

In the Matter of Arthur Higgs, Bar No. 025540, File No. 09-0110, effective 05/23/2011. Attorney Admonished and costs imposed.

Pursuant to Rule 57(a)(4)(A), Ariz.R.Sup.Ct., the PDJ approved the direct Agreement for Discipline by Consent submitted by the parties and admonished Arthur Higgs.

In 2008, Respondent was appointed as a public defender in a criminal matter. The client was charged with Aggravated Assault, a class three dangerous felony and Unlawful Flight, a class five felony. Respondent appeared at the scheduled arraignment, participated in the case management conference, appeared at the Omnibus Hearing and at the Change of Plea Hearing. The client rejected the State's offer at the Change of Plea Hearing and a jury trial was scheduled.

On December 8, 2008, the client filed a *pro se* motion waiving his right to counsel and requested Respondent be removed from his case. A hearing was held on December 11, 2008. Respondent was removed as counsel of record and was appointed as advisory counsel to the client. On December 12, 2008, Respondent filed a motion to be removed as advisory counsel citing a conflict of interest. That same day, the client also filed a *pro se* motion asking that Respondent be removed as advisory counsel.

On December 15, 2008, the Court removed Respondent as advisory counsel. From December 15, 2008 through January 14, 2009, neither Respondent nor the Mohave County Public Defender's Office received any communication, evidence or documents in the matter. On January 14, 2009, the first day of trial, the client withdrew his waiver of counsel. The Court recessed and contacted the Public Defender's Office and stated the Court intended to reappoint the Public Defender's Office to the case. The Public Defender's Office appeared and objected to the reappointment. Despite the objection, the Court reappointed the Public Defender's Office and recessed. Respondent appeared later that morning and requested a one day continuance stating that he "cannot ethically proceed" because he had not received or reviewed any of the recent evidence/documents in the matter, it was unclear if the client wished to testify, and he had not reviewed the matter in over month. The State objected to the continuance and the Court denied Respondent's motion to continue.

Respondent did not participate in the trial and continued to object to the reappointment, arguing he had no time to prepare for a jury selection or trial. Respondent argued he was prevented from defending the client because he believed he could not provide a competent defense because he did not have adequate time to prepare for trial and the continued representation would result in an ethical violation. Respondent then renewed his request for a continuance and requested a mistrial be declared which the Court denied. Respondent did not prepare for the second day of trial and ultimately filed a Motion for New Trial arguing that his belated reappointment was inherently prejudicial. That motion was dismissed. At the sentencing hearing, the client was sentenced to 16 years in prison and Respondent withdrew as counsel of record. The Mohave Public

Defender's Office thereafter, appealed arguing ineffective assistance of counsel. The Court of Appeals upheld the conviction and ruled an ineffective assistance of counsel issue is properly addressed in a Rule 32, post conviction relief motion.

Respondent admits that after being reappointed as counsel on the day of trial, he failed to diligently represent his client and failed to continue representation of his client by choosing to not participate in a criminal jury trial and provide a defense for his client. Respondent further admits he failed to aid in the defense of his client which was prejudicial to the administration of justice and caused potential issues for appeal.

Respondent's negligent misconduct constituted grounds for the imposition of discipline pursuant to the Rules of the Supreme Court of Arizona and violated Rule 42, ERs 1.3 (diligence), 1.16(c) (declining or terminating representation) and 8.4(d) (conduct prejudicial to the administration of justice), Ariz.R.Sup.Ct., and caused actual harm to the client.

In aggravation, factor 9.22(i) (substantial experience in the practice of law) was found; and in mitigation, factors 9.32(a) (absence of prior disciplinary history), 9.32(b) (absence of dishonest or selfish motive), 9.32(d), (good faith effort to rectify consequences of misconduct), 9.32(e) (cooperative attitude toward proceedings), and 9.32(g) (character or reputation) were found.

The agreement is accepted and costs awarded in the amount of \$1,572.00. The proposed final judgment and order is reviewed, approved and signed.