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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**DARRELL J. DUNCAN,
Bar No. 029022,**

Respondent.

PDJ 2020-9066

State Bar File No. **20-0320, 20-0580,
20-0741, 19-2894,
And 20-1096**

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, and Respondent Darrell J. Duncan who is represented in this matter by counsel, Nancy A. Greenlee and Patricia A. Sallen, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on August 5, 2020. A formal complaint was filed with respect to 20-0320, 20-0580, and 20-0741 on August 11, 2020. The parties agreed to include two additional matters, 19-2894 and 20-1096, in the interest of judicial economy. Respondent voluntarily waives the right to an adjudicatory hearing, 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(s) by letter/email on April 26, 2021. Complainant(s) 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. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.3, 1.4, 1.5, 1.16(d), 3.3, 8.1, 8.4(c), 8.4(d), Rule 32, and Rule 54(d).

Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **six (6) months and one (1) day Suspension**. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order. If costs are not paid within the 30 days interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on December 13, 2011.

COUNT ONE (File no. 20-0320/ Luder)

2. On January 24, 2020, Respondent was administratively suspended for failure to complete Mandatory Continuing Legal Education (MCLE) requirements. If this matter proceeded to a contested hearing, Respondent would testify that he did

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.

not receive notice of the suspension, in part because he had changed his office address and had not updated his State Bar membership records.

3. On January 31, 2020, Roger Luder submitted a telephonic bar charge against Respondent because Respondent was opposing counsel in a case pending in Maricopa County Superior Court, CV2019006632, and Respondent had not responded to him about accepting service of a crossclaim against Respondent's client.

4. Intake Bar Counsel left Respondent a voicemail message on January 31, 2020. Respondent then left a return voicemail message, and said that his wife was out of town all week but that he intended to contact Mr. Luder before the end of the day.

5. Later on January 31, 2020, Intake Bar Counsel was able to speak with Respondent. Respondent informed her that he did not know that he was administratively suspended from practicing law, but admitted he knew he had to "work on" his CLEs. He also said his wife was out of town and he needed to catch up on his cases. If this matter proceeded to a hearing, Respondent would explain that he knew he was behind on accruing CLE hours, and realized that he had missed the MCLE filing deadline, but did not know that he had been administratively

suspended. Respondent then said he would remedy his suspension by contacting member services and would contact Intake Bar Counsel the next week regarding the same.

6. In fall 2019, Respondent's wife had begun a new job that required extended out-of-town travel. This meant Respondent, who worked out of his home, was balancing his role as the sole caregiver of his three young children with the demands of his law practice. The stress of his family situation made it difficult for him to adhere to processes and procedures that previously had helped him cope with the after-effects of a traumatic brain injury he suffered in law school.

7. After the January 31, 2020 communication, Respondent did not contact Intake Bar Counsel again, so on February 11, 2020, she followed up with Respondent by email and inquired about the status of remedying his suspension with member services. Respondent failed to timely respond to her email.

8. On February 19, 2020, Intake Bar Counsel emailed Respondent again and stated that she would send the matter to screening if he did not respond by February 25, 2020. Respondent responded on February 25, 2020, and stated he would provide documentation showing his compliance later that day. The next day, he asked for an extension of time to provide the documentation, and was provided

an extension until February 28, 2020. Respondent never responded again and did not provide the required documentation.

9. Bar Counsel sent a screening letter to Respondent's address of record on March 9, 2020. It was returned as undeliverable on March 25, 2020. On April 8, 2020, a duplicate of the screening letter in another matter (20-0580) matter was emailed to Respondent, and Bar Counsel requested that Respondent update his address and respond. He did not respond. Respondent asserts that because of ongoing technological issues, he did not receive the email in file 20-0580 and, because the screening letter in file 20-0320 was returned to the State Bar, he did not receive it. On April 30, 2020, a duplicate of the screening letter in 20-0320 was emailed to Respondent, but he did not respond.

10. Because Respondent had not responded to the screening letters in files 20-0320 and 20-0580, an Investigator was tasked with making contact with Respondent. The Investigator performed searches for Respondent, and found various matters where Respondent was counsel of record and had listed an address at a UPS store on Happy Valley Road in Glendale. This address was different from his address at that time on record with membership, which was a UPS store on 67th Avenue in Glendale.

11. The Investigator also called two phone numbers for Respondent, but could not reach him. She left a message on the phone number listed with membership, and never heard back. She called what appeared to be his personal number, and always got a busy signal. During this time, Respondent's business telephone number had been disconnected and he lost his personal cell phone.

12. The Investigator's research revealed other matters in which Respondent had filed documents and/or made appearances after he had been administratively suspended.

13. Despite multiple attempts to reach Respondent, Bar Counsel was unable to reach him. Respondent provided no response to this screening investigation. Respondent acknowledges that it was his responsibility to have an accurate physical and email address on file with the Bar, and he did not.

COUNT TWO (File no. 20-0580/Spirea)

14. On November 19, 2019, Niculae Spirea retained Respondent to represent him in a contract action in Moon Valley Justice Court. The fee agreement indicated it was a flat fee agreement for \$2,500, but required additional installments of \$1,000 for "overages." Spirea initially paid \$2,500, then, in December of 2019, he paid an additional \$3,500, for a total of \$6,000.

15. Spirea and Respondent had not met in person when the fee agreement was signed and the payments were made. Spirea and Respondent communicated primarily by email and some texts, as well as a few phone calls at the beginning.

16. On November 18, 2019, Spirea emailed Respondent explaining the factual basis of his claims. The case stemmed from a dispute over someone using Spirea's business license to run a group home without paying Spirea in accordance with a verbal contract. Spirea had filed the action on his own, but the defendant retained counsel, so Spirea thought he should as well. Spirea's email to Respondent alerted Respondent to an upcoming hearing on December 18, 2019.

17. On November 19, 2019, Respondent emailed Spirea the fee agreement, which he signed and returned.

18. On December 6, 2019, Spirea emailed Respondent and noted that it had been a while since they spoke, and he hoped Respondent was learning about the case. Spirea explained more about the case, prior attempts at settlement, and goals for trial.

19. On December 10, 2019, Spirea emailed Respondent copy of a notice he received from defense counsel, and asked why it was sent to him in light of the fact

that Respondent was his lawyer. Respondent had not filed a notice of appearance or alerted opposing counsel to his representation of Spirea in the matter.

20. On December 12, 2019, Respondent texted Spirea an invoice for \$3,000 for a “trial retainer” which Spirea paid.

21. On December 13, 2019, Spirea emailed Respondent certain documents that were relevant and should be used as exhibits for trial, and described certain persons who could testify, as well as the subject of their testimony.

22. On December 18, 2019, Spirea met Respondent at the court for the hearing. Spirea claims that Respondent was unprepared, and had to get a copy of file documents from the clerk to understand what was happening in the case. If this proceeded to a hearing, Respondent would testify that he was prepared for the hearing and that he obtained a copy of the court file so that Spirea had access to all documents for the hearing.

23. The judge asked Respondent why he had not filed a notice of appearance, and Respondent said he had just been retained and did not have time. The judge allowed Respondent to represent Spirea at the hearing.

24. Spirea claimed Respondent was not prepared, and Respondent did not know what questions to ask him. Spirea stated Respondent had also brought his

daughter to court with him because he had no one to watch her. Spirea's wife ended up watching Respondent's daughter during the trial. At a contested hearing, Respondent would testify that his assistant was at court with him to watch Respondent's daughter (because he did not have childcare that day), but Spirea's wife offered to do so instead.

25. At the end of the hearing, the judge ruled against Spirea, and directed the defendant to file an application for fees.

26. On December 26, 2019, Spirea emailed Respondent and said, "Why do I get the feeling of being harder to get a hold of you or get an answer from you at any time but when payments are due. There are many instances when I called, message, text or e-mail without any response from you. Please, I need to see what the charges are so I could do my math too."

27. Later that day Respondent responded, "I apologize for coming off this way. I have no problem getting you a breakdown post-haste of services rendered associated with pretrial and trial preparations. I will itemize this for you before the end of the week, I estimate no later than Sunday night to finalize and email the itemization. . . . I will text it or email you to ensure to keep you in the loop."

28. On January 16, 2020, Spirea emailed Respondent, “I just received the judgment from Defendant’s Lawyer and it says that he was forwarding a copy to you as well; Please do not spent [sic] any more time on this matter before I could get a copy of my spending bill from you. You[sic] suppose to send me this invoice (as per your explanations) periodically before any other charges will be applied as you were billing me—I got no bill so far.”

29. On January 22, 2020, opposing counsel emailed Respondent, “The attached application for attorney’s fees and (lodged) judgment form were [sic] mailed to you on January 13, 2020. The package was returned to us stating that you are no longer at this address. Please let us know how much additional time you will need to respond.”

30. On February 5, 2020 Spirea emailed Respondent:

Has been a while, has been multiple attempts to from my side to get our relation on truck and has been same amount of failures to communicate properly; on the other hand I paid you \$6,000 and I still don’t know what for nor what did you do for what I paid you to represent me in court.

I’m not a lawyer but I know there is a status of limitation to everything and I don’t want to stretch time to that limit; we got involved on 11/18/2019 on 11/19/2019 you got your first payment, you got your second payment on 12/12/2019 and not even today I still don’t know what a balance I have.

Please contact me and let me have a clear picture of my account with you

Regards

Nick Spirea

31. On February 6, 2020, Respondent emailed opposing counsel's office, saying "I apologize for any confusion as I recently changed offices. . . . I spoke with one of your office assistants when I was on the road a little while ago and was just informed that your documents were returned and this issue has been remedied with an address update (also indicated in the below signature line). . . . Please provide Plaintiff a reasonable opportunity to respond to this application for fees. Also as this is a post-trial matter, this issue has to be addressed with my client as I am preparing a final accounting. . . . please allow this office until February 21, 2020. If you believe this additional fourteen (14) days is not reasonable, please let me know what additional time your office is amenable to so a stip can be drafted and filed per your office's offer for extension and especially in light of the volume of Exhibit A, which Plaintiff needs to review in its entirety to properly respond to with respect to both reasonableness of the amount and time and in light of the nature of the representation."

32. Opposing counsel granted the extension, and Respondent forwarded the email to Spirea. Respondent also promised to send an accounting and offered to have a teleconference with Spirea, but never followed up.

33. On February 9, 2020, Spirea emailed Respondent, “I sent you an email on 1/16/20 asking you not to perform any work on my behalf until I get a status on what I spend so far. . . . Please show me my billing and do not add more expenses until we could discuss this matter.” Respondent stopped responding. Spirea asserts that he made numerous other attempts to reach Respondent by phone, but Respondent never responded.

34. Bar Counsel sent a screening letter to Respondent’s address of record on March 9, 2020. It was returned as undeliverable on March 25, 2020. On April 8, 2020, a duplicate of the screening letter was emailed to Respondent. He did not respond. Because of ongoing technological issues, Respondent denies that he received this email and, because the screening letter was returned to the State Bar, he did not receive it. He acknowledges, however, that he should have had valid addresses on file with the Bar.

35. Respondent failed to respond to the screening investigation.

COUNT THREE (File No. 20-0741/Mahan)

36. In September of 2018, James Mahan retained Respondent to handle a civil matter for him. Respondent filed a complaint in superior court captioned *Mahan v. Taylor*, CV 2018-005443, and the matter had been proceeding.

37. Respondent was suspended on January 24, 2020, for failing to complete his MCLE, as discussed above, and was not aware until informed by Intake Counsel in a phone conversation on January 31, 2020.

38. On March 12, 2020, Mahan submitted a telephonic bar charge against Respondent because he learned from the judge in his case that Respondent was suspended.

39. Mahan tried to reach Respondent, but was unable to reach him and was concerned. Mahan indicated that he had trouble getting Respondent to communicate throughout the entire matter. Mahan said that it often took very “angry and awful” text messages from him to get Respondent to respond. If this matter proceeded to a hearing, Respondent would testify that Mahan routinely communicated with him by sending a voluminous number of “angry and awful” email and text messages.

40. Mahan had paid Respondent \$3,000 to handle his case, and observed:

Just found out! 15 hours of classes may cost me my case and thousands of dollars!!! And that he can take them classes anytime. Yet obviously hasnt!

41. The docket from Mahan’s case reveals that Respondent filed an amended complaint on January 24, 2020, the same date he was administratively suspended.

42. On March 4, 2020, opposing counsel filed a “Motion to Determine Counsel” based on Respondent’s suspension. The motion also noted that Respondent was uncommunicative, and had not served an initial disclosure statement, which was due December 5, 2019.

43. On March 5, 2020, the judge issued a minute entry that confirmed she saw that Respondent was suspended on the State Bar website, and she set a status conference for March 24, 2020.

44. On March 12, 2020, Mahan reported that he heard from Respondent, who was in the process of correcting his suspension.

45. Bar Counsel sent a screening letter to Respondent’s address of record on March 20, 2020. Respondent did not respond.

46. The court in Mahan’s case held a status conference on March 24, 2020, and noted on the record:

The Court ordered Darrell Duncan to also appear at this hearing even though he is currently suspended from the practice of law. Mr. Duncan informs the Court that his suspension is due to his failure to file his CLE affidavit which he has now submitted. He is waiting to hear back from the State Bar regarding his reinstatement.

47. Respondent’s statement to the court was false, as he had undertaken no effort to complete his MCLE, submit his affidavit, or contact membership services.

48. Respondent failed to respond to the screening investigation.

COUNT FOUR (19-2894/Wallace)

49. Wallace retained Respondent in February of 2019, to draft and file a complaint for her in a medical negligence matter. She stated she paid him \$3,500 and \$600 directly into Respondent's Wells Fargo account, as directed. Wallace stated she received no formal fee agreement.

50. In response to the Bar's screening letter, Respondent produced two agreements that he said applied to his representation of Wallace. The first was dated October 26, 2018, signed by Respondent but not Wallace, and provided:

The Law Firm and You agree to pay The Law Firm based on the following payment structure:

Payment Amounts

- (1) \$3,500.00 for intake, organizing, drafting, and filing of the Complaint (against multiple pain centers and individual defendants).
- (2) This Flat Fee is subject to overage and therefore The Law Firm and client both agree that any and all services rendered in this matter are subject to the Law Firm's current rate of \$300.00 per hour for each billable hour worked and each billable hour rendered.
- (2) Because this Flat Rate Fee and is earned, the payment must be deposited to the Law Firm's operating account.

1. DESCRIPTION OF SERVICES. Beginning on **October 26, 2018** The Law Firm will provide to You the following services (collectively, the "Services"):

- (1) Full representation regarding negligence and/or (medical negligence) [specifically Complaint against multiple pain centers including individuals as and where needed];
- (2) Full representation for matters involving pre-litigation and/or settlement including but not limited to settlement negotiations in-case demand(s), settlement conferences, mediation, and/or any form of alternative dispute resolution utilized;
- (3) Full representation for matters involving litigation, including but not limited to preparation for and attendance of trial, hearings, conferences, etc.;

51. Respondent produced a text message dated February 26, 2019, that he stated confirmed the \$3,500 fee set forth in the fee agreement.

52. Respondent also asserted he had a separate agreement with Wallace for \$600 for a demand letter, which Wallace paid. This fee agreement was apparently only via text, as follows:

(Demand)

February 26,2019 (due upon receipt)

Deposit to any Wells Fargo bank
branch

Amount: \$600.00 (flat fee payment
for services rendered related to de-
mand letter) in the event that demand
leads to settlement or negotiating
client agrees to pay to Law Firm's for
any hours billed for these services (if
any, if and when needed)

Account Number: [7347863776](#)

Account name The Law Office of
Darrell.J Duncan, PLLC

Just text me a pic of the receipt once
it has been deposited and make sure
to tell the teller to deposit to the
account ending in 3776 as I have had
issues with tellers depositing into
other accounts :)

53. Wallace claimed Respondent failed to provide her a draft complaint or any work product, despite her multiple texts and messages requesting that he provide her a draft. Wallace stated Respondent always had an excuse for not responding to her or providing anything, including issues with his children. Wallace acknowledged that her intractable pain and memory loss issues made it difficult for her to recall everything that transpired, but she had emails and text messages with Respondent to

support her position. When she had not heard from Respondent in a while, she initiated a phone charge against Respondent on October 14, 2019.

54. In response to the phone charge, Respondent had a telephone call with Wallace, and then he drafted a complaint, which he stated he emailed to her. Respondent explained to intake counsel that the “intake” process took from October of 2018, to September of 2019. In an October 21, 2019 email to intake counsel, Respondent wrote:

Also, as this misunderstanding is centered around my approximations of time to complete the (1) intake and (2) complaint (draft not final per agreement), I will be contacting Ms. Wallace today and only once the majority of the draft is completed, which will ABSOLUTELY be NO LATER THAN end of night tonight, and the draft will be emailed to her for her review for factual and defendant information accuracy (client verification).

55. Wallace acknowledged that a few days later she received a draft complaint after she had “lit a fire under” Respondent by calling the Bar. Wallace indicated to intake counsel that she was satisfied at that time, and the charge was dismissed.

56. Wallace asserted, however, that she then noticed various issues with the draft; Respondent had not addressed or included information that she had provided over the months before Respondent had drafted anything. Wallace claimed she

provided additional input, and Respondent assured her he was addressing it, but she never got a finished product.

57. Wallace stated Respondent stopped responding again, so she looked for him on the Bar website, and discovered he was suspended as of January 24, 2020. Respondent had not informed Wallace of his suspension, despite knowing about it as of January 31, 2020, at the latest. She said Respondent assured her he would help her find another lawyer, but he did nothing. The last communication she had with Respondent was July 24, 2020, and Respondent did not tell her he was suspended.

58. Respondent stated that after he sent Wallace a draft complaint and the phone charge was dismissed, Complainant “inundated” him with questions, and provided additional input on the draft complaint. Respondent claims that after he made all the requested changes, he told Wallace it “was time to file,” but she resisted. Respondent stated he then learned that Wallace could no longer afford to retain him on an hourly basis, but because he could not afford the costs of a contingency arrangement, he declined to modify the fee agreement. Respondent stated he told Wallace she would need to find another lawyer.

59. Respondent he offered to assist Wallace in finding another lawyer, but then his own personal problems preoccupied him, and then he was suspended on January 24, 2020.

60. Respondent “realizes he should have put his notice of withdrawal in writing in an email with a follow up mailing to [Wallace.]” Respondent asserted that Wallace nevertheless “knew at the beginning of the year she would need to find successor counsel.”

61. Respondent asserted that he earned the money Wallace paid him because he worked for her for “many, many months,” and responded to her “questions, additions and subtractions as he drafted and re-drafted the Complaint.”

COUNT FIVE (20-1096/State Bar of Arizona)

62. Attorney John Lierman contacted the State Bar regarding Respondent because he had been unreachable in a matter where Respondent was opposing counsel. Lierman submitted a Local Rule 7.1 Certificate of Good Faith that outlined at least five (5) times from November 11, 2019, to January 2, 2020, he could not reach Respondent to discuss a discovery dispute.

63. Respondent was administratively suspended on January 24, 2020, for non-compliance with MCLE.

64. On February 24, 2020, Lierman filed a “Motion for Instruction on Plaintiff Representation,” because he had learned of Respondent’s suspension.

65. Respondent’s response acknowledged that he was informed of his suspension by intake counsel on January 31, 2020. The response asserted that Respondent believed all he needed to do was complete the 2018-2019 MCLE requirements, and he “did not immediately realize the significance of administrative suspension.”

66. Respondent asserted that in the fall of 2019, he experienced significant personal problems that resulted in him “losing his mailing address,” having his business telephone disconnected, and losing his personal cell phone.

67. Respondent claimed his personal problems “carried over into 2020” and were exacerbated by the COVID 19 pandemic. Since 2020, he has been living with his mother, separated from his wife and children, and is working part time to afford to pay the fees associated with his suspension.

68. Lierman provided additional information regarding emails that Respondent submitted “as a mere courier” for pro per filings by his client, stating that his client had difficulty with email.

69. The court noted in a minute entry dated May 26, 2020, that Respondent had emailed the court without copying Lierman. The minute entry also noted:

Upon Court inquiry, Ms. Ryan advises that Mr. Duncan has filed the paperwork for reinstatement with the Arizona State Bar and is awaiting decision. Further, Ms. Ryan hopes that Mr. Duncan will be reinstated, and this matter will proceed with Mr. Duncan as her counsel.

70. In reality, Respondent had not submitted any paperwork for reinstatement at that time. If this matter proceeded to a hearing, Respondent would deny having told his client that he had filed any paperwork with the State Bar as of the day of the hearing.

71. Additionally, the client persisted in copying Respondent on matters that she purported to file pro per, and in one filing, she indicated that Respondent tried to call in to a hearing in April of 2020, while he was administratively suspended.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits that he violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.4, 1.5, 1.16(d), 3.3, 8.1, 8.4(c), 8.4(d), Rule 32, and Rule 54(d).

CONDITIONAL DISMISSALS

The State Bar has agreed to dismiss allegations of violations of ERs 1.15, 3.2, 3.4(c), and 5.5.

RESTITUTION

Restitution is not at 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 sanctions are appropriate: **Suspension of six (6) months and one (1) day.**

If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

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 determining an appropriate sanction the Court considers 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. *Standard* 3.0.

The parties agree that the following *Standard 4.6 Lack of Candor, and 6.1 False Statements* are the appropriate *Standards* given the facts and circumstances of this matter: *Standard 4.62 Lack of Candor* provides that Suspension is generally appropriate when a lawyer knowingly deceives a client and causes injury or potential injury. Similarly, 6.12 False Statements provides that Suspension is generally appropriate when a lawyer knows that false statements are submitted to the court, takes no remedial action to correct them, and causes injury or potential injury to a party to the legal proceedings, or causes an adverse effect on the legal profession.

Here, Respondent knew no later than January 31, 2020 that he was administratively suspended, he did not inform his clients, opposing parties, or courts of his administrative suspension, he did not take the necessary steps to get reinstated,

and on March 24, 2020, he falsely stated to a court that he had taken the necessary steps and his reinstatement was imminent.

Standard 4.4 Lack of Diligence also applies to Respondent's conduct. Standard 4.42 provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential to a client. Here, Respondent failed to notify his clients, opposing counsel, and the courts that he was administratively suspended, and failed to take appropriate steps to protect his clients. His clients experienced adverse rulings as a result.

The duty violated

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

The lawyer's mental state

Respondent was knowingly in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

There was actual harm to the client, the profession, and the legal system.

Aggravating and mitigating circumstances

The presumptive sanction is Suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered:

In aggravation:

- a) 9.22(c) a pattern of misconduct. Respondent engaged in the same failure to inform clients, courts, and opposing parties in multiple cases. Respondent failed to respond to multiple Bar screening investigations.
- b) 9.22(d) multiple offenses. Respondent lacked diligence, failed to communicate, made misrepresentations to a court, and failed to respond during multiple Bar screening investigations.
- c) 9.22(e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent failed to respond during the screening investigations, and initially defaulted on the formal complaint. After he retained counsel, he was responsive.
- d) 9.22(h) vulnerability of victims. Respondent's clients were primarily unsophisticated litigants who needed his help and were harmed when he abandoned their cases.

In mitigation:

- a) 9.32(a) absence of a prior disciplinary record. Respondent has been licensed since December 2011, without incident until he began to face personal challenges in fall 2019.

- b) 9.32(b) absence of a dishonest or selfish motive;
- c) 9.32(c) personal or emotional problems. Respondent suffered a traumatic brain injury during law school. In his law practice, he adopted systems and procedures to deal with his challenges. When his wife began a new job in late 2019, and he was responsible for solely caring for their children when she was out of town on business, he was unable to continue using those systems and procedures, particularly when he began operating his law practice out of their home. During this matter, he and his wife also temporarily split up and lived apart.
- d) 9.32(l) remorse.

Discussion

The parties conditionally agree that upon application of the aggravating and mitigating factors the presumptive sanction is appropriate.

The parties conditionally agree that a greater or lesser sanction is not appropriate. This agreement is based on the following: The parties agree that because Respondent's misconduct affected multiple clients, courts, and parties, and because he made false statements to a court, suspension of six months and one day is appropriate.

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. In re *Peasley*, 208 Ariz. 27 (2004). 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 and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this 3rd day of May 2021.

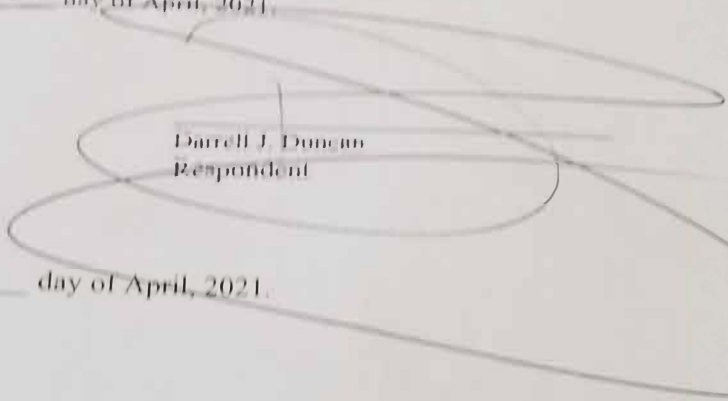
STATE BAR OF ARIZONA

Kelly J. Flood

Kelly J. Flood
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 25th day of April, 2021.


Darrell J. Duncan
Respondent

DATED this _____ day of April, 2021.

Nancy A. Greenlee
Counsel for Respondent

DATED this _____ day of April, 2021.


Patricia A. Sallen
Counsel for Respondent

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.

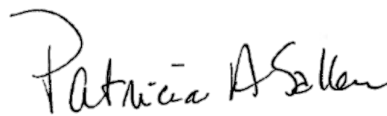
DATED this _____ day of April, 2021.

Darrell J. Duncan
Respondent

DATED this 30th day of April, 2021.


Nancy A. Greenlee
Counsel for Respondent

DATED this 30th day of April, 2021.


Patricia A. Sallen
Counsel for Respondent

Approved as to form and content

Maret Vessella
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 3rd day of May, 2021.

Copy of the foregoing emailed
this 3rd day of May, 2021, to:

Nancy A. Greenlee
821 E Fern Drive North
Phoenix, Arizona 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

Patricia A. Sallen
3104 E. Camelback #541
Phoenix, Arizona 85016
Email: psallen@ethicslaw.com
Respondent's Counsel

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

by: Jennifer Smith
KJF/jas

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Suspended Member of the State Bar of Arizona
Darrell J. Duncan, Bar No. 029022, Respondent

File No(s). 20-0320, 20-0580, 20-0741

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings

\$1,200.00

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Additional Costs

04/24/20	Accurint-Computer investigation reports	\$ 17.92
10/01/20	Accurint-Computer investigation reports	\$ 18.82
Total for additional costs		<u>\$ 36.74</u>

TOTAL COSTS AND EXPENSES INCURRED **\$ 1,236.74**

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**DARRELL J. DUNCAN,
Bar No. 029022,**

PDJ 2020-9066

**FINAL JUDGMENT AND
ORDER**

State Bar No. **20-0320, 20-0580,
20-0741 &
19-2894, 20-1096**

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

Accordingly:

IT IS ORDERED that Respondent, **Darrell J. Duncan**, is Suspended for six (6) months and one (1) day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be subject to any terms of probation imposed as a result of reinstatement hearings held.

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 \$ 1,276.34, within 30 days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within 30 days from the date of service of this Order.

DATED this _____ day of May, 2021.

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 _____ day of May, 2021.

Copies of the foregoing mailed/mailed
this _____ day of May, 2021, to:

Nancy A. Greenlee
821 E. Fern Drive North
Phoenix, AZ 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Counsel

Patricia A. Sallen
3104 E. Camelback #541
Phoenix, Arizona 85016
Email: psallen@ethicslaw.com
Respondent's Counsel

Kelly J. Flood
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

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

by: _____

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

DARRELL J. DUNCAN,
Bar No. 029022

Respondent.

PDJ 2020-9066

**DECISION ACCEPTING
DISCIPLINE BY CONSENT**

[State Bar Nos. 20-0320, 20-0580, 20-
0741, 19-2894, 20-1096]

FILED MAY 24, 2021

Under Rule 57(a), Ariz. R. Sup. Ct.,¹ an Agreement for Discipline by Consent was filed on May 3, 2021. The formal complaint was filed on August 11, 2020. The State Bar of Arizona is represented by Bar Counsel Kelly J. Flood. Mr. Duncan is represented by Nancy A. Greenlee and Patricia A. Sallen.

Rule 57 requires admissions be tendered solely “...in exchange for the stated form of discipline...” Under that rule, the right to an adjudicatory hearing is waived only if the “...conditional admission and proposed form of discipline is approved....” If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Mr. Duncan has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be asserted upon approval of the

¹ Unless otherwise stated rule references are to the Ariz. R. Sup. Ct.

proposed form of discipline. Notice of the agreement was sent to the complainant by email and letter on April 26, 2021. One objection was filed by the Complainant in Count Two stating restitution may be appropriate to the victims affected by Mr. Duncan's actions and that any final decision should protect the public from injury or potential injury.

A six month and one day suspension will require Mr. Duncan to go through formal reinstatement proceedings under Rule 65, Ariz. R. Sup. Ct. and he will have to prove by clear and convincing evidence that he has been rehabilitated from his misconduct and fit to practice law. The Supreme Court has held that monetary damages or restitution are more suited to civil courts and are not a substitute for instances of malpractice. *Matter of Murphy*, 188 Ariz. 375 (1997).

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Mr. Duncan admits he violated Rule 42, ERs 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.16(d) (declining/terminating representation), 3.3 (candor before the tribunal), , 8.1 (bar admission and disciplinary matters) (8.4(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation, 8.4(d) conduct prejudicial to the administration of justice), Rule 32 and Rule 54(d) (refusal to cooperate/furnish information). As a sanction, the parties agree to a 6 month and one day suspension and the payment of costs within 30 days.

The parties stipulate that in multiple counts Mr. Duncan failed to adequately communicate with and diligently represent clients. Additionally, he engaged in the unauthorized practice of law while administratively suspended for failure to comply with Rule 45, mandatory continuing legal education. Mr. Duncan further made false statement to the court regarding the status of his license to practice law.

The parties stipulate Mr. Duncan knowingly violated his duty to his client, the legal profession, the legal system, and the public. Mr. Duncan's conduct caused actual harm to the client, legal system and the profession.

The presumptive sanction is suspension under ABA *Standards* 4.42 *Lack of Diligence*. The parties stipulate to the presence in the record of aggravating factors 9.22(c) pattern of misconduct, (d) multiple offenses, 9.22(e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency, and 9.22(h) vulnerability of victims. In mitigation the parties have stipulated to mitigating factors 9.32(a) absence of prior disciplinary record, 9.32(b) absence of selfish or dishonest motive, 9.32(c) personal or emotional problems, and 9.22(l) remorse.

IT IS ORDERED accepting the Agreement and incorporating it with any supporting documents by this reference. A final judgment and order is signed this date.

DATED this 24th day of May 2021.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed
on this 24th day of May 2021 to:

Kelly J. Flood
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: LRO@staff.azbar.org

Nancy A. Greenlee
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Patricia A. Sallen, Bar No. 012338
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Telephone (480) 290-4841
Email: psallen@ethicsatlaw.com

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

DARRELL J. DUNCAN,
Bar No. 029022

Respondent.

PDJ 2020-9066

**FINAL JUDGMENT
AND ORDER**

State Bar Nos. 20-0320, 20-0580,
20-0741, 19-2894, 20-1096

FILED MAY 24, 2021

The Presiding Disciplinary Judge accepted the parties' Agreement for Discipline by Consent submitted pursuant to Rule 57(a), Ariz. R. Sup. Ct.

Accordingly:

IT IS ORDERED Respondent, **DARRELL J. DUNCAN, Bar No. 029022** is suspended for six (6) months and one (1) day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this order.

IT IS FURTHER ORDERED upon reinstatement, Mr. Duncan shall be subject to any terms of probation imposed as a result of reinstatement hearings held.

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 pursuant to Rule 72 Ariz. R. Sup. Ct., Mr. Duncan shall comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED Mr. Duncan shall pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,276.34, within thirty (30) days from the date of this Order. There are no costs or expenses incurred by the Office of Presiding Disciplinary Judge in these proceedings.

DATED this 24th day of May, 2021.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/mailed
this 24th day of May, 2021, to:

Kelly J. Flood
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Nancy A. Greenlee
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by: SHunt