

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**DUANE E. OKKEN,
Bar No. 007470**

Respondent.

PDJ 2014-9023

FINAL JUDGMENT AND ORDER

[State Bar Nos. 13-2232, 13-3626]

FILED JULY 15, 2014

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on June 26, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Duane E. Okken**, is hereby suspended for a period of six (6) months and one (1) day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately.

IT IS FURTHER ORDERED that upon reinstatement, Respondent shall be placed on probation with the terms and conditions of probation, including the length of probation, determined upon reinstatement.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

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 \$ 1,366.91. 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 15th day of July, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 15th day of July, 2014.

Ralph W. Adams
Adams & Clark PC
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Respondent's Counsel

Nicole S Kasetta
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by:MSmith

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

DUANE E. OKKEN,
Bar No. 007470

Respondent.

No. PDJ-2014-9023

**REPORT ACCEPTING CONSENT
FOR DISCIPLINE**

[State Bar No. 13-2232, 13-3636]

FILED JULY 15, 2014

An Agreement for Discipline by Consent filed on June 26, 2014, was submitted pursuant to Rule 57 of the Rules of the Arizona Supreme Court. Pursuant to that rule the parties may tender an agreement regarding a respondent against whom a formal complaint has been filed. In this matter, a Probable Cause Order was filed on February 24, 2014, and the formal complaint was filed on March 12, 2014. Such tender is a conditional admission of unethical conduct in exchange for a stated form of discipline, other than disbarment.

Bar Counsel provided notice of this agreement to counsel for the complainant(s) by letter on May 27, 2014. Included within that letter was a notification of the opportunity for the complainant to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice.

On May 30, 2014, an objection was filed by complainant Michael Juilfs in File No. 13-3626. Mr. Juilfs stated that Respondent should be disbarred and that

Respondent should be required to pay his attorney fees. Mr. Juilfs however, was not a client of Respondent and restitution is not appropriate in this matter.

Upon filing such agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate". The PDJ notes there is no evidence to support mitigating factors 9.32(c) and 9.32(h). The absence of those factors however, do not affect the overall outcome.

Accordingly,

IT IS ORDERED incorporating by this reference the Agreement for Discipline by Consent and any supporting documents by this reference. The agreed upon sanctions include the imposition of a six (6) months and one (1) day suspension, probation upon reinstatement with length and terms to be determined at the time of reinstatement.

IT IS ORDERED the Agreement for Discipline by Consent discipline is accepted. A proposed final judgment and order was submitted simultaneously with the Agreement. Costs as submitted are approved in the amount of \$1,366.91. The proposed final judgment and order having been reviewed are approved as to form. Now therefore, the final judgment and order is signed this date.

DATED this 15th day of July, 2014

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 15th day of July, 2014, to:

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IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**DUANE E. OKKEN,
Bar No. 007470,**

Respondent.

PDJ 2014-9023

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar Nos. 13-2232, 13-3626

The State Bar of Arizona (State Bar), through undersigned Bar Counsel, and Respondent, Duane E. Okken, who is represented in this matter by counsel, Ralph W. Adams, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A Probable Cause Order was entered in State Bar No. 13-2232 on February 24, 2014. In State Bar No. 13-3626, the parties reached an agreement for discipline by consent before the matter was

submitted to the Attorney Discipline Probable Cause Committee; therefore, there is no order of probable cause in State Bar No. 13-3626. 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 letter on May 27, 2014. 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. The State Bar did not receive a written objection from the complainant in State Bar No. 13-2232. However, on May 30, 2014, the State Bar received a written objection from Complainant Michael Juilfs in State Bar No. 13-3626. See Exhibit "A". In this written objection, Complainant Michael Juilfs states that he believes that Respondent should be "permanently disbarred" and that Respondent should pay certain of his attorney fees and costs in the underlying matter. The State Bar and Respondent do not believe that Complainant Michael Juilfs' objection has merit given that Complainant Michael Juilfs was not a client of Respondent and, therefore, would not be entitled to restitution from Respondent, and because the State Bar and Respondent believe that the agreed upon sanction is sufficient to protect the public.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.16(a)(2), 3.2, 8.1(b), and 8.4(d), and Rules 54(c) and 54(d), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Respondent shall

be suspended from the practice of law in Arizona for a period of six months and one day and, upon reinstatement, Respondent shall be placed on probation with terms and conditions of probation to be determined at the time of reinstatement. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "B."

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 23, 1982.

COUNT ONE (File no. 13-2232/ Judicial Referral)

2. On March 14, 2013, certain plaintiffs (plaintiffs) filed a complaint against certain defendants alleging negligence in the operation of a motor vehicle. See Maricopa County Superior Court Case No. CV 2013-001904.

3. On June 21, 2013, the Maricopa County Superior Court (court) appointed Respondent to arbitrate the above case, with the arbitration to occur by October 21, 2013.

4. Respondent did not contact the parties to schedule the arbitration. The plaintiffs' counsel states that he attempted to contact Respondent by phone but the phone number listed on the State Bar's website for Respondent did not work.

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.

5. On August 5, 2013, the plaintiffs' counsel sent a letter to Respondent stating "[p]lease advise if you have dates that you want this set or do you want counsel to submit agreed upon dates."

6. Respondent did not respond to this letter.

7. On August 20, 2013, the plaintiffs' counsel filed a notice with the court outlining his attempts at contacting Respondent and Respondent's failure to respond to him. In the notice, the plaintiffs' counsel requested a new arbitrator.

8. On August 30, 2013, the court issued a minute entry stating that Respondent: ". . . was appointed to arbitrate this matter pursuant to Rules 72-77 through an order dated June 21, 2013. He has failed to act, and attempts at reaching him have failed. Accordingly, IT IS ORDERED appointing a new arbitrator."

9. The new arbitrator subsequently scheduled the arbitration for January 8, 2014.

10. On September 3, 2013, the court forwarded the August 30, 2013 minute entry to the State Bar.

11. On September 6, 2013, intake bar counsel sent Respondent a letter stating: "I have tried to reach you by telephone to discuss the charge, but have been unable to contact you at the number noted in our records. Please contact me . . . within ten (10) days of the date of this letter."

12. On September 11, 2013, a staff investigator contacted Respondent at a different number. Respondent asked why the State Bar was contacting him and the staff investigator explained to Respondent the background on this matter. Respondent informed the staff investigator that he had been sick for the last year and had "missed some things."

13. On September 24, 2013, Respondent emailed the State Bar. Respondent informed the State Bar that he had experienced medical issues and that he was trying to obtain the medical records.

14. On October 24, 2013, Respondent emailed the State Bar and attached a purported medical record. The medical record is from April of 2013 and notes that Respondent suffered fevers.

15. On November 7, 2013, the State Bar sent Respondent a screening letter asking him to respond to the bar charge within twenty days.

16. Respondent failed to respond to the screening letter.

17. On December 5, 2013, the State Bar sent Respondent a second letter demanding a response to the bar charge within ten days.

18. Respondent failed to respond to the State Bar's December 5, 2013 letter.

19. On December 27, 2013, the State Bar left Respondent a voicemail message asking Respondent to contact the State Bar regarding his failure to respond.

20. Respondent failed to return this voicemail message.

21. On January 10, 2014, the State Bar requested and then obtained a subpoena duces tecum requiring Respondent to appear at a deposition on February 4, 2014 and to produce certain documents at such deposition.

22. The State Bar mailed the request for the subpoena to Respondent on January 10, 2014.

23. The State Bar personally served the subpoena on Respondent on January 16, 2014 by leaving a copy of the subpoena at Respondent's address with a person named "Brittany."

24. On January 19, 2014, a Sunday, Respondent left a voicemail message with the State Bar stating that he was attempting to provide the State Bar a response but that he may be hospitalized for internal bleeding.

25. Respondent failed to appear at the deposition or produce any documents.

26. On the date of the deposition, the State Bar left Respondent a voicemail message regarding his nonappearance but Respondent failed to return the State Bar's call.

27. On March 10, 2014, the Presiding Disciplinary Judge (PDJ) held a show cause hearing relating to Respondent's failure to comply with the subpoena duces tecum.

28. On April 7, 2014, the PDJ issued an order regarding the show cause hearing, noting that Respondent alleged that he suffered certain medical ailments that impacted his law practice but provided almost no documentation to substantiate the same.

29. On April 2, 2014, Respondent produced medical records to the State Bar showing that he was hospitalized on January 19, 2014.

COUNT TWO (File no. 13-3626/Juilfs)

30. In 2004, Michael Juilfs (Juilfs) filed a complaint in pro per against certain defendants (defendants). See Maricopa County Superior Court Case CV2004-020502. Juilfs alleged that defendants executed a contract to purchase an

American Express Financial Advisors Financial Planning Practice from him but failed to pay him the agreed amount of \$100,000. Juilfs alleged breach of contract and defamation.

31. In 2005, Respondent commenced representation of the defendants.

32. On September 21, 2005, Juilfs served discovery requests on Respondent. On November 30, 2005, after Respondent failed to respond to the discovery requests, Juilfs filed a motion to compel. Juilfs then requested a "stay" of the motion to compel because Respondent allegedly agreed to deliver certain categories of documents requested.

33. On September 26, 2006, Juilfs served further document requests on Respondent and then, on October 10, 2006, filed another motion to compel stating that Respondent failed to produce a single document.

34. On October 11, 2006, Respondent filed a motion for summary judgment arguing that the defamation claim was barred by the statute of limitations and the contract claim was barred by the statute of frauds.

35. On October 30, 2006, Respondent filed a motion to strike Juilfs' October 10, 2006 motion to compel.

36. On March 2, 2007, Juilfs retained an attorney who filed an amended complaint alleging unjust enrichment in addition to breach of contract and defamation, and a response in opposition to Respondent's motion for summary judgment.

37. On September 14, 2007, the court granted the motion for summary judgment, leaving only the unjust enrichment claim pending.

38. On February 1, 2008, Juilfs filed a memorandum regarding discovery stating that Respondent has not produced not a single document despite Juilfs filing two motions to compel that the court had not yet addressed.

39. On May 20, 2009, Juilfs served further discovery requests on Respondent.

40. Respondent did not substantively respond to the discovery requests and, therefore, Juilfs sent a letter to Respondent regarding the same.

41. In September of 2009, Respondent replied and stated that he has been faced with a series of family medical emergencies, including: (a) his mother suffered food poisoning and then a heart attack; and (b) his niece was rushed to the hospital. Respondent stated that he would substantively respond to Juilfs' letter by September 16, 2009 but he did not subsequently do so.

42. On October 15, 2009, Juilfs filed another motion to compel and Respondent responded to such motion.

43. On December 8, 2009, the court granted the motion to compel.

44. On January 25, 2010, the court ordered that Respondent respond to the outstanding discovery requests by February 19, 2010.

45. On January 26, 2010, Respondent filed a motion for summary judgment and a motion to stay the court's discovery ruling pending consideration of the motion for summary judgment.

46. Respondent did not comply with the court's January 25, 2010 order by providing the required discovery by February 19, 2010.

47. On July 22, 2010, the court denied the motion for summary judgment and ordered that "discovery and disclosure shall move forward."

48. On May 2, 2012, Juilfs filed a motion for sanctions stating that Respondent failed to comply with the court's January 25, 2010 order.

49. On May 25, 2012, Respondent filed a response opposing the motion for sanctions.

50. On August 10, 2012, the court held a hearing on the motion for sanctions. During the hearing, the court asked whether either party exchanged initial disclosure statements. When both parties responded in the negative, the court responded "[w]hat in the world . . . have you guys been doing?" The court denied the motions for sanctions but ordered that Respondent respond to Juilfs' discovery requests by August 17, 2012, and that the parties exchange disclosure statements by August 17, 2012.

51. During the hearing, Respondent informed the court that he is on his "fourth round of antibiotics to kill an infection."

52. Respondent did not comply with the court's August 10, 2012 order and, therefore, on September 13, 2012, plaintiff filed another motion for sanctions. Respondent did not respond to this motion for sanctions.

53. On November 8, 2012, the court entered a minute entry stating: "This case has been pending for eight years. On August 10, 2012, . . . [t]he Court ordered the following: . . . Both parties exchange initial or updated Rule 26.1 Disclosure Statements by Friday, August 17, 2012. . . . Defendants provide their answers to Plaintiffs' combined Requests for Admission/Non-Uniform Interrogatories (as already ordered by Judge Mangum) by Friday, August 17, 2012." The court stated that defendants failed to file responses to discovery requests "as ordered by Judge Mangum on January 25, 2010, as affirmed by Judge Mangum on July 22,

2012, and as again ordered by this Court on August 10, 2012.” The court found that “severe sanctions are warranted for Defendants’ failure to comply with Rule 26.1 and three Court orders regarding discovery.” The court struck defendants’ affirmative defenses and precluded defendants “from offering any argument or evidence in defense of Plaintiff’s claims.”

54. The court then set an evidentiary hearing on the issue of damages for December 20, 2012.

55. On December 5, 2012, Respondent filed a motion to hold the case “in abeyance” until after January 2013 because of health issues. Respondent wrote that he was unable to “keep track” of the case because of his medical issues, including daily fevers caused by an “exotic infection” that he contracted during a hospital stay.

56. The court held the evidentiary hearing on December 20, 2012. Neither Respondent nor his client attended. The court denied Respondent’s motion to hold the matter in abeyance and granted judgment in favor of the plaintiff.

57. On February 11, 2013, the court entered a judgment against defendants in principal sum of approximately \$98,000 and with attorney fees of approximately \$30,000.

58. On August 9, 2013, new counsel for defendants substituted in for Respondent.

59. On August 12, 2013, defendant’s new counsel filed a motion for relief from judgment stating that Respondent’s health conditions affected his ability to respond to motions and attend hearings, and that Respondent never informed defendants of the hearings, motions, and court orders. The motion attached a declaration from Respondent stating: (a) In 2011, his son took medication and,

when he stopped taking it, this caused life threatening behaviors. Respondent claims that he did not sleep during this period of time; (b) In July of 2012, Respondent was admitted to the hospital "due to serious health issues" wherein he contracted an infection and was placed on an antibiotic that caused daily fevers and exhaustion. As a result, Respondent states that he was incapacitated and unable to practice law; (c) that he was not physically capable of attending the December 20, 2012 evidentiary hearing; and (d) his illness prevented him from opposing the judgment.

60. Juilfs opposed the motion. The court never ruled on the motion because the parties subsequently settled the case and the court vacated the judgment.

61. In addition to submitting documentation regarding the above case to the State Bar, Juilfs provided to the State Bar a minute entry from another case in which Respondent represented his son and two other defendants. See Maricopa County Superior Court Case No. CV2010-031832. In this case, a homeowners association (HOA) filed a complaint after the defendants failed to pay HOA dues. The case was submitted to arbitration. Neither Respondent nor his clients appeared at the arbitration. The arbitrator found in favor of the plaintiff. In November of 2012, Respondent filed a motion to hold the matter in abeyance because of his alleged health issues. On January 1, 2013, the court stayed the matter until February 22, 2013, extending the deadline for Respondent to appeal the arbitration award until then. Respondent did not appeal and the court entered a judgment against defendants. New counsel for defendants subsequently substituted in and

filed, under seal, a motion to set aside the judgment. The parties subsequently settled and the case was dismissed.

62. On December 27, 2010, Juilfs submitted his bar charge relating to Respondent.

63. On January 22, 2014, the State Bar sent Respondent a screening letter directing Respondent to respond to Juilfs' bar charge within 20 days.

64. Respondent did not respond to the screening letter. Accordingly, on February 20, 2014, the State Bar sent Respondent a second letter demanding a response to the bar charge within 10 days.

65. Respondent did not respond to this second letter or otherwise respond to the Juilfs' bar charge.

CONDITIONAL ADMISSIONS

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

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.16(a)(2), 3.2, 8.1(b), and 8.4(d), and Rules 54(c) and 54(d), Ariz. R. Sup. Ct.

RESTITUTION

Restitution is not an issue in this matter. Although Juilfs contends that Respondent should be compelled to reimburse him for certain costs and attorney fees, Juilfs was not a client of Respondent and, therefore, restitution does not apply.

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 sanction is appropriate: Respondent shall be suspended from the practice of law in Arizona for a period of six months and one day and, upon reinstatement, Respondent shall be placed on probation with terms and conditions of probation to be determined at the time of reinstatement.

LEGAL GROUNDS IN SUPPORT OF SANCTION

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

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

The parties agree that *Standards* 4.42, 6.22, and 7.2 are the appropriate *Standards* given the facts and circumstances of this matter. *Standard* 4.42 provides that suspension is generally appropriate when a lawyer knowingly fails to perform

services for a client and causes injury or potential injury to a client. In State Bar No. 13-3626, Respondent knowingly failed to attend a December 20, 2012 evidentiary hearing, knowingly failed to communicate with his client regarding certain discovery orders and the evidentiary hearing, and knowingly failed to attend an arbitration. The parties agree that Respondent's conduct caused actual injury to his client, including in the form of a judgment being entered against his clients.

Standard 6.22 provides that suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client, or a party, or interference or potential interference with a legal proceeding. In State Bar No. 13-2232, Respondent knowingly violated the court's June 21, 2013 order appointing him as an arbitrator causing actual interference with a legal proceeding in that the court had to appoint another arbitrator and the arbitration was not held until January of 2014. In State Bar No. 13-3626, Respondent knowingly violated certain discovery orders resulting in a delay in the proceeding and actual harm to his client by virtue of the court's November 8, 2012 order and the court entering a judgment against his client.

Standard 7.2 provides that suspension is generally appropriate when a lawyer knowingly 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. In State Bar No. 13-2232, Respondent knowingly failed to respond to the bar charge and, as a result, the State Bar had to serve a subpoena duces tecum on Respondent. Respondent knowingly failed to comply with the subpoena duces tecum. In State Bar No. 13-3626, Respondent knowingly failed to respond to the bar charge.

The duty violated

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

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent knowingly failed to comply with court orders, knowingly failed to attend an evidentiary hearing and an arbitration, knowingly failed to respond to two bar charges, knowingly failed to comply with a subpoena duces tecum, and knowingly failed to communicate with his client, and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

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

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(c): A pattern of misconduct.

Standard 9.22(d): Multiple offenses.

Standard 9.22(e): Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent failed to respond two bar charges and failed to comply with a subpoena duces tecum issued in State Bar No. 13-2232.

Standard 9.22(i): Substantial experience in the practice of law. Respondent has been licensed in Arizona since October 23, 1982.

In mitigation²:

Standard 9.32(a): Absence of a prior disciplinary record.

Standard 9.32(b): Personal or emotional issues. Respondent experience severe health related issues. Moreover, Respondent's son experience severe mental health and physical health related issues.

Standard 9.32(d): Timely good faith efforts to make restitution. Respondent informed his clients of the errors and suggested they contact counsel to pursue legal malpractice claims against him. He later reached settlement with the clients wherein each was compensated by his malpractice carrier and he paid deductibles of \$5,000.00 in each of three matters. Respondent has been and continues to work with his malpractice insurer to cover the deductible portions of all claims.

Standard 9.32(g): Character and reputation. Attached are several letters attesting to Respondent's good character and reputation. See Exhibit "C".

Standard 9.32(h): Physical disability. Respondent experience severe medical issues which will be fully discussed during reinstatement proceedings.

Standard 9.32(k): Imposition of other penalties. See discussion re: *Standard 9.32(d)*.

Standard 9.32 (l): remorse. See discussion re: *Standard 9.32(d)*.

² The State Bar requested that Respondent produce and provide with this consent agreement documentation demonstrating the applicability of *Standards 9.32(b)* and *(h)*. Respondent has declined to do so and informed the State Bar that he does not intend to produce such documentation until his reinstatement hearing. The State Bar does not believe, however, that the absence of these mitigating factors would change the agreed upon sanction of a six month and one day suspension.

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: The State Bar gives great weight to Respondent's lack of a prior disciplinary record. Additionally, the parties believe that a six month and one day suspension will adequately protect the public, and Respondent has already been suspended since February 28, 2014 as a result of his failure to comply with his continuing legal education obligations.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of a six month and one day suspension, probation to be determined upon reinstatement, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "D."

DATED this 26th day of June, 2014

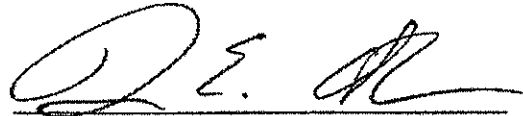
State Bar of Arizona



Nicole S. Kaseta
Staff Bar Counsel

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

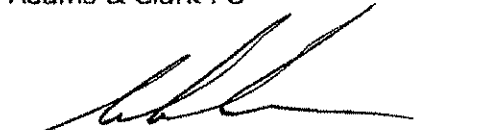
DATED this 25th day of June, 2014.



Duane E. Okken
Respondent

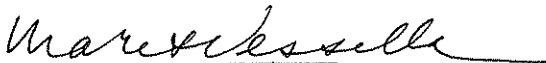
DATED this 26th day of June, 2014.

Adams & Clark PC



Ralph W. Adams
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 26th day of June, 2014.

Copies of the foregoing mailed/emailed
this 26th day of June, 2014 to:

Ralph W. Adams
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520 E. Portland St
Phoenix, AZ 85004-1843
ralph@adamsclark.com
Respondent's Counsel

Copy of the foregoing emailed
this 26th day of June, 2014, to:

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

Copy of the foregoing hand-delivered
this 26th day of June, 2014, to:

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

by: Jackie Derender
NSK: JLD

EXHIBIT "A"

May, 29, 2014

Ms. Lucinda Crowley
Lawyer Regulation Office
Suite 100
4201 N. 24th St.
Phoenix, AZ 85016-6266

Mailed via First Class Mail, May 29, 2014

RE: File Nos. 13-2232 and 13-3626
Duane E. Okken, Respondent

The following is my response to your letter dated May 27, 2014.

I strenuously object to the extreme leniency that the State Bar of Arizona is displaying toward Mr. Okken.

For eight years, Mr. Okken routinely delayed proceedings, ignored multiple orders of the Court to provide disclosure (yet, in eight years never provided a single page of disclosure), failed to be truthful with the Court, and then, when his delaying tactics and stonewalling finally ran out - he feigned yet another excuse. Tellingly, while purportedly to "ill" or distracted to properly represent his client, he has plenty of time and energy to pursue his own legal action in Maricopa County Superior Court for his own benefit. Further aggravating Mr. Okken's malfeasance is his claim that he never informed his client about anything - for years! I would assume that if Mr. Okken truly never informed his client about anything, he certainly must not have billed him for anything during that entire time.

Examination of other cases that Mr. Okken has been involved with (which I have done) will reveal a repeated and continual use of similar tactics - even when representing his own family - utilizing the same tactics in an attempt to get a "do-over" from the Court when things didn't go his way. I implore the Bar to examine not only this case, but an extensive sampling of Mr. Okken's cases in order to reveal the continual pattern of unethical behavior and abuse of the court process.

RECEIVED

MAY 30 2014

15849 N. 71st St., Ste. 100, Scottsdale, AZ 85254

Tel (480) 361-4727 | Fax (623) 580-1829 | michaeljuilfs@pfsarizona.com

Securities and Advisory Services offered through Commonwealth Financial Network,
Member FINRA, SIPC, a Registered Investment Adviser

Mr. Okken's antics caused me to incur tens of thousands of dollars in unnecessary legal fees responding to frivolous motions, his repeated failure to respond, delays and repeatedly ignoring orders of the Court.

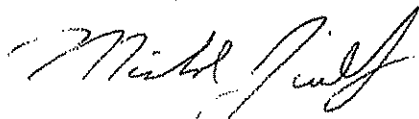
Worse, when he resorted to his final "act", I incurred thousands of additional dollars in legal fees responding to his final ruse. Mr. Okken was not even man enough to appear before the judge to plead his case at trial - electing instead to not even show up. Instead, "falling on his sword" in an attempt to win a "do-over" for his client. His malpractice insurance carrier certainly recognized his negligence when they funded a settlement - for half of the amount owed by the Defendant. Given my first hand experience with the "legal process" and its subjectivity to gross manipulation, I was petrified to become entangled in it yet again.

At the very least, Mr. Okken should be compelled to re-take the bar exam. In reality, he should be permanently disbarred- as he has demonstrated a long and repeated history of unbridled breach of ethics and of abuse of the legal process - not to mention repeatedly ignoring the orders of the Court. Further, in light of Mr. Okken's claim of "medical conditions", he should be required to provide a full and unconditional medical release by a Board Certified physician.

In addition, Mr. Okken should be compelled to reimburse me for any and all legal costs incurred after the Court issued its ruling - following the hearing for which he could not even be bothered to show up for. These costs were the direct and sole result of Mr. Okken's actions. These costs totaled \$7,002.08. This was in addition to the \$32,800.69 in legal fees insured over the eight year pendency of this case upon which the Court issued judgment against Defendant.

I hereby request the opportunity to testify before the Presiding Disciplinary Judge, and/or any other appropriate body, regarding this matter.

Respectfully submitted,



Michael Juilfs MBA, CFP, CFS, CDFIA

Disclaimer:

The foregoing is solely the private opinion of the author and is for the explicit purpose of responding to the request of the State Bar of Arizona letter dated May 27, 2014. It is not intended for public disclosure or any other action which may result if the filing of legal action against the author by Mr. Okken or his representative(s).

EXHIBIT "B"

Statement of Costs and Expenses

In the Matter of a Suspended Member of the State Bar of Arizona,
Duane E. Okken, Bar No. 007470, Respondent

File No(s). 13-2232 and 13-3626

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

09/11/13	Computer investigation reports, Accurint	\$	16.95
01/10/14	Travel and mileage, attempt to serve Respondent	\$	10.64
01/14/14	Travel and mileage, attempt to serve Respondent	\$	8.96
01/16/14	Travel and mileage, service of subpoena	\$	8.96
02/04/14	Deposition of Respondent	\$	104.60
03/03/14	Travel and mileage, service of order	\$	8.96
03/10/14	Travel and mileage, to testify at hearing	\$	7.84

Total for staff investigator charges \$ 166.91

TOTAL COSTS AND EXPENSES INCURRED **\$ 1,366.91**


Sandra E. Montoya
Lawyer Regulation Records Manager

6-3-14
Date

EXHIBIT "C"

GARY A. DONGELL
1220 N. Crystal Shores
Gilbert, AZ 85234

June 5, 2014

State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016

Re: Attorney Duane E. Okken

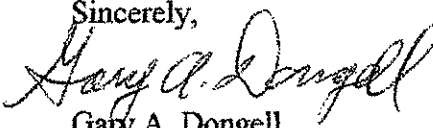
To the State Bar:

I have known attorney Duane Okken for approximately almost four decades. I can attest to the fact that he conducts his personal and business life with good character and high integrity.

By way of background, prior to my retirement, for decades I was the manager and head Arizona corporate officer of Mesa Insulation Specialists, (then) the largest insulation company in Arizona. In that capacity, I managed multiple hundreds of employees. I say that to give you some idea of the fact that I spent decades observing peoples' character and integrity.

With that in mind, I can personally recommend Duane as having high morals, strong integrity, and good character. Duane and I have traveled several places in the world together. We have gone to church together and have gone on trips into Mexico where we helped build church facilities for the less fortunate. On one such trip, although it wasn't on the original itinerary, we helped bring running water, plumbing, and sewer into the home of blind individual.

If you have any further questions as to his character, you can contact me at 480-962-1022.

Sincerely,

Gary A. Dongell

CAROL A. COOK
8513 E. Montecito
Scottsdale, AZ 85251

June 23, 2014

State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016

Re: Attorney Duane E. Okken

To the State Bar:

I have known attorney Duane Okken and have been his neighbor for approximately a quarter century. I can attest to the fact that he conducts his personal and business life with good character and high integrity. Taking that statement from the abstract to real life, it may be best summed up in the fact that the grown children of our mutual neighbor refer to Duane as "Saint Duane" for the care, both personal and business wise, he has shown to their mother who is in her nineties.

By way of just one example, several years ago when our mutual neighbor was "merely" in her 80's, Duane personally got our neighbor, who had never used a computer, online where she could use the internet. Today, that neighbor communicates with dozens of people round the globe via computer on a daily basis.

In my life, without compensation, Duane forced my home lender to return my home to me and void foreclosures, not once, but twice! He then also assisted me in getting my mortgage payment reduced by 75%.

I could provide many more examples, but suffice it to say, I know of Duane's character and integrity and can vouch for it without reservation.

Sincerely,


Carol A. Cook

DENNIS L. BLACK
8787 E. Pinchot Avenue
Scottsdale, AZ 85251

June 5, 2014

State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016

Re: Attorney Duane E. Okken

To the State Bar:

I have known attorney Duane Okken for approximately a quarter century in both business and personal settings. I can attest to the fact that he conducts his personal and business life with good character and high integrity.

I first met Duane when I was working as a real estate broker. Duane was then Vice President of Denro, Ltd., a real estate development company. Subsequently, I was hired into the same company and worked for a few years with Duane there.

After leaving that company, Duane and I have stayed in close touch. I have watched and/or worked with him on a variety of real estate projects and thus can tell you from personal knowledge of his character and integrity. In business he has engineered several unique and creative real estate transactions. He has even paid me a commission on a real estate project where he had no legal obligation to do so – simply because he thought it was the right thing to do.

I may be one of the few individuals outside of his immediate family or neighbors who saw him after he became seriously ill after complications from a brief hospital stay in July, 2012. It is no exaggeration to say, he looked like he was extremely ill or dying for months thereafter.

If you have any further questions as to his character, you can contact me at 602-717-7222.

Sincerely,

**Dennis
Black**

Dennis L. Black

Digitally signed by Dennis Black
DN: cn=Dennis Black, c=US,
o=103181NNDBLACK,
email=dennisblack@1031nndbl
ack.com
Date: 2014.06.18 14:03:29
-0700

GERALD W. BOSSTICK
5414 Oberlin Drive, Ste. 140
San Diego, CA 92121

June 5, 2014

State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016

Re: Attorney Duane E. Okken

To the State Bar:

I have been asked to comment on the character of attorney Duane Okken. My comment is that Duane conducts his personal and business life with highest integrity and utmost good character. I have known Duane for over 25 years. Although we have always lived in different states, I consider Duane more than just my attorney, I consider him a friend. My regard for his character and integrity can perhaps be best illustrated by the fact that, prior to my son becoming of appropriate age and maturity, Mr. Okken was a trustee on our family trust.

To give you some background, I have been involved in hundreds-of-millions of dollars in real estate and business ventures. I have been represented by dozens of attorneys over the years. I have had a lifetime of observing individuals of varying character and integrity and, with that in mind, I can personally vouch for Duane.


I have dealt with and observed Duane from a multitude of situations. I first met Duane when he was Vice President of a prominent real estate development company from which I was interested in purchasing some land for development in a business park they had developed. I found Duane to be always honest and fair. When Duane left that company, I hired him to be our attorney in Arizona. In that capacity, he successfully negotiated with and/or litigated against some of the country's and world's largest companies on our behalf, including, without limitation, Sprint Communications, Daimler Chrysler, Fuji Film, ASM, Astra-Zeneca and the like. Rather than churn a legal matter to create more fees for himself, Mr. Okken would go out of his way to minimize fees.

When our eldest two children went to the University of Arizona and Arizona State, Duane would assist us in any personal matters which might arise, even if it was in the middle of the night.

In summary, I have observed Duane for decades in various capacities and can recommend his character and integrity in all instances.

If you wish any additional information from me, I can be reached at 858-756-7576.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald W. Bosstick", with a long horizontal line extending to the right.

Gerald W. Bosstick

EXHIBIT "D"

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**Duane E. Okken,
Bar No. 007470,**

Respondent.

PDJ 2014-9023

FINAL JUDGMENT AND ORDER

State Bar Nos. 13-2232, 13-3626

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, **Duane E. Okken**, is hereby suspended for a period of six months and one day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this Final Judgment and Order.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation with the terms and conditions of probation, including the length of probation, determined upon reinstatement.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

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 \$ 1,366.91, within thirty (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 thirty (30) days from the date of service of this Order.

DATED this _____ day of June, 2014.

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 June, 2014.

Copies of the foregoing mailed/emailed
this _____ day of June, 2014.

Ralph W. Adams
Adams & Clark PC
520 E. Portland St
Phoenix, AZ 85004-1843
Email: ralph@adamsclark.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of June, 2014, to:

Nicole S Kaseta
Staff 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 June, 2014, to:

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

by: _____