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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**PHILLIP D. HINEMAN,
Bar No. 011887,**

Respondent.

PDJ 2020-9104

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

State Bar File Nos. 19-2355 and 20-0285

The State Bar of Arizona, and Respondent Phillip D. Hineman who is represented in this matter by counsel, Geoffrey M. T. Sturr, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct.

Probable cause orders were entered on August 31, 2020 and September 28, 2020, and a formal complaint was filed on November 6, 2020. 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 Complainants by email on March 19, 2021. Complainants have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated, with respect to Count 1, Rule 42, Ariz. R. Sup. Ct., ERs 1.5(b), 5.3(b), and 1.16(d), and with respect to Count 2, ERs 1.3, ER 1.4(a), and ER 1.15(d).

Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **sixty (60) days Suspension effective 7/2/21, and upon reinstatement shall be placed on two (2) years of probation with LOMAP.**

Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order. If costs are not paid within the 30 days interest will begin to accrue at the legal rate.¹

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

FACTS

1. Respondent was licensed to practice law in the State of Arizona on May 21, 1988.

COUNT ONE (File No. 19-2355/Nekho)

2. On or about November 8, 2018, Complainant filed a *pro per* Petition for Legal Separation with Children and related initial documents to initiate the Gila County Superior Court case of *Christina Nekho v. Waleed Nekho*, DO2018-00389.

3. The Court scheduled a hearing on the request for temporary orders for November 16, 2018.

¹ 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.

4. In or around November 15, 2018, Complainant hired Respondent to represent her in the case.

5. On November 18, 2018, Respondent sent Complainant a written fee agreement. The written fee agreement required the payment of a \$5000.00 advanced fee (\$2500.00 immediately and \$2500.00 by November 19th). The agreement provided that Respondent would “discount 20% of his hourly rate \$325.00/hr. to \$260/hr. on the monies applied towards the retainer and on any outstanding invoices due and owing so long as said invoices are paid within ten (10) days of the date received by the client.”

6. Complainant paid Respondent \$2,500 on November 20, 2018 and \$2,500 on November 26, 2018.

7. Respondent represented Complainant between November 16, 2018 and June 7, 2019.

8. On November 16, 2018, Respondent and Complainant appeared for the temporary orders hearing. Husband appeared *pro per* and requested a hearing. The Court continued the hearing until November 21, 2018.

9. On November 21, 2018, the Court held the temporary orders hearing and ordered, among other things, that Complainant have sole legal decision-

making and primary custody/residency of the children, with Husband having supervised visitation subject to approval by Complainant. The Court also ordered that both parties undergo weekly random drug testing.

10. On or about December 27, 2018, Respondent caused invoice #2410 to be sent to Complainant, which had time entries between November 15 and December 26, 2018. The invoice had total charges of \$6,337.50, credits for the \$5,000.00 advanced deposit payments, and stated that a balance of \$1,337.50 was due. Respondent's time was billed at the rate of \$325.00 per hour.

11. On January 4, 2019, Complainant paid Respondent \$1,500.00

12. Although Complainant paid the invoice within ten days, Respondent failed to give Complainant a credit for the 20% discount set forth in his fee agreement.

13. On March 9, 2019, Complainant paid Respondent \$4,500.00.

14. On or about March 26, 2019, Husband retained counsel just weeks before trial. Counsel filed a motion to continue which was objected to by Respondent. The Court granted the motion to continue.

15. Between late April and early May 2019, Respondent was out of the office due to two surgeries. As a result of post-op complications, Respondent filed a motion to continue the new June trial date on May 8, 2019.

16. On May 21, 2019, Complainant e-mailed Respondent terminating the representation and requested a final accounting of the fees incurred.

17. On May 28, 2019, Respondent sent Complainant an email stating “[w]e will provide you a reconciliation of your account within 2 weeks of your email.”

18. On or about June 6, 2019, Respondent filed a motion to withdraw which was granted by the Court on June 7, 2019.

19. On June 19, 2019, Complainant e-mailed a member of Respondent’s staff requesting a full accounting of all prepaid funds and fees incurred.

20. On July 10, 2019, Complainant e-mailed the staff member again requesting a full accounting of all prepaid funds and fees incurred.

21. On August 30, 2019, Respondent sent Complainant a letter enclosing invoice #2506, dated August 29, 2019. The invoice had three time entries from December 2018 that did not appear in invoice #2410 (for a phone call with Complainant on December 5, 2018, an email to Complainant on December 26,

2018, and a phone call with Complainant on December 27, 2018) and time entries from January 2, 2019 through May 14, 2019, along with an itemized list of costs that had been advanced. The invoice reflected that a portion of Complainant's January 4, 2019 payment of \$1,500.00 had been applied to invoice #2410 and a portion to that invoice, and that Complainant's March 9, 2019 payment of \$4,500.00 had been applied to that invoice, leaving a balance due of \$11,990.00. Respondent's time was billed at an hourly rate of \$325.00.

22. In response to the State Bar's investigation, Respondent states that he mistakenly thought his office provided Complainant with a full accounting after Complainant's May 21, 2019^t e-mail and that he was unaware of the follow up e-mails to his staff.

23. Respondent informed the State Bar during this proceeding that he has written off, and will not seek to collect from the Complainant, the \$11,990.00 balance owing on his August 29, 2019 invoice.

COUNT TWO (File No. 20-0285/Harrington)

24. On or about March 16, 2018, Complainant retained Respondent to represent her in the then-pending Yuma County Superior Court case of *Harrington*

v. Harrington, DO2017-01280. The primary issues in the case was Complainant's entitlement to a portion of her husband's retirement benefits and/or an award of spousal support.

25. Complainant claimed that various medical issues prevented her from working or caused her to be underemployed during the marriage. Husband contested Complainant's claims of medical limitations and rejected pre-litigation settlement offers.

26. The hourly representation agreement that Respondent submitted to Complainant and which Complainant signed called for Complainant to pay Respondent \$7,500.00 as an advanced deposit that would be applied "against Client's account balance as they become due," and that Complainant would "pay[] Attorney's bills promptly upon receipt. In a "Billing Practices" section, the agreement stated that "[a]n itemized statement for Attorney's fees, costs and expenses will be sent to Client regularly each month. The balance set forth on Client's statement is due and payable upon receipt and must be paid within 20 days of receipt of said bill." It also stated, in a section captioned "Court Ordered Fees," that "Client understands that Client is and shall remain solely responsible for all legal fees costs and expenses occurred by Attorney despite such a court-ordered

fee award payable to Client's benefit from other parties in Client's action. Monies received as a result of such an order will be credited to Client's account and displayed on Client's monthly billings." The agreement provided that fee disputes would be submitted to the State Bar's Fee Arbitration Program.

27. Respondent represented Complainant during 2018 but did not cause monthly invoices to be issued to Complainant as stated in Respondent's fee agreement.

28. A temporary orders hearing was held in June 25, 2018.

29. Among the relief Respondent sought for Complainant was that she receive \$15,000.00 from community assets to pay her attorney's fees

30. The temporary orders hearing was continued to August 14, 2018. At that hearing, the Court ruled that Complainant receive \$5,000.00 for her attorney's fees, and set the case for trial on January 29, 2019.

31. Respondent anticipated that the \$5,000.00 would be applied to the fees and costs he had incurred on Complainant's behalf.

32. On August 20, 2018, opposing counsel sent to Respondent by mail a check in the amount of \$5,000.00 for attorney's fees as the Court had ordered. The

check was a personal check written by Complainant's husband and made payable to Complainant.

33. Respondent was told by his legal assistant that the check had been received and that Complainant was contacted and asked to come to the office and sign the check over to the law firm

34. Respondent's office was told that Complainant was "in the midwest and the east coast...for several months".

35. Respondent states that his paralegal called Complainant again in November and December 2018 to determine if she had returned from her trip.

36. Respondent's billing records indicate that he did not perform any work on the case between August 20, 2018 and December 14, 2018.

37. Respondent met with Complainant on January 1 and 2, 2019 after which he served a notice for the deposition of Complainant's husband.

38. On January 7, 2019, Respondent sent Complainant a letter seeking medical and financial records he had previously asked her to provide.

39. At or about this time, Respondent's paralegal realized that the \$5,000.00 check Respondent had received in August was still in the office

unsigned. The paralegal called Complainant regarding the check, who picked up the check from Respondent's office.

40. On January 13, 2019, Respondent sent Complainant invoice #2436, which reflected time entries from March 19, 2018 through January 7, 2019. Total fees were \$14,800.00, while costs were \$2,951.22, for total billings of \$17,751.22. After the \$7,500.00 advanced deposit was credited, the outstanding balance was \$10,251.22. This was the first invoice Respondent sent to Complainant. Respondent asked that Complainant make a payment of \$5,000.00 by the following day.

41. On January 15, 2019, Respondent moved to continue the January 29, 2019 trial for ninety days to obtain financial and other information from the opposing party that had not been provided through disclosure and discovery.

42. On January 20, 2019, Respondent e-mailed Complainant stating, in pertinent part, "[a]s mentioned in my text from today, and as you will see by the attached signed fee agreement, I will need you to deposit \$5000.00 as an advance deposit (see page 3 of agreement) for your upcoming trial. This will need to be paid by 1/28[.] Also, I will need payment in full on the outstanding invoice by 1/23 if you want to enjoy the discount."

43. On or about January 22, 2019, Complainant deposited the \$5,000.00 check into her bank account.

44. On January 25, 2019, Complainant received a notice of insufficient funds from her bank.

45. That day, Respondent and Complainant exchanged text messages that addressed several issues. Two of those issues related to Respondent's previous requests for financial and medical information. Respondent also stated that he needed to receive a \$5,000.00 payment by the following day and was prepared to withdraw from the representation if an agreement could not be reached regarding payment of his fees. Complainant stated that Respondent had failed to provide monthly billing statements but did not respond to Respondent's request for a \$5,000.00 payment.

46. Later in the day on January 25, 2019, Respondent filed a motion to withdraw which stated, inter alia, that "The attorney-client relationship is breached, irreconcilable differences exist between attorney and client and undersigned counsel is unable to effectively and efficiently represented (Complainant)."

47. On January 28, 2019, Respondent filed a second supplemental motion to continue the trial, which was based on a recently suffered injury to his foot.

48. On January 28, 2019, Respondent wrote Complainant a letter which addressed the medical and financial issues he had previously raised with Complainant and explained that he believed a continuation of the trial was in her best interest to allow for relevant discovery. His letter concluded: “In short, I would like to represent you but your adamance about not continuing the trial makes no sense and I am not going to trial if I do not believe I have what I need to represent you.”

49. On January 29, 2019, Respondent appeared before the Court telephonically because of his foot injury. The court denied the motion to withdraw, scheduled a hearing for March 11, 2019 on Complainant’s motion to compel discovery responses, and re-set the trial for May 2, 2019.

50. On January 31, 2019, Respondent sent Complainant a letter which referenced the scheduling hearing and the new trial date, reiterated his previous request for medical and financial information, described a motion for contempt he would be filing to obtain records from Complainant’s husband, and said he would be sending her an updated invoice.

51. Respondent did not, however, send Complainant an updated invoice. He did not charge her for any fees or costs incurred after he sent his January 13, 2019 invoice.

52. On February 7, 2019, Complainant filed a petition with the State Bar Fee Arbitration Program in which she disputed \$8,050.65 of the \$17,751.22 charges on Respondent's January 13, 2019 invoice. Complainant stated that the representation had ended on January 25, 2019.

53. On February 15, 2019, Respondent filed a motion for sanctions relating to withdrawals Complainant's husband had made from a Fidelity account. The motion was scheduled to be heard on March 27, 2019.

54. The Court held a hearing on February 26, 2019 at which Respondent and Complainant appeared.

55. The Court held a hearing on March 11, 2019 on Complainant's motion to compel discovery responses, at which both Respondent and Complainant appeared. The Court ordered Complainant's husband to disclose certain information and ordered Complainant to answer written discovery.

56. On March 15, 2019, Respondent sent Complainant a letter which stated, in part, that he was preparing for a scheduled March 27, 2019 hearing on

Complainant's motion for sanctions and advised her that "[u]nless I hear differently from you, I will be moving to withdraw at the March 27 hearing so you may obtain new counsel. If you already know that you do not want me to stay on the case, I can send a stipulated consent to withdraw from the case so that after the hearing on the 27th you can pursue [sic] to obtain new counsel."

57. On March 15, 2019, Respondent filed a reply in support of Complainant's motion for sanctions.

58. On or about March 19, 2019, Complainant, pro per, filed a motion to allow Respondent to withdraw as her counsel.

59. On March 26, 2019, Respondent filed a response to Complainant's motion which stated, in relevant part, "[w]ithout jeopardizing any attorney client privileged matters, undersigned counsel and his firm set forth that irreconcilable differences exist at this time between [Complainant] and counsel and request withdrawal from this matter."

60. At the March 27, 2019 hearing, the Court entered an order permitting Respondent to withdraw as Complainant's counsel.

61. On March 29, 2019, Respondent submitted to the Fee Arbitration Coordinator a response to Complainant's petition.

62. On October 2, 2019, Respondent and Complainant participated in a Fee Arbitration hearing. Complainant testified that she asked Respondent to provide timely billing statements and Respondent failed to do so.

63. On December 30, 2019, the Fee Arbitrator issued an Award, which found that the amount of legal fees reasonably incurred during the representation was \$17,559.22, and awarded Respondent \$10,059.22.

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.

With respect to Count 1, Respondent conditionally admits that he violated Rule 42, Ariz. R. Sup. Ct., ER 1.5(b) (by issuing an invoice and receiving payment from Complainant without complying with the discounting provisions of his fee agreement); ER 5.3(b) (by failing to ensure that his staff promptly responded to Complainant's requests for a final statement); and ER 1.16(d) (by failing to timely provide Complainant with a final accounting of fees and charges and failing to respond to Complainant's request for that accounting).

With respect to Count 2, Respondent conditionally admits that he violated ER 1.3 (by failing to act with reasonable diligence in ensuring that the August 2018 check was promptly delivered to Complainant); ER 1.4 (by failing to keep Complainant timely informed about fees and charges incurred on a monthly basis); and ER 1.15(d) (by failing to promptly deliver the August 2018 check to Complainant).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss:

Count 1:

Rule 42, Ariz. R. Sup. Ct., ER 1.4, based upon Respondent's disclosure of additional information, texts, e-mails and phone records documenting the communication between he and the Complainant regarding the status of the case.

Count 2:

Rule 42, Ariz. R. Sup. Ct., ERs 8.1, 8.4(d) and Rule 54, Ariz. R. Sup. Ct., based upon Respondent's disclosure of information relating to his mental state in communicating with A/CAP before receiving a screening letter. Respondent also disclosed information that his conduct did not have any material prejudicial effect on the marital dissolution proceeding at issue.

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, as set forth above, the following sanctions are appropriate: **Suspension of sixty (60) days, effective 7/2/21,² and two (2) years of probation with LOMAP upon reinstatement, the terms of probation will consist of:**

1. LOMAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order. Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.
2. CLE: In addition to annual MCLE requirements, Respondent shall complete no less than twelve (12) hours of Continuing Legal Education

² Respondent has requested that the effective date of the suspension be July 2, 2021 because he has ten hearings or trials scheduled for the month of June. The State Bar concurs in that request.

("CLE") program(s). Respondent must complete the following State Bar programs or reasonably related CLE programs approved by the State Bar, regarding diligence, communication, billing and supervision of staff:

- *2020 Ethical Trends Today!*
- *Practice Management Essentials: Tools For Avoiding Nasty Surprises*
- *Fee No Evil: Handling Fees and Fee Disputes Ethically and Professionally*
- *Avoiding Ethical Pitfalls.*

The CLE programs must be completed within the term of probation. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes and certificate of completion. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

3. Respondent shall commit no further violations of the Rules of Professional Conduct.

NON-COMPLIANCE LANGUAGE

If Respondent fails to comply with any of the foregoing probation terms and the State Bar of Arizona 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 breached a term of probation and, if so, to recommend an appropriate sanction. If the State Bar alleges 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.

If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

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 determining an appropriate sanction, the Court considers 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. *Standard* 3.0.

The parties agree that the following *Standards* are the appropriate *Standard* given the facts and circumstances of this matter:

With respect to Respondent's conditional admission that he violated ERs 1.3 (diligence) and 1.4 (communication), the applicable *Standard* is *Standard* 4.43, which states: "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."

With respect to Respondent's conditional admission that he violated ER 1.5(b) (fees), the applicable *Standard* is *Standard* 4.63, which states: "Reprimand is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes injury or potential injury to the client."

With respect to Respondent's conditional admission that he violated ER 1.15(d) (safekeeping client property), the applicable *Standard* is *Standard 4.12*, which states: "Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client."

With respect to Respondent's conditional admission that he violated ERs 1.16(d) (terminating representation) and 5.3(b) (supervision of nonlawyer assistants), the applicable *Standard* is *Standard 7.3* which states: "Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system."

The duty violated

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

The lawyer's mental state

The parties agree that Respondent acted negligently with respect to the Rules of Professional Conduct he has conditionally admitted violating.

The extent of the actual or potential injury

The parties agree there was actual and potential harm to the client, the profession and the legal system.

Aggravating and mitigating circumstances

The presumptive sanction is reprimand. The parties conditionally agree that the following aggravating and mitigating factors should be considered:

In aggravation:

- a) 9.22(a) prior disciplinary offenses;
 - PDJ 2016-9103 (SB16-0507 & 16-0704): Respondent received a Reprimand with Probation for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.4, 1.5(a), (b) & (d)(3), 1.7 and 3.2;
 - SB14-3365: Respondent received an Admonition with Probation for violating the Trust Account Rules;
 - SB08-1585: Respondent received an Informal Reprimand with Probation for violating Rule 42, Ariz. R. Sup. Ct., ER 1.15 and Rule 43;
 - SB06-0823: Respondent received a Censure for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.1, 1.2, 1.3, 1.7, 1.14, 1.16, 3.1, 3.7, and 8.4(d).
 - SB03-1581: Respondent received an Informal Reprimand for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.15(b) & (c).
 - SB99-1374, 00-1054, 01-0033, 01-055: Respondent received a Censure with Probation for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.5(a) & (b) and 1.8(a).

- SB96-3100, 98-0924, 98-0924, 98-1364: Respondent received a Censure with Probation for violating Rule 42, Ariz. R. Sup. Ct., ERs 1.1, 1.3, 1.4, 1.16(d), 3.2 and 8.4(d).

b) 9.22(d) multiple offenses; and

c) 9.22(i) substantial experience in the practice of law.

In mitigation:

a) 9.32(b) absence of a dishonest or selfish motive.

b) 9.32(c) personal or emotional problems (as set forth above, Respondent was out of the office April and May 2019 for two surgeries and in June 2019 had post-operative complications); and

c) 9.32(m) remoteness of prior offenses

Discussion

The parties agree that although the presumptive sanction is Reprimand, application of the aggravating and mitigating factors makes the appropriate sanction Suspension (60 days) with Probation (two years). Because Respondent has ten hearings or trials schedule for the month of June, 2021, the parties request that the effective date of the suspension be July 2, 2021.

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. In re *Peasley*, 208 Ariz. 27 (2004). 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 Suspension with Probation and the imposition of costs and expenses.

A proposed form of order is attached hereto as Exhibit B.

DATED this 21st day of April 2021.

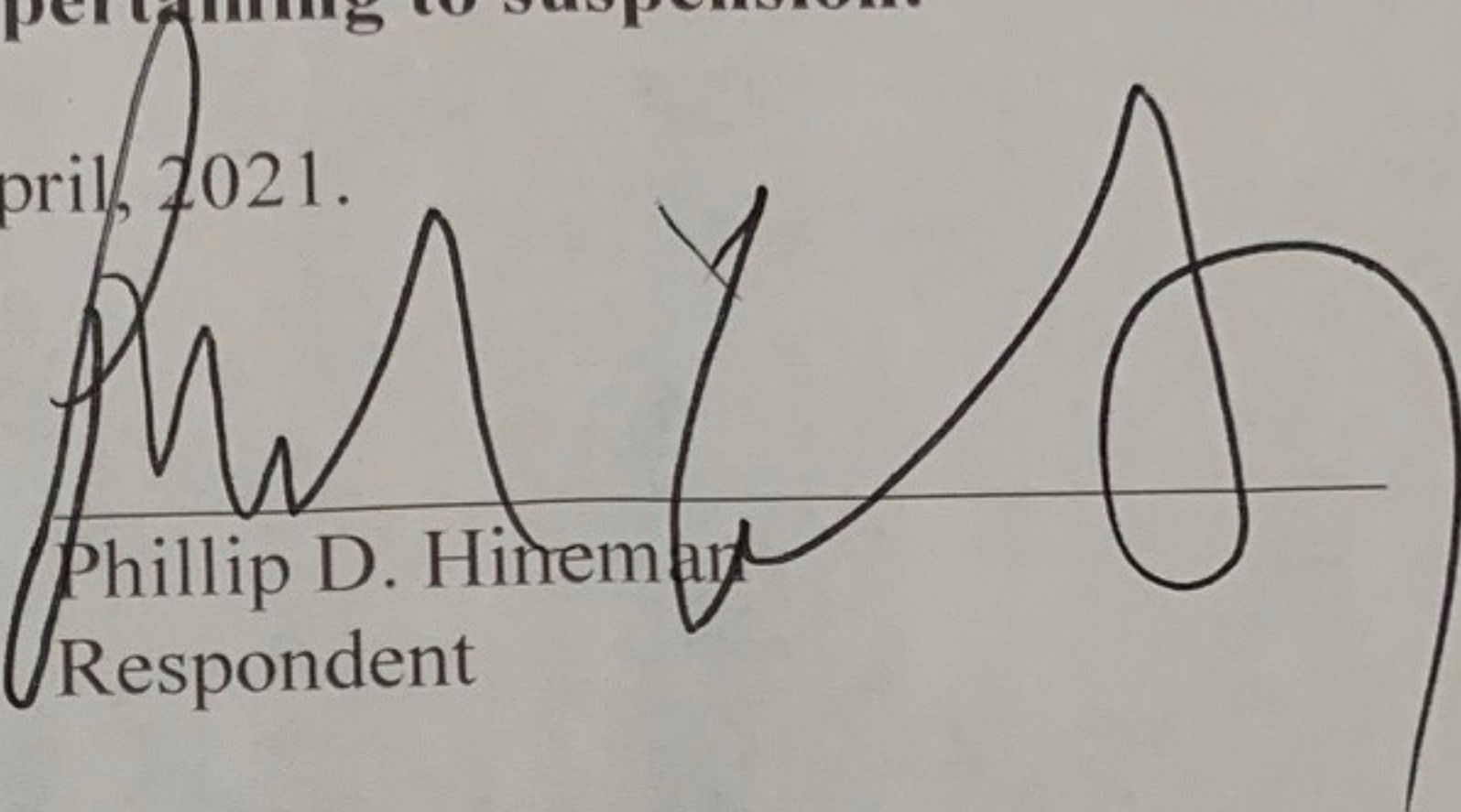
STATE BAR OF ARIZONA

/s/ Craig D. Henley

Craig D. Henley
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 20th day of April, 2021.


Phillip D. Hineman
Respondent

DATED this _____ day of April, 2021.

Osborn Maledon PA

Geoffrey M. T. Sturr
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this ___ day of April, 2021.

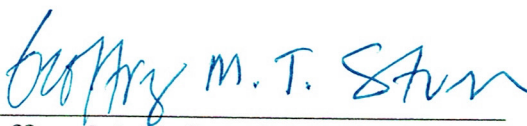
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property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

DATED this _____ day of April, 2021.

Phillip D. Hineman
Respondent

DATED this 20th day of April, 2021.

Osborn Maledon PA



Geoffrey M. T. Sturr
Counsel for Respondent

Approved as to form and content

/s/ Maret Vessella

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 21st day of April, 2021.

Copy of the foregoing emailed
this 21st day of April, 2021 to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 21st day of April, 2021 to:

Geoffrey M. T. Sturr
Osborn Maledon PA
2929 N. Central Avenue, Suite 2100
Phoenix, AZ 85012-2765
Email: gsturr@omlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 21st day of April, 2021 to:

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

by: /s/ Karen E. Calcagno
CDH/kec

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona
Phillip D. Hineman, Bar No. 011887, Respondent

File No(s). 19-2355, 20-0285

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

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**PHILLIP D. HINEMAN,
Bar No. 011887,**

PDJ 2020-9104

**FINAL JUDGMENT AND
ORDER**

State Bar Nos. 19-2355 and 20-0285

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

Accordingly:

IT IS ORDERED that Respondent, **Phillip D. Hineman**, is suspended for sixty (60) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective July 2, 2021.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation for a period of two (2) years the terms of probation which will consist of:

1. LOMAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order.

Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.

2. CLE: In addition to annual MCLE requirements, Respondent shall complete no less than twelve (12) hours of Continuing Legal Education ("CLE") program(s). Respondent must complete the following State Bar programs or reasonably related CLE programs approved by the State Bar, regarding diligence, communication, billing and supervision of staff:

- *2020 Ethical Trends Today!*
- *Practice Management Essentials: Tools For Avoiding Nasty Surprises*
- *Fee No Evil: Handling Fees and Fee Disputes Ethically and Professionally*
- *Avoiding Ethical Pitfalls.*

The CLE programs must be completed within the term of probation. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes and

certificate of completion. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

Respondent shall commit no further violations of the Rules of Professional Conduct.

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 April, 2021.

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 April, 2021.

Copies of the foregoing mailed/mailed
this _____ day of April 2021 to:

Geoffrey M. T. Sturr
Osborn Maledon PA
2929 N Central Ave Ste 2100
Phoenix, AZ 85012-2765
Email: gsturr@omlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of April, 2021 to:

Craig D. Henley
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 April, 2021 to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N 24th Street, Suite 100

Phoenix, Arizona 85016-6266

by:_____

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**PHILLIP D. HINEMAN,
Bar No. 011887**

Respondent.

PDJ 2020-9104

**DECISION ACCEPTING
DISCIPLINE BY CONSENT**

[State Bar No. 19-2355 and 20-0285]

FILED APRIL 23, 2021

Under Rule 57(a), Ariz. R. Sup. Ct.,¹ an Agreement for Discipline by Consent was filed on April 21, 2021. The two-count formal complaint was filed on November 6, 2020. The State Bar of Arizona is represented by Senior Bar Counsel Craig D. Henley. Mr. Hineman is represented by Geoffrey M. T. Sturr, *Osborn Maledon PA*.

Rule 57 requires admissions be tendered solely “...in exchange for the stated form of discipline....” Under that rule, the right to an adjudicatory hearing is waived only if the “...conditional admission and proposed form of discipline is approved....” If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Mr. Hineman has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline.

¹ Unless otherwise stated rule references are to the Ariz. R. Sup. Ct.

As required by Rule 53(b)(3), Ariz. R. Sup. Ct., each complainant was given notice of the agreement and was notified of the right to file a written objection with five (5) business days. No objection has been received.

The Agreement

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Regarding Count 1 Mr. Hineman admits he violated Rule 42, Ariz. R. Sup. Ct., ERs 1.5(b), (Fees), 5.3(b), (Responsibilities regarding nonlawyer assistants) and 1.16(d) (Declining or terminating representation). The State Bar agreed to dismiss the claimed violation of ER 1.4. Regarding Count 2, he admits violating and ERs 1.3, (Diligence), 1.4(a), (Communication), and 1.15(d), (Safekeeping property.) The State Bar agrees to dismiss allegations of violations of ERS 8.1, 8.4(d), and Rule 54.

As a sanction, the parties agree to a 60-day suspension, and upon reinstatement, two years of probation with LOMAP and the payment of costs within 30 days.

Stipulated Facts

Count 1. After filing a *pro per* Petition for Legal Separation with Children, Complainant hired Mr. Hineman on about November 15th to represent her agreeing to pay him \$5,000 of which \$2,500 was paid immediately and the balance six days later. His hourly fee was to be discounted by 20% after the \$5,000 was expended. By December 26 he had charged her for \$6,337.50 but failed to credit her for the discount.

She paid him \$1,500 and another \$4,500 about two months later. Due to health issues, Mr. Hineman was out of the office from late April to early May. Due to health complications he moved to continue the trial.

Complainant terminated Mr. Hineman and requested an accounting. When none was received, she emailed a request again three weeks later. Nearly six weeks later the accounting was sent to Complainant billing stating a balance owed of \$11,990. It had three entries that did not appear in the prior relevant invoice and the hourly rate was never discounted. Mr. Hineman has written off the \$11,990 and states he mistakenly thought his staff had provided the accounting in May.

Count 2. The second Complainant retained Mr. Hineman to represent her in a dissolution in which the primary issue was her entitlement to a portion of her husband's retirement benefits and/or an award of spousal support. Complainant paid him \$7,500 as an advanced deposit to be applied again Complainant's account balance as it became due. Mr. Hineman failed to cause monthly invoices to be issued to Complainant as stated in the fee agreement. The court awarded Complainant attorney fees of \$5,000 from community funds. Opposing counsel sent Mr. Hineman a check for \$5,000 payable to Complainant. Mr. Hineman failed to act with reasonable diligence delivering the check to Complainant. In January of the following year Mr. Hineman finally sent Complainant an invoice for total billings of \$17,751.22 and ultimately moved to withdraw and three days later moved to continue the trial due to his own

health issues. After the court denied his motion to withdraw, he told Complainant he would be sending an updated invoice but failed to do so. Mr. Hineman failed to keep his client reasonably informed about fees and charges on a monthly basis.

The parties stipulate Mr. Hineman negligently violated his duties to his clients the profession, and the legal system. His misconduct caused actual and potential harm to the clients, the profession, and the legal system. The presumptive sanction is reprimand under the cited *ABA Standards*. The parties stipulate to the presence of aggravating factors: 9.22(a) seven prior disciplinary offenses; 9.22(d) multiple offenses, and 9.22(i) substantial experience in the practice of law. In mitigation are factors: 9.32(b) absence of selfish or dishonest motive; 9.32(c) personal or emotional problems; and 9.32(m) remoteness of prior offenses. The parties further stipulate that upon application of the aggravating and mitigating factors, an increase in the presumptive sanction is justified and a short-term suspension and probation is the appropriate sanction.

IT IS ORDERED accepting the Agreement and incorporating it with any supporting documents by this reference. A final judgment and order is signed this date.

DATED this 23rd day of April 2021.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed
on this 23rd day of April 2021 to:

Craig D. Henley
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: LRO@staff.azbar.org

Geoffrey M. T. Sturr
Osborn Maledon PA
2929 N. Central Ave. Ste. 2100
Phoenix, AZ 85012-2765
Email: gsturr@omlaw.com

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**PHILLIP D. HINEMAN,
Bar No. 011887**

Respondent.

PDJ 2020-9104

**FINAL JUDGMENT AND
ORDER**

[State Bar Nos. 19-2355 and 20-
0285]

FILED APRIL 23, 2021

The Presiding Disciplinary Judge accepted the parties' Agreement for Discipline by Consent under Rule 57(a), Ariz. R. Sup. Ct.

Accordingly:

IT IS ORDERED Respondent, **PHILLIP D. HINEMAN, Bar No. 011887**, is suspended for sixty (60) days for his conduct in violation of the Arizona Rules of Professional Conduct effective July 2, 2021, as outlined in the consent documents.

IT IS FURTHER ORDERED Mr. Hineman, once reinstated, shall be placed on probation for two (2) years. The terms of probation include:

- a) Law Office Management Assistance Program (LOMAP): Mr. Hineman shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of Order. He shall submit to a LOMAP examination of his office procedures and sign terms and conditions of

participation which shall include reporting requirements and are incorporated by reference. He shall be responsible for any costs associated with LOMAP.

b) Continuing Legal Education (CLE): In addition to his annual MCLE requirements, Mr. Hineman shall complete no less than twelve (12) hours of CLE programs(s). He must complete the following State Bar programs or reasonably related CLE programs approved by the State Bar, regarding diligence, communication, billing, and supervision of staff.

- *2020 Ethical Trends Today!*
- *Practice Management Essentials: Tools for Avoiding Nasty Surprises.*
- *Fee No Evil: Handling Fees and Fee Disputes: Ethically and Professionally.*
- *Avoiding Ethical Pitfalls.*

The CLE programs must be completed within the term of probation. Mr. Hineman shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes and certificate of completion. Mr. Hineman shall contact the State Bar Compliance Monitor at (602) 340-7258 to submit this evidence and is responsible for the cost of the CLE.

Mr. Hineman shall commit no further violations of the Rules of Professional

Conduct.

IT IS FURTHER ORDERED under Rule 72, Ariz. R. Sup. Ct., Mr. Hineman shall comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED Mr. Hineman shall pay the costs and expenses of the State Bar of Arizona of \$1,350.88, within thirty (30) days from the date of this Order. There are no costs and expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

DATED this 23rd day of April 2021.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed this
23rd day of April 2021, to:

Craig D. Henley
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: LRO@staff.azbar.org

Geoffrey M. T. Sturr
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by: SHunt