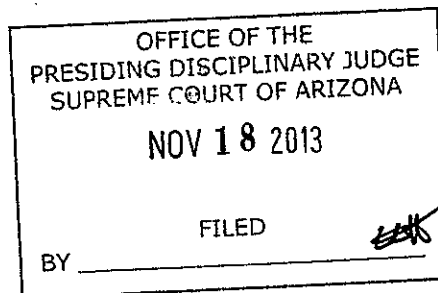


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Respondent's Counsel

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

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

**Steven E Sufrin,
Bar No. 014273,**

Respondent.

PDJ-2013-9079

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar No. 13-0316

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Steven E. Sufrin, who is represented in this matter by counsel, Gregory A. Riebesehl, 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.

Bar Counsel mailed a letter to the Complainant in this matter, Burl Swain, on or about October 16, 2013, informing Complainant of this consent agreement and

his opportunity to object to this agreement. Bar Counsel has not received any objection from Mr. Swain relating to this consent agreement.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER(s) 1.2(a), 1.3, 1.4, 3.2, and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Thirty (30) day suspension, followed by one (1) year of probation. The probation shall include participation in the Law Office Management Assistance Program (LOMAP).

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 December 1, 1992.

COUNT ONE (State Bar File No. 13-0316)

2. On June 1, 2010, Burl Swain retained Respondent to assist him in seeking modification of his spousal maintenance payments ordered in the Maricopa County Superior Court case of In Re the Matter of Diane Ruth Zwar and Burl Gene Swain, FN2004-090657.

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.

3. On June 3, 2010, Respondent filed a petition to modify spousal maintenance on behalf of Mr. Swain alleging that Mr. Swain could no longer afford the spousal maintenance payments. Respondent attached to this motion an Affidavit of Financial Information (AFI).

4. The court scheduled an evidentiary hearing relating to the motion to modify spousal maintenance for February 28, 2011, and ordered that the parties file a joint pretrial statement by January 28, 2013 and exhibits thirty days before the hearing.

5. Mr. Swain's ex-wife was represented by Amber Guymon during these proceedings.

6. On November 24, 2010, Ms. Guymon filed a motion to dismiss the petition to modify spousal maintenance, asserting that the spousal maintenance was not modifiable.

7. Respondent did not file a response to the motion to dismiss. On January 13, 2011, however, the court denied the motion to dismiss.

8. On February 25, 2011, Respondent and Ms. Guymon filed pretrial statements.

9. On February 28, 2011, the court held the evidentiary hearing on the motion to modify spousal maintenance during which Mr. Swain, his ex-wife, and his son testified. During the hearing, Ms. Guymon informed the court that Respondent did not provide her any exhibits, or a witness list, and never responded to her request to coordinate on the joint pretrial statement. Respondent informed the court that Ms. Guymon never contacted him regarding a joint pretrial statement.

10. During the hearing, Respondent failed to offer any exhibits. Respondent contends that this is because Mr. Swain never provided him with any exhibits, other than what he had already filed with the court with the petition and his pretrial statement including Mr. Swain's AFI and certain medical documentation.

11. Respondent failed to communicate with Mr. Swain after the hearing for months despite Mr. Swain calling Respondent and leaving him messages.

12. On April 26, 2011, the court entered a minute entry denying Mr. Swain's motion to modify spousal maintenance because Mr. Swain failed to establish substantial and continuing changed circumstances to warrant modification of the existing spousal maintenance. In denying the motion, the court noted that Mr. Swain's "resources are not fully known", that it is his "fault that [the] Court cannot fully assess them" and "as a result, the court draws a negative inference" against Mr. Swain. The court further noted that Mr. Swain "has not been truthful about his abilities to pay spousal support."

13. The court also granted Ms. Guymon a portion of her attorney fees and costs, requiring Ms. Guymon to file documentation to support the fees and costs by May 31, 2011 and providing Respondent an opportunity to object by June 15, 2011.

14. Respondent did not provide Mr. Swain a copy of the April 26, 2011 minute entry, or otherwise timely discuss it with him.

15. On May 11, 2011, Ms. Guymon filed an affidavit seeking \$8,456.00 in fees and costs. Respondent never filed a response or an objection to this affidavit, and did not provide Mr. Swain a copy of this affidavit or discuss it with him in a timely manner.

16. On May 25, 2011, Ms. Guymon filed a motion for clarification regarding spousal maintenance arrearages. The motion requested that the court address Mr. Swain's arrearages in support payments by ordering him to pay an additional \$300.00 per month until the arrearage amount is paid in full.

17. Respondent never filed a response to this motion for clarification, and Respondent did not discuss it with Mr. Swain in a timely manner and never provided him a copy of such motion.

18. In late May or early June of 2011, Mr. Swain states that he contacted the court and that this is when he learned about the April 26, 2011 minute entry. Mr. Swain then contacted Respondent about the aforementioned minute entry and they met in early June of 2011 to discuss the minute entry. At this meeting, Respondent informed Mr. Swain that he would have "take care of it."

19. Respondent never filed anything with the court regarding the April 26, 2011 minute entry.

20. On June 9, 2011, Ms. Guymon sent Respondent a letter reminding him of the court's April 26, 2011 minute entry and stating that Mr. Swain failed to pay the amount the court ordered. Ms. Guymon informed Respondent that, if Mr. Swain fails to pay the full amount that the court ordered him to pay within 30 days, "we will be filing a Petition for Contempt."

21. Respondent did not respond to this letter.

22. On July 27, 2011, the court ordered that Mr. Swain pay his ex-wife's attorney fees and costs in the amount of \$6,000.00, no later than August 31, 2011.

23. Respondent did not timely provide Mr. Swain with a copy of this order, did not timely discuss this order with him, and did not inform him that he had to pay Ms. Guymon's costs and fees by August 31, 2011.

24. On July 28, 2011, the court also granted the motion for clarification, requiring Mr. Swain to pay an additional \$300.00 per month in spousal support.

25. Respondent did not timely discuss this order with Mr. Swain or otherwise inform him that he had to pay an additional \$300.00 per month or provide him a copy of this order.

26. In August of 2011, Respondent moved offices and, because of this move, he contends that he did not timely receive certain letters from Ms. Guymon beginning in August of 2011.

27. Specifically, on August 4, 2011, Ms. Guymon sent a letter to Respondent stating that the court ordered his client to pay an additional \$300.00 per month but that Mr. Swain failed to do so. Ms. Guymon wrote: "My client is concerned that Mr. Swain is not receiving copies of court pleadings or correspondence we send to your office. Given that you have never responded to any of my letters and that you never responded to even one pleading that I filed with the Court, I have concerns myself. Please provide proof that Mr. Swain was advised of the Court's most recent order. I would hate to file a Petition for Contempt against an individual that had no notice of the order because his attorney failed to advise him."

28. Respondent did not respond to Ms. Guymon's August 4, 2011 letter and contends that this is one of the letters that he did not timely receive because of his office move.

29. In August of 2011, however, Mr. Swain received a copy of the August 4, 2011 letter with no return sender listed on the address. After receiving the letter, Mr. Swain contacted Respondent about the \$300.00 per month increase in support payments and Respondent advised him that he would take care of it.

30. On September of 2011, Mr. Swain received a copy of the July 27, 2011 minute entry in an envelope with no return sender. Mr. Swain contacted Respondent after he received the July 27, 2011 minute entry. Mr. Swain and Respondent met and Respondent informed him that he would take care of it.

31. Respondent did not file anything with the court regarding the July 27, 2011 or July 28, 2011 minute entries or take any other action to address these minute entries.

32. On September 13, 2011, Ms. Guymon sent another letter to Respondent enclosing the court's order regarding attorney fees, stating that they were due on August 31, 2011, and stating that "your client is in contempt for non-payment."

33. Respondent did not respond to this letter or consult with Mr. Swain regarding it. Respondent contends that he did not receive this letter for approximately two months because Ms. Guymon used his former address in sending this letter to him.

34. On November 11, 2011, Ms. Guymon sent Respondent a third letter again inquiring as to the payment of the attorney fees. Ms. Guymon wrote: "If I do not hear from you within ten . . . days. . . , we will proceed with a . . . petition for contempt."

35. Respondent did not respond to this letter, did not provide a copy of this letter to Mr. Swain, or otherwise discuss this letter with Mr. Swain. Respondent again claims that he did not immediately receive this letter because Ms. Guymon used his former address.

36. On December 21, 2011, Ms. Guymon filed a motion for contempt. The court scheduled a hearing on the motion for contempt for May 2, 2012.

37. Respondent did not file a response to the motion for contempt or otherwise contact Ms. Guymon to discuss the motion for contempt prior to the May 2, 2012 hearing.

38. Respondent informed the State Bar that a written response to the motion for contempt was unnecessary because "the issues were resolved amicably in short order."

39. On February 8, 2012, a process server served the motion for contempt on Mr. Swain. Mr. Swain then contacted and met with Respondent. Mr. Swain states that Respondent informed him that he would file a response to the motion, that the motion must be a mistake, and that he would "fix" the problem for Mr. Swain.

40. On April 13, 2012, Ms. Guymon filed a pretrial statement alleging that Respondent failed to correspond with her, failed to file a response to the motion for contempt, proffered no offers to settle, and failed to cooperate in the drafting of the pretrial statement.

41. On May 2, 2012, Respondent appeared on behalf of Mr. Swain for the contempt hearing. Immediately prior to the contempt hearing commencing, Respondent and Ms. Guymon discussed the contempt motion in the hallway of the

court building. Respondent informed Ms. Guymon that they needed to resolve the matter. Ms. Guymon states that she informed Respondent that they could have resolved the matter if Respondent had responded to her phone calls or letters.

42. The parties then settled the contempt motion and placed their settlement on the record with the court before the contempt hearing commenced.

43. The court then issued a minute entry on the same date stating that the parties reached a settlement whereby Mr. Swain must pay his ex-wife \$6,800.00 in fees and costs, continue to pay \$300.00 per month toward arrearages, and an additional \$100.00 per month to be credited to the \$6,800.00 in attorney fees.

44. Mr. Swain subsequently retained new counsel and, on November 9, 2012, filed a second Petition to Modify Spousal Support. On August 6, 2013, the court denied this second petition because Respondent again did not demonstrate a substantial and continuing change of circumstances.

45. If this matter were to go to hearing, Respondent would testify that Mr. Swain provided him an initial retainer, after that retainer was spent, he represented Mr. Swain on a pro bono basis and did not subsequently keep time records or documentation substantiating any communications he allegedly had with Mr. Swain. Respondent would further testify that he has since implemented the following procedures in his office: (a) all pleadings and letters are scanned into a client's file the same day that he receives the pleading or letter; (b) he now communicates court filings or other documentation with his clients by emailing them so that he retains a copy of the email for the file showing his communication; and (c) all of his files are backed-up on a daily basis and kept off-site.

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 ERs 1.2(a), 1.3, 1.4, 3.2, 8.4(d).

CONDITIONAL DISMISSALS

The State Bar conditionally agrees to dismiss the alleged ER 8.4(c) violation 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: Thirty (30) day suspension, followed by one (1) year of probation to include participation in the Law Office Management Assistance Program (LOMAP).

LOMAP

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(a), 1.3, 1.4, and 3.2. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time reinstatement and will conclude one

(1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

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* 4.2 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.2 provides that 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.

The parties agree that Respondent engaged in a pattern of neglect including by failing to respond to the motion to dismiss, the motion for clarification, the motion for attorney's fees, and the motion for contempt and in failing to

communicate with Mr. Swain regarding these motions and other correspondence he received from Ms. Guymon. The parties further agree that some of these failures were knowing. The parties further agree that Respondent's actions caused actual injury to Mr. Swain.

The duty violated

As described above, Respondent's conduct violated his duty to his client.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent knowingly failed to respond to certain motions, knowingly failed to adequately communicate with his client regarding the same, 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 client including because his ex-wife filed a motion for contempt against him which was not settled until the date of the contempt hearing.

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 informally reprimanded and placed on probation in file no. 04-1036 for violating ER 1.3 and 1.8(h). In file no. 04-1036, Respondent failed to timely file an appellate brief and entered into an agreement to settle his former client's malpractice claim without advising her in writing of the desirability of seeking independent legal counsel.

Standard 9.22(c): A pattern of misconduct.

Standard 9.22(i). Substantial experience in the practice of law. Respondent has been an Arizona attorney since December 1, 1992.

In mitigation:

Standard 9.22(m): Remoteness of prior offenses. Respondent's prior informal reprimand occurred in 2004.

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. Respondent's prior disciplinary offense is considered an aggravating factor but this prior disciplinary offense occurred approximately 9 years ago and remoteness of this prior offense is a mitigating factor. Additionally, although Respondent's conduct evidences a pattern of misconduct and this is an aggravating factor, Respondent's probationary period and participation in LOMAP should assist him in avoiding the misconduct that he engaged in relating to Mr. Swain.

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.

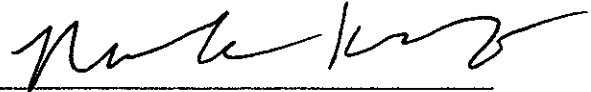
CONCLUSION

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 thirty (30) day suspension, followed by one (1) year of

probation to include LOMAP, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 15th day of November, 2013.

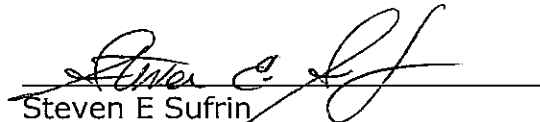
STATE BAR OF ARIZONA



Nicole S Kaseta
Staff Bar Counsel

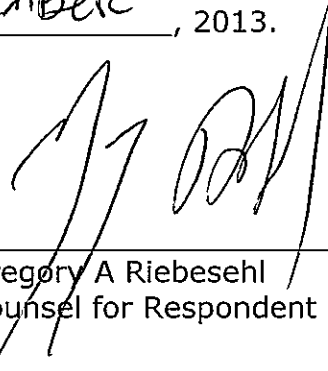
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property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

DATED this 14th day of November, 2013.



Steven E Sufrin
Respondent

DATED this 14 day of November, 2013.



Gregory A Riebesehl
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 18th day of November, 2013.

Copies of the foregoing mailed/emailed
this 18th day of November, 2013, to:

Gregory A. Riebesehl
Riebesehl Family Law Offices
4050 East Greenway Road, Suite 3
Phoenix, Arizona 85032-4700
Email: gregriebesehl@yahoo.com
Respondent's Counsel

Copy of the foregoing emailed
this 18th day of November, 2013, to:

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

Copy of the foregoing hand-delivered
this 18th day of November, 2013, to:

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

By: Jackie Deventer
NSK:jld

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

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

**STEVEN E. SUFRIN,
Bar No. 014273**

Respondent.

PDJ-2013-9079

FINAL JUDGMENT AND ORDER

[State Bar No. 13-0316]

FILED NOVEMBER 22, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on November 18, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Steven E Sufrin**, is hereby suspended for a period of thirty (30) days 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 Order.

IT IS FURTHER ORDERED that upon reinstatement, Respondent shall be placed on probation for a period of one (1) year.

IT IS FURTHER ORDERED that during the probation period of one (1) years, Respondent shall also complete the following:

LOMAP

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(a), 1.3, 1.4, and 3.2. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence upon reinstatement and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

NON-COMPLIANCE LANGUAGE

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, 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 \$1,236.16. 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 22nd day of November, 2013.

William J. O'Neil

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 22nd day of November, 2013.

Copies of the foregoing mailed/emailed
this 22nd day of November, 2013, to:

Gregory A. Riebesehl
Riebesehl Family Law Offices
4050 East Greenway Road, Suite 3
Sun City, Arizona 85032-4700
Email: gregriebesehl@yahoo.com
Respondent's Counsel

Copy of the foregoing hand-delivered/emailed
this 22nd day of November, 2013, to:

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Sandra Montoya
Lawyer Regulation Records Manager
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by: MSmith