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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **David K. Rosen,** **Bar No. 018589,** Respondent.	**PDJ-2013-9078** **AGREEMENT FOR DISCIPLINE BY CONSENT** State Bar No. 11-3932

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent David K. Rosen, who is represented in this matter by counsel, Nancy A. Greenlee, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER(s) 1.2(a), 1.3, 1.4(a)(3) and (4), 1.16(a) and (b), and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the

following discipline: Reprimand and one (1) year of probation to include participation in LOMAP and MAP. 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 "A."

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 18, 1997.

COUNT ONE (State Bar File No. 11-3932)

2. At the end of May 2010, Diane Graham, the CEO of STRATCO Global (the Client) and Complainant Cecilia Mancero, the Client's Vice President, retained Respondent to represent three of their closely affiliated entities, STRATCO, Inc., ECOPATH Industries, LLC and ECOPATH Contracting, LLC in three ongoing litigation matters. The entities design and develop equipment for the asphalt industry, and sell and lease polymer asphalt equipment to various companies.

3. According to Respondent, Complainant advised him that the Client was prepared to file bankruptcy and therefore, they wanted to take "a minimalist approach" to the defense in the litigation matters. Further, that the Client wanted to "buy time" to convince the plaintiffs and potential plaintiffs that it was pointless to pursue the Client because of its financial condition.

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[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 June 7, 2010, the Client executed a Legal Services Agreement, which provided that Respondent would represent the Client in "a variety of general legal matters." The Client was to pay a $3,000.00 retainer and Respondent would bill his time at the discounted hourly rate of $225.00 per hour.

5. According to Respondent, he agreed to accept a $3,000.00 retainer instead of the $5,000.00 that he initially requested based upon the Client's stated goal of wanting to take a minimalist approach to the litigation. The Legal Services Agreement does not, however, reflect any such limitation on the representation.

6. On June 8, 2010, Complainant paid the $3,000.00 retainer.

7. By letter dated July 1, 2010, Respondent billed the Client for services provided between May 25th and June 30th, 2010. There was an outstanding balance owed of $1,367.50. Respondent advised the Client that he would require an additional retainer of $5,000.00 to continue to represent the Client in all of the pending legal matters.

8. By letter dated August 1, 2010, Respondent billed the Client for services provided between July 1st and July 28th, 2010. The Client had not paid any additional retainer and there was an outstanding balance owed of $3,505.00. Respondent reminded the Client that he still required the additional retainer.

9. By letter dated September 1, 2010, Respondent billed the Client for services provided between August 2nd and August 30th, 2010. The Client had not paid any additional retainer and there was an outstanding balance owed of $5,620.00.

10. The Client never paid Respondent any additional attorney fees for services performed during the representation.

11. Respondent admits that by August 2010, he was "getting increasingly frustrated" with the Client, their "inability to provide authority to make reasonable settlement offers" and "their expectation that he handle their various legal matters without replenishing the retainer." He admits that he "became less prompt in his responses to them." Details of these shortcomings are set forth below. Further, "[t]o compound matters," Respondent was told that the Client had met with a bankruptcy attorney and that a filing "appeared imminent."

Mattivi Brothers v. Ecopath Ind.

12. In June 2010, Respondent began getting up to speed on *Mattivi Brothers v. Ecopath Industries, LLC.* which was pending in the Arizona District Court. The case involved claims for breach of contract, breach of express warranty and consumer fraud relating to the plaintiff's purchase of an asphalt rubber blending plant.

13. At the time Respondent was retained, the Client was represented by the Rose Law Group. Respondent states that it was unclear to him in June 2010, if he would simply serve in an advisory role or formally substitute in as counsel of record in the litigation.

14. On June 1, 2010, the plaintiff served discovery requests, the responses to which were due on July 6, 2010. The discovery requests included requests for admissions, interrogatories, and a request for production of documents.

15. On June 14, 2010, the plaintiff disclosed its expert and expert report. The Client's expert report was due by July 16, 2010, but according to Respondent, the Client decided not to spend the money to hire an expert.

16. On June 15, 2010, the Rose Law Group filed an ex parte application to withdraw for nonpayment of over $40,000.00 in attorney's fees. The application was denied because a corporate entity must have counsel.

17. On July 6, 2010, Respondent filed a notice of substitution as counsel of record for the Client. On the same day, Respondent submitted responses to the requests for admissions to plaintiff's counsel. Respondent responded to only the requests for admissions because it was "deemed most critical."

18. By email dated August 18, 2010, the Client provided Respondent with information relating to the outstanding discovery responses, as well as a rebuttal to the plaintiff's expert report. The Client advised Respondent that it would "leave it to your judgment whether the timing is right to bring up ulterior motives of the expert now or later, if at all, and how to do so."

19. On August 26, 2010, the Court conducted a telephonic conference regarding the Client's failure to respond to plaintiff's discovery requests and ordered that the Client do so by September 3, 2010. The Court advised that if the Client failed to do so, it would entertain a motion for sanctions, including default judgment.

20. By email dated August 27, 2010, Complainant referenced having met with Respondent at which time they were able to come up with "some kind of action plan." Complainant confirmed that Respondent would send her information the following Monday regarding the draft discovery requests, as well as information regarding a request received that day to conduct depositions. Complainant states in the email that the "alternative is to go back to the bankruptcy option."

21. Respondent did not respond to the request for deposition dates.

22. Respondent claims that he received information necessary for him to respond to the discovery requests the day before they were due.

23. Respondent admits that for some "inexplicable reason," he did not mail the discovery responses to plaintiff's counsel, although he initially thought that he had done so. Respondent suggests that he may have confused the deadline with a deadline for discovery responses in another case he was handling for the Client.

24. By email dated September 9, 2010, Complainant asked Respondent if there was "anything that we need to do at this time related to Mattivi."

25. By email dated September 14, 2010, Complainant asked for another status update and asked "what we need to do at this time."

26. By email dated October 13, 2010, Ms. Graham stated as follows: "We have all been asking for status reports on anything....What is it you need from us to get a response?" The re: line on the email was: "Are u still working for us?"

27. On October 29, 2010, plaintiff moved for a default judgment. Respondent did not respond to the motion.

28. By email dated November 5, 2010, Complainant complained that she was not receiving any "feedback" from Respondent; that he failed to participate in a scheduled telephone conference on that date and asked: "If you think you cannot help us, please let us know. We cannot forget the issues we have pending in the legal side."

29. By email dated November 12, 2010, Respondent apologized to Complainant for not responding sooner and stated that he had been out of the office for the past two weeks due to "some serious family issues." Complainant responded that they could speak about pending matters on the following Monday.

30. According to Complainant, Respondent stopped communicating with the Client after November 12, 2010.

31. In November 2010, and while the motion for default judgment was pending, the Client retained new counsel, Sarah Barnes, who entered her appearance in another pending litigation matter involving the Client. However, Attorney Barnes did not enter her appearance in this case.

32. On December 9, 2010, the Court granted the motion and entered a default judgment against the Client for approximately $270,000.00. An additional amount of approximately $19,000.00 was awarded for attorneys fees.

33. Respondent claims that the Client did not advise him that they had retained new counsel until December 2010.

34. On April 19, 2011, plaintiff filed an application for a writ of garnishment in an attempt to collect on the judgment.

35. During the first week of March 2011, Complainant asked Ms. Barnes to look into the status of this matter. However, the Client did not authorize Ms. Barnes to take immediate action because it was contemplating filing for bankruptcy.

36. On April 25, 2011, Ms. Barnes filed a motion to substitute in as counsel and filed a motion to set aside the judgment claiming excusable neglect and gross negligence of the Respondent. The motion was denied.

37. The Client filed an appeal, which was ultimately withdrawn. Complainant advised Ms. Barnes that she would seek a settlement with the plaintiff. Ms. Barnes discontinued representation at that time, because Ecopath was being liquidated and they would not be able to pay her any longer.

England v. Stratco et al.

38. The second case that Respondent handled for the Client was *Randall England vs. Stratco, Inc. and Ecopath Holdings, LLC*, CV2010-050198 in the Maricopa County Superior Court. This was an unpaid wages/breach of contract case. By the time that Respondent took over the case, the Rose Law Group had filed an answer on behalf of the Client, asserted a counterclaim for breach of the covenant not to compete and had conducted some initial discovery. Respondent was advised by the Client that the plaintiff had demanded $85,000 to settle the case, but that the Client did not intend to pay him anything.

39. Respondent states that the Client asked that he review the case and make recommendations, with the possibility that he would substitute in for the Rose Law Group as counsel of record.

40. On June 24, 2010, the Rose Law Group filed an ex parte motion to withdraw as counsel for the Client for nonpayment of attorneys' fees.

41. During July 2010, Respondent prepared responses to plaintiff's interrogatories, while he fielded questions from the Client regarding a variety of other legal matters.

42. On July 6, 2010, the Court granted the Rose Law Group's motion to withdraw. Respondent never entered an appearance with the Court in this matter.

43. On July 10, 2010, plaintiff filed a Motion to Compel the Client to respond to interrogatories.

44. On August 2, 2010, the Client advised Respondent that plaintiff's counsel had filed the motion to compel.

45. On August 18, 2010, Respondent received information from the Client that he apparently needed to complete the discovery responses.

46. On August 24, 2010, the Court granted the motion to compel and ordered the Client to respond to the interrogatories by August 28, 2010 (a Saturday).

47. Respondent mailed the responses to interrogatories to plaintiff's counsel on August 30, 2013, even though he had not entered his appearance of record.

48. On September 14, 2010, plaintiff's counsel filed a motion to dismiss the Client's counterclaim stating that the Client had not responded to the interrogatories as ordered by the Court.

49. By email dated September 15, 2010, Complainant provided Respondent with a copy of the motion to dismiss and expressed dismay that plaintiff's counsel was still sending filings to her attention because "a counsel had not been appointed."

50. Respondent admits that he did not "clearly communicate" with Complainant that he was never counsel of record and could not properly file a response to the motion to dismiss the counterclaim because 1) he was adhering to the directive to keep attorneys' fees to a minimum and take a "lay low" approach and 2) he had not been paid since the initial retainer was exhausted.

51. Respondent admits that he told Complainant that he would have his assistant call plaintiff's counsel on September 16th regarding the motion to compel, but he does not have any record of making the call.

52. Respondent admits that he did not file a response to the motion to dismiss.

53. On October 26, 2010, the Court granted the motion to dismiss the counterclaim.

54. By email dated October 29, 2010, Complainant forwarded a copy of the order to Respondent stating: "I don't think this is good for us. We need to have a strategy."

55. On November 23, 2010, Attorney Barnes filed an application for substitution of counsel of record with consent, which application was granted by the Court.

56. Respondent admits that he never filed a notice of substitution of counsel in the case. He claims that he tried to get information to support the counterclaim, which was never provided to him by the Client. And, that he tried to recommend that a settlement offer be made, but the Client never gave him any settlement authority.

57. Complainant states that the Client ultimately settled the case for payment of $12,500.00. The Client settled the case because it was cost-prohibitive to seek reinstatement of the counterclaim, which was dismissed due to Respondent's inaction.

58. According to Attorney Barnes, the settlement may have been "a little more" than what the Client would have had to pay if the counterclaim had not been dismissed.

CRM v. Ecopath Contracting

59. On June 30, 2010, the Client gave Respondent responsibility for *CRM of America, LLC vs. Ecopath Contracting, LLC*, CV2010-020302, which was pending in the Maricopa County Superior Court. CRM was a "crumb rubber" supplier who claimed that the Client owed it $265,000.00.

60. Respondent claims that the Client advised that they had been negotiating with CRM's owner and that they would continue to communicate with CRM regarding resolving the matter.

61. On August 10, 2010, Respondent filed an answer in the lawsuit, which already had a pre-judgment writ of garnishment, after he was advised that the Client had been unable to resolve the dispute.

62. On August 12, 2010, plaintiff filed a motion for summary judgment seeking over $80,000.00 after all offsets and credits. Respondent claims that he advised the Client about the motion, but was told that the Client needed to obtain documentation to see what, if any offsets existed. According to Respondent, the Client did not provide him with any such documentation.

63. By email dated August 27, 2010, Complainant referenced having met with Respondent at which time they were able to come up with "some kind of action plan." Complainant states in the email that they needed to discuss with Ms. Graham whether to wait for the court to rule on the motion for summary judgment or propose a payment plan to the plaintiff to resolve the case.

64. On September 27, 2010, the court granted the motion for summary judgment based upon the Client's failure to respond.

65. According to Respondent, at the end of September 2010, Complainant provided him with a draft "settlement letter" that she authored to one of plaintiff's principals. He further claims that Complainant told him that she did not see the benefit in responding to the motion for summary judgment when the money "was admittedly owed."

66. Respondent did not respond to the Motion for Summary Judgment. Complainant denies that she advised Respondent not to respond to the motion.

67. In October and November 2010, the plaintiff executed writs of garnishment. Respondent admits that he has no record of transmitting those papers to the Client. Complainant states that she did not learn about the order granting summary judgment until the court entered an order of garnishment.

68. The Client did not attempt to have the summary judgment set aside.

Termination of Representation

69. By email dated November 5, 2010, Complainant expressed her dissatisfaction over the lack of communication and Respondent's failure to participate in a scheduled telephone conference. Respondent did not respond to the email until November 12, 2013, at which time he stated that he had been dealing with "some serious family issues" and asked if they could speak the following Monday about pending cases.

70. On or about November 18, 2010, after becoming dissatisfied with Respondent's representation, Complainant met with Attorney Barnes to discuss the possibility of Attorney Barnes taking over the representation from Respondent.

71. By email dated December 2, 2010, Complainant terminated Respondent's representation and asked Respondent to forward all documentation on pending matters to Attorney Barnes.

72. Respondent admits that when the various matters began "to escalate and he continued not to be paid for his legal services, he should have moved to withdraw." He recognizes that he should have had a separate fee agreement for each matter, along with a separate advanced fee for each matter. He also acknowledges that he was "having a difficult time in August/September 2010 keeping track of all the various legal matters" that the Client had sent to him.

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., specifically ERs 1.2(a), 1.3, 1.4(a)(3) and (4), 1.16(a) and (b), and 8.4(d).

RESTITUTION

Restitution is not an issue in this matter. The Client paid Respondent only $3,000 for legal services. However, during the course of the representation Respondent billed the Client an additional $5,620 for legal services actually provided by Respondent. Those fees remain unpaid and Respondent agrees that he will not seek payment from the Client for same.

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: Reprimand and probation one year during which time he shall participate in MAP and LOMAP. Respondent shall also pay costs as set forth in Ex. "A" attached hereto.

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.2, 1.3, 1.4, and 1.16. LOMAP personnel shall develop Terms and Conditions of Probation and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude for one year from that date. Respondent shall be responsible for any costs associated with LOMAP.

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at 602-340-7334 or 800-681-3057, within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment. Terms and Conditions of Probation shall be developed if it is determined that the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will begin to run at the time of the entry of the final judgment and order and will conclude one year from that date. Respondent shall be responsible for any costs associated with MAP.

In the event that Respondent fails to comply with any of the foregoing probation 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 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 presumptive *Standard* 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; or a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. However, for the reasons set forth below, the parties believe that a deviation from this standard is warranted and that the appropriate sanction is a reprimand, with one (1) year probation to include MAP and LOMAP.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent's conduct was, in some instances, knowing and in others, it was negligent 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 both actual and potential harm to the client, the profession, the legal system, and the public.

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. Respondent's conduct violated the Rules of Professional Conduct in three (3) cases that he was handling for the client as described above.

In mitigation:

Standard 9.32(a) – absence of a prior disciplinary record;

Standard 9.32(b) – absence of a dishonest or selfish motive;

Standard 9.32(c) – personal or emotional problems. In the summer of 2010, Respondent was diagnosed and sought treatment for ADD. He continues to be treated for his condition, which will be monitored through MAP during the period of probation. Specific information relating to Respondent's treatment is covered by a protective order entered by the Presiding Disciplinary Judge on October 22, 2012. The information is being submitted under seal as Exhibit "C" attached hereto.

Standard 9.32(e) – full and free disclosure to disciplinary board or cooperative attitude toward proceedings; and

Standard 9.32(l) – remorse.

Discussion

The parties have conditionally agreed that a lesser sanction is appropriate under the facts and circumstances of this matter. This agreement was based on the following: Respondent has mitigation evidence that supports a deviation from the Guidelines, which has been set forth above. Respondent has not been the subject of any bar charges other the present matter. Given Respondent's lack of other bar charges, this matter appears to be an isolated instance of client neglect caused by Respondent's undiagnosed and untreated ADD condition. Respondent

avows that he has continued to treat his ADD since the summer of 2010 and that he is no longer experiencing issues with communication and diligence in client matters.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that sanction set forth above is within the range of appropriate sanctions 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 reprimand and one (1) year probation to include participation in MAP and LOMAP and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 30th day of August, 2013.

STATE BAR OF ARIZONA

Stacy L. Shuman

Stacy L. Shuman
Staff Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 28th day of August, 2013.

David K. Rosen
Respondent

DATED this 28th day of August, 2013.

Nancy A. Greenlee
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
this 30th day of August, 2013.

Copies of the foregoing mailed/emailed
this 30th day of August, 2013, to:

Nancy A. Greenlee
821 E. Fern Drive North
Phoenix, AZ 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

Copy of the foregoing emailed
this 30th day of August, 2013, to:

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

Copy of the foregoing hand-delivered
this 30th day of August, 2013, to:

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

By: Samantha Lesley
SLS:

FILED

JUL 17 2013

STATE BAR OF ARIZONA

BY

BEFORE THE ATTORNEY DISCIPLINE PROBABLE CAUSE COMMITTEE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **DAVID K. ROSEN,** **Bar No. 018589** Respondent.	No. 11-3932 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on July 12, 2013, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 8-0-1[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 11-3932.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 17 day of July, 2013.

Lawrence F. Winthrop

Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

[1] Committee member William J. Friedl did not participate in this matter.

Original filed this 17th day
of July, 2013, with:

Lawyer Regulation Records Department
State Bar of Arizona
4201 North 24th Street, Suite 100
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Copy mailed this 24th day
of July, 2013, to:

Nancy A. Greenlee
821 East Fern Drive North
Phoenix, Arizona 85014-3248
Respondent's Counsel

Copy emailed this 24th day
of July, 2013, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

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

by: Rodney T. Bruce

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 MEMBER OF THE STATE BAR OF ARIZONA, **DAVID K. ROSEN,** **Bar No. 018589** Respondent.	**PDJ-2013-9078** **FINAL JUDGMENT AND ORDER** [State Bar No. 11-3932] **FILED SEPTEMBER 20, 2013**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on August 30, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **David K. Rosen**, is hereby Reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this final Judgment and Order.

IT IS FURTHER ORDERED that Respondent shall be placed on probation for a period of one year.

IT IS FURTHER ORDERED that, Respondent shall contact the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a

LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.2(a), 1.3, 1.4(a)(3) and (4) and 1.16(a). LOMAP personnel shall develop Terms and Conditions of Probation, and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the final Judgment and Order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

Respondent shall also contact the State Bar's Member Assistance Program (MAP), at 602-340-7334 or 800-681-3057, within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment. Terms and Conditions of Probation shall be developed if it is determined that the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will begin to run at the time of the entry of the final Judgment and Order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with MAP.

In the event that Respondent fails to comply with any of the foregoing probation 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 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.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $1,200.00. 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 20th day of September, 2013.

/s/ *William J. O'Neil*

The Honorable 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 20th day of September, 2013.

Copies of the foregoing mailed/emailed
this 20th day of September 2013, to:

Nancy A. Greenlee
821 E Fern Dr North
Phoenix, AZ 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

Copy of the foregoing hand-delivered/emailed
this 20th day of September, 2013, to:

Stacy L. Shuman
Staff Bar Counsel
State Bar of Arizona
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Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

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

by: MSmith