

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**JEFFREY A. JAMES,
Bar No. 013884**

Respondent.

PDJ 2014-9090

FINAL JUDGMENT AND ORDER

[State Bar Nos. 14-1521, 14-1789]

FILED FEBRUARY 6, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on February 2, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED Respondent, **Jeffrey A. James**, 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 March 15, 2015.

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

IT IS FURTHER ORDERED 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 \$1,200.00, within thirty (30) days from the date of service of this Order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 6th day of February, 2015.

William J. O'Neil

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

Copies of the foregoing mailed/emailed
this 6th day of February, 2015.

Jeffrey A. James
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Respondent

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by: JAlbright

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

JEFFREY A. JAMES,
Bar No. 013884

Respondent.

No. PDJ-2014-9090

**DECISION ACCEPTING CONSENT
FOR DISCIPLINE**

[State Bar File Nos. 14-1521, 14-1789]

FILED FEBRUARY 6, 2015

An Agreement for Discipline by Consent (Agreement) was filed on February 2, 2015, and submitted under Rule 57(a), of the Rules of the Arizona Supreme Court. Orders of probable cause were filed on September 23, 2014. On October 3, 2014, a two count formal complaint was filed.

Supreme Court Rule 57 authorizes filing such agreements with the Presiding Disciplinary Judge, before or after the authorization to file complaints by probable cause orders, provided the sanction is at least a reprimand. Upon filing such agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate."

The complainants were provided notice of this agreement by letter on January 6, 2014, and were informed they had five (5) business days to file any written objections to the agreement. No objections were filed; however, on January 12, 2014 complainant send a letter to the State Bar. The letter contains information that is

not relevant as it predates Mr. James's representation. It does however, appear to address the perceived injury cause by Mr. James's neglect of Complainant's case.

GENERAL ALLEGATIONS

Mr. James engaged in a pattern of neglect by failing to communicate and diligently represent clients. He conditionally admits his conduct violated ERs 1.2, 1.3, 1.4, 1.16(d), and 8.4(d). Specifically, he failed to timely provide court decisions and respond to case status inquiries by an incarcerated client. He failed to file an appellate brief, despite being given an extension of time by the court. Despite multiple requests, he also failed to forward his client's file to an investigator.

Suspension is the presumptive sanction and given Mr. James has been diverted for similar misconduct, the suspension is a proper sanction. No mention is made why the misconduct occurred, notwithstanding, the length of suspension requires Mr. James submit to formal reinstatement proceedings. This also protects the public.

IT IS ORDERED incorporating by this reference the Agreement and any supporting documents by this reference. The agreed upon sanctions are a six month and one day suspension effective March 15, 2015. Upon reinstatement, Mr. James shall be placed on probation with terms and conditions, including the length of probation, to be determined during reinstatement. Costs and expenses of \$1,200.00 are imposed and to be paid within 30 days from the final judgment and order.

IT IS FURTHER ORDERED the Agreement is accepted. A final judgment and order was submitted simultaneously with the Agreement. Costs as submitted are approved for \$1,200.00. The proposed final judgment and order having been reviewed are approved as to form. The suspension is effective March 15, 2015.

DATED this 6th day of February, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 6th day of February, 2015 to:

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Respondent

Sandra Montoya
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by: [JAlbright](#)

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
FEB 02 2015
BY  FILED

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**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

**JEFFREY A. JAMES,
Bar No. 013884**

Respondent.

PDJ 2014-9090

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar File Nos. 14-1521, 14-1789

The State Bar of Arizona ("State Bar"), through undersigned Bar Counsel, and Respondent, Jeffrey A. James, who has chosen not to seek the assistance of counsel, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. 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 January 6, 2015. 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. On January 12, 2015, the State Bar received a letter from Complainant Leroy Montoya attached hereto as Exhibit "A.". Exhibit A appears to be an objection to the Agreement for Discipline by Consent given that it is dated three days after the State Bar sent its letter to Complainant Montoya informing him of the Agreement for Discipline by Consent. Exhibit A, however, includes information that is not related to the instant matter and information that predates Respondent's representation of Complainant Montoya.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.2, 1.3, 1.4, 1.16(d), and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline:

- A. Respondent shall be suspended from the practice of law in Arizona for a period of six months and one day; and
- B. Upon reinstatement, Respondent shall be placed on probation with terms and conditions of probation to be determined at the time of reinstatement.

Respondent requests that his suspension not be effective until March 15, 2015 because he has a two-week trial scheduled to begin on February 24, 2015 in Mohave County Superior Court, case no. CR2013-01173. Respondent states that the case involves a homicide that occurred on August 21, 2011 and that, if his suspension becomes effective while the trial is proceeding, it would result in the case being delayed for another year or more as new counsel would have to be appointed and new counsel would need time to become familiar with the voluminous disclosure materials. The State Bar does not oppose Respondent's request that his suspension not commence until March 15, 2015 given that this

would result in the suspension becoming effective only approximately two weeks after it would ordinarily become effective if it became effective within thirty (30) days of entry of a final judgment and order.

Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within thirty (30) days from the date of this order, and if costs are not paid within the thirty (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 "B."

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on October, 26, 1991.

COUNT ONE (File no. 14-1521/ McGrane)

2. In November of 2011, Scott Shire (defendant) was charged with five counts of endangerment and two counts of DUI. Respondent represented the defendant.

3. The court originally scheduled trial for September 26, 2012. On September 6, 2012, Respondent filed a motion to continue the trial because there was a delay in certain blood alcohol testing and, "[d]epending on the results of such toxicology", Respondent would need to arrange for an expert from California to testify at trial. The court granted the motion and subsequently scheduled trial for April of 2013.

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. On April 1, 2013, Respondent filed a motion to continue the April 2013 trial date, stating: "On March 22, 2013[,] the court denied the defendant's request for supplemental allocation of indigent funds for expert witness fees. The defendant is not able to secure the attendance of out of state expert witness . . . or [an] in-state expert witness . . . without making arrangements for payments of his expert witness fees. Counsel has consulted with the defendant and believes that with the continuance . . ., the defendant can make arrangements to pay such expert fees for trial."

5. The court granted Respondent's motion to continue.

6. On November 12, 2013, the court held a case transfer conference and entered a minute entry summarizing the same. The minute entry waives the defendant's appearance at the hearing, schedules trial for December 11, 2013, and states that "[c]ounsel for the Defendant shall file an Affidavit indicating the Defendant is aware of the trial date."

7. Respondent did not file the affidavit.

8. On December 6, 2013, Respondent filed a motion to continue the December 2013 trial date. Respondent wrote: "This motion is made for the reason that counsel has received communication from the defendant that the defendant is not prepared for trial due to mistakes of undersigned counsel and/or undersigned counsel's office. The defendant asserts that undersigned counsel cannot be prepared due to the alleged mistakes, which include . . . not having his file sent to an investigator, Blair Abbott, for review as requested. The defendant has demanded that counsel file the present motion on the foregoing basis and that the

mistakes of counsel will result in his constitutional rights being violated if this matter proceeds to trial as scheduled.”

9. On December 9, 2013, the court held a hearing on the motion to continue. In response to the court’s request for a more thorough explanation, Respondent informed the court: “Mr. Shire is not happy . . . that an investigator that he has wanted to look at the file didn’t receive a copy of the file. I thought it had been sent to this investigator sometime ago. I never had any contact with the investigator. . . . Mr. Shire believes that his constitutional rights are being violated. I’m not sure what all of that means but I had filed a motion, on his demands that I file a motion. . . .” Respondent further informed the court that his client requested that he send the file to the investigator in May or June, that his client followed up with him in October or November regarding the same, and that Respondent informed his client that “I believed it had been sent.”

10. During the hearing, the court stated: “And after the last hearing, because Mr. Shire was not present, I asked you to file an affidavit acknowledging the trial date even though he was present . . . on the date and time we set trial. What happened with that?” Respondent replied: “Judge, I dropped the ball. That’s my mistake. I know I spoke with Mr. Shire after the hearing. . . .”

11. The State informed the court: “Judge, I will say the State’s ready to go to trial this week. . . . We have one flying from Texas which is the biggest concern. We got a plane ticket last week when we confirmed the trial was going. . . . I think it seems clear . . . that the defendant has notice of the trial date. . . . [W]hile I would prefer the trial go . . . , I’ll leave it to the court because I think that’s a legitimate issue . . . on post-conviction.”

12. The court responded: "I'll go ahead [and] vacate the trial dates." The State then asked for sanctions because "it was a nonrefundable plane ticket." The court instructed the State to file a motion if it wanted sanctions. The State never filed a motion for sanctions.

13. On December 11, 2013, the court held another hearing and set a March 26, 2014 trial date.

14. On March 17, 2014, Respondent filed a motion to continue the March 26, 2014 trial date alleging that he had a scheduling conflict. The court granted Respondent's motion.

COUNT TWO (File No. 14-1789/Montoya)

15. On December 10, 2012, Respondent was appointed to represent Leroy Montoya ("Montoya") in an appeal of a conviction for trafficking of stolen property. A different attorney filed a notice of appeal for Montoya on November 26, 2012 in the court of appeals. The original due date for the appellate brief was February 11, 2013.

16. On December 12, 2012, Respondent filed his notice of appearance on behalf of Montoya but did so in superior court and not in the court of appeals.

17. On December 27, 2012, Montoya sent Respondent a letter listing his contact information and requesting that Respondent provide him certain transcripts.

18. Respondent did not timely respond to this letter and, on February 4, 2013, Montoya sent Respondent another letter writing: "I wrote you on 12-27-12. . . . It has been 56 days and you can at least of written a quick response letter of some kind of acknowledgement. However, you chose not to I will make this easy for you, go ahead and file a motion to withdraw as counsel from the above

cause. I can already see how this song will end and I don't need an attorney who can't write a 5 minute letter to me. . . . If I don't hear from you by Feb. 12, 2013, I will send out a motion to dismiss you as counsel . . . [a]nd, then file a complaint with the Arizona State Bar."

19. Respondent did not timely respond to this letter.

20. Respondent also did not file his opening brief by February 11, 2013. Respondent contends that he did not know it was due then because he did not file a notice of appearance in the court of appeals.

21. On February 21, 2013, Montoya filed a motion to dismiss counsel in the superior court because of Respondent's failure to communicate with him.

22. On March 5, 2013, because Respondent failed to file his opening brief, the court of appeals extended the due date until April 4, 2013 "or OSC [order to show cause] 4/17/13."

23. On March 7, 2013, another attorney who previously represented Montoya filed a motion to vacate order to show cause hearing in the court of appeals stating: "It is unknown why Mr. James [Respondent] did not file a notice with this Court or file a timely opening brief. However, since counsel undersigned does not represent Mr. Montoya in this appeal, it is requested that the Order to Show Cause hearing be Vacated."

24. On March 14, 2013, the court vacated the show cause hearing, ordered that the record reflect that Respondent was the attorney for Montoya, and ordered that the opening brief was due on April 22, 2013.

25. On March 17, 2013, Respondent sent Montoya a letter and apologized for not communicating with him and stating "[u]nfortunately, when your letters

came in[,] I was out of the jurisdictions both times and responses were not calendared.”

26. On March 28, 2013, the superior court scheduled a hearing for April 30, 2013 on Montoya’s motion to dismiss. The court subsequently vacated the hearing on the motion to dismiss after Respondent contacted Montoya and they mutually agreed to vacate the hearing.

27. On April 23, 2013, a day after his opening brief was due, Respondent filed a motion to extend the time for him to file his opening brief by 30 days. On April 29, 2013, the court extended the time for Respondent to file his opening brief until May 22, 2013.

28. On May 17, 2013, Montoya sent Respondent a letter requesting copies of certain documents.

29. Respondent did not respond to this letter.

30. Respondent did not file his opening brief by its new due date of May 22, 2013. Accordingly, on June 4, 2013, the court of appeals entered an order extending the time to file the opening brief until July 3, 2014 or “OSC 07/17/2013 (Jeffrey James).”

31. On July 2, 2013, Respondent filed his opening brief with the court of appeals on behalf of Montoya.

32. On July 19, 2013, Montoya sent Respondent a letter stating: “A few days ago I received legal mail from you. . . . I received the ‘Appendix to Appellant’s Opening Brief.’ Where is the opening brief. . . . [P]lease keep me in the loop on what you are doing? Mr. James, do you think I got play in my opening brief? What do you think?”

33. On July 25, 2013, Respondent sent Montoya a letter enclosing the opening brief and stating: "Yes, I do believe that there is a chance for success at your appeal. Once I receive the State's response[,] I will forward a copy to you and schedule a telephone call."

34. On August 25, 2013, Montoya wrote Respondent a letter asking if he could send Montoya "the address & cost for the Arizona Rules of Court."

35. Respondent did not respond to this letter.

36. On October 5, 2013, Montoya wrote Respondent again stating: "I have written you a few times & you have not responded, what's up? I just want an update on the progress of my appeal? Have you heard from the state in any capacity? I would at least want to hear from you or your office."

37. Respondent did not respond to this letter.

38. On or about November 15, 2013, the State filed its answering brief in the court of appeals.

39. Respondent failed to timely provide Montoya a copy of the State's answering brief.

40. Respondent did not file a reply brief in the court of appeals and did not consult with Montoya about his decision not to file a reply brief.

41. On December 1, 2013, Montoya sent Respondent a letter stating: "I would like any kind of update on the status of my opening brief—state's answer's deadline? Also[,] I wrote you on 8-25-13 & I received no response from you? Could you please respond to that letter . . . & this letter. . . . I am concerned that I haven't heard from you!" Montoya also wrote: "Did you ever contact [my PCR attorney] . . . , I hope you remember our phone conversation"

42. Respondent did not respond to this letter.

43. On December 5, 2013, Montoya sent a letter to Respondent and wrote: "Did the State request an extension to their answer brief? . . . Also, I have a few questions to ask? . . . What is the address & cost for an Arizona Rules of Court. . .? . . . What is a global motion?"

44. Respondent did not respond to this letter.

45. On January 23, 2014, Montoya sent Respondent a letter and wrote: "I have written you on: 8-25-13, 10-05-13, 12-1-13, 12-15-13 and now this letter today and you have not responded to any of my letters as of today. As of January 2, 2014, it has been 6 months since you filed my opening brief and I have absolutely no idea what is going on. Mr. James, this is my life & freedom that you are playing with & apparently you are not taking this appeal seriously. . . . Mr. James, I will give you until January 31, 2014 to set up a legal call with me and if you choose to not set up a legal call with me on or before Jan. 31, 2014, I will file a motion to dismiss you as my attorney with the court of appeals! Mr. James, what is going on with you?"

46. Respondent did not respond to this letter.

47. On January 24, 2014, Montoya filed a "motion to dismiss attorney" in the court of appeals stating that Respondent has not responded to his letters, only spoke with him once on the phone, and only sent him one letter.

48. Respondent did not file a response to this motion to dismiss attorney.

49. On February 22, 2014, Respondent sent Montoya a letter advising him that he attended oral argument at the court of appeals recently, summarizing the oral argument, and stating that he expected a decision within 60 days. Respondent

also sent Montoya a copy of the State's answering brief and the order scheduling the oral argument.

50. On February 26, 2014, Montoya sent Respondent a letter acknowledging receipt of Respondent's February 22, 2014 letter, asking for a transcript of the oral argument, and whether Respondent filed a reply brief. Montoya also requested that Respondent contact his post-conviction relief ("PCR") attorney, send this attorney a copying of the appellate briefing, and then also obtain certain documentation from this attorney.

51. Respondent did not respond to this letter.

52. On March 4, 2014, the court of appeals affirmed the trial court. Respondent did not timely provide Montoya a copy of the court of appeals' decision.

53. On March 24, 2014, Montoya sent Respondent another letter stating: "I wrote you last month (2-26-14) and I have not received a response from you. What's going on & will you be answering my questions? . . . [M]y question is, is it because I'm in prison & you think I'm some kind of piece of shit & you don't have to give me updates & respond to my many letters in the last 13 months? If that is your attitude . . . then, don't you at least give a fuck!"

54. On April 17, 2014, Respondent forwarded to Montoya the court of appeal's decision and wrote: "To my surprise, the court did not send your case back to the trial court for a re-sentencing. . . . You may have a basis to file a Petition for Post-Conviction Relief . . . , but I do not believe that there is any basis to seek a petition for review with the Arizona Supreme Court. I will attempt to schedule a legal call prior to May 6, 2014 to discuss your options."

55. When Respondent sent his April 17, 2014 letter to Montoya, the deadline for filing a petition for review with the Arizona Supreme Court had already expired.

56. On April 22, 2014, Montoya responded to Respondent's April 17, 2014 letter and wrote: "In your letter you stated 'to my surprise', are you that stupid in the Arizona law & its proper interpretation. . . . [W]e have a lot to talk about Jeff."

57. On April 23, 2014, Montoya received another letter from Respondent advising Montoya of Respondent's suspension from the practice of law commencing May 7, 2014 and further advising Montoya of another attorney who would associate while Respondent was suspended.

58. Montoya responded by sending a letter to Respondent stating the following: "It's just not me thinking you are a lousy attorney in the State of Arizona. Now I know why you said you would call me before May 6, 2014. Because your suspension starts May 7, 2014. . . . I hope you call before May 6, 2014."

59. Respondent did not call Montoya prior to the effective date of his suspension.

60. On May 4, 2014, Respondent moved to withdraw because he was not able to obtain written consent from Montoya for an association of counsel.

61. On May 19, 2014, Montoya wrote Respondent that he was not surprised "that you didn't call before May 6, 2014."

62. On May 22, 2014, Montoya demanded his file from Respondent.

63. On May 26, 2014, Montoya filed a motion in the court of appeals requesting the court to instruct Respondent to forward Montoya's file to him.

64. Respondent provided Montoya his file on June 27, 2014.

CONDITIONAL ADMISSIONS

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

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically violated Rule 42, ERs 1.2, 1.3, 1.4, 1.16(d), and 8.4(d).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss the allegation in count one of the complaint that Respondent violated ER 3.4(c) because of evidentiary issues.

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 sanction is appropriate:

- A. Respondent shall be suspended from the practice of law in Arizona for a period of six months and one day;
- B. Upon reinstatement, Respondent shall be placed on probation with terms and conditions of probation to be determined at the time of reinstatement.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the above terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule

60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within thirty (30) days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

LEGAL GROUNDS IN SUPPORT OF SANCTION

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

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

The parties agree that *Standard* 4.42 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.42 provides:

Suspension is generally appropriate when:

- (a) A lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or
- (b) A lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Respondent knowingly failed to communicate with Complainant Montoya, including by timely failing to provide Complainant Montoya with the court of appeals' decision in his case and by failing to consult with him regarding filing a reply brief with the court of appeals and a petition for review with the Arizona Supreme Court. Respondent also knowingly failed to respond to Complainant Montoya's letters that requested status updates. Respondent engaged in a pattern of neglect with Complainant Montoya by failing to timely file his appellate brief despite the court providing him extensions of time to do so. Respondent similarly engaged in a pattern of neglect by failing to send his client's file in count one to the investigator despite the fact that his client asked him to do so more than once.

The duty violated

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

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent acted knowingly in failing to communicate with Complainant Montoya and engaged in a pattern of neglect by failing to timely Complainant Montoya's appellate brief and in failing to provide his client's file in count one to the investigator, 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 potential harm to Respondent's clients and actual harm to the legal system in that the court had to expend resources in adjourning the trial in count one and in granting Respondent extensions of time to file his appellate brief in count two.

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(a): Prior disciplinary offenses. Respondent was suspended effective May 7, 2014 for forty-five (45) days for violating ERs 1.2, 1.3, 1.5(d)(3), 3.2, and 8.4(d). See PDJ No. 2013-9110.

Standard 9.22(c): Pattern of misconduct. Respondent continually failed to communicate with Complainant Montoya. Additionally, Respondent was previously diverted and suspended for similar misconduct. See State Bar File No. 12-0834 and PDJ No. 2013-9110.

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 attend the initial case management conference in this matter which resulted in the Presiding Disciplinary Judge holding a show cause hearing on November 20, 2014.

Standard 9.22(i): Substantial experience in the practice of law. Respondent was admitted to practice law in Arizona on October 26, 1991.

In mitigation: There are no applicable mitigating factors.

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: Suspension is the presumptive sanction. Given that Respondent has already been diverted and suspended for similar misconduct, the parties agree that a long term suspension of six months and one day is appropriate.

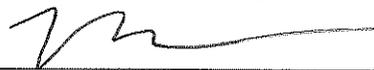
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

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 "C."

DATED this 30th day of January, 2015.

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 28th day of January, 2015.



Jeffrey A. James
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 2nd day of February, 2015.

Copies of the foregoing mailed/emailed
this 2nd day of February, 2015, to:

Jeffrey A. James

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Respondent

Copy of the foregoing emailed
this 2nd day of February, 2015, to:

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

Copy of the foregoing hand-delivered
this 2nd day of February, 2015, to:

Lawyer Regulation Records Manager
State Bar of Arizona
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Phoenix, Arizona 85016-6266

by: Jackie Demuth
NSK: jld

EXHIBIT A