

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**SCOTT ALLAN MAASEN,
Bar No. 018073**

Respondent.

PDJ 2019-9079

**FINAL JUDGMENT AND
ORDER OF RESTITUTION**

[State Bar No. 18-3381]

FILED APRIL 23, 2021

On January 8, 2020, the parties filed an agreement for discipline by consent. By that agreement Mr. Maasen agreed to “abide by the fee arbitration outcome.” The agreement was accepted, and judgment entered on January 16, 2020. This court found that judgment Mr. Maasen stipulated “to the entry of a restitution order by this judge which he agrees to pay within thirty days of entry of that order.”

On April 7, 2021, the State Bar moved for an order of restitution. A Fee Arbitration Award (“Award”) in State Bar Fee Arbitration File No. FA-19-0169 dated April 2, 2021, has issued and was attached as a copy to the motion as Exhibit A.

Under this Court’s order dated January 16, 2020, the notice of that award is self-executing for the entry of the restitution order by agreement of the parties and by this court’s order. No response is warranted or needed.

Accordingly:

IT IS ORDERED, ADJUDGED, AND DECREED that Scott Allan Maasen shall pay Michael R. Burkes \$11,970 for restitution within thirty days plus any interest due under the April 2, 2021 Arbitration Award.

DATED this 23rd day of April 2021.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copy of the foregoing emailed this 23rd day of April, 2021, to:

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

Scott Allan Maasen
310 S. 4th St., Unit 2105
Phoenix, AZ 85004-2490
Email: scottmaasen01@gmail.com
Respondent

Michael R. Burkes
9327 E. Via Zona Rd.
Scottsdale, AZ 85262
Email: michaelburkes@hotmail.com
Complainant

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**SCOTT ALLAN MAASEN,
Bar No. 018073**

Respondent.

PDJ 2019-9079

**ORDER ACCEPTING
AGREEMENT FOR
DISCIPLINE BY CONSENT**

[State Bar No. 18-3381]

FILED JANUARY 17, 2020

Under Rule 57(a), Ariz. R. Sup. Ct., an Agreement for Discipline by Consent (“Agreement”), was filed on January 8, 2020. A formal complaint was filed on November 8., 2019. The State Bar of Arizona is represented by Senior Bar Counsel David L. Sandweiss. Mr. Maasen is self-represented. At the initial case management conference held on December 17, 2019, the parties verbally agreed to this agreement.

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 an agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Mr. Maasen 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 parties’ agreement. Notice of the Agreement and an opportunity to object within five (5) days pursuant to Rule 53(b)(3), was emailed to the complainant on January 7, 2019.

The Agreement details a factual basis for its acceptance. It is incorporated by reference. Mr. Maasen is a disbarred attorney. The complainant was a client of Mr. Maasen. He seeks a refund of his fees. The fee agreement between them contained a provision for State Bar-sponsored fee arbitration which Mr. Maasen has now initiated. This Agreement assures an accounting and an opportunity for a refund.

The parties stipulate to abide by the fee arbitration outcome. If a refund is owed, Respondent stipulates to the entry of a restitution order by this judge which he agrees to pay within thirty days of entry of that order. If no refund is owed, this matter will be dismissed with prejudice.

IT IS ORDERED accepting the Agreement and incorporating it with any supporting documents by this reference. A final judgment and order will be signed upon conclusion of that arbitration. This matter is otherwise concluded.

DATED this 16th day of January 2020.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
on this 17th day of January 2020, to:

Counsel for State Bar
David L. Sandweiss
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Respondent
Scott Allan Maasen
310 S. 4th St., Unit 2105
Phoenix, AZ 85004-2490
Email: scottmaasen01@gmail.com

by: BEnsign

JAN 08 2020

FILED

BY _____

David L. Sandweiss, Bar No. 005501
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7272
Email: LRO@staff.azbar.org

Scott Allan Maasen, Bar No. 018073
310 S. 4th St., Unit 2105
Phoenix, AZ 85004-2490
Telephone 480-329-5886
Email: scottmaasen01@gmail.com
Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**SCOTT ALLAN MAASEN,
Bar No. 018073,**

Respondent.

PDJ 2019-9079

State Bar File No. 18-3381

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona and Respondent Scott Allan Maasen, 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.¹ What brought this matter to its

¹ All references herein to rules are to the Arizona Rules of the Supreme Court.

current status is: Complainant charged Respondent with several violations stemming from representation in a criminal matter, although fundamentally the charge sought an accounting and refund of fees. Also, the State Bar charged Respondent with failing to cooperate in a bar investigation. Owing to Respondent's disbarment the State Bar determined that it was impracticable to seek further formal discipline; therefore, it sought and, on April 30, 2019, obtained an order of restitution from the Attorney Discipline Probable Cause Committee (ADPCC). On May 8, 2019, Respondent objected to that order and demanded fee arbitration. His objection was the first notice to the State Bar and ADPCC that his fee agreement with Complainant contained a provision for State Bar-sponsored fee arbitration. On May 28, 2019, ADPCC issued an order that vacated the order of restitution and directed the State Bar to file a formal complaint. However, to enable Complainant and Respondent to resolve the fee and refund issues in the intended manner, on August 9, 2019, the State Bar filed a motion that asked ADPCC to vacate the part of its May 28 order that directed the bar to file a formal complaint. Unfortunately, on October 31, 2019, ADPCC denied that motion without explanation and without conducting its customary question and answer session with bar counsel at a regular monthly meeting.

The State Bar filed a formal complaint on November 5, 2019, and Respondent filed his signed answer on December 12, 2019. The court conducted a telephonic conference on December 17, 2019, during which the parties and the court discussed the current posture of the case. All concerned agreed to postpone scheduling the customary dates and deadlines for a hearing, disclosures, discovery, etc., in favor of completing a consent agreement.

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), notice of this agreement was provided to the complainant by email on January 7, 2019. Complainant has 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 has initiated fee arbitration with Complainant. Upon acceptance of this agreement, the parties agree to abide by the fee arbitration outcome. If the fee arbitrator[s] decide[s] that Respondent owes Complainant a refund, the court will

enter a restitution order for that principal amount pursuant to Rule 60(a)(6), and that will conclude the case. If the fee arbitrator[s] decide[s] that Respondent does not owe Complainant a refund, this matter will be dismissed with prejudice.

FACTS

COUNT ONE of ONE (File no. 18-3381/ Michael Burkes)

1. Respondent was admitted to practice law in California in 1996 and in Arizona on May 17, 1997. Effective January 24, 2019, Respondent was disbarred in Arizona.

2. In July 2017, Complainant retained Respondent to represent him in a criminal matter. Complainant paid Respondent a total of \$30,000 for the representation.

3. Complainant charged that Respondent took no discernable, substantive action on Complainant's behalf, and kept Complainant, the court, and the state in the dark regarding his past and pending discipline cases, including orders of suspension. Respondent denies these charges and asserts that he took significant steps in Complainant's defense.

4. Complainant charged that in November 2018, due to Respondent's failure to notify Complainant, the court, and the state of his professional status, the

state filed a motion to determine counsel, and Complainant filed a motion to continue a January 2019 trial date and to have new counsel appointed for him. Respondent denies that Complainant suffered any prejudice due to any action or inaction on Respondent's part.

5. The court granted Complainant's motion to continue the trial.

CONDITIONAL ADMISSIONS and DISMISSALS

The parties incorporate herein by reference the above recitations regarding the current status of this matter, as well as the fee arbitrator's[s'] future decision in this case. Because the parties agree to abide by the fee arbitrator's[s'] as yet unknown decision, they are incapable of specifying precise Rule 42 ER violations. For purposes of this consent the State Bar agrees to dismiss all charges unrelated to fees. 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.

RESTITUTION

As stated above, if the fee arbitrator[s] decide[s] that Respondent owes Complainant a refund, the court will enter a restitution order for that principal amount pursuant to Rule 60(a)(6), and that will conclude the case. Respondent

agrees to pay any awarded Restitution within thirty (30) days of entry of the court's order of restitution. If the fee arbitrator[s] decide[s] that Respondent does not owe Complainant a refund, this matter will be dismissed with prejudice.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter the following sanction or result is appropriate: Restitution or dismissal with prejudice, as stated above. If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

LEGAL GROUNDS IN SUPPORT OF SANCTION

Rule 57(a)(2)(E) requires that a consent agreement "include a discussion of the American Bar Association's Standards for Imposing Lawyer Sanctions" (*Standards*). The forms of discipline to which specific *Standards* apply are disbarment, suspension, reprimand, and admonition. Restitution is an "other sanction" for which there is no express *Standard*. "These other sanctions and remedies are those that the court or the board may impose when it is deemed necessary to carry out the goals of the disciplinary system." *Standards* 2.8. If the fee arbitrator[s] decide[s] that Respondent owes a refund, the parties agree that the goals

of the disciplinary system in this case under these unique circumstances render it appropriate and necessary for this court to enter an ensuing order of restitution.

Ordinarily, 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 Court undertakes this analysis, however, only "after a finding of lawyer misconduct" *Id.* Because the fee arbitration contemplated by this consent agreement has not yet occurred, it is premature to conclude that Respondent has or has not committed identifiable misconduct. Hence, the analysis ordinarily conducted under *Standard 3.0* is not applicable.

Discussion

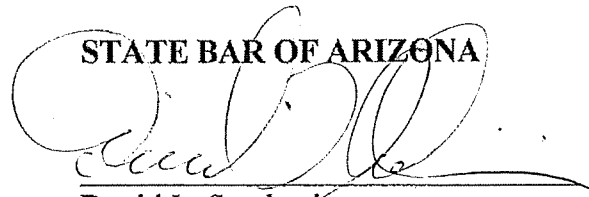
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction or result set forth above is within the range of appropriate conclusions and will serve the purposes of lawyer discipline.

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

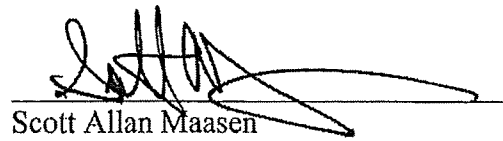
(2004). Recognizing that determination of the appropriate outcome is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the terms of this consent agreement stated above. A proposed form of order is attached hereto as Exhibit A.

DATED this 8th day of January 2020.


STATE BAR OF ARIZONA

David L. Sandweiss
Senior Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 7th day of January, 2020.


Scott Allan Maasen
Respondent

Approved as to form and content


Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 8th day of January, 2020.

Copy of the foregoing emailed
this 8th day of January, 2020, to:

The Honorable William J. O'Neil
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 mailed/emailed
this 8th day of January, 2020, to:

Scott Allan Maasen
310 S. 4th St., Unit 2105
Phoenix, AZ 85004-2490
Email: scottmaasen01@gmail.com
Respondent

Copy of the foregoing hand-delivered
this 8th day of January, 2020, to:

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

by:

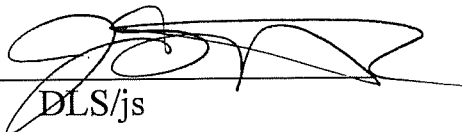

DLS/js

EXHIBIT A

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**SCOTT ALLAN MAASEN,
Bar No. 018073,**

PDJ 2019-9079

**FINAL JUDGMENT AND
ORDER**

State Bar No. 18-3381

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. Respondent has initiated fee arbitration with Complainant. Respondent and the State Bar agree to abide by the fee arbitration outcome. Accordingly,

IT IS ORDERED if the fee arbitrator[s] decide[s] that Respondent owes Complainant a refund, the court will enter an order of restitution for that principal amount pursuant to Rule 60(a)(6), Ariz. R. Sup. Ct., and that will conclude the case. Respondent shall pay any awarded Restitution within thirty (30) days of entry of the court's order of restitution. If the fee arbitrator[s] decide[s] that Respondent does not owe Complainant a refund, this matter will be dismissed with prejudice.

DATED this _____ day of January, 2020.

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 January, 2020.

Copy of the foregoing mailed/emailed
this _____ day of January, 2020, to:

Scott Allan Maasen
310 S. 4th St., Unit 2105
Phoenix, AZ 85004-2490
Email: scottmaasen01@gmail.com
Respondent

Copy of the foregoing emailed/hand-delivered
this ____ day of January, 2020, to:

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

Copy of the foregoing hand-delivered
this ____ day of January, 2020 to:

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

by: _____