Courtesy, and Confidence: Common Courtroom Conundrums." This CLE is to be done in addition to the annual CLE requirements.

⁴ Exhibit A of the Agreement lists only "General Administrative Expenses."

⁵ The Complainant was the DUI client's attorney in a separate criminal matter.

different attorney with Lerner and Rowe failed to appear for a pre-trial conference on October 19, 2012. This resulted in an order directing the defendant to appear for a hearing set on November 26, 2012. Lerner and Rowe filed a motion to withdraw which apparently was not granted until the hearing on November 26, 2012. It is unclear if anyone from that firm appeared for the hearing. A warrant issued for the client for failing to appear.

Ultimately, on December 19, 2012, in open court, Mr. Younglove entered his appearance on behalf of the client and moved quash the arrest warrant. The client signed a summons stating she would appear on January 7, 2013. Mr. Younglove subsequently had the pretrial conference continued until February 11, 2013, but did not appear for the hearing. As conditionally admitted, Mr. Younglove could not produce any information to explain his absence. It is not stated whether the client had notice of that changed date.

Thereafter, Mr. Younglove or the staff at Lerner and Rowe communicated with the client about pending calendar call and jury trial. The client did not appear for the calendar call on April 29, 2013 and the court set a new secured appearance bond at \$1,000. Mr. Younglove appeared for the May 1, 2013 trial date to enter a change of plea for the client. The court vacated the trial, but still issued an arrest warrant for the failure to appear on April 29. As conditionally agreed, the court failed to notify Mr. Younglove of the issued arrest warrant until May 15, 2013. That same day, Mr. Younglove filed a Motion to Quash Warrant, which was granted. The court set a pretrial conference for June 10, 2013 and the parties agree the client knew this conference. Neither the client nor Mr. Younglove appeared at this June 10 conference set for 8:30 a.m. Later that day, around 6:30 p.m., Mr. Younglove faxed an

Emergency Motion to Continue Trial and explained his absence was due to being in Maricopa County Superior Court that morning handling two (2) other cases, which he admitted to having known or should have known about when setting up the client's June 10 pretrial conference.⁶ The court denied the motion to continue the case and set bond at \$500, which had to be paid before the court would quash the arrest warrant. Nothing is stated regarding any effort to notify the client of these circumstances.

On July 10, 2013, the client appeared in court with a different attorney—the complainant in this count—on an unrelated matter. The client was arrested and the complainant posted the client's bond to quash the arrest warrant. In early August 2013, the complainant lodged his bar charge citing Mr. Younglove's inadequate administrative procedures as the reason for failures to appear at court hearings.

By September 6, 2013, Mr. Younglove negotiated a plea agreement with the state, which included a suspended sentence conditional to the client's compliance with court-ordered alcohol screening.

In response to the State Bar, Mr. Younglove, stated it was not unusual for him to have multiple hearings in different cases and courts but on this occasion he could not arrange for coverage. If Mr. Younglove tried to notify any court his inability to appear, this information is absent. From the admissions it appears he made no such effort. Instead in his response to the State Bar he asserted felonies (clients charged with felonies) in Superior Court take precedence over misdemeanors (clients charged with misdemeanors) in Municipal Court, "although the Municipal Court judges do not typically accept that reality."

⁶ Reference Agreement, ¶13-14 for case numbers and dates.

Count Two (File No. 13-2016/SBA-Judicial Referral)

Mr. Younglove represented a client in a criminal proceeding in Bullhead City Municipal Court and had a pretrial hearing set for May 9, 2013 at 1:30 p.m. Mr. Younglove arrived at the Bullhead City Municipal Court hours after the time for hearing, with no apparent effort to notify the court, and asked to have his case heard to avoid making another trip from Phoenix to Bullhead City. Judge Psareas took the bench and admonished Mr. Younglove "for expecting the court to drop everything it was doing at 4:50 p.m. to accommodate him."

At some point, Judge Psareas asked Mr. Younglove if he knew Judge Majestic and if he thought she would hear the case given his late appearance.⁷ Mr. Younglove assured that he knew Judge Majestic from not only his many appearances before her in Tempe, but "that Judge Majestic was his golfing partner so she would be happy to hear his case under the scenario presented." Skeptical of his answer, the agreement states the judge "asked Respondent if he said that Judge Majestic plays golf. Respondent replied that everyone 'there' (Phoenix area) plays golf."

In June 2013, Judge Psareas relayed this event to Judge Majestic at a judicial conference. On July 18, 2013, Judge Majestic wrote to Mr. Younglove, relating the narrative he presented to Judge Psareas and stating: "Obviously, these representation were a surprise to me since 1) you may have appeared before me but I have no recollection of you, 2) I am not your 'golfing companion' and 3) I do not play golf." She asked him to self-report to the State Bar for lying to Judge Psareas. Mr. Younglove did not self-report, so Judge Majestic reported him to the State Bar.

⁷ Judge Psareas and Judge Majestic knew each other from when Judge Psareas worked as a prosecutor in Tempe.

In the agreement, Mr. Younglove acknowledges to have never appeared before Judge Majestic, despite handling a case she presided over from December 2012 through September 2013. Further, Mr. Younglove rationalized in the agreement his comment about being a golfing buddy being a mistake. He asserts in the agreement years ago he had been paired at a golf tournament with a couple, which included a woman who introduced herself as a local municipal court judge. Mr. Younglove admits to not knowing of whether or not the woman was Judge Majestic.

Mr. Younglove knew he was being untruthful regarding multiple appearances before Judge Majestic and acknowledges he did not know the truth of his statement to Judge Psareas that he had golfed with Judge Majestic. That he has no remorse, and believes these misrepresentations to the court were appropriate and "honest" is revealed by his statement: "Perhaps I should not have said she was my golfing companion unless I knew with 100% certainty that she was." We conclude from this Mr. Younglove has no apparent difficulty nor remorse for representing something as a fact when he does not know if it is true and perceives no need to distinguish between truth and speculation, even in the courtroom. Apparently for Mr. Younglove, his inner hunch establishes the truth or a fact. That he continues to fail to appreciate this distinction is clarified from his statement in the agreement: "Respondent stated he apologizes to Judge Majestic *if* she was in any way offended. It was an honest mistake and nothing more." (Emphasis added.)

There is nothing "honest" in stating something is a fact when one knows it may not be a fact. When a lawyer then builds upon that speculation to state he has a relationship with a judge from multiple appearances before the judge (which he knew at the time was false) and adds his uncertain speculation that an unnamed female

judge may have been Judge Majestic is troubling. That he could not perceive Judge Majestic was offended by his intentional misrepresentations about her and stated speculation on how she would rule based on this non-existent relationship after she wrote him, pointing out his untruthful statements, is more blatant and troubling. That he still has never apologized personally to her or Judge Psareas is insightful.

Count Three (File No. 13-3342/SBA-Judicial Referral)

In the third count, Judge Jerry Bernstein lodged a bar charge against Mr. Younglove for actions arising out of his representation of a client charged with aggravated DUI. The client was originally represented by a public defender, but hired Lerner and Rowe to represent him. On March 25, 2013, Mr. Younglove's staff filed a notice of appearance on behalf of the client for all further proceedings in the DUI case. However, Mr. Younglove and his staff failed to examine the court docket and failed to calendar the April 25, 2013 preliminary hearing originally set by the client's public defender. At the April 25 hearing, the client and the prosecutor were in appearance, but Mr. Younglove was not. The court vacated the hearing and reset it for May 8, 2013. At the May 8 hearing Mr. Younglove failed to appear, this time due to scheduling conflict with other morning trials. Judge Bernstein had a different defense attorney appear for the client and proceeded with the preliminary hearing. At the conclusion, a status conference was set for June 19, a trial management conference set for August 1, and a jury trial set for August 5, 2013.

Mr. Younglove was in appearance for the June 19 status conference and moved to withdraw representation because the client had failed to comply with the financial terms of his representation agreement. The motion was denied. On July 19, 2013, Mr. Younglove moved to continue trial because the client had not been

communicating with him and needed time to complete witness interviews. The motion was granted and the trial was reset for October 7 with the final management conference moved to October 3, 2013.

However, Mr. Younglove failed to appear at the October 3 final management conference and filed another motion to withdraw as the client still did not comply with the financial terms of the representation agreement. Mr. Younglove had filed emergency motions to continue matters in other courts due to a family emergency that required him to be in Florida.

Judge Bernstein ordered Mr. Younglove to appear on October 18 to show cause why he should not be held in contempt for failing to appear. The October 7 trial date was vacated. On October 18, Judge Bernstein granted the motion to withdraw representation and appointed a public defender to the client. The hearing on the order to show cause was moved to November 1, 2013 and later continued to November 23, 2013. At the November 23, 2013 hearing to show cause, Mr. Younglove gave his explanations for his failed appearances, citing no knowledge of the first hearing, the failure of the client to make payment on his fee agreement, failing to adequately balance his morning calendar and case load in his second absence, and the family emergency in his third absence. He also blamed Lerner and Rowe policies for his actions which the agreement outlines led to the judge criticizing Lerner and Rowe.

Judge Bernstein did not admonish or otherwise sanction Mr. Younglove. However, based on Mr. Younglove's assertions, Judge Bernstein forwarded his concerns about the Lerner and Rowe practices to the State Bar for further investigation raising concerns about proper calendaring of matters, having measures

to assure case coverage, and apparent abandonment of represented clients without prior court approval.

Count Four (File NO. 14-2180/Zvonar)

In the fourth count, Mr. Younglove represented a client in two intertwined criminal matters, which resulted in several failures to appear on scheduled court dates.⁸ In October 2013, the client—represented at the time by a public defender—pled guilty to felony theft and was sentenced to two (2) years of unsupervised probation. In April 2014, the client was charged with committing Organized Retail Theft-Artifices which meant a violation of her probation on top of her failure to pay restitution. Initially, the client was represented by a public defender, but after spending a week in jail the client contacted Lerner and Rowe. The public defender had set a status conference for May 19 and a preliminary hearing for May 22.

In April 2014, the client agreed to let the firm represent her in both criminal matters for a flat fee of \$7,500 with \$1,500 being paid by the client. Mr. Younglove was assigned the client's cases.⁹ After initial negotiations, Mr. Younglove could not get a better plea deal than what was offered to the public defender. Mr. Younglove sought deviation based on the client's rheumatoid arthritis and lupus, which he established through medical documentation provided by the client.

While representing the client as part of the 2014 criminal charges, Mr. Younglove had the court reset the status conference and preliminary hearing to June 16 and 19, respectively, to prepare a deviation request. As conditionally agreed

⁸ See Agreement, ¶¶ 52-59 (2013 case timeline) and ¶¶ 60-68 (2014 case timeline).

⁹ On May 2, 2014, Mr. Younglove filed a Notice of Appearance with the court. It stated, "Respectfully submitted this 2nd day of April 2014" even though certification of service showed May 2, 2014. [Agreement, ¶ 61.]

upon, Mr. Younglove sent the client's public defender a Notice of Substitution of Counsel in late April or early May of 2014.

On May 8, 2014, there was a Non-Witness Violation Hearing stemming from the probation violation of the 2013 criminal charges with the hearing continued to June 5, 2014. The client signed a form acknowledging her duty to appear in court for the June 5 hearing. Mr. Younglove later spoke with the client and told her he would combine the two (2) criminal matters in one docket.¹⁰ Neither Mr. Younglove nor the client appeared for the June 5 hearing and a bench warrant was issued against the client with a bond set at \$5,000. Around 5 p.m. that day, Mr. Younglove filed a motion¹¹ to continue the hearing due to the client having another scheduled status conference, his own scheduling conflicts, and the lack of a signed Substitution of Counsel received from the public defender.

On June 9, Mr. Younglove appeared in court for the client where the court continued the probation revocation arraignment to June 23. On June 21, Mr. Younglove learned he had missed a June 16 hearing in conjunction with the 2014 criminal charges and the client now had two (2) separate bench warrants.

By June 23, 2014, the client had terminated Mr. Younglove as representative and hired new counsel to handle her pending criminal matters. On July 1, 2014, the court signed an order substituting the new counsel as the counsel of record. On the same day, the new counsel quashed the remaining bench warrant, had bond set at \$2,600, and remanded the client to the sheriff's office where she was jailed for about 22 hours before posting bond.

¹⁰ There is no record of the cases being combined in the Agreement.

¹¹ The motion ended "Respectfully submitted this 2nd day of April 2014" even though certification of service showed June 5, 2014. [Agreement, ¶ 56.]

Presumptive Sanctions

The parties agree that *Standards* 4.43, 6.12, 6.23, and 7.3 of the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("ABA Standards") apply under the circumstances.

Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

ABA Standards Standard 6.12

Reprimand is generally appropriate when a lawyer negligently reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

ABA Standards Standard 4.43

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

ABA Standards Standard 6.23

Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

ABA Standards Standard 7.3

As conditionally agreed, for the most severe violation of his ethical duties, the presumptive sanction for Mr. Younglove's misconduct is a suspension. The parties agree Mr. Younglove knowingly violated Rule 41(c). As cited by the parties, "The standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations." *Sanctions*, II. Theoretical Framework.

Aggravation and Mitigation

The mitigation includes: absence of a dishonest motive, cooperative attitude toward the disciplinary proceedings, remorse, and remoteness of prior offenses. It is conditionally agreed upon that aggravating factors include: prior disciplinary offenses¹², a pattern of misconduct, multiple offenses, and substantial experience in the practice of law.

The object of lawyer discipline is to protect the public, the legal profession, the administration of justice, and to deter other attorneys from engaging in unprofessional conduct. *Peasley*, 208 Ariz. 27, 38, 90 P.3d 764, 775 (2004). Attorney discipline is not intended to punish the offending attorney, although the sanctions imposed may have that incidental effect. *Id.*

Judge Psareas asked Mr. Younglove, "if he regularly did criminal work; if he knew Judge Majestic in Tempe and if he thought Judge Majestic would hear his case if he 'barged' into her courtroom at 4:50 and demanded attention." The truth is Mr. Younglove did not know the answer to any of those questions because he had no professional relationship with nor appearances before Judge Majestic. Notwithstanding, he chose to be untruthful. He had never appeared in front of Judge Majestic and was not certain the female judge he purportedly played golf with "years earlier" was Judge Majestic. Even if he had played golf with her, she was not his "golfing companion" and he would have gained no insight into how she conducted her courtroom when lawyers were late for their hearings by over three hours without notice. Mr. Younglove was dishonest with a purpose. Left unstated in the agreement

¹² As conditionally agreed upon, this aggravating factor is given minimal weight due to the remoteness of the prior disciplinary offense, which last occurred in 2008. [Agreement, p. 20-21.]

is that due to the delay his client suffered, who had paid him for his representation and who also apparently waited over three hours for his arrival, the client was relegated to being unimportant because of Mr. Younglove's choices. It may appear a suspension of 60 days is insufficient considering the open dishonesty to a judge whom Mr. Younglove knowingly ignored his ethical duties towards. It also appears Mr. Younglove has little recognition of, nor insight into the cause of his misconduct. A proposed reprimand was rejected. It is hopeful the agreed upon suspension will cause a better self-reflection than the agreement reflects. In that context, the PDJ finds the proposed sanction of a sixty (60) day suspension meets the objectives of discipline. Upon completion of the suspension, Mr. Younglove will be subject to a period of probation for one (1) year with agreed upon terms. The Agreement is accepted.

IT IS ORDERED incorporating by this reference the Agreement and any supporting documents by this reference. The agreed upon sanctions are: sixty (60) days suspension, one (1) year of probation, and the payment of costs and expenses of the disciplinary proceeding for \$1,200.00 to be paid within thirty (30) days of the final order.

IT IS FURTHER ORDERED as a term of probation the mandatory completion of LOMAP and the CLE "Candor, Courtesy, and Confidence: Common Courtroom Conundrums." The CLE will be in addition to the mandatory CLE requirements and will not count toward the annual requirements under Rule 45(a).

IT IS FURTHER ORDERED the Agreement is accepted. Costs as submitted are approved for \$1,200.00 to be paid within thirty (30) days of the final order. Now

therefore, a final judgment and order is signed this date. Mr. Younglove is suspended effective November 1, 2015.

DATED 18th day of August, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 18th day of August, 2015.

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by: JAlbright

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
AUG 04 2015
BY  FILED

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

DOUGLAS S. YOUNGLOVE,
Bar No. 012034,

Respondent.

PDJ No. 2015-9041

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

**State Bar File Nos. 13-1767, 13-2016,
13-3342, and 14-2180**

The State Bar of Arizona ("SBA") through undersigned Bar Counsel, and Respondent Douglas S. Younglove who is represented by counsel Mark I. Harrison and Chelsea Sage Gaberdiel, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct.¹ These matters have been presented to the Attorney Discipline Probable Cause Committee ("ADPCC"), ADPCC entered probable cause orders on April 20, 2015, and the SBA filed a formal complaint on June 29, 2015. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admissions and proposed form of discipline are approved.

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

Pursuant to Rule 53(b)(3) notice of this agreement was provided to the complainants by letter or email on July 9, 2015. Complainants were 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. Bar counsel received a comment from one complainant and a question from another, but no objections.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 41(c) and Rule 42, specifically ERs 1.3 (diligence), 1.4 (communication), 5.1 (responsibilities of partners, managers, and supervisory lawyers), 5.3 (responsibilities regarding nonlawyer assistants), and 8.4(d) (conduct prejudicial to the administration of justice).

Upon acceptance of this agreement, and subject to the approval of the Court, Respondent agrees to accept a suspension of sixty (60) days effective November 1, 2015, with one-year of probation following his reinstatement.² 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.³ The SBA's Statement of Costs and Expenses is attached hereto as Exhibit A. The probationary terms are to enter into terms and conditions of participation with the SBA's Law Office Management Assistance Program ("LOMAP"), obtain a practice monitor, and view the SBA's CLE program entitled "Candor, Courtesy, and Confidences: Common Courtroom Conundrums." That CLE program must be in addition to Respondent's annual CLE requirement. Respondent shall provide the SBA with proof

² Subject to the approval of the Presiding Disciplinary Judge, Bar counsel has conditionally agreed to a November 1, 2015 start date of the suspension provided that Respondent adequately justifies the reasons for that start date. Respondent's justification and explanation for why he requests a delayed start date is included in the attached declaration at Exhibit C.

³ 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.

of viewing the program by furnishing copies of his Certificate of Attendance, and hand-written class notes.

PROBATION NON-COMPLIANCE NOTICE

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

GENERAL ALLEGATIONS RELEVANT TO ALL COUNTS

1. Respondent was licensed to practice law in Arizona on May 21, 1988. Respondent practiced criminal law with Lerner and Rowe Law Group, P.C. ("Lerner & Rowe") during the time periods pertinent to all counts.

COUNT ONE of FOUR (File no. 13-1767/Brown)

2. This bar charge was made by Complainant Matthew O. Brown in connection with Respondent's representation of Marquita Sampson in a criminal matter. Mr. Brown represented Ms. Sampson in a separate criminal matter.

3. In August 2012, in Tempe Municipal Court, the state filed a misdemeanor complaint against Marquita Sampson for violation of DUI (alcohol, drugs, or toxic vapors) and metabolite laws. Ms. Sampson retained Lerner & Rowe to defend her. Alan Hock of that firm entered his appearance on August 10, 2012.

4. Mr. Hock continued the pretrial conference to September 14. On September 13, William Cronin of Lerner & Rowe filed a "Notice of Change of Counsel Within the Firm" stating that he had undertaken responsibility for representing Ms. Sampson on behalf of the firm, and that she had been notified. He postponed the pretrial conference to October 19.

5. Neither Mr. Cronin nor Ms. Sampson appeared in court on October 19, so the court vacated the pretrial conference and set the case for trial on November 28. The court also set a calendar call for November 26 and sent Mr. Cronin a notice to that effect. The calendar call order states that "the defendant must appear in person for calendar call unless the defendant or the defendant's attorney have been excused from appearing by the Court."

6. Lerner and Rowe filed a Motion to Withdraw on November 5, on the ground that "Defendant has not complied with the financial representation agreement which was reached at the time that Defense Counsel was retained. . . ."

7. On November 26, the court granted the Motion to Withdraw and vacated a November 28 trial date. Since Ms. Sampson had not appeared in court on November 26 for a calendar call, the court issued an arrest warrant for her and set a secured appearance bond at \$500.00.

8. Ms. Sampson and Lerner & Rowe resolved their differences and on December 19, 2012 Respondent, who worked at Lerner & Rowe, entered his appearance for Ms. Sampson. They both appeared in court. She posted a \$500.00 bond and Respondent was able to have the arrest warrant quashed. The court had Ms. Sampson sign a summons stating that she was to appear for a pretrial conference on January 7, 2013.

9. Respondent continued the pretrial conference to February 11, 2013. Neither he nor Ms. Sampson appeared. Respondent told bar counsel he has nothing in his file to explain his

absence. The court set the case for a jury trial on March 27 and a calendar call on March 25. The court granted Respondent's motions to continue both events and set the jury trial for May 1 and the calendar call for April 29, 2013. Respondent's office notified Ms. Sampson of both events.

10. Ms. Sampson did not appear for the April 29 calendar call so the court forfeited the \$500.00 bond and set a new secured appearance bond at \$1,000.00.

11. Respondent appeared in court on May 1 and told the court that Ms. Sampson would enter a Change of Plea. The court vacated the May 1 trial date but issued an arrest warrant for Ms. Sampson due to her absence from the April 29 calendar call. The court did not tell Respondent that it issued the arrest warrant.

12. The notice of the arrest warrant that was mailed to Respondent was returned to the court. On May 15, 2013, the court called Respondent's office and told him that the court issued an arrest warrant. That day Respondent filed a Motion to Quash Warrant and Set for a Change of Plea. On May 16 the court granted the Motion to Quash and issued an order setting a pretrial conference for June 10 at 8:30 a.m. Respondent's office notified Ms. Sampson of that event on May 28. In the court's internal case summary, there is a reference to the June 10 pretrial conference as "Last Reset" but neither that legend nor anything similar appears on the order that went to Respondent's office.

13. Respondent and Ms. Sampson did not appear on June 10, 2013. Later that day, at 6:30 p.m., Respondent's staff faxed to the court an "Emergency Motion to Continue Trial" claiming that he was in Maricopa County Superior Court in 2 cases that took the entire morning. Those cases were *State v. Gueyllinmar Ferrari*, CR2012-160052 and *State v. Troy Johnson*, CV2013-115390.

14. In *State v. Ferrari*, on May 7, 2013, Respondent filed an Affidavit of Acknowledgment of Trial Dates stating that he was aware of the pretrial conference scheduled for June 10, 2013, at 8:30 a.m. In *State v. Johnson*, on April 24, 2013 at the defendant's arraignment and in Respondent's presence, the court set an initial pretrial conference for June 10 at 8:15 a.m. Thus, on May 16, 2013, when the Tempe Municipal Court set Ms. Sampson's pretrial conference for the morning of June 10, Respondent already knew, or should have known, that he had two other calendar conflicts that day and had 25 days to obtain coverage.

15. In his response to the SBA and in conversation, Respondent said that it is not unusual for him to have multiple hearings in different cases and courts but on this occasion he was unable to arrange court coverage to handle his matters in both courts. Felonies in Superior Court take precedence over misdemeanors in Municipal Court, although the Municipal Court judges do not typically accept that reality. Respondent's firm handles a high volume of cases and was unrealistic in its scheduling on this occasion. Respondent claims that his firm has tightened up its practices to assure that he or someone else from the firm will appear as scheduled in all cases.

16. On June 17, 2013, the court denied Respondent's motion to continue, stating that the June 10 pre-trial conference "was to be the final pre-trial setting due to the age of this case." The court set a bond at \$500.00 and ruled that when Ms. Sampson posted the bond the court would quash the arrest warrant.

17. On July 10, 2013, Ms. Sampson appeared in court with her counsel, Mr. Brown (the Complainant), in a different case. The court advised her of the active bench warrant. The police took Ms. Sampson into custody on the active warrant. Mr. Brown (the Complainant) then posted the \$500.00 bond for his client, Ms. Sampson, and the arrest warrant was quashed. The

court set a new pre-trial conference for August 5. Shortly after, Complainant filed this bar charge. He told bar counsel that he does not criticize Respondent's lawyerly capabilities but believes that respondent did not have adequate administrative procedures in place to assure his timely appearance at all court hearings.

18. Respondent produced copies of correspondence to Ms. Sampson informing her of the May 1 trial date and the June 10 pretrial conference.

19. On September 6, 2013, Respondent negotiated a plea agreement with the state that called for ten days in jail with nine suspended if/when Ms. Sampson complied with court-ordered alcohol screening.

COUNT TWO of FOUR (File no. 13-2016/SBA-Judicial Referral)

20. This bar charge was made by Tempe Municipal Court Judge MaryAnne Majestic and stems from a statement Respondent made to a different judge in Bullhead City Municipal Court.

21. Respondent represented a client in a criminal matter pending in Bullhead City Municipal Court. A pretrial proceeding was scheduled for May 9, 2013, at 1:30 p.m., along with other cases on the court's calendar. Due to a busy morning schedule Respondent was delayed leaving Phoenix. He had trouble finding the court and arrived after 4:00 p.m. He met his client, checked in with the bailiff, asked the bailiff about the status of the calendar, was directed to check in at the clerk's counter, and then waited in the courtroom.

22. Judge Psareas heard from his court staff that Respondent had arrived in court and asked to have his case heard. Respondent denies making any demands - he just wanted to get the case resolved so he could avoid making another trip from Phoenix to Bullhead City. Judge

Psareas took the bench and admonished Respondent for expecting the court to drop everything it was doing at 4:50 in the afternoon just to accommodate him.

23. Judge Psareas asked Respondent if he regularly did criminal work; if he knew Judge Majestic in Tempe (with whom Judge Psareas had worked when he was a prosecutor in Tempe); and if he thought Judge Majestic would hear his case if he "barged" into her courtroom at 4:50 and demanded attention.

24. Respondent told Judge Psareas that he regularly did criminal work and appeared regularly in Tempe Municipal Court; he knew Judge Majestic; and that Judge Majestic was his golfing partner so she would be happy to hear his case under the scenario presented. Judge Psareas was skeptical that Judge Majestic would be so accommodating. Later in the hearing, he asked Respondent if he said that Judge Majestic plays golf. Respondent replied that everyone "there" (Phoenix area) plays golf.

25. In June 2013 Judges Majestic and Psareas met at a judicial conference. Judge Psareas related the story involving Respondent to Judge Majestic. On July 18, 2013, Judge Majestic wrote to Respondent, narrated what Judge Psareas told her, and added: "Obviously, these representations were a surprise to me since 1) you may have appeared before me but I have no recollection of you 2) I am not your 'golfing companion' and 3) I do not play golf." She accused Respondent of lying and asked him to self-report to the State Bar in writing with a copy to her. Respondent did not self-report so Judge Majestic, the Complainant, reported him to the SBA.

26. Respondent told the SBA that he does not believe he has ever appeared before Judge Majestic. Judge Majestic presided over *State v. Marquita Sampson* (see SBA no. 13-1767) that Respondent litigated from December 2012-September 2013. Nonetheless, Mr. Younglove

does not believe that he actually appeared in front of Judge Majestic because he believes his involvement in the Sampson case involved no open court proceedings. He continued: Years ago he played golf in Tempe and was joined by another couple that included a woman who introduced herself as a local Municipal Court Judge. He incorrectly assumed that the golfer was Judge Majestic because she was the only woman Municipal Court Judge in Tempe. When he arrived in Bullhead City he was anxious to have his case heard. He drove for over three hours to get there and was delayed getting the court's attention when he dealt with court security and "check in with the front desk." Judge Psareas took the bench "in a huff. He was unnecessarily and openly hostile." He berated Respondent about "barging into his court at a quarter to five. . . . I could only assume that I had inadvertently stepped on some toes of court personnel who perhaps wanted to leave and resented an attorney coming in close to closing time."

27. Respondent agrees that he was too flippant in response to the judge's short-tempered reaction. "Perhaps I should not have said she was my golfing companion unless I knew with 100% certainty that she was. Nevertheless, I believed it at the time. Apparently I was mistaken. I only meant to engage Judge Psareas in conversation in response to his question. I could have and perhaps should have limited my responses to single syllable answers lest I be accused of lying." He meant no disrespect to either judge, and did not intend to mislead the court.

28. Respondent stated he apologizes to Judge Majestic if she was in any way offended. It was an honest mistake and nothing more. Respondent did not apologize directly to Judge Majestic but the bar relayed a copy of his screening investigation response letter that included his apology to Complainant Judge Majestic.

29. Bar counsel told Respondent that the alleged misrepresentation aside, it is offensive to a judge to claim that she would be happy to hear a case in which the lawyer for a party is her golfing companion. Respondent replied that he had not considered the implications of his statement.

COUNT THREE of FOUR (File no. 13-3342/SBA-Judicial Referral)

30. This bar charge was made by Judge Jerry Bernstein in connection with Respondent's representation of Markist Spillman.

31. Markist Spillman was charged with two counts of aggravated DUI. The court appointed a public defender to represent him. In a minute entry dated March 13, 2013, the court set a preliminary hearing for April 25 at 8:30 a.m. before Judge Bernstein.

32. On March 25, 2013, Respondent's staff filed a notice of Appearance on behalf of Mr. Spillman "for all further proceedings in this case." He did not examine the court docket to determine if any court matters were scheduled.

33. Mr. Spillman and the prosecutor appeared for the April 25 preliminary hearing but Respondent did not appear. The court vacated that day's preliminary hearing and reset it to May 8, 2013, at 8:30 a.m.

34. By 10:00 a.m. on May 8, Mr. Spillman and the prosecutor appeared for the preliminary hearing but Respondent did not appear. Judge Bernstein asked a different defense attorney who was present in court that morning to appear for Mr. Spillman. The preliminary hearing proceeded and Judge Bernstein set a status conference for June 19 at 8:30 a.m., a final trial management conference for August 1, and a jury trial for August 5.

35. As is common in criminal matters, courts set multiple matters for a single time which they treat as a "cattle call" that lasts the entirety of the morning calendar. It is common for

criminal law practitioners to have multiple hearings in multiple cases set for the same time—they simply go from court to court to appear in each such hearing. In this case, Respondent appeared in two other matters before heading to Judge Bernstein's court to appear at the hearing for Mr. Spillman. Unfortunately, the court ended its morning calendar at 10:00 a.m.—which is earlier than usual and before Respondent arrived—which is why he did not appear at the hearing when the Spillman matter was called.

36. Mr. Spillman and Respondent both appeared for the June 19 status conference. On June 21, Respondent filed a Motion to Withdraw on the ground that Mr. Spillman had not complied with the financial terms of his representation agreement (the mailing certificate shows that Respondent's legal assistant sent the motion to the Kyrene Justice Court clerk, in Chandler).

37. Judge Bernstein denied the motion—a trial date was set and Respondent did not certify that another attorney was available and ready for trial.

38. On July 19, 2013, Respondent filed a Motion to Continue Trial. As alternative grounds he asserted that Mr. Spillman had not communicated with him and he needed time to complete witness interviews. Judge Bernstein granted the motion, reset the trial to October 7, 2013 and scheduled a final trial management conference for October 3 at 8:30 a.m.

39. Respondent did not appear for the final trial management conference the morning of October 3. At 2:50 p.m. that day, Respondent's staff filed another Motion to Withdraw as Counsel claiming that Mr. Spillman had not complied with the financial terms of his representation agreement or communicated with Respondent's office. Respondent added that he was unavailable for that morning's trial management conference due to a family emergency in Florida. Respondent had filed motions to continue matters in other court divisions for this same reason.

40. Judge Bernstein issued a minute entry on October 3 containing the following: By 10:55 a.m., Mr. Spillman and the prosecutor were present in court but Respondent was not present. Judge Bernstein asked a different attorney who happened to be present to appear for Mr. Spillman. Because Respondent failed to appear, the court vacated that day's final trial management conference and set a status conference and Order to Show Cause for October 18 at 8:30 a.m. He ordered Respondent to appear and show cause why he should not be held in contempt for failing to appear. The court vacated the October 7 trial date and, due to Respondent's failure to appear, excluded 15 days (October 3-18) from the speedy trial deadline calculation.

41. Respondent and Mr. Spillman appeared in court on October 18. Judge Bernstein granted Respondent's motion to withdraw and appointed a public defender for Mr. Spillman. Respondent asked for a hearing on the OSC so Judge Bernstein set it for November 1, 2013. He also set a status conference for November 8 and excluded 21 days (October 18-November 8) from the speedy trial deadline calculation.

42. Respondent obtained a continuance of the OSC to November 23, 2013. He appeared that day. Judge Bernstein asked him to explain why he did not appear in court three times while Mr. Spillman waited for him. Judge Bernstein ordered the court reporter to prepare a transcript as a reasonable and necessary expense to be borne by the court.

43. Respondent offered these explanations for his three absences:

a) April 25, 2013—he was retained on March 25, the April 25 date already had been set, he did not have a minute entry about the April 25 date, and no one told him about it. After Mr. Spillman signed a fee agreement he immediately breached it by failing to pay the fee "which put the file in sort of a secondary category within my office to determine whether or not Mr. Spillman was going to be a continuing client at the office. All of that is done outside of my purview. It's done in a separate department that I'm not connected with or have nothing to do with." Respondent was in court on April 25 on other matters and

could have appeared if he had known there was something on the calendar that day in Mr. Spillman's case;

b) May 8, 2013—he was in court that morning on other matters and came to Judge Bernstein's court for the Spillman matter at about 10:10 a.m. Court already had recessed. Court staff told Respondent that a different lawyer stood in for him;

c) October 3, 2013—he had a family emergency that required him to fly to Florida. His office filed emergency motions to continue in his other cases but not in Mr. Spillman's case, "I can only assume because ... the office had filed a second motion to withdraw in the matter and it was in that sort of gray area between actual representation. . . ." Although his legal assistant failed to file a Motion to Continue in Mr. Spillman's case, she did later contact the court to say that Respondent would not be able to attend that day's proceeding due to his emergency.

44. Respondent explained to Judge Bernstein that while there are other lawyers in his firm who can appear for him in his absence, the firm's policy is that only Respondent can handle court appearances in felony cases. Respondent told the SBA in his screening investigation response that he became a supervising attorney at Lerner & Rowe in June 2013.

45. Judge Bernstein expressed his concern that Respondent's office did not properly administer his calendar and assure someone's presence when Respondent was busy. He also expressed concern over the firm's apparent philosophy that it need not appear in court for clients who do not pay their fees despite the fact that Respondent is counsel of record for them. Respondent acknowledged that it was premature to file a notice of appearance when it was not yet clear that Mr. Spillman would abide by the fee agreement.

46. Judge Bernstein concluded:

Although the court finds fault with Mr. Younglove for his personal failure to monitor his case and to ensure that another member of his firm would appear if he could not be present himself, no sanction will be ordered. It appears that Lerner and Rowe has not adopted adequate controls for proper representation and maintenance of client files. The classification and attention given to files based upon payment of fees is troublesome. It has resulted in unnecessary delays. It conveys a lack of professionalism. A Motion to Withdraw was not filed until after the matter was first set for trial. The first Motion to Withdraw was denied due to

the status of the case. However, since Lerner and Rowe were still attorneys of record, they were still required to perform their responsibilities. They failed to do so in this case. If they are retained in too many cases, they need to institute changes within their firm."

COUNT FOUR of FOUR (File no. 14-2180/Zvonar)

47. This bar charge was made by Alicia Zvonar in connection with Respondent's representation of her in two criminal cases.

48. In Maricopa County Superior Court no. CR2013-103700 ("2013 case"), Ms. Zvonar (the Complainant) pled guilty to Theft, a Class 6 Felony. On October 28, 2013, she was sentenced to unsupervised probation for two years and ordered to pay restitution. The public defender represented her in that case.

49. On April 12, 2014, Ms. Zvonar allegedly committed Organized Retail Theft-Artifices, a Class 4 felony. This, and her failure to pay restitution in the 2013 case, violated her probation. The state filed a petition for probation revocation in the 2013 case. The 2014 crime became Maricopa County Superior Court no. CR2014-117077 ("2014 case"). The court appointed a public defender to defend her in the two cases.

50. After spending a week in jail, Ms. Zvonar contacted Lerner & Rowe. On April 24, 2014, she hired that firm to represent her in both cases for a flat fee of \$7,500. She paid \$1,500. The firm assigned Respondent to her cases.

51. According to Ms. Zvonar, Respondent talked to the prosecutor and learned that the state would not offer Ms. Zvonar a better plea deal than the one it offered to the public defender. Respondent sought a deviation on Ms. Zvonar's behalf based on her rheumatoid arthritis and lupus. Ms. Zvonar gave Respondent medical bills and records.

A. 2013 CASE

52. The court set a Non-Witness Violation Hearing for May 8, 2014. Respondent sent a Notice of Substitution of Counsel form to Ms. Zvonar's public defender, who did not return the notice to Respondent prior to May 8 but did attend the hearing with Ms. Zvonar. On a defense motion the hearing was continued to June 5 at 8:30 a.m.

53. Ms. Zvonar signed a form acknowledging her duty to appear in court on June 5 at 8:30 a.m., and that if she did not appear "the court may issue a Bench Warrant for my arrest."

54. Ms. Zvonar and Respondent spoke later on May 8. According to Ms. Zvonar, Respondent said he would combine her two cases in one docket with the next court event scheduled for June 21. According to the court filings, there was no court event scheduled for June 21 in either case. Respondent denies telling her that there was any event scheduled for that date.

55. Neither Ms. Zvonar nor Respondent appeared on June 5, 2014. Ms. Zvonar's public defender appeared and is shown on that day's minute entry as Ms. Zvonar's counsel. The court issued a Failure to Appear Bench Warrant that ordered Ms. Zvonar's arrest with a bond set at \$5,000.00.

56. At 4:55 p.m. on June 5 Respondent filed a Motion to Continue Non-Witness Violation Hearing. He asked to move the hearing to June 9 at 10:30 a.m. because Ms. Zvonar was scheduled to appear for a status conference that day at 8:30 a.m. He also wrote that he had scheduling conflicts and that he had not yet received the signed Substitution of Counsel from the public defender. Respondent's motion ended, "Respectfully submitted this 2nd day of April 2014" but the certificate of service states that it was filed and served on June 5.

57. On June 9, Respondent appeared in court for Ms. Zvonar. On the court's own motion, the court continued the probation revocation arraignment hearing to June 23 at 8:30 a.m. Respondent is shown as Ms. Zvonar's counsel of record on the minute entry.

58. Ms. Zvonar went to court on June 21, 2014 believing that there was to be a combined docket hearing (see para. 54. above). A woman at the check-in counter told her that she was supposed to have been in court on June 16 (see para. 63. below) and that there were two bench warrants out for her. Due to Respondent's alleged failure to represent Ms. Zvonar adequately in both cases, she terminated his services.

59. On June 23 Ms. Zvonar appeared in court with new counsel, Justin Atkinson from the Scott Maasen law firm. The court continued the probation revocation hearing due to the other pending charges, to July 21. The court also quashed the bench warrant. On July 1, 2014, the court signed an order substituting the Maasen firm in as counsel of record.

B. 2014 CASE

60. On April 21, 2014, while Ms. Zvonar was represented by a public defender, the court set a status conference for May 19 and a preliminary hearing for May 22, both at 8:30 a.m.

61. On May 2, Respondent filed a Notice of Appearance. It was "Respectfully submitted this 2nd day of April 2014" but the certificate of service states that it was filed and served on May 2.

62. On Respondent's motions and stipulations with the prosecutor, the court re-set the status conference to June 16, 2014 and the preliminary hearing to June 19, both at 8:30 a.m., to give him time to prepare a deviation request.

63. Neither Ms. Zvonar nor Respondent appeared for the June 16 status conference. The court issued a bench warrant for Ms. Zvonar's arrest, assessed fees, set a bond at \$2,700.00,

set an August 26 bond forfeiture hearing for the \$50.00 bond Ms. Zvonar paid after her arrest, and vacated the June 19 preliminary hearing.

64. On June 18, Respondent filed a Motion to Quash Warrant. He claimed that he and Ms. Zvonar thought that June 18, not June 16, was the date for the status conference. The motion was "Respectfully submitted this 18th day of April 2014" but the certificate of service states that it was filed and served on June 18.

65. Respondent told the SBA that he notified Ms. Zvonar of the June 16, 2014 court date. The SBA believes this is unlikely since a) he did not appear on June 16, either, and b) he thought the correct court date was June 18.

66. On July 1, Ms. Zvonar appeared for an Initial Appearance Hearing on a Bench Warrant. Mr. Atkinson from Mr. Maasen's office appeared with her and moved to be substituted in as Ms. Zvonar's counsel. The court granted that motion, set a bond at \$2,600.00, quashed the warrant, and remanded Ms. Zvonar to the sheriff's office where she was jailed for 22 hours. She posted the bond the next day.

67. On August 26, 2014, the court exonerated the \$50.00 bond on the ground that Ms. Zvonar had not received notice from Respondent of the missed June 16 status conference date. Thereafter the case proceeded smoothly and in November 2014 Ms. Zvonar was sentenced after entering into a plea agreement.

68. Ms. Zvonar charged that Respondent did not return her medical documents. Respondent replied that neither Ms. Zvonar nor successor counsel asked for their return.

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 the following rules:

Count One, SBA no. 13-1767 (Brown)-ERs 1.3 (diligence) and 8.4(d) (conduct prejudicial to the administration of justice);

Count Two, SBA no. 13-2016 (Judicial Referral-Judge Majestic)-Rule 41(c) (respect due to courts of justice and judicial officers);

Count Three, SBA no. 13-3342 (Judicial Referral-Judge Bernstein)-ERs 1.3, 5.1 (responsibilities of partners, managers, and supervisory lawyers), 5.3 (responsibilities regarding nonlawyer assistants), and 8.4(d); and

Count Four, SBA no. 14-2180 (Zvonar)-ERs 1.3, 1.4 (communication), and 8.4(d).

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter a sixty (60) day suspension with one-year of probation as described above is the appropriate sanction. If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

LEGAL GROUNDS IN SUPPORT OF SANCTION

To determine 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 imposing sanctions by identifying relevant factors for courts to 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 duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent conducted himself negligently in counts one, three, and four, and knowingly in count two.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual and potential harm to clients, the profession, and the legal system. The State Bar believes that this is true as to all four counts. If this matter went to a hearing Respondent would offer evidence to show that there was little or no actual or potential injury as to counts 1 (13-1767 (Brown)), 2 (13-2016 (Judicial Referral-Judge Majestic)), and 3 (13-3342 (Judicial Referral-Judge Bernstein)).

The parties agree that the following *Standards* are relevant:

ERs 1.3 and 1.4

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

ERs 5.1 and 5.3

Standard 7.3-Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

ER 8.4(d)

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

Rule 41(c)

Standard 6.12- Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Respondent did not communicate effectively with his clients regarding required court dates and did not appear for court hearings despite having adequate time to obtain calendar-conflict coverage. His no-shows burdened the courts and their ability to administer their calendars. Respondent knowingly misstated his relationship with Judge Majestic and thereby failed to maintain the respect due to Judges Psareas and Majestic when he stated that Judge Majestic was his golfing companion and would hear his cases.

Aggravating and mitigating circumstances

The presumptive sanction for Respondent's most serious misconduct is suspension. "The standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct among a number of violations." *Sanctions, II. Theoretical Framework*. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation: *Standard 9.22--*

(a) prior disciplinary offenses;

- 2008, 07-2122, Informal reprimand (currently, Admonition), ERs 1.2, 1.3, and 1.4. "Respondent and his client failed to appear for a scheduled pre-trial conference which resulted in the issuance of an arrest warrant for the client. Such conduct is unacceptable and inexcusable. Respondent's assumption that others would act on his behalf indicates a failure to understand the obligations of a licensed lawyer in this state."
- 2003, 00-0791, 00-1175, and 01-0646 (consolidated), Censure (currently, Reprimand) and Probation for one year (LOMAP). Respondent failed to furnish information or respond promptly to bar counsel, and refused to cooperate with officials and staff of the State Bar, in connection with three charges involving mishandling of medical provider liens. There were three

aggravating factors: prior disciplinary offenses; substantial experience in the practice of law; and bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. There were two mitigating factors: remorse and lack of a dishonest or selfish motive. Respondent violated Rule 51(h) and (i), Ariz.R.S.Ct.

- 2000, 99-1167, Informal reprimand, ER 1.3. "Your failure to verify that the court had formally granted your withdrawal constituted a violation of ER 1.3."
- (c) a pattern of misconduct;
 - (d) multiple offenses;
 - (i) substantial experience in the practice of law.

In mitigation: *Standard 9.32--*

- (b) absence of a dishonest or selfish motive;
- (e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings;
- (l) remorse;
- (m) remoteness of prior offenses.

Discussion

The parties conditionally agree that upon application of the aggravating and mitigating factors to the facts of this case it is appropriate to add probation to the presumptive sanction of suspension. 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 SBA and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of suspension for sixty (60) days with one-year of probation and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

Respondent requests that the Presiding Disciplinary Judge defer the effective date of the suspension imposed by this Consent Agreement to November 1, 2015, for the reasons set forth in respondent's Declaration which is attached as Exhibit C to this Consent Agreement. In his Declaration, Respondent acknowledges his misconduct and confirms that as a result of this painful experience, he will not engage in similar misconduct in the future. Subject to the approval of the Presiding Disciplinary Judge, Bar Counsel does not object to deferral of the effective date of the suspension to November 1, 2015.

DATED this 4th day of August 2015.

STATE BAR OF ARIZONA



David L. Sandweiss
Senior Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. 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 3rd day of August, 2015.



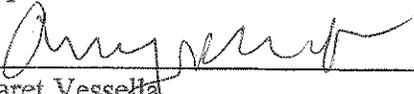
Douglas S. Younglove
Respondent

DATED this 3rd day of August, 2015.



Chelsea Sage Gaberdiel
Respondent's Counsel

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 4th day of August
2015.

Copies of the foregoing mailed/emailed
this 4th day of August 2015, to:

Mark Harrison
Chelsea Sage Gaberdiel
Osborn Maledon, PA
2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012-2765
Email: mharrison@omlaw.com
cgaberdiel@omlaw.com
Respondent's Counsel

Copy of the foregoing emailed this
4th day of August, 2015, to:

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

Copy of the foregoing hand-delivered
this 4th day of August, 2015, to:

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

by: 
DLS: jld

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Douglas S. Younglove, Bar No. 012034, Respondent

File Nos. 13-1767, 13-2016, 13-3342, and 14-2180

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

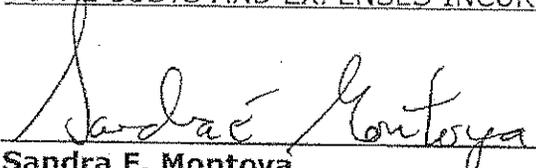
\$1,200.00

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

4-7-15
Date

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

Douglas S. Younglove,
Bar No. 012034,

Respondent.

PDJ No. 2015-9041

**PROPOSED FINAL JUDGMENT AND
ORDER**

State Bar File Nos. 13-1767, 13-2016,
13-3342, and 14-2180

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, **Douglas S. Younglove**, is hereby suspended for sixty (60) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective _____.

IT IS FURTHER ORDERED that, Respondent shall be placed on probation for a period of one year. The probation period will begin at the time this Order is served on Respondent and will conclude one year from that date. Respondent shall enter into terms and conditions of participation with the SBA's Law Office Management Assistance Program ("LOMAP"), including reporting requirements, if deemed appropriate by the SBA's LOMAP officer which shall be incorporated herein; obtain a practice monitor; and view the SBA's CLE program entitled "Candor, Courtesy, and Confidences: Common Courtroom Conundrums." That CLE program shall be in addition to Respondent's annual CLE requirement. Respondent shall provide the SBA with proof of viewing the program by furnishing copies of his Certificate of Attendance, and hand-written class notes. Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to initiate his probation. Respondent will be responsible for any costs associated with LOMAP.

PROBATION NON-COMPLIANCE TERMS

In the event that Respondent fails to comply with any of the foregoing probation terms and the State Bar receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether Respondent has breached a term of probation 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 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 August, 2015.

William J. O'Neil, Presiding Disciplinary Judge

EXHIBIT C

DECLARATION OF DOUGLAS YOUNGLOVE IN SUPPORT OF
REQUEST TO DELAY DATE OF SUSPENSION

Douglas Younglove states as follows;

1. I make this declaration in support of my request in *In re Douglas S. Younglove*, PDJ No. 2015-9041, for a suspension start date of November 1, 2015.
2. I am currently attorney of record in two pending Maricopa County Superior Court criminal matters; State v. Randy Jones (CR2014-001171) hereinafter "Jones") and State v. Nathaniel Vargas (CR2014-116440) (hereinafter "Vargas").
3. Both clients/defendants are charged with major felonies that could result in imprisonment between ten and hundreds of years in the Department of Corrections.
4. Both matters have been designated as "complex" in nature.
5. Both matters are in what I term the "critical stages" of their respective prosecutions.
6. Both of the families of these clients/defendants have invested significant financial resources in legal fees and related costs to fund their respective defenses.
7. Both of the clients/defendants are currently incarcerated in County Jail awaiting the resolution of their respective cases.
8. Both defendants will remain incarcerated until their matters are resolved either by a plea agreement or trial.
9. The Jones case is currently scheduled for a settlement conference September 4, 2015. Should that settlement conference result in a plea agreement, it is likely that a mitigation hearing would be required at a sentencing hearing in October. Should the matter not resolve at the settlement conference, a jury trial would likely commence prior to October 4, 2015, currently the last day the State has to comply with Jones' right to a speedy trial. (Ariz. R. Crim P. 8).

10. The Vargas case is currently scheduled for settlement conference on August 12th, 2015. Should that conference result in a plea agreement, it is likely that a mitigation hearing would be required at sentencing in late September or October. Should the matter not resolve at the settlement conference, a jury trial would likely commence prior to October 9, 2015, currently the last day the State has to comply with Vargas' right to a speedy trial. (Ariz. R. Crim. P. 8).
11. I believe that my participation in these settlement conferences, trials, and/or sentencing hearings would be crucial to the outcomes for these clients. I am the only attorney at my office who has been working on these two cases since our firm was engaged, and I have developed a comprehensive understanding of the evidence, legal arguments, and procedural history of both cases. I have also developed relationships with the parties and their families.
12. I believe my suspension and resulting disqualification in these cases prior to the resolution of each case would be prejudicial and severely detrimental to the clients. It would require the assignment of new counsel, it would significantly delay both cases because new counsel would have to get up to speed for these complex cases, and prolong the County jail incarceration of both clients during the delay.
13. In addition, I believe my disqualification in these cases prior to the successful resolution would almost certainly undermine the processes and strategies that have been essential to the preparation of the defense of each case and would likely cause the clients to incur financial hardships imposed by the retention of new counsel.
14. Both of these criminal matters should be resolved in their entirety by November 1, 2015, but neither will resolve prior to September 15, 2015.
15. I am not contesting my impending suspension and seek a delay of the effective date of the suspension to November

1, 2015 only to avoid unnecessary injury to the clients that would inevitably result if I am disqualified prior to the resolution of their cases.

16. I genuinely regret the conduct which has led to my impending suspension and have learned valuable lessons which will enable me to avoid similar misconduct in the future.

I declare under the penalty of perjury that the forgoing is true and correct.

EXECUTED on this 2nd day of August, 2015, Maricopa County, Arizona.



Douglas Younglove

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/mailed
this _____ day of August, 2015, to:

Mark Harrison
Chelsea Sage Gaberdiel
Osborn Maledon, PA
2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012-2765
Email: mharrison@omlaw.com
cgaberdiel@omlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-
delivered this _____ day of August,
2015, to:

David L. Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this _____ day of August, 2015, to:

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

by: _____