

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**GREGORY E. MCCLURE,
Bar No. 022587**

Respondent.

PDJ-2017-9062

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 16-1965]

FILED MAY 26, 2017

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on May 9, 2017, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement. Accordingly:

IT IS ORDERED Respondent, **Gregory E McClure**, is reprimanded and placed on probation for a period of eighteen (18 months) for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED Mr. McClure shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this order. Mr. McClure shall submit to a LOMAP examination of his office procedures. Mr. McClure shall sign terms and conditions of participation, including reporting

requirements, which shall be incorporated herein. Mr. McClure shall be responsible for any costs associated with LOMAP.

IT IS FURTHER ORDERED Mr. McClure shall pay the costs and expenses incurred by the State Bar in connection with these disciplinary proceedings in the amount of 1,200.00, within thirty (30) days from the date of this order. 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 26th day of May, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 26th day of May, 2017, to:

Gregory E. McClure
12325 East Horsehead Road
Tucson, Arizona 85749-8678
Email: ggmccclur@yahoo.com
Respondent

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

by: MSmith

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

GREGORY E. MCCLURE,
Bar No. 022587

Respondent.

PDJ-2017-9062

**DECISION AND ORDER
ACCEPTING DISCIPLINE
BY CONSENT**

[State Bar File No. 16-1965]

FILED MAY 26, 2017

Probable Cause issued on April 3, 2017 and no formal complaint has been filed in the matter. The parties filed their Agreement for Discipline by Consent on May 9, 2017, pursuant to Rule 57(a), Ariz. R. Sup. Ct.

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. McClure 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 proposed form of discipline. Notice of this Agreement and an opportunity to object as required by Rule 53(b)(3), Ariz. R. Sup. Ct., was

provided by letter to the complainant(s) on May 8, 2017. No objections have been filed.

The Agreement details a factual basis to support the conditional admissions. Mr. McClure conditionally admits he violated Rule 42, ERs 1.3 (diligence), 1.4 (communication), 1.16 (declining or terminating representation), 3.2 (expediting litigation), 3.4(c) (fairness to the opposing party and counsel), 8.4(d) (conduct prejudicial to the administration of justice), and Rule 54(c) (knowing violation of any rule or any order of the court). The agreed upon sanctions include a reprimand with eighteen (18) months of probation, the term of which shall be to participate in the Law Office Management Assistance Program (LOMAP), and the payment of \$1,200.00 in costs and expenses within thirty (30) days of the date of this order. The conditional admissions are briefly summarized.

In July, 2014, Mr. McClure represented a defendant against a complaint filed by Southwest Pinnacle Enterprises (SPE). Mr. McClure did not intend to litigate the case, instead, he intended to limit the scope of his representation to filing the answer and contacting opposing counsel by phone. Mr. McClure filed an answer and called opposing counsel in September, 2014. He then informed his client that he satisfied the terms his of representation and that the client needed to hire new counsel.

The client did not hire new counsel, Mr. McClure did not move to withdraw from the case, and remained as the counsel of record. Mr. McClure failed to provide

SPE with his Rule 26.1 disclosure statement by the court ordered deadline. Mr. McClure failed to participate in creating a court ordered joint report and proposed joint scheduling order by the deadline.

The Court extended its deadlines with a stipulation that Mr. McClure participate in preparing the joint report and scheduling order by May 7, 2015, provide a Rule 26.1 disclosure by May 15, 2015, and pay SPE \$1,500.00 in attorneys' fees as a sanction for failing to comply with the court ordered deadlines. Mr. McClure failed to provide his Rule 26.1 disclosure statement and failed to pay the sanctions.

On August 4, 2015 the Court ordered Mr. McClure to exchange all required disclosure/discovery by August 25, 2015 or it would consider harsh sanctions. Mr. McClure failed to comply with the Court's order. In September, 2015, SPE filed an "Application for the Imposition of Sanctions and Memorandum in Support," to which Mr. McClure responded late. In October, 2015, Mr. McClure moved for leave to file an untimely response to the plaintiff's application for imposing sanctions. The Court granted SPE's application and struck defendant's answer.

In October, 2015, Mr. McClure moved to set aside judgment which was denied. The defendant hired a new lawyer who filed a Notice of Appearance and a motion to reconsider the Court's denial of Mr. McClure's motion to set aside judgment in December, 2015. This motion was denied because Mr. McClure was

still the attorney of record and had not yet moved to withdraw. The next week, the defendant's new lawyer filed a stipulation for substitution of counsel, which was granted.

Rule 58(k) provides sanctions shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, (“Standards”). The parties agree *Standard 4.42, Lack of Diligence* applies to Mr. McClure's violation of ERs 1.3 and 1.4, and provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or engages in a pattern of neglect and causes injury or potential injury to a client.

Mr. McClure violated his duty to his client by not endeavoring to achieve the client's objectives in litigation as expeditiously and economically while he remained attorney of record. Mr. McClure knowingly failed to meet court ordered deadlines, comply with court orders, and pay sanctions. By doing this, Mr. McClure created a potential risk of injury to the defendant during litigation.

The parties agree that the presumptive sanction is suspension. The parties further agree there are no aggravating factors present in the record and stipulate the following mitigating factors are present: *Standards 9.32(a)* absence of a prior disciplinary record, *9.32(b)* absence of a selfish or dishonest motive, *9.32(c)*

personal or emotional problems, and 9.32(e) full and free disclosure and cooperative attitude toward the proceedings.

Mr. McClure had a tremendous amount of pressure and stress placed on him personally and professionally which impeded his ability to provide adequate representation to the defendant. The parties have provided evidence of Mr. McClure's serious emotional distress from health issues with members of his family beginning around January, 2014 lasting throughout the litigation. Additionally, Mr. McClure was serving as in-house counsel and an officer for a restaurant company on a full-time basis throughout the litigation.

The company expanded rapidly from April 2009 to May 2015, causing Mr. McClure to work as much as twenty hours per day, seven days a week for months at a time. The defendant knew of this when he asked for Mr. McClure's assistance. Towards the end of 2015 the company experienced significant financial difficulties and had to close many of its locations and reduce staff to a minimum number of employees. This consumed Mr. McClure's time and increased Mr. McClure's workload significantly. The parties agree that a mitigated sanction is appropriate.

The Presiding Disciplinary Judge finds the proposed sanctions of reprimand and probation meet the objectives of attorney discipline. This sanction will protect the public and remind Mr. McClure that as the attorney of record, he has important duties to his client that must be met or he must timely withdraw.

Now therefore,

IT IS ORDERED accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: reprimand and eighteen (18) months of probation. The terms shall include participation and compliance with the LOMAP, and the payment of \$1,200.00 in costs and expenses within thirty (30) days from the date of this order. There are no costs incurred by the Office of the Presiding Disciplinary Judge. A final judgment and order is signed this date.

DATED this May 26, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
on May 26, 2017, to:

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

Gregory E. McClure
12325 E. Horsehead Road
Tucson, AZ., 85749-8678
Email: ggmclur@yahoo.com
Respondent

by: MSmith

Bradley F. Perry, Bar No. 025682
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7247
Email: LRO@staff.azbar.org

Gregory E. McClure, Bar No. 022587
12325 East Horsehead Road
Tucson, Arizona 85749-8678
Telephone 480-213-8123
Email: gmcclur@yahoo.com
Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**GREGORY E. MCCLURE,
Bar No. 022587,**

Respondent.

PDJ 2017-_____

State Bar File Nos. **16-1965**

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Gregory E. McClure, 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 April 3, 2017, but no formal complaint

has been filed in this matter. 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 on May 8, 2017. 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, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.16, 3.2, 3.4(c), 8.4(d), and Rule 54(c), Ariz. R. Sup. Ct. Upon acceptance of this Agreement, Respondent agrees to accept imposition of the following discipline: Reprimand with 18 months of probation, the term of which shall be to participate in the Law Office Management Assistance Program. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this Order, and 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 October, 24, 2003.

COUNT ONE (File No. 16-1965/Bruno & Bookspan)

2. On July 8, 2014, Southwest Pinnacle Enterprises (SPE) filed a Complaint in CV2014-009362 against Brennan Watkins and associated companies. Respondent represented the defendants.

3. The scope of Respondent's representation was intended to be filing the answer and contacting opposing counsel by phone. Respondent did not intend to litigate the case.

4. Respondent filed an answer on September 5, 2014, and called opposing counsel.

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.

5. Respondent informed his client that he satisfied the terms of the representation and that the client needed to hire new counsel. The client did not hire new counsel as originally anticipated.

6. Respondent did not move to withdraw from the case when the client did not hire new counsel and remained counsel of record.

7. Respondent failed to provide SPE with his initial Rule 26.1 Disclosure by the October 15, 2014, deadline.

8. On December 10, 2014, the Court ordered the parties to file a joint report and proposed joint scheduling order on or before April 6, 2015.

9. Between December 2014 and March 2015, SPE placed phone calls and sent emails and letters to Respondent to discuss and prepare the ordered joint report and proposed joint scheduling order. Respondent failed to return any of the communications.

10. Respondent failed to participate in the creation of the ordered joint report and proposed joint scheduling order by the April 6, 2015, deadline.

11. After the deadline passed, the parties entered into a stipulation whereby Respondent would participate in the preparation of a joint report and scheduling order by May 7, 2015, provide a Rule 26.1 disclosure by May 15, 2015, and would pay SPE

\$1,500.00 in attorneys' fees as a sanction for his failure to comply with the court-ordered deadlines.

12. Respondent failed to provide his Rule 26.1 disclosure statement and failed to pay the stipulated sanctions.

13. On August 4, 2015, the Court ordered Respondent to exchange all required disclosure/discovery no later than August 25, 2015, or "harsh sanctions" would be considered. Respondent failed to comply with the Court's order.

14. On September 8, 2015, SPE filed an "Application for the Imposition of Sanctions and Memorandum in Support." Respondent responded late. On October 13, 2015, Respondent filed "Defendants' Motion For Leave To File Untimely Response To Plaintiffs' Application For Imposition Of Sanctions and Memorandum In Support and to comply with the Court's August 4, 2015, Minute Entry Order."

15. On October 14, 2015, the Court granted SPE's application and struck Respondent's answer.

16. On October 30, 2015, Respondent filed a motion to set aside judgment, which was denied on November 24, 2015.

17. On December 4, 2015, Defendant's new lawyer, Neal Bookspan, filed a Notice of Appearance and a motion to reconsider the Court's denial of Respondent's

motion to set aside judgment. The Court denied the motions as Respondent was still attorney of record and had not yet filed a motion to withdraw.

18. On December 11, 2015, Bookspan filed a stipulation for substitution of counsel, which was granted.

19. Respondent's conduct in this matter violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 3.2, 3.4(c), 8.4(d), and Rule 54(c), Ariz. R. Sup. Ct.

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 his conduct violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.16, 3.2, 3.4(c), 8.4(d), and Rule 54(c), Ariz. R. Sup. Ct.

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: Reprimand and 18 months of probation, the term of which shall be Respondent's participation in the Law Office Management Assistance Program.

If Respondent violates any of the terms of this Agreement, further discipline proceedings may be brought.

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 appropriate. Standard 4.42 states that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client.

The duty violated

As described above, Respondent's conduct violated his duty to his client.

The lawyer's mental state

For purposes of this Agreement, the parties agree that Respondent knowingly failed to meet discovery deadlines, comply with court orders, and pay sanctions, and 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.

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:

None.

In mitigation:

Standard 9.32(a) – Absence of a prior disciplinary record.

Standard 9.32(b) – Absence of dishonest or selfish motive.

Standard 9.32(c) – Personal or emotional problems.

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, a mitigated sanction is appropriate. The parties have conditionally agreed that a lesser sanction is appropriate under the facts and circumstances of this matter.

This Agreement was based on the following: A reprimand and probation will adequately serve the goals of lawyer discipline. The sanction will protect the public by ensuring Respondent has procedures in place to prevent future occurrences of this type of conduct. The sanction is also sufficient to remind Respondent that he has important, ongoing duties to his clients that must be met as long as he is attorney of record, no matter what is happening in his personal life.

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 reprimand with probation and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this _____ day of May 2017.

STATE BAR OF ARIZONA

Bradley F. Perry
Staff Bar Counsel

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

DATED this _____ day of May, 2017.

Gregory E. McClure
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 _____ day of May, 2017.

Copy of the foregoing emailed
this ____ day of May, 2017, 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 _____ day of May, 2017, to:

Gregory E. McClure
12325 East Horsehead Road
Tucson, Arizona 85749-8678
Email: ggmclur@yahoo.com
Respondent

Copy of the foregoing hand-delivered
this _____ day of May, 2017, to:

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

by: _____

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Gregory E. McClure, Bar No. 022587, Respondent

File Nos. 16-1965

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.

Staff Investigator/Miscellaneous Charges

Total for staff investigator charges \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED \$1,200.00

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**GREGORY E. MCCLURE,
Bar No. 022587,**

Respondent.

PDJ _____

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 16-1965]

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

IT IS HEREBY ORDERED that Respondent, **Gregory E McClure**, is hereby Reprimand and placed on probation for a period of 18 months 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 contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order. Respondent shall submit to a LOMAP examination of their office procedures.

Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.

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 May, 2017.

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, 2017.

Copies of the foregoing mailed/mailed
this _____ day of May, 2017, to:

Gregory E. McClure
12325 East Horsehead Road
Tucson, Arizona 85749-8678
Email: ggmclur@yahoo.com
Respondent

Copy of the foregoing emailed/hand-delivered
this _____ day of May, 2017, to:

Bradley F. Perry
Staff 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 May, 2017 to:

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

by: _____