

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

AUGUSTINE JIMENEZ, III
Bar No. 012208

Respondent.

PDJ 2021-9061

FINAL JUDGMENT AND ORDER

[State Bar No. 20-1672]

FILED NOVEMBER 22, 2021

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

IT IS THEREFORE ORDERED that Respondent, **AUGUSTINE JIMENEZ, Bar No. 012208**, is suspended from the practice of law in Arizona for 18 months, effective immediately, for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that Respondent shall comply with the requirements of Rule 72, Ariz. R. Sup. Ct., including notifying clients, counsel, and courts of his suspension.

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 pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,200.00, within 30 days from the date of service of

this order. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

DATED this 22nd day of November, 2021.

Margaret H. Downie

Margaret H. Downie
Presiding Disciplinary Judge

Copies of the foregoing emailed
this 22nd day of November, 2021, to:

Augustine Jimenez
Augustine B. Jimenez III, PC
2999 N. 44th Street, Suite 318
Phoenix, Arizona 85018-7250
Email: Augie@saldivarlaw.com
Respondent

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

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

AUGUSTINE JIMENEZ, III
Bar No. 012208

Respondent.

PDJ 2021-9061

**DECISION ACCEPTING
AGREEMENT FOR DISCIPLINE
BY CONSENT**

[State Bar No. 20-1672]

FILED NOVEMBER 22, 2021

The State Bar is represented in this matter by Hunter F. Perlmeter; Respondent Augustine Jimenez, III is self-represented. A probable cause order issued on July 13, 2021, and a formal complaint was filed on July 27, 2021. On November 18, 2021, the parties filed an Agreement for Discipline by Consent (“Agreement”) pursuant to Rule 57(a), Ariz. R. Sup. Ct. Contingent on approval of the proposed form of discipline, Mr. Jimenez has voluntarily waived the right to an adjudicatory hearing, as well as all motions, defenses, objections, or requests that could be asserted. The State Bar is the complainant in this matter; therefore, notice pursuant to Rule 53(b)(3) is not required.

The Agreement details a factual basis to support the conditional admissions and is incorporated by reference. *See* Rule 57(a)(4). Mr. Jimenez admits that he violated Rule 42, ER 1.15 (safekeeping property) and Rule 43 (trust accounts). As a sanction, the parties agree to an eighteen-month suspension and the payment of costs to the State Bar.

Mr. Jimenez was suspended for trust account violations in 2019 and has not been reinstated. The formal complaint in these proceedings alleges additional trust account

violations. Mr. Jimenez admits failing to adhere to rules governing the management of trust accounts, resulting in overdrafts and disbursement errors. After being advised of the deficiencies, Mr. Jimenez wrote checks to previously uncompensated lienholders.

Based on the conditional admissions, the parties agree that the presumptive sanction under the ABA Standards for Imposing Lawyer Sanctions is suspension under § 4.12 (Failure to Preserve the Client's Property). Mr. Jimenez knowingly violated duties owed to his clients, the public, and the profession, resulting in potential harm to clients whose funds were temporarily removed from his trust account. The parties stipulate to the existence of aggravating factors 9.22(a) (prior disciplinary offenses), 9.22(c) (pattern of misconduct), 9.22(d) (multiple offenses), and 9.22(i) (substantial experience in the practice of law). No mitigating factors have been cited.

IT IS ORDERED accepting the Agreement for Discipline by Consent. A final judgment and order is signed this date.

DATED this 22nd day of November 2021.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

COPY of the foregoing e-mailed
this 22nd day of November 2021 to:

Hunter F. Perlmeter
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Respondent

by: SHunt

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Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**AUGUSTINE JIMENEZ,
Bar No. 012208,**

Respondent.

PDJ 2021-9061

State Bar File No. **20-1672**

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, and Respondent Augustine Jimenez, who has chosen not to seek the assistance of counsel, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on July 13, 2021. A formal complaint was filed July 21, 2021.

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.

The State Bar is the complainant in this matter. Therefore, no notice of this agreement is required pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER 1.15 and Rule 43. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **eighteen (18) months' Suspension** from the effective date of the judgment and order to be issued in this matter [Respondent has not reinstated from his prior 18-month suspension in PDJ 2018-9100]. 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.

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the

FACTS

1. Respondent was first licensed to practice law in the state of Arizona on October 21, 1988.

2. Effective June 13, 2019, Respondent was suspended from the practice of law for 18-months for trust account violations (PDJ2018-9100). Respondent has not been reinstated.

COUNT ONE (File no. 20-1672/Jimenez)

3. On July 14, 2020, Respondent's trust account check number 1738, in the amount of \$17,416.01, attempted to pay against the account when the balance was \$14,702.39. The bank returned the check and did not charge an overdraft fee leaving the account balance unchanged.

4. Respondent self-reported to the State Bar.

5. In performing her review, The Examiner determined that at the beginning of the period of review, January 1, 2019, Respondent's trust account held funds in the amount of \$3,105.09 that could not be identified as belonging to a client.

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

6. The Examiner identified two improper disbursements of earned fees. On October 2, 2019, on behalf of client V, Respondent disbursed funds to himself in the amount of \$1,400.00, and on November 5, 2019, on behalf of Client V, Respondent disbursed funds to himself in the amount of \$10,500.00. At the time of these distributions, all earned fees for Client V had already been disbursed.

7. This created a deficit of \$9,856.62 of other client funds, beginning on November 5, 2019.

8. Because Respondent did not maintain compliant trust account records, he failed to timely identify the deficit.

9. On July 27, 2020 Respondent deposited funds in the amount of \$2,713.62 and issued a replacement check paid directly to client M leaving the trust account with no balance.

10. Respondent's settlement statement for client B reflects a payment to Chiro-plus in the amount of \$1,990.00 and a payment to Diagnostic X-Ray in the amount of \$100.00. However, these disbursements were never made from the trust account. Thus, client B should have held \$2,090.00 on deposit, that was no longer present in Respondent's trust account.

11. Similarly, the settlement statement for client G reflects payments to Chiro-plus in the amount of \$3,980.00 and to Diagnostic X-Ray in the amount of \$100.00, which were never disbursed from the trust account. Thus, client G should have held a balance of \$4,080.00.

12. A settlement in the amount of \$1,000.00 from an insurance company was deposited into the trust account on April 22, 2019 on behalf of V, however, Respondent did not record the funds on the settlement statement and failed to disburse the funds to client V.

13. On June 28, 2019 Respondent used a trust account check to make a payment in the amount of \$325.00 for computer services. The payment was made with client funds. On July 10, 2019, Respondent transferred \$325.00 to his trust account to cover the amount.

14. Respondent also over-disbursed earned fees on behalf of client A in the amount of \$27.00 leaving the client with a negative balance in the trust account.

15. Respondent has indicated that the above errors were made because after he began his June of 2019 suspension from the practice of law, he no longer

was able to employ staff to perform his accounting work and his office equipment including computer accounting systems were placed in storage.

16. On May 24, 2021, after being notified of the Examiner's findings, Respondent wrote checks to the previously uncompensated lienholders identified herein.

17. Respondent's current trust account balance is zero.

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 ER 1.15 and Rule 43.

CONDITIONAL DISMISSALS

There are no conditional dismissals.

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 sanctions are

appropriate: **Suspension of eighteen (18) months from the date of the judgment and order** (this is in addition to the suspension Respondent began serving in June of 2019.) Because he has not reinstated from his prior suspension, Respondent's effective period of suspension will be approximately 4 years. 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 4.1 Failure to Preserve the Client's Property* is the appropriate *Standard* given the facts and circumstances of this matter: *Standard 4.12 Failure to Preserve the Client's Property* provides that Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

The duty violated

Respondent's conduct violated his duty to his clients, the public, and the profession.

The lawyer's mental state

Respondent knowingly failed to engage in proper bookkeeping and violated multiple trust account rules that led to the errors described herein.

The extent of the actual or potential injury

There was potential harm to clients whose money was temporarily removed from Respondent's trust account.

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(a) prior disciplinary offenses (Respondent was originally suspended effective June of 2019).
- b) 9.22(c) a pattern of misconduct (the trust account violations are repeated and are similar to those for which he was previously suspended)
- c) 9.22(d) multiple offenses (multiple trust account violations)
- d) 9.22(i) substantial experience in the practice of law

Discussion

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

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 19th day of November 2021

STATE BAR OF ARIZONA

/s/ Hunter F. Perlmeter
Hunter F. Perlmeter
Senior 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 19th day of November, 2021.

Augustine Jimenez

Augustine Jimenez
Respondent

DATED this 19th day of November, 2021.

Approved as to form and content

/s/ Maret Vassella

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 19th day of November, 2021.

The Honorable Margaret H. Downie

Presiding Disciplinary Judge

Supreme Court of Arizona

1501 West Washington Street, Suite 102

Phoenix, Arizona 85007

E-mail: officepdj@courts.az.gov

Copy of the foregoing emailed
this 19th day of November, 2021, to:

Augustine Jimenez III

Augustine B. Jimenez III PC

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Phoenix, Arizona 85018-7250

Email: Augie@saldivarlaw.com

Respondent

Lawyer Regulation Records Manager

State Bar of Arizona

4201 N. 24th St., Suite 100

Phoenix, Arizona 85016-6266

Email: LRO@staff.azbar.org

by: /s/ Dorian Dawson
HFP/dpd

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Suspended Member of the State Bar of Arizona
Augustine Jimenez III, Bar No. 012208, Respondent

File No. 20-1672

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

Total for additional costs \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED **\$ 1,200.00**

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**AUGUSTINE JIMENEZ,
Bar No. 012208,**

PDJ 2021-9061

**FINAL JUDGMENT AND
ORDER**

State Bar No. 20-1672

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, **Augustine Jimenez**, is Suspended for eighteen (18) months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately.

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 Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ _____, 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 November, 2021.

**Margaret H. Downie, 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 November, 2021.

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

Augustine Jimenez
Augustine B. Jimenez III, PC
2999 N. 44th Street, Suite 318
Phoenix, Arizona 85018-7250
Email: Augie@saldivarlaw.com
Respondent

Copy of the foregoing emailed
this _____ day of November, 2021, to:

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by: _____