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Respondent's Counsel

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

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

**WILLIAM L. CLEMMENS
Bar No. 003653**

Respondent.

PDJ 2014-9001

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar Nos. 12-1912 and 13-0574

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, William L. Clemmens, who is represented in this matter by counsel, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A formal complaint was filed in this matter on January 7, 2014. 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 complainants by letter on May 1, 2014. The 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. To date, no objection has been received.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER(s) 1.1, 1.3, 1.4, 1.5, 3.2, 8.1(b) and 8.4(d), and Rule 54(e). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Suspension for four months and one year of probation. 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." The parties have stipulated that if the consent agreement is approved by the Court, the period of suspension will become effective June 15, 2014.

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 April 27, 1974.

COUNT ONE (File no. 12-1912/Jarnagin)

2. Respondent failed to comply with the terms of his diversion in State Bar file number 12-1912. While Respondent completed the Law Office Management Assistance Program ("LOMAP") component of his diversion, he failed to attend ordered fee arbitration.

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. The State Bar Fee Arbitration Program sent correspondence to Respondent concerning ordered fee arbitration on June 15, 2012. When Respondent failed to respond, the fee arbitration file was closed on July 16, 2012.

4. After additional information was submitted by Complainant to the Fee Arbitration Program in September and November of 2012, the file was reopened. The new information and an agreement to arbitrate was forwarded to Respondent on November 16, 2012, but Respondent again failed to respond and the file was closed on December 17, 2012. None of the mail sent to Respondent was returned as undeliverable.

5. ACAP counsel sent a letter to Respondent on June 4, 2013, requesting a response concerning his failure to comply. Respondent failed to respond to the letter.

6. On July 30, 2013, ACAP counsel filed the aforementioned "Notice of Termination of Diversion as Unsuccessful and Referral to Bar Counsel."

7. A "Notice of Termination of Diversion as Unsuccessful and Referral to Bar Counsel" was signed by Attorney/Consumer Assistance Program ("ACAP") counsel on July 30, 2013.

8. When the Bar attempted to contact Respondent by phone on October 4, 2013, to investigate his failure to comply with diversion, Respondent did not answer. A message was not left because Respondent's voicemail was full.

9. On the same day, the Bar attempted to email Respondent at his email address listed in the member database and the email was returned as undeliverable.

10. Bar counsel eventually made contact with Respondent, who signed an agreement to participate in fee arbitration. After fee arbitration was conducted, Respondent paid the ordered fee arbitration judgment to Jarnagin.

11. Rule 54(e) subjects a lawyer to discipline for violating a term of probation or diversion. Respondent failed to comply with the terms of his diversion.

12. ER 8.1(b) requires a lawyer to respond to a lawful demand for information. Respondent failed to respond to ACAP counsel's request for information.

COUNT TWO (File no. 13-0574/Kendall)

13. Complainant Angie Kendall hired Respondent to take over as counsel in her suit against the seller of a defective home that she purchased. On June 8, 2011, Complainant paid Respondent an initial fee of \$2,000.

14. Kendall met with Respondent 5-6 times at his office during the course of the representation. Most of her time was spent with Respondent's paralegal preparing the case by reviewing photos and going over important dates.

15. Throughout the representation, Kendall had difficulty reaching Respondent. By her estimation, she made 20-25 unsuccessful communication attempts during his handling of the case.

16. After Respondent took over the case, Paula Williams, counsel for the defendant, wrote a letter to Respondent informing him that the parties were bound by a mandatory arbitration clause in the purchase agreement and that the lawsuit brought in the Superior Court by Respondent's predecessor was improper.

17. Kendall provided Respondent with a copy of the purchase agreement including the arbitration clause at the outset of the representation.

18. By letter of May 17, 2012, Respondent indicated to Paula Williams that he would talk to his client and get back to her regarding dismissal of the Superior Court matter and filing arbitration. However, he never communicated to her again.

19. On November 1, 2012, Respondent called Kendall and indicated that he was sending the case to "American Arbitrators" and that Kendall should expect to receive documents from them. However, Respondent failed to send the case to American Arbitrators.

20. When Kendall placed calls to Respondent to follow up, she received either messages indicating that his voicemail was full or left voice messages that were never returned.

21. Respondent failed to timely respond to the Bar's initial screening letter of May 6, 2013, and failed to timely respond to a follow-up letter of June 12, 2013.

22. As of October of 2013, no action of any kind had taken place in the case since April of 2012.

23. Respondent admits that he was not qualified to handle an arbitration matter and that he failed to timely withdraw from the matter because he was distracted by a personal business transaction.

24. Respondent retained all of the funds that he collected during the representation of Kendall until several months after the subject bar complaint was filed. He eventually issued a full refund, plus interest.

25. ER 1.1 requires a lawyer to provide competent representation to a client. Respondent, by his own admission, was not competent to handle an arbitration matter. When he was made aware by Paula Williams that the matter he was litigating was improperly filed, he failed to take any action for more than a year.

26. ER 1.3 requires a lawyer to exercise reasonable diligence and promptness in representing a client. Respondent failed to diligently prosecute his client's case and failed to diligently communicate with the opposing party.

27. ER 1.4 requires a lawyer to reasonably communicate with his client. Respondent consistently failed to return phone calls and emails and failed to keep his client informed as to the status of her case.

28. ER 1.5 requires a lawyer's fee to be reasonable. Although Respondent performed work in the case, it is unclear that he advanced the case in any way or provided work of any value to the client. Ultimately Respondent abandoned the client without notice.

29. ER 3.2 requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client. Respondent abandoned the case and took no action for more than one year.

30. Rule 8.1(b) requires a lawyer to respond to a lawful demand for information. Respondent failed to timely respond to letters from the bar of May 6, 2013, and June 12, 2013, respectively, requesting information.

31. ER 8.4(d) prohibits a lawyer from engaging in conduct prejudicial to the administration of justice. Respondent's abandonment of his client and failure to dismiss an action that he knew had been improperly brought in Superior Court was prejudicial to the administration of justice.

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, ER(s) 1.1, 1.3, 1.4, 1.5, 3.2, 8.1(b) and 8.4(d), and Rule 54(e).

RESTITUTION

Restitution is not an issue in this matter. Respondent has refunded his attorney's fees to both complainants.

SANCTION

Respondent and the State Bar of Arizona agree that based upon the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: suspension of four months and probation of 1 year to begin on the date of Respondent's reinstatement. During his period of probation Respondent will be required to maintain a practice monitor.

PROBATION

LOMAP (Practice Monitor)

Respondent has communicated with Arizona attorney, Dennis Wortman, who has agreed to serve as his practice monitor for a period of one year. Respondent is not being ordered to meet directly with LOMAP staff at this time, because he has agreed to withdraw from or conclude representation in all pending matters prior to the effective date of his suspension, except for representation of the Tri-City Regional Sanitary District and certain entities in which he currently possesses an ownership interest. Respondent has further agreed not to take on any new clients in the future. If respondent violates this agreement by taking on a new client, he will be required to meet with LOMAP staff monthly for a period of one year from the date

upon which such representation begins and will abide by any terms imposed by LOMAP.

Respondent understands that, at all times, his failure to maintain a qualified practice monitor, approved by bar counsel, may result in revocation of probation. Respondent further understands that no attorney-client relationship exists between Respondent and the practice monitor and specifically authorizes the Bar to provide the practice monitor with copies of this agreement. Respondent understands that the practice monitor's duty to report ethical misconduct is governed by ER 8.3.

At a minimum, the practice monitor must do the following:

1. Meet with Respondent no less than every sixty days for the first six months after his appointment to ensure that Respondent is abiding by his agreement to retain only one client, Tri-City Regional Sanitary District, and to refrain from taking on any new clients. Respondent will be permitted to provide legal work for entities in which he currently possesses an ownership interest. After the first six months, the Practice monitor may meet with Respondent on a quarterly basis.
2. Report any apparent breach of this agreement to LOMAP and, if appropriate under ER 8.3, report apparent violations of the Rules of the Supreme Court to Lawyer Regulation.
3. Submit quarterly reports to LOMAP regarding Respondent's compliance with the terms of this agreement.

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 a proper 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 lawyer knowingly fails to perform services for a client or engages in a pattern of neglect and causes injury or potential injury to a client.

The duty violated

For the reasons described in the above stated facts, Respondent's conduct violated his duty to his clients and the profession.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent knowingly, failed to timely respond to a State Bar investigation, failed to comply with an order of diversion, failed to reasonably communicate with his client, failed to diligently prosecute his client's case and failed to timely issue a refund of fees. In doing so, he engaged in conduct that 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 the client.

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.

Standard 9.22(c) a pattern of misconduct

Standard 9.22(d) multiple offenses

Standard 9.22(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules

Standard 9.22(i) substantial experience in the practice of law.

In mitigation: There are no mitigating factors relevant to this matter.

Discussion

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. In entering into this agreement, the State Bar has taken into account that Respondent has agreed not to take on any new clients in the future.

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 suspension from the practice of law for four months, beginning June 15, 2014, probation, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 23rd day of May, 2014



Hunter F. Perimeter
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 May, 2014.



William L. Clemmens

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CONCLUSION

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DATED this _____ day of May, 2014

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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 May, 2014.



William L. Clemmens

DATED this 23rd day of May, 2014.



Mark Harrison
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of May, 2014.

Copies of the foregoing mailed/emailed
this _____ day of May, 2014, to:

Mark Harrison
Osborn Maledon PA
2929 North Central Avenue, Suite 2100
Phoenix, AZ 85012-2765
mharrison@omlaw.com
Respondent's Counsel

Copy of the foregoing emailed
this _____ day of May, 2014, to:

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

DATED this 23rd day of May, 2014.



Mark Harrison
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

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Respondent's Counsel

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this 23rd day of May, 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 23rd day of May, 2014, to:

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

by: 
HFD/jao

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,**

**WILLIAM L. CLEMMENS,
Bar No. 003653**

Respondent.

PDJ 2014-9001

FINAL JUDGMENT AND ORDER

[State Bar No. 12-1912 and 13-0574]

FILED MAY 30, 2014

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the agreement for discipline by consent filed on May 23, 2014, pursuant to Rule 57(a) Ariz. R. Sup. Ct., hereby accepts the parties proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **William L. Clemmens**, is hereby suspended for four (4) months for his conduct in violation of the Arizona Rules of Professional Conduct, effective June 15, 2014.

IT IS FURTHER ORDERED that upon reinstatement, Respondent shall be placed on probation for a period of one (1) year. During that time he will be required to meet regularly with a practice monitor pursuant to the terms set forth in the consent agreement entered into in this matter.

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 \$ 1,200.00. 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 30th day of May, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 30th day of May, 2014, to:

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Respondent's Counsel

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by: [MSmith](#)