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Respondent's Counsel

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

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **Richard Mendel Wintory, Bar No. 022768,** Respondent.	**PDJ-2013-9089** **AGREEMENT FOR DISCIPLINE BY CONSENT** [State Bar No. 13-0465]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Richard Mendel Wintory, who is represented in this matter by counsel, J Scott Rhodes, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A Probable Cause Order was entered in this matter on July 17, 2013 and a Complaint was filed on October 1, 2013. 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 by letter on January 22, 2014. The Complainant was 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of a suspension of 90 days. 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

(State Bar File No. 13-0465)

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 24, 2003.

2. In a January 31, 2013, minute entry in Pima County Superior Court case no. CR20101551, the court referred Respondent to the State Bar to determine whether certain of his conduct in prosecuting criminal defendant Darren Goldin violated ethical standards.

3. The Goldin case concerned the defendant's involvement in a murder for hire plot, a crime for which the State initially sought the death penalty.

[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. To aid defense counsel in identifying mitigation evidence, the court recommended use of a confidential intermediary (CI) to locate the defendant's biological mother. Because the defendant had been adopted, neither he nor his defense counsel had any knowledge of his family's mental health history or whether his mother had used drugs or alcohol during pregnancy—information that could have been considered as mitigation evidence if the case had resulted in a conviction and proceeded to the penalty phase. In fact, the State ultimately elected not to pursue the death penalty in the case. The Attorney General's Office informed the State Bar that the allegations against Respondent were not the basis of its decision not to pursue the death penalty.

5. A CI was appointed by the Office of Court Appointed Counsel (OCAC) from a list of intermediaries approved by the Arizona Supreme Court. Her pay vouchers were to be reviewed and approved by defense counsel.

6. In June of 2011, the CI located and contacted the defendant's birth mother. On July 1, 2011, during a contentious meeting with defense counsel, the CI refused to share the birth mother's identity because she did not believe she had authority to do so. On July 2, 2011, the CI withdrew from the case and the birthmother filed an Affidavit of No Contact.

7. On July 6, 2011, defense counsel requested an *ex parte* hearing with the court to discuss his difficulties in obtaining information from the CI. The hearing was scheduled for August 22, 2011.

8. On August 8, 2011, the CI attempted to contact Respondent by phone at his office and left a message regarding her disagreement with defense counsel,

who she felt was improperly pressuring her to disclose information concerning the defendant's birth mother.

9. Respondent's secretary sent Respondent a text message that morning stating, "Please call when u have a minute. Received an interesting call re Hippert Thx ann". Attorney Thomas Hippert was the defense attorney in the case.

10. Phone records indicate that, the following day, August 9, 2011, a call was placed from Respondent's office line to the Confidential Intermediary Program of the Arizona Supreme Court. Respondent has stated that during the phone call he left a message for the CI with the CI's supervisor.

11. According to affidavits from the CI and Respondent's paralegal, who claims to have been present during the call, within fifteen minutes of hanging up with the supervisor, the CI called Respondent's office line and a discussion of unknown length occurred. According to affidavits from the CI, Respondent's paralegal, and Respondent's representations in this case, the CI did not address with Respondent any information related to the defense or defense strategy but rather discussed her concern that the defense was improperly pressuring her to reveal information that the birth mother did not want disclosed and, in addition, Respondent and the CI discussed the CI's desire to be represented by counsel, whether the State would provide counsel for her, and Respondent offered to research that possibility. The CI also informed respondent that Goldin's birth mother was adopted, that she had had no contact with Goldin's father for many years and believed him to be deceased, and that she was a smoker during the prenatal period.

12. Phone records reflect that on August 11, 2011, Respondent received an early morning call from the CI on his personal cell phone. Respondent returned the

call the same morning, while driving to work. Phone records reveal that the call lasted approximately 23 minutes. Respondent believes the call ended when he pulled into the garage at work.

13. Phone records also reveal that when Respondent arrived at his office that morning, he placed another phone call to the CI. The call was two minutes long. Respondent believes he called the CI back because the initial call had been cut off when he pulled into the garage. Respondent contends that the subject of this and all subsequent calls was whether the State would pay for her legal representation. Respondent further contends that he researched that issue and ultimately learned that the State would not provide representation for the CI.

14. On or about August 18, 2011, the CI hired private counsel, Bradley Thrush, to provide her with representation at the upcoming August 22, 2011, hearing concerning her disagreement with defense counsel.

15. On the way to court for the August 22, 2011 hearing, Respondent for the first time told his co-counsel, Nanette Morrow, that he had spoken with the CI. According to Morrow, she was left with the impression that Respondent had spoken to the CI only once. Respondent's position is that he had not disclosed his conversations with the CI to defense counsel or the court, because he did not believe he had an obligation to do so.

16. During the hearing, Respondent voluntarily disclosed to the court and to defense counsel that he had previously spoken with the CI concerning her attempts to contact the criminal defendant's birth mother. Respondent stated:

> . . . it seems like the Court is burning with some very common sense questions about what was said. I'm privileged to know it, there's no reason for the Court not to

know it or Mr. Hippert (defense counsel), from my discussions with Ms. Fornino (CI) prior to today.

17. Defense counsel immediately responded: "Judge, if I might, I think what Mr. Wintory is saying is that Ms. Fornino has shared things with him that she learned as a confidential intermediary. If that's true, then I think that's a gross violation of her confidentiality." Respondent replied: "I don't think so in the least ...."

18. The court stated, "My problem is that, how is – it seems like people are sharing information above and beyond what should be shared at this point. If that's true, that's concerning." No other discussion concerning Respondent's communications with the CI took place during the hearing. Respondent and the CI have both claimed that no confidential information related to the defense was shared with Respondent at any time.

19. On August 30, 2011, the CI again called Respondent. The conversation lasted 18.3 minutes. At the time, the CI was represented by counsel. Her counsel was aware that she planned to talk to Respondent about obtaining counsel through the State.

20. On September 9, 2011, defense counsel filed a Motion to Recuse Prosecutor and to Appoint New Confidential Intermediary. The motion sought to recuse Respondent and the Attorney General's Office from prosecuting the case as a result of Respondent's contacts with the CI. The contents of the motion make clear that defense counsel was only aware of one contact between Respondent and the CI.

21. In the motion, defense counsel alleged that the CI had violated A.R.S. § 8-134(C), which provides: "The confidential intermediary shall keep confidential all information obtained during the course of the investigation."

22. Morrow was assigned to prepare a draft response to the Motion to Recuse Prosecutor.

23. Within the Attorney General's Office, great scrutiny was given to whether office staff had witnessed the first call between Respondent and the CI because, at the time, Morrow and the Attorney General's Office believed only one phone call had taken place between Respondent and the CI and it would have been helpful to have a witness confirm that defense strategies were not discussed during the call. Respondent claims that no one specifically asked him if there was a witness to the first call, and he did not at that time remember a witness to that call. It eventually became clear that there were four phone calls, at least one of which took place while Respondent was alone in his vehicle. Respondent's position is that, at the time, he was focused on the only issue that he considered salient to the Motion to Recuse, i.e., whether he had received confidential defense information from the CI, and because he had only had one substantive conversation with the CI (the first conversation) that was the only relevant communication. Respondent in hindsight understands and accepts that, had he been less focused on his own conviction about what was relevant and material for the Motion to Recuse, he would have been more aware of the scrutiny being given internally at the Attorney General's Office to the fact that he had talked to the CI, and he would have taken definitive measures to make sure all relevant facts were known and presented internally and to the Court, including interviews with his staff and obtaining telephone records.

24. On September 12, 2011, Respondent returned a voicemail left by the CI. The conversation lasted approximately 5.5 minutes.

25. On September 19, 2011, Morrow discussed responding to the Motion to Recuse Prosecutor with Respondent. Respondent's position is that, at the time, he did not recall that a witness had been present for his first telephone conversation with the CI, that he did not tell Morrow he had participated in more than one conversation with the CI, and that he was not specifically asked that question. In hindsight, however, he accepts that his approach to the issues was too narrow, which caused him to miss the concerns and questions raised internally at the Attorney General's Office.

26. Morrow and Respondent jointly filed a Response to the Motion to Recuse on September 22, 2011. The Response mentioned only one conversation between Respondent and the CI. Respondent and Morrow both signed the Response.

27. On September 23, 2011, Respondent met with his supervisor, Kim Ortiz. Ortiz believed there had been only one conversation. Ortiz's notes of the meeting state: "No recording, no witness." According to Ortiz, she specifically asked whether Respondent's conversation with the CI had been recorded or whether a witness had been present and Respondent indicated that there had been no witness to the call and there was no recording. Respondent's position is that he did not mention a witness because at the time he did not remember there had been a witness to the first call. In a joint affidavit dated October 3, 2011, Morrow and Ortiz stated that Respondent "did not discuss having a third party present at the conversation." Respondent admits that he did not discuss whether there was a witness, but he denies he affirmatively represented there was no witness. Respondent's position is that, until October 3, he did not remember there was a witness.

28. On Friday, September 30, 2011, from approximately 3:00 to 5:00 p.m., Ortiz, Morrow and Respondent met to prepare for the hearing on the Motion to Recuse scheduled to take place the following Monday. They discussed the lack of a factual record to substantiate Respondent's position that his conversation with the CI did not interfere with the defense's strategy. Respondent informed Ortiz and Morrow of the final call from the CI, which was included in the affidavit.

29. During the meeting Respondent did not indicate that there had been a witness to the conversation with the CI. Respondent's position is that at that time, he did not recall that there had been a witness.

30. Around the time of the meeting, Respondent prepared a draft affidavit for Ortiz's review to supplement the Response that he and Morrow had filed on September 22, 2011. The draft affidavit did not mention a witness to the conversation with the CI, but did disclose the final communication with the CI that occurred on September 12, 2011, that was not disclosed in the September 22, 2011, Response to Motion to Recuse Prosecutor.

31. On Monday morning, October 3, 2011, Respondent revised, finalized and signed the affidavit pursuant to a deadline Ortiz had set and believing there would be a hearing on the Motion to Recuse that day. The revised affidavit did not mention the 18.3 minute conversation that phone records would later reveal took place on August 30, 2011, or the 23 minute phone call that took place on the morning of August 11, 2011. Respondent's position is that he did not think those calls were material because they pertained to the issue whether the CI could obtain state-funded representation and not to any subject related directly to the birth mother.

32. Additionally, in his October 3, 2011, affidavit, Respondent, for the first time, indicated that his paralegal had witnessed his initial call with the CI. Respondent's position is that his staff reminded him on October 3, 2011 that his paralegal had been present for the call, which he had not remembered until then, even though he specifically requested and arranged for the presence of that witness. When he first heard about it, he asked for his paralegal to prepare an affidavit and played no role in preparing it.

33. Upon learning that Respondent now claimed to have a witness to his initial conversation with the CI, Ortiz called her supervisor, James Keppel, to discuss her concerns about the last minute nature of the disclosure. Following the discussion, Ortiz sent Respondent the following email:

> Jim (Criminal Division Chief) concurs that the court is entitled to know that today is the first time Tari (the paralegal) being a witness to the phone call enters the picture. We filed a written response last week which never mentioned Tari and we have had discussions for the past two weeks which never mentioned Tari, which are inconsistent with the position being taken today. Accordingly, Nanette (Morrow) and I will be filing a joint affidavit to that effect . . . Richard (Respondent), I suggest you include in your affidavit whatever information you believe is relevant to explain why you lacked recall of Tari being a witness when Nanette filed the response or during the various conversations we have had individually and collectively the past two weeks.

34. The hearing on the Motion to Recuse Prosecutor was continued to give the defense time to present mitigation evidence to the Attorney General's Capital Review Committee. The defendant accepted a plea agreement before the court ruled upon the motion, but not before the following events occurred.

35. On March 2, 2012, the State produced redacted phone records for Respondent's and his secretary's office lines in a Rule 15 supplemental disclosure.

36. On April 4, 2012, the State also disclosed Respondent's redacted cell phone records that Respondent had obtained and provided.

37. On May 3, 2012, because of the pending Motion to Recuse, Ortiz removed Respondent from the case and named Morrow lead counsel.

38. On June 26, 2012, the CI's attorney provided the CI's cell phone records to the defense and the State. The records revealed that Respondent had engaged in a 23 minute cell phone call with the CI on August 9, 2011 and an 18 minute call on August 30, 2011.

39. Because the records contained phone calls that had not been detailed in Respondent's affidavit, the State filed a supplemental response to the Motion to Recuse Prosecutor to clarify the record.

40. On August 6, 2012, the State filed a Notice of Withdrawal of Capital Allegation.

41. In a January 13, 2013, minute entry, the court accepted the defendant's guilty plea to second degree murder and ordered him to a mitigated sentence of eleven years of imprisonment. The court found mitigating factors to include "... the defendant's acceptance of responsibility, remorse as indicated by the defendant's counsel, and the apparent misconduct allegedly engaged in by the prior prosecutor in this matter."

42. The court, in the same order, referred the matter to the State Bar requesting that the Bar conduct an investigation of the handling of the matter by Respondent.

43. Respondent violated ER 8.4(d), which prohibits a lawyer from engaging in conduct prejudicial to the administration of justice. Respondent engaged in

multiple conversations, of significant length, with the CI who had been appointed to assist defense counsel in uncovering mitigation evidence. As a result of the conversations, the defense filed a Motion to Recuse Respondent and the Attorney General's Office from the case. Respondent had additional conversations with the CI even after concerns had been raised about the communications and after the defense filed its Motion to Recuse. Respondent did not inform his co-counsel or his supervisors that he had engaged in multiple conversations with the CI and, in his Response, Respondent mentioned only one conversation with the CI, when there had in fact been several. In an affidavit that he later filed to supplement his Response, Respondent detailed one additional phone communication but did not inform his superiors, colleagues or the court of his two longest phone conversations with the CI.

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 8.4(d).

CONDITIONAL DISMISSALS

Were this matter to proceed to a contested hearing, the State Bar would contend that Respondent deliberately withheld information about his contacts with the CI from the court, defense, and his colleagues and superiors. The State Bar would further contend that he did so in a dishonest attempt to hide the fact or avoid even the allegation that he had communications with the CI and that had he revealed those communications he risked embarrassment, drawing the court's ire, his own and the

Attorney General's Office's disqualification, and his possible firing. Respondent would contend that his conduct was not deliberate or intentional, but instead was in good faith with no intent to deceive. Respondent acknowledges that he failed to appreciate that there were concerns raised at the Attorney General's Office that needed to be understood and addressed and that he was focused on his own theory that the only relevant issue related to the Motion to Recuse was the substance and not the number of communications he had with the CI. The parties agree that Respondent first disclosed that he had communicated with the CI to the court and opposing counsel at the first hearing on the issue and that he did so voluntarily. In view of the State Bar's burden of proof by clear and convincing evidence, and in exchange for Respondent entering into this Agreement for Discipline by Consent, the State Bar has conditionally agreed to dismiss allegations that Respondent violated ERs 3.3(a) and 8.4(c).

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: suspension of 90 days.

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(b) is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.42(b) provides that Suspension is generally appropriate when a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Respondent repeatedly communicated by phone with a confidential intermediary who had been appointed to assist the defense in uncovering mitigation evidence. As a result of Respondent's contact with the confidential intermediary, the Defense moved to have Respondent and the Attorney General's Office recused from the prosecution of Darrin Goldin. Before responding to the Motion to Recuse, Respondent did not inform the court, his co-counsel or his supervisors of the extent of his conversations with the confidential intermediary. Specifically, Respondent referred to only one conversation in filing a Response to the Motion to Recuse, and he subsequently filed an affidavit that detailed only one additional phone conversation, but excluded his two longest phone conversations. Respondent accepts that he caused actual or potential prejudice by failing to disclose the extent of his communications with the CI. To the extent that Respondent was unable to remember all of his communications he should have obtained all relevant

phone records before filing his response and affidavit with the court. If he had not been so "single-minded" in his approach to the Motion to Recuse, the Attorney General's Office would not have faced possible recusal, and the court and victims would not have wondered whether the ultimate outcome of the Goldin case was influenced by the allegations against Respondent. As a result of Respondent's conduct, the Attorney General's Office ran the risk of being recused from the case and the victims ran the risk of having to seek justice through another prosecution office. Ultimately, the defendant accepted a plea agreement before the court ruled on the Motion to Recuse.

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 negligently failed to inform the adverse party, the court, his co-counsel and his supervisors of the number of phone conversations that he had with the confidential intermediary. The parties agree that his conduct was in violation of the Rules of Professional Conduct. However, had this matter proceeded to hearing rather than being resolved by consent agreement, the State Bar would have contended that Respondent knowingly engaged in dishonest conduct. Respondent would have contended that, while negligent, he acted in good faith and had no intention to be dishonest or to deceive the Court or his colleagues.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential harm to the client, the profession, the legal system and the public. Although no evidentiary hearing occurred about his conduct and no judicial findings were made, the parties prepared and filed motions which led the Court to be concerned about his conduct and to refer the matter to the State Bar, which then expended its resources in investigating and prosecuting this matter.

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(d) multiple offenses: Respondent failed to obtain, review and disclose relevant facts and to detail the extent of his communications in responding to a Motion to Recuse and then omitted conversations of a significant length in a subsequent filing.

Standard 9.22(i) *substantial experience in the practice of law: Respondent has been an Arizona attorney since 2003, but has been a prosecutor in Oklahoma, at least since the early 90's. He has extensive experience in trying capital cases.*

In mitigation:

Standard 9.32(a): absence of a prior disciplinary record

Standard 9.32(e): full and free disclosure to the disciplinary board

If this case were to proceed to a hearing, Respondent would also introduce as mitigation evidence his extensive contributions to the legal profession through years of teaching seminars on a statewide and national level on subjects related to training prosecutors, defense counsel, law enforcement and judges on issues related to

constitutional law. Respondent is a former Prosecutor of the Year and has also received other awards and commendations for his years as a prosecutor.

While presenting the above-described information as mitigation, Respondent would also have accepted responsibility that his experience should have guided him to broaden his focus beyond his conviction that only the substance of the first telephone call with the CI was material to the Motion to Recuse, and, if he had so broadened his focus, he would have recognized that some internal concerns raised by his interaction with the CI also should have been addressed.

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. 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.

Stipulation to Shorten Time Before Judgment and Order of Suspension is Effective.

The parties stipulate to shorten the waiting period before the Judgment and Order of suspension becomes effective from 30 days to 15 days. *See* Rule 72(d), Ariz.R.Sup.Ct.

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 of 90 days and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 14th day of February, 2014.

STATE BAR OF ARIZONA

Hunter F. Perlmeter
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 February, 2014.

Richard Mendel Wintory
Respondent

DATED this 14th day of February, 2014.

J Scott Rhodes
Counsel for Respondent

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DATED this _____ day of February, 2014.

STATE BAR OF ARIZONA

_____
Hunter F. Perlmeter
Staff Bar Counsel

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DATED this 20th day of February, 2014.

_____
Richard Mendel Wintory
Respondent

DATED this _____ day of February, 2014.

_____
J Scott Rhodes
Counsel for Respondent

that the objectives of discipline will be met by the imposition of the proposed sanction of suspension of 90 days and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this _____ day of February, 2014.

STATE BAR OF ARIZONA

Hunter F. Perlmeter
Staff Bar Counsel

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DATED this 14th day of February, 2014.

Richard Mendel Wintory
Respondent

DATED this 14th day of February, 2014.

J Scott Rhodes
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 14th day of February, 2014.

Copies of the foregoing mailed/emailed
this 14th day of February, 2014, to:

J Scott Rhodes
Jennings Strouss & Salmon, PLC
One E Washington St Ste 1900
Phoenix, AZ 85004-2554
Email: srhodes@jsslaw.com
Respondent's Counsel

Copy of the foregoing emailed
this 14th day of February, 2014, to:

Honorable Mark S. Sifferman
Acting Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 14th day of February, 2014, to:

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

By: _____
HFP:jd

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 WEST WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **RICHARD MENDEL WINTORY, Bar No. 022768,** Respondent.	**PDJ-2013-9089** **AMENDED FINAL JUDGMENT AND ORDER** [State Bar No. 13-0465] **FILED MARCH 5, 2014**

The undersigned Acting Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on February 14, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly,

IT IS HEREBY ORDERED that Respondent **Richard Mendel Wintory** is suspended for ninety (90) days his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective fifteen (15) days from February 28, 2014, the date the original Final Judgment and Order was filed.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

IT IS FURTHER ORDERED that, pursuant to Rule 72, Ariz. R. Sup. Ct., Respondent shall 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 $1,911.10. 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 5th day of March, 2014.

Mark S. Sifferman

Mark S. Sifferman,
Acting Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 5th day of March, 2014.

Copy of the foregoing mailed/emailed
this 5th day of March, 2014, to:

J. Scott Rhodes
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by: /s/ LHopkins