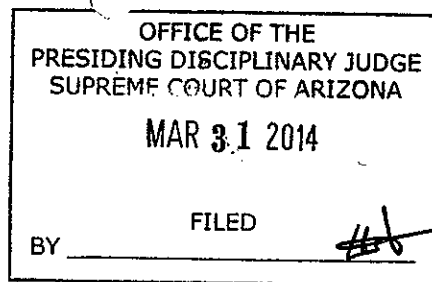


Nicole S. Kasetta, Bar No. 025244
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: 602 340-7250
Email: LRO@staff.azbar.org



Jeffrey A. James, Bar No. 013884
121 East Birch Avenue, Ste 403
Flagstaff, AZ 86001-4610
Email: Jeffrey.James@azbar.org
Respondent

**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 2013-9110

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar Nos. 13-1729, 14-0513

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 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.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant in State Bar file no. 13-1729, Donna Boeckman, by

letter on March 4, 2014. Complainant has 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. No objection has been received from complainant Donna Boeckman.

As part of this agreement, the State Bar has agreed to dismiss a bar charge filed in State Bar file no. 14-0513 against Respondent. Notice of this agreement, of such dismissal, and the complainant's opportunity to object was provided to the complainant in State Bar file no. 14-0513 on March 12, 2014. As discussed in the conditional dismissals section of this agreement, the complainant in State Bar file no. 14-0513 submitted a written objection to the State Bar.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, Ariz. R. Sup Ct., ERs 1.2(a), 1.3, 1.4, 1.5(d)(3), 1.16(d), 3.2, and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Forty-five (45) day suspension, followed by one (1) year of probation to include a Membership Assistance Program assessment, and compliance with any resulting recommendations. 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."

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.

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 26, 1991.

COUNT ONE (State Bar File No. 13-1729)

2. On September 2, 2007, Candice Wright's (Wright) husband was shot and killed in their home. During the investigation, an officer swabbed Wright's hands for gunshot residue (GSR) and took her clothing to test for the same. The State, however, never conducted the testing.

3. Wright was eventually convicted of second-degree murder.

4. On January 13, 2010, Respondent entered an appearance on behalf of Wright in the court of appeals.

5. Wright did not communicate with Respondent frequently but, instead, most correspondence with Respondent went through Wright's mother, Donna Boeckman (Boeckman).

6. On January 21, 2010, Boeckman executed a "retainer agreement" with Respondent for a "fixed fee" of \$5,000 for "[a]ppeal of conviction"

7. The retainer agreement does not include the language required by ER 1.5(d)(3).

8. Although Respondent originally provided Boeckman a copy of this agreement, they made revisions to the agreement and Boeckman requested a copy of the revised agreement from Respondent.

9. On March 8, 2010, Respondent filed a motion to extend the time for him to file his opening brief with the court of appeals. The court granted it until April 8, 2010. Respondent filed a second motion to extend the time to file his opening brief and the court of appeals granted it until May 10, 2010.

10. On March 20, 2010, Boeckman again requested a copy of the revised retainer agreement from Respondent. Respondent did not respond to this request.

11. On April 25, 2010, Boeckman sent a letter to Respondent stating: "I tried three times last week to reach you by telephone to no avail. . . . Once again, I would like to request that you mail a copy of the corrected [r]etainer agreement to me. . . . This is my third attempt since January. It would be appreciated if you could give me an update on the progress, or lack thereof, of the appeal as well as Candice's chances of getting a post-conviction bail release. We would both like to know what to expect of the steps that are being taken and will be taken."

12. Respondent did not timely respond to this letter.

13. In May of 2010, Respondent filed his opening brief in the court of appeals.

14. On May 23, 2010, Respondent sent a letter to Boeckman stating: "I apologize for the delay in getting back to you. Enclosed are copies of the original retainer agreement and the brief which was filed with the Court of Appeals."

15. On July 7, 2011, the court of appeals affirmed Wright's conviction.

16. On July 17, 2011, Respondent emailed Boeckman the court of appeals' decision and stated: "I will be making sure that a Petition for Review with the Arizona Supreme Court is timely filed. I will also be locating a forensics company to do a test of the GSR swabs taken . . . during the original investigation and prepare

the appropriate motions to have such accomplished. My original fee did not cover any review of the Court of Appeals['] decision or the forensics I would charge an additional \$2,500.00 to do the Petition for Review. This would cover additional research which is necessary for filing the petition with the Supreme Court and the paperwork to get going on the GSR testing. Please let me know if that is acceptable."

17. On July 24, 2011, Respondent sent Boeckman a letter stating: "This letter acknowledge's [sic] receipt of your payment of \$2,500.00 for the filing of a Petition for Review with the Arizona Supreme Court on Candace's case as well as filing with the trial court for access to the GSR evidence for independent testing."

18. Respondent and Boeckman agreed to have the clothing and swabs tested for GSR and, if the tests results were negative, raise this in a Post Conviction Relief (PCR) petition.

19. On August 8, 2011, Respondent filed a motion to extend the time in which to file a petition for review with the Arizona Supreme Court, which the court granted until September 8, 2011.

20. On August 22, 2011, Respondent forwarded to Boeckman this motion to extend and stated "I will speak with you next Tuesday." Respondent did not speak with Boeckman the following Tuesday.

21. On September 7, 2011, Respondent filed another motion to extend the time to file the petition for review.

22. On September 19, 2011, Respondent filed his petition for review with the Arizona Supreme Court.

23. On May 30, 2012, the Arizona Supreme Court declined to accept review.

24. On June 4, 2012, Boeckman advised Respondent that Wright received "a notice from the court that her case was denied." Boeckman further wrote: "[P]lease let me know [as] soon as possible how you will proceed with the PCR, how you go about it and how soon you can proceed."

25. On June 10, 2012, Respondent replied: "I will call you tomorrow . . . to discuss getting the PCR moving forward."

26. On June 12, 2012, Respondent filed a Notice of PCR.

27. Respondent did not, however, call Boeckman as he stated that he would in his June 10, 2012 email. Accordingly, on June 18, 2012, Boeckman sent Respondent an email stating "I have not heard from you. . . . It is now June 18 and no response. Please give me a status report."

28. Respondent did not respond to this email and on June 30, 2012, Boeckman sent Respondent another email observing: "It is now July 1 and no response. Don't you think you owe me the consideration of a reply? I have tried to contact you three times and just can't understand your style of communication."

29. On July 3, 2012, Respondent filed a motion to extend the time to file the PCR petition which the court granted until September 13, 2012.

30. Respondent did not respond to Boeckman's June 30, 2012 email and, on July 26, 2013, she again emailed Respondent, writing: "I have been attempting to contact you four times since June 18. Have you ever hired anyone who completely ignores you?"

31. On July 30, 2012, Respondent finally replied and wrote: "I should know this week when I can have access to the GSR swabs to get them independently tested. I hope to have a stipulation with the State filed on Thursday that those samples may be picked up by courier to be taken to an independent lab for the testing. I am looking at several forensics lab [sic] to do the testing. . . . I will call . . . Candice this coming Friday. I apologize for not getting back to you, but I did not mean to ignore your requests, but was waiting to be able to tell you something and did not have anything to tell you until I reached the agreement . . . this past Thursday to release evidence."

32. Respondent never called Wright as he stated that he would in his July 30 email.

33. On September 4, 2012, Boeckman emailed Respondent and wrote: "You have said you would **call** her [Wright] on August 16. That Friday and two more have come and gone with no communication. She would like to talk to you."

34. Respondent did not reply to this email.

35. On September 11, 2012, Respondent filed another motion to extend the time to file his PCR petition stating that he "needs additional [time] to conduct investigation as to the issues to be presented in the petition, including independent scientific examination of portions of the State's evidence. Counsel has been in consultation with a laboratory to conduct such examination, but needs additional time to finalize arrangements and have the evidence released from the custody of the . . . Police Department to the lab."

36. The court granted the motion and provided an extension until November 9, 2012.

37. On November 7, 2012, Respondent filed another motion to extend stating: “. . . the defendant’s independent scientific examination of portions of the state’s evidence has not been completed.”

38. On November 9, 2012, the court granted an extension until December 24, 2012.

39. On November 19, 2012, Boeckman sent the following email to Respondent in all capital letters: “I requested a status report a week ago regarding the GSR. If you haven’t heard from the lab, then please get on the phone and find out the status of the report as this has gone on for nearly two months by now. I expect a prompt reply.”

40. Respondent did not reply to this email.

41. On December 24, 2012, Respondent filed another motion to extend stating that “this motion is made for the reason that counsel needs additional time to complete his investigation as to the issues to be presented in the petition for post-conviction relief.”

42. The court granted an extension until February 15, 2013.

43. On February 14, 2013, Respondent filed another motion to extend stating that he needed “additional time for scientific examination to be completed of items of evidence to be released by the State.”

44. On February 15, 2013, the court entered granted an extension until April 19, 2013.

45. On February 17, 2013, Boeckman emailed Respondent and referred to ER 1.3.

46. Respondent did not reply to this email.

47. On February 25, 2013, Boeckman emailed Respondent and directed him to obtain the GSR evidence.

48. Respondent never obtained the GSR evidence.

49. Boeckman subsequently retained a new attorney for Wright and, on April 16, 2013, this new attorney sent a letter to Respondent stating that he is now representing Wright and requesting Wright's file.

50. Respondent did not immediately respond to this letter.

51. Respondent also did not file the PCR petition by April 19, 2013 and never had the GSR evidence tested.

52. Wright's new attorney placed numerous calls to Respondent and did not receive a response.

53. Respondent finally responded by email on May 14, 2013 and delivered Wright's file to the new attorney on May 20, 2013. Wright's new attorney did not know of the April 16, 2013 deadline for filing the PCR petition at this time.

54. Wright's new attorney subsequently had the GSR evidence tested, with the testing process taking only 2-3 weeks. The tests were positive for GSR on Wright's clothing.

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, 1.5(d)(3), 1.16(d), 3.2, and 8.4(d).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss the ER 3.3(a) allegation because of evidentiary issues.

The State Bar has also conditionally agreed to dismiss one screening file, State Bar file no. 14-0513, because this file would not have increased the sanction imposed and because there is not clear and convincing evidence of any ethical rule violation in this file. The complainant in State Bar file no. 14-0513 has filed an objection to this dismissal. See Exhibit "B."

In State Bar file no. 14-0513, the Respondent represented the complainant commencing in 2010 relating to criminal charges of aggravated assault and aggravated driving under the influence. The complainant in this file alleges that the Respondent failed to convey certain plea offers to him resulting in this complainant being sentenced to over 12 years in prison. Respondent denies this assertion and states that he conveyed all plea offers to this complainant. Even if there were clear and convincing evidence of an ethical rules violation in this file, which there is not, the State Bar believes that any communication issues that Respondent had relating to his clients were addressed in Respondent's participation in LOMAP in 2013. See, *infra*, footnote 2.

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: Forty-five (45) day suspension, followed by one (1) year of probation

to include a MAP assessment, and any terms recommended by MAP as a result of the assessment.

MAP

Respondent shall contact the State Bar's Compliance Monitor, Yvette Penar, at 602-340-7258, within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment by a health care professional selected by the State Bar. The compliance monitor, in consultation with bar counsel, shall develop "Terms and Conditions of Probation" if the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will commence at the time of reinstatement and will conclude one year (1) from that date. If the compliance monitor determines, however, that Respondent does not need the assistance of MAP, Respondent's probation will terminate after the MAP assessment and after the compliance monitor makes such determination. Respondent shall be responsible for any costs associated with the assessment, any treatment or testing, and/or monitoring, during the probationary period.

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.

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 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 obtain the GSR evidence and have it tested, filing numerous motions to extend the time to file the PCR petition, failing to file the PCR petition, and by

repeatedly failing to communicate with Boeckman and respond to her requests for information. The parties further agree that some of these failures were knowing. The parties further agree that Respondent's actions caused actual harm to Boeckman.

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 obtain the GSR evidence and have it tested, knowingly failed to communicate with his client, and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual harm to Boeckman in that Boeckman had to retain another attorney to obtain the GSR evidence and have it tested.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(c): A pattern of misconduct.

Standard 9.22(h): Vulnerability of victim. Boeckman is an elderly woman, who resides in California.

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

In mitigation:

Standard 9.32(a): Absence of a prior disciplinary record.²

Standard 9.32(c): Personal or emotional problems. See Exhibit "C" for Respondent's explanation of his personal or emotional problems.

Standard 9.32(e): Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

Standard 9.32(g): Character or reputation. Respondent has submitted two character letters to the State Bar. See Exhibit "D".

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. While Respondent has not been disciplined before, he was diverted to LOMAP for one year on December 21, 2012. Most of the misconduct that occurred in this matter occurred prior to Respondent entering into terms with LOMAP. Respondent has since successfully completed his terms with LOMAP. Accordingly, the parties believe that Respondent's prior participation in LOMAP combined with the probation period and his participation in MAP should assist Respondent in avoiding the misconduct that he engaged in relating to Boeckman.

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.

² However, in State Bar File No. 12-0834, Respondent was diverted to LOMAP for one year on December 21, 2012. *In Re Zawada*, 208 Ariz. 232, 238, n.4, 92 P.3d 862, 869 (2004), holds that absence of a prior disciplinary record is accorded little or no consideration when there is evidence of prior, known misconduct. *Id.*

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 forty-five (45) day suspension and one year of probation to include a MAP assessment, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "E."

DATED this 31st day of March, 2014.



Nicole S. Kaseta
Staff Bar Counsel

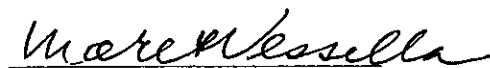
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property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

DATED this 22nd day of March, 2014



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 31st day of March, 2014.

Copies of the foregoing mailed/emailed
this 31st day of March, 2014, to:

Jeffrey A James
121 E Birch Ave Ste 403
Flagstaff, AZ 86001-4610
Jeffrey.James@azbar.org
Respondent

Copy of the foregoing emailed
this 31st day of March, 2014, 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 31st day of March, 2014, to:

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

by: Jackie Deuster
NSK: jld

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,**

**Jeffrey A. James,
Bar No. 013884**

Respondent.

PDJ 2013-9110

FINAL JUDGMENT AND ORDER

[State Bar No. 13-1729, 14-0513]

FILED APRIL 7, 2014

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on March 31, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Jeffrey A. James**, is hereby suspended for a period of forty-five (45) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective May 7, 2014.

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) year, Respondent shall complete the following:

MAP

Respondent shall contact the State Bar's Compliance Monitor, Yvette Penar, at 602-340-7258, within thirty (30) days of the date of this final judgment and order.

Respondent shall submit to a MAP assessment by a health care professional selected by the State Bar. The compliance monitor, in consultation with bar counsel, shall develop "Terms and Conditions of Probation" if the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will commence at the time of reinstatement and will conclude one year (1) from that date. If the compliance monitor determines, however, that Respondent does not need the assistance of MAP, Respondent's probation will terminate after the MAP assessment and after the compliance monitor makes such determination. Respondent shall be responsible for any costs associated with the assessment, any treatment or testing, and/or monitoring, during the probationary period.

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 Complainant's objection in State Bar file no. 14-0513 is rejected and that the bar charge in such file is dismissed.

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 \$1,200.00, within thirty (30) days from the date 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 7th day of April 2014.

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 7th day of April, 2014.

Copies of the foregoing mailed/emailed
this 7th day of April, 2014.

Mr Jeffrey A. James
121 E Birch Ave Ste 403
Flagstaff, AZ 86001-4610
Email: Jeffrey.James@azbar.org]
Respondent

Nicole S. Kaseta
Bar Counsel - Litigation
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: MSmith