

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

AUG 21 2013

BY _____ FILED

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Hunter F. Perlmeter, Bar No. 024755
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

Sandra L. Slaton, Bar No. 006454
Slaton Law Office PC
6730 N Scottsdale Rd Ste 233
Scottsdale, AZ 85253-4416
Telephone: 480-483-2178
Email: Slaton@sandraslatonlaw.com
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,
PAUL J. MATTERN,
Bar No. 015487,**

Respondent.

PDJ-2013-1011
**AGREEMENT FOR DISCIPLINE BY
CONSENT**
State Bar No. 13-0464

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Paul J Mattern, who is represented in this matter by counsel, Sandra L. Slaton, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER 1.3, 1.4, 3.2, 8.4(d), and Rule 41(g). Upon acceptance of this agreement, Respondent agrees to accept imposition of suspension of six months

and two years 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."

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 May 21, 1994.

COUNT ONE (State Bar File No. 13-0464)

2. The State Bar received a complaint from a Yuma County Superior Court judge concerning Respondent's representation of clients in five matters: CR2009-00342 (McCluskey), CR2009-01172 (Mendoza), CR2011-00132 (Aguirre), CR2010-01494 (Contreras) and CR2010-00389 (Ayala).

CR2009-00342 (McCluskey)

3. On August 27, 2010, Respondent was appointed to represent the defendant in CR2009-00342 In Post-Conviction Relief (PCR) proceedings.

4. On January 25, 2011, Respondent requested an extension of time to file a petition.

5. On May 6, 2011, Respondent's Motion to Extend Time was rejected. The court noted that the motion and order had been forwarded to the court with the wrong case number and "this Court's judicial assistant has left emails with counsel to correct the matter and no action has been taken."

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

6. On June 9, 2011, the court received a letter from the defendant, which began with the following:

I am writing you this letter in regard to a problem I seem to have with my counsel, Mr. Paul J. Mattern who represents me in a rule 32 Post Conviction Relief case #s1400cr200900342 which is before our court.

I truly regret the need I feel to address this issue with you but I find no other course of action available to me since I have tried every avenue with Mr. Mattern and have not received any response from him.

7. The letter went on to explain that Respondent had not responded to any letters requesting documents or any of the defendant's legal calls.

8. On the same date, Respondent filed an extension of time to file his petition. The court granted the motion and ordered that the petition be filed by July 25, 2011.

9. On July 29, 2011, Respondent requested an additional sixty days to file his petition and the court granted the motion.

10. On October 7, 2011, Respondent again filed a Motion to Extend Deadline to File Petition, requesting an additional sixty days. The extension was granted, but Respondent failed to timely file a petition.

11. On December 15, 2011, the court issued the following order: "Defendant filed a Notice of Post Conviction Relief on August 23, 2010. Counsel was appointed on August 27, 2010. Although counsel has been granted numerous extensions of the deadline to file a Petition for Post-Conviction Relief, none has been filed. It is ordered dismissing the Notice of Post-Conviction relief filed on August 23, 2010."

Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

12. On July 10, 2012, Respondent wrote a letter to the defendant in which he stated, "I got delayed last month with scheduling. I had a number of deadlines in which it was necessary to complete them first. Legally, getting deadlines completely legally (sic) takes precedence to visiting a client – and I had to complete them."

13. In September of 2012, Respondent drafted a Motion to Reinstate Petition and to Extend Time, in which he indicated that he had "mistakenly missed the deadline which with (sic) to file a Motion to Continue in the instant matter." He provided the signed pleading to his client, dated September 6, 2012, but never filed it with the court.

14. In responding to the Bar, Respondent has explained, "As previously order (sic) many years ago, Mr. Mattern followed what he believed to be proper procedure by sending both the original and all orders directly to the trial judge. He believe (sic) this is what happened here, and somehow (for reasons that he cannot explain) it was not filed." Respondent has indicated that he knew the proper manner in which to file pleadings with the court, but he followed what he understood to be a customary procedure.

15. In a September 5, 2012, letter, Respondent wrote to the defendant: ". . . I am sorry that I was unable to fly to visit you. As you can see from the enclosed receipts, this was a pre-paid ticket, and I felt this was serious enough to visit you personally. I will make another trip out as soon as I can arrange it. I will also attempt to set up additional phone call with you and your mother. I again greatly apologize." Respondent attached a receipt for a flight from Tucson to Phoenix.

16. On February 4, 2013, the defendant, pro-per, filed a Notice of Post-Conviction Relief stating, "Mr. Mattern never filed a brief making any claims and led me to believe the case was moving forward when in fact it had been dismissed. Neither Mr. Mattern nor the court notified me of the dismissal until after I recently filed a complaint with the Bar. I am including a motion sent to me by Mr. Mattern after my complaint where he admits he let my case go." The included motion was the September 6, 2012, Motion to Reinstate that Respondent had not filed.

17. On February 26, 2013, the court issued an order noting that Respondent "should have sent a copy of the order (order of dismissal) to his client and further found that Respondent had failed to provide proper legal assistance to the defendant. The court set aside the dismissal of the Notice of Post Conviction Relief and Respondent was ordered removed from the case.

18. Respondent's position is that he did advise his client that the matter had been dismissed.

19. In 2013, the defendant filed a new petition for Post Conviction Relief and a new attorney was appointed to represent him.

20. Respondent's position is that for much of this representation he was dealing with the same emotional difficulty that was found to be a mitigating factor in the resolution of State Bar File No. 12-0320: the sexual assault of a family member. Respondent has provided the State Bar with a copy of a police report concerning the alleged incident.

CR2009-01172 (Mendoza)

21. In 2011, in CR2009-01172, Respondent was appointed to represent the defendant in PCR proceedings.

22. On February 5, 2012, Respondent filed a Motion to Extend Time to File Post-Conviction Relief. The motion was granted on February 10, 2012, and an extension of sixty days was given.

23. Respondent failed to timely file a petition. On April 27, 2012, the court found that Respondent had "not filed a Petition for Post Conviction Relief or Notice advising the Court that the Defendant does not have a colorable claim." Respondent was ordered to appear and explain why he had failed to comply with Rule 32 at a May 30, 2012, hearing.

24. Respondent filed an Emergency Motion to Continue on the day of the May 30, 2012, hearing and the matter was continued until June 13, 2012.

25. On June 11, 2012, Respondent filed a Motion to have OSC Hearing in a Sealed Courtroom, or in Chambers but on the Record. In the motion he explained that it would be necessary for him "to discuss at length a situation in which a family member of his was sexually assaulted."

26. As indicated above, this issue was considered as mitigation in Respondent's prior bar discipline case (State Bar File No. 12-0320) that resulted in an admonition in August of 2012. Respondent, in that discipline matter, indicated to the Bar that he first became aware of the issue concerning his family member in April of 2011. Respondent's position is that such issues continued to effect his practice through the time of the OSC hearing.

27. At the June 13, 2012 hearing, the court quashed the Order to Show Cause and Respondent advised the court that he would be filing a Notice of Completion. In the Notice of Completion that he filed that day, Respondent indicated that he would not be filing a petition and requested that the court allow

the defendant forty-five days to file any pro-per petition he desires. Such filings generally indicate to the court that the attorney is unable to identify an issue that would entitle a defendant to relief from conviction.

28. On August 15, 2012, the Court granted the request to allow the defendant 45 days to file a petition and the defendant chose not to file a petition.

CR2010-01494 (Contreras)

29. On August 19, 2011, Respondent was appointed in CR2010-01494, to represent the defendant in PCR proceedings.

30. On December 15, 2011, Respondent filed a Notice of Completion indicating that he was unable to ethically file a petition and motioned the court to grant the defendant 45 days to file a pro-per pleading.

31. On December 15, 2011, Respondent was ordered to mail the PCR record to the defendant and file a certification of mailing with the court.

32. On February 28, 2012, the court, set an Order to Show Cause hearing requiring Respondent to appear "regarding proof of filing certificate of mailing to the Defendant." The hearing was scheduled for March 14, 2012.

33. On March 13, 2012, the hearing was vacated. Although not specifically indicated in a minute entry, the court has indicated that Respondent indicated in writing that he had mailed the record.

34. On June 5, 2012, having failed to receive a PCR petition from the defendant, the court dismissed the proceedings.

35. On June 25, 2012, the defendant, pro per, moved to vacate the dismissal. In the pleading, he indicated that Respondent had not responded to his letters and had not contacted him concerning issues to be raised in a PCR petition.

The defendant also indicated that he had not received a copy of the Notice of Completion filed by Respondent, despite Respondent's certification that he mailed it.

36. The court vacated the dismissal and ordered Respondent to immediately provide the defendant with all pertinent records by July 16, 2012. The Court also set a status conference for July 25, 2012, to ensure that Respondent had complied with the order.

37. On July 25, 2012, Respondent failed to appear for the status conference. Respondent has provided the Bar with an email that he sent to the court's judicial assistant thirteen minutes after the start of the hearing stating: "I have been attempting to contact CPO for the past hour via email AND telephone so I could initiate 3-way - I also left messages and am checking for an email response from. Paul. 928-779-0602." The defendant appeared and indicated that Respondent had not provided him with a copy of his file and the hearing was reset for July 26, 2012.

38. On July 26, 2012, Respondent filed "Memorandum Regarding: Supplemental Transmission of Court Legal File; Request Grant (sic) the Defendant Additional Time, Until September 10, 2012, to File Petition if Any". In the pleading Respondent avowed that he had transmitted a second copy of the file to the defendant. Respondent further indicated, "due to the fact that this matter was previously closed, this information and copies of these materials were obtained from storage, which delayed the mailing of these and additional written communication with the client until July 21, 2011."² Respondent went on to explain

² Respondent appears to have erred in providing a 2011 date rather than a 2012 date.

that the delay "prevented this Memorandum from being placed in the custody of the United States Postal Service for mailing to this Court until July 23, 2012."

39. A hearing was held that day during which the Defendant advised the court that he still had not received a copy of the file from Respondent. Respondent, who was present telephonically, was ordered to file a confirmation of Defendant's receipt of the file no later than August 2, 2012.

40. On July 31, 2012, the court received an empty envelope from Respondent. The court's judicial assistant contacted Respondent and informed him that proof of providing the file to his client was needed "ASAP."

41. On August 2, 2012, Respondent filed a pleading entitled Proof of Transmission of File, in which he provided evidence that the defendant had signed for a copy of his file on July 26, 2012. In the pleading he voiced concern about the court having ex parte communication with his client during a status conference that he failed to attend.

42. In an August 9, 2012, order, the court informed Respondent that the only communication the court had had with his client was on the record and was related to continuing hearing dates due to Respondent's inability to be present. The court admonished Respondent that he should "review the record before making statements regarding his concerns of improper conduct by this Court."

43. Respondent's position is that in voicing his concerns to the court regarding ex parte communication, he was only trying to protect his client, which as a criminal defense attorney, he had a duty to do.

CR2011-00132 (Aguirre)

44. Respondent, in CR2011-00132, was appointed to represent the defendant in PCR proceedings on February 15, 2011.

45. On April 27, 2012, the matter was dismissed. The court found that Respondent had not filed a Petition for Post Conviction Relief or a notice advising the court that the Defendant does not have a colorable claim. Respondent was ordered to appear on May 30, 2012 and explain why he had failed to comply with Rule 32.

46. On May 30, 2012, the court issued an order continuing the hearing because of an Emergency Motion to Continue by Respondent. The hearing was continued until June 13, 2012.

47. On June 13, 2012, Respondent appeared. Following discussion, the court quashed the order to show cause.

CR2010-00389 (Ayala)

48. The defendant in CR2010-00389 appealed his conviction and Respondent was appointed to provide him with representation in his direct appeal.

49. Division One of the Court of Appeals affirmed the conviction in a memorandum decision filed on July 24, 2012.

50. On September 14, 2012, Respondent filed a Notice of Post-Conviction Relief in Yuma County Superior Court and sought appointment of PCR counsel for the defendant.

51. Attorney Terri Capozzi was appointed and on November 16, 2012, Capozzi filed a Motion to Extend Filing of PCR. In the motion, Capozzi stated, "Undersigned counsel has requested a copy of Defendant's file from Defendant's

appellate attorney, Paul J. Mattern, but has not yet received the file." The court granted the motion.

52. On January 29, 2013, on the court's own motion, a status conference re: Post-Conviction Relief was scheduled for Wednesday, February 6, 2013. The order indicated that Respondent would be permitted to appear telephonically.

53. Respondent failed to appear for the February 6, 2013, hearing. By minute entry, the court noted Respondent's failure to appear and Capozzi asked the court to intervene in helping her to obtain a copy of the defendant's file from Respondent. Respondent believes he received the minute entry notifying him of the hearing on the day of the hearing and did not have notice of the hearing itself.

54. Respondent was ordered to provide a copy of the file to Capozzi by February 13, 2013. The court stated, "should Mr. Mattern fail to provide the Defendant's file to Ms. Capozzi by February 13, 2013 at 5:00 p.m., Mr. Mattern shall appear at the Status Hearing currently set on February 27, 2013" The court indicated that Respondent would be held in contempt if he failed to follow the Court's Order.

55. On February 22, 2013, Respondent filed a Notice of Delivery of File to PCR Counsel; Request to Continue of (sic) Vacate OSC Hearing Set for Monday, February 25, 2013 to Allow Counsel to Brief the Cause for His Delay in Providing the File."

56. In the filing, Respondent stated, "While there was significant delay in transmitting the file in this matter, counsel suffered a delay in receiving an initial Order issued by this Court dated January 29, 2013, which Ordered counsel to appear at a status conference which had already passed by the date Counsel

received that order." Respondent further indicated that he had received an emailed minute entry from the court two days prior to the status conference, but had not read it until after the status conference had passed. Respondent requested additional time to investigate mailing issues with his staff and brief the court.

57. On February 26, 2013 Capozzi and the Prosecutor filed a Stipulation to Vacate the February 27, 2013 hearing, "for the reason and on the grounds that Mr. Paul Mattern has delivered Defendant's file to undersigned counsel for Defendant."

58. The Court granted the order and vacated the hearing.

Text Messaging

59. On May 8, 2013, the Yuma County Superior Court judge who brought Respondent's conduct to the Bar's attention again contacted the State Bar and indicated that she had been contacted by an attorney who had received disturbing text messages from Respondent around the hour of 4 a.m. The text messages concerned the judge's decision to contact the State Bar regarding the matters detailed above.

60. In the text messages Respondent referenced taking depositions at gunpoint:

I wanted 2 find where Cyndi [Respondent's wife] took the gun and do gunpoint depos like cops do. Cndnt find gun or see computer 2 email so u guys paid when I texted. My phone was closer and u guys paid. Know why ur pissed but better than taking depos at gunpoint, no? Sorry again.

61. The recipient of the text messages, attorney Mary Perez, contacted Yuma Police and the Bar concerning the text messages. Perez has explained that she was particularly concerned because of the odd hour of the text messages and the anger Respondent had expressed towards the judge who had filed a bar

complaint against him. Respondent's counsel, has spoken with Yuma Police and no further investigation will take place concerning the text messages.

62. The documentation itself reflects that the text messages in question were sent to Ms. Perez on May 6, 2013, two days before Ms. Perez's contact on May 8th to the judge. Also, between May 6th and May 8th Ms. Perez and Mr. Mattern continued to exchange text messages with each other. Respondent has indicated to the Bar, that Respondent "could have been joking and I think he most likely was, but I was not going to be quiet about what I received. A police report was made and the officer did take pictures of the text messages and write a report, though he did not feel charges were necessary."

63. Respondent, through counsel, has indicated that "any text messages sent or text discussions with Ms. Perez reflected a familiar relationship where inside jests were traded on a regular basis - They jested, joked exaggerated, and boasted with each other as fellow lawyers, colleagues and "friends" for about eight years."

COUNT TWO (13-1257)

64. Respondent represented client Rick Kosterow in an appeal of his criminal conviction in Court of Appeals Division One case no. 1 CA-CR 08-0150.

65. Kosterow has indicated that Respondent failed to timely respond to his attempts to communicate and provided inadequate representation. Respondent disputes this claim.

66. On May 8, 2008, Respondent filed a Notice of Appearance and Motion for Extension of Time. The court granted the motion and set a due date of June 12, 2008 for Respondent's opening brief.

67. On June 16, 2008, Respondent filed a Motion to Re-Set Deadline to File Opening Brief. The request was granted and Respondent was given until July 18, 2008 to file his brief. In the order granting the continuance, the court stated, "[a]bsent compelling circumstances, no further extensions will be granted.

68. Respondent failed to file his brief by July 18, 2008. His position is that the failure related to a calendaring error that resulted from his high case load at that time. According to Respondent, immediately upon catching the error, he filed a motion requesting additional time that was deemed moot by the appellate court as that court had already issued its own order allowing Respondent to file the brief by September 2, 2009. In the order, the court indicated that if Respondent failed to comply with the deadline, he would be required to appear before the court on September 16, 2008 to show cause why sanctions should not be imposed.

69. On September 2, 2008, Respondent again moved to extend the deadline for filing his opening brief. The court granted the motion and extended the deadline until October 6, 2008. In the order, the court vacated the prior order to show cause and set a new show cause date of October 15, 2008, in the event that Respondent failed to comply.

70. On October 6, 2008, Respondent again moved to extend the deadline indicating that his wife's mother had recently died. The court granted the motion and extended the deadline until November 6, 2008. The prior show cause date was vacated and a new show cause date of November 19, 2008, was scheduled.

71. On November 16, 2008, Respondent again moved for an extension. The extension was granted until November 17, 2008. Respondent filed his brief on November 17, 2008.

Rule Violations

72. ER 1.3 requires a lawyer to act with reasonable diligence and promptness in representing a client. Respondent repeatedly failed to meet filing deadlines. Additionally, he failed to timely mail documents to his client's new counsel and to his client.

73. ER 1.4 requires a lawyer to reasonably communicate with a client. Respondent failed to adequately inform at least one client of the status of his case and failed to timely provide documents to Attorney Capozzi.

74. ER 3.2 requires a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client. Respondent repeatedly failed to timely meet filings on behalf of his clients and repeatedly moved to extend filing deadlines.

75. ER 8.4(d) prohibits a lawyer from engaging in conduct prejudicial to the administration of justice. Respondent's failure to meet court deadlines and failure to appear for hearings, resulted in potential prejudice to his clients and to the court system.

76. Rule 41(g) requires a lawyer to avoid engaging in unprofessional conduct. Respondent sent unprofessional text messages at an early hour to another attorney concerning conducting depositions at gunpoint. Respondent's position is that such text messages were sent in jest, but acknowledges that they were extremely unprofessional.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.4, 3.2, 8.4(d), and Rule 41(g).

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 6 months and 2 years probation.

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 potential future reinstatement. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ER's 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 the date of reinstatement and terminate two years from that date. Respondent shall be responsible for any costs associated with LOMAP.

TREATMENT PLAN

Respondent shall contact the State Bar's compliance monitor within thirty (30) days of potential future reinstatement and provide a treatment plan prepared by his health care provider to be implemented during the two year probationary period. Respondent will provide quarterly reports from his health care provider to

the State Bar's compliance monitor concerning his treatment 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(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 failed to expedite litigation on behalf of his clients and was not diligent in meeting court deadlines or attending court hearings. Respondent's failures appear to have been the result of negligence.³

The duty violated

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

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent negligently failed to meet court deadlines and failed to appear for court hearings. Respondent acknowledges 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 potential harm to Respondent's client, the profession and the legal system.

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 received an admonition for similar conduct in 2012 for violations of ER 1.1, 1.3, 3.2, and Rule 54(d).

Standard 9.22(c): A pattern of misconduct: Respondent failed to act diligently and comply with court orders in several matters.

In mitigation:

Standard 9.32(c): Personal or Emotional problems. Respondent filed a police report in 2011 related to what he believed to be sexual abuse against a family member. Respondent has indicated that issues related to the incident negatively impacted his mental state and ability to practice. He has received treatment related to the incident.

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 Respondent's repeated failure to expedite litigation, failure to timely meet filing deadlines and failure to appear for hearings. A greater sanction was not considered because Respondent's failures were negligent.

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 suspension of six months followed by two years probation and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

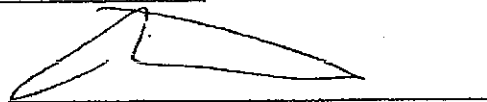
DATED this 21st day of August, 2013.

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.

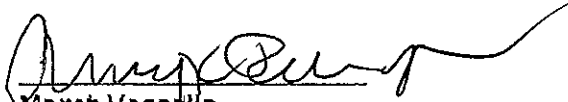
DATED this 20th day of August, 2013.


Paul J. Mattern
Respondent

DATED this 20th day of August, 2013.


Sandra L. Slaton
Counsel for Respondent

Approved as to form and content


Maret Yessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 21st day of AUGUST, 2013.

Copies of the foregoing mailed/emailed
this 21st day of AUGUST, 2013, to:

Sandra L. Slaton
Slaton Law Office, PC
6730 N. Scottsdale Road, Suite 233
Scottsdale, Arizona 85253-4416
Email: Slaton@sandraslatonlaw.com
Respondent's Counsel

Copy of the foregoing emailed
this 21st day of AUGUST, 2013, to:

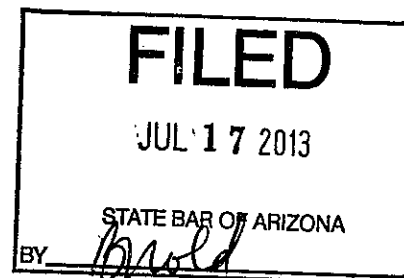
William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 21st day of AUGUST, 2013, to:

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

By: 
HFP/lmc

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



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

No. 13-0464

PAUL J. MATTERN,
Bar No. 015487

PROBABLE CAUSE ORDER

Respondent.

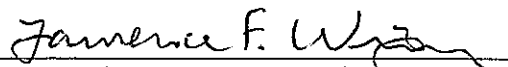
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona (“Committee”) reviewed this matter on July 12, 2013, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar’s Report of Investigation and Recommendation, and Respondent’s Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 13-0464.

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

Parties may not file motions for reconsideration of this Order.

DATED this 17 day of July, 2013.



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

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

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

Copy mailed this 19th day
of July, 2013, to:

Sandra L. Slaton
Slaton Law Office, PC
6730 North Scottsdale Road,
Suite 233
Scottsdale, Arizona 85253-4416
Respondent's Counsel

Copy emailed this 19th day
of July, 2013, to:

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

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

by: Jessie M Casablance

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,**

**PAUL J. MATTERN,
Bar No. 015487**

Respondent.

PDJ-2013-9071

FINAL JUDGMENT AND ORDER

[State Bar No. 13-0464]

FILED SEPTEMBER 5, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on August 21, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Paul J. Mattern**, is hereby suspended for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, for a period of six (6) months effective sixty (60) days from the date of this Order.

IT IS FURTHER ORDERED that upon reinstatement, Respondent shall be placed on probation for a period of two (2) years under the following terms and conditions:

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within thirty (30) days of the date of the Order of Reinstatement. Respondent shall submit to a LOMAP examination of his

office's procedures, including, but not limited to, compliance with ERs 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 is effective the date of the Order of Reinstatement and will conclude two years from that date. Respondent shall be responsible for any costs associated with LOMAP.

TREATMENT PLAN

Respondent shall contact the State Bar's compliance monitor within thirty (30) days of the Order of Reinstatement and provide a treatment plan prepared by his health care provider to be implemented during the two year probationary period. Respondent will provide quarterly reports to the State Bar's compliance monitor concerning his treatment.

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 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 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 5th day of September, 2013.

/s/ William J. O'Neil

**The Honorable William J. O'Neil
Presiding Disciplinary Judge**

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 5th day of September, 2013.

Copies of the foregoing mailed/emailed
this 5th day of September, 2013, to:

Sandra L. Slaton
Slaton Law Office, PC
6730 N. Scottsdale Road, Suite 233
Phoenix, Arizona 85253-4416
Email: Slaton@sandraslatonlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered/emailed
this 5th day of September, 2013, to:

Hunter F. Perlmeter
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

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

by: MSmith