

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

BARRY GLEN NELSON,
Bar No. 006746

Respondent.

PDJ 2017-9069

**FINAL JUDGMENT AND
ORDER**

[State Bar Nos. 16-2136, 16-2798, 16-
2229, 17-0119]

FILED JUNE 26, 2017

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on May 25, 2017, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement. Accordingly:

IT IS ORDERED Respondent, **BARRY GLEN NELSON, Bar No. 006746**, is suspended from the practice of law for a period of six (6) months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately from the date of this order.

IT IS FURTHER ORDERED pursuant to Rule 72 Ariz. R. Sup. Ct., Mr. Nelson shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED upon reinstatement, Mr. Nelson shall be placed on probation for a period of two (2) years with the State Bar's Member Assistance Program (LRO/MAP).

IT IS FURTHER ORDERED Mr. Nelson shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of his reinstatement, to schedule a MAP assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Mr. Nelson shall be responsible for any costs associated with participation with compliance.

IT IS FURTHER ORDERED Mr. Nelson shall pay restitution to the following individuals in the following amounts:

COUNT 1 (16-2136/Aragona): Mr. Nelson shall pay \$457.00 to Dominic Aragona. Mr. Nelson shall not be reinstated to the practice of law until restitution to Mr. Aragona is paid.

COUNT 2 (Merkle/16-2798): Mr. Nelson shall pay \$1,986.00 to James Merkle. Mr. Nelson shall not be reinstated to the practice of law until restitution to Mr. Merkle is paid.

IT IS FURTHER ORDERED Mr. Nelson shall initiate fee arbitration proceedings with Joie Lech prior to applying for reinstatement to the practice of law.

IT IS FURTHER ORDERED Mr. Nelson shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of any reinstatement hearings held.

IT IS FURTHER ORDERED Mr. Nelson shall pay the costs and expenses of the State Bar of Arizona 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 June, 2017.

William J. O'Neil
William J. O'Neil, Presiding Disciplinary Judge

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

Barry Glen Nelson
Law Office of Barry Nelson
6579 West Wilhoit Way
Tucson, Arizona 85743-1161
Email: bgnelsonlaw@gmail.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: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

BARRY GLEN NELSON,
Bar No. 006746

Respondent.

PDJ-2017-9069

**DECISION AND ORDER
ACCEPTING DISCIPLINE BY
CONSENT**

[State Bar File Nos. 16-2136, 16-
2798, 16-2229, 17-0119]

FILED JUNE 26, 2017

No probable cause orders have issued and no formal complaint has been filed. The parties filed their Agreement for Discipline by Consent on May 25, 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. Nelson 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 23, 2017. No objections have been filed.

The Agreement details a factual basis to support the conditional admissions. Mr. Nelson conditionally admits he violated Rule 42, ERs 1.3 (diligence), 1.4 (communication), 1.5 (fees), 1.15 (safekeeping property) 1.16 (declining or terminating representation), 3.2 (expediting litigation), and 8.4(d) (conduct prejudicial to the administration of justice). The agreed upon sanctions include a six (6) month suspension, restitution, fee arbitration, and upon reinstatement, two year of probation with the State Bar's Member Assistance Program (MAP), 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 four counts, Mr. Nelson accepted fees from clients and then, because of unforeseen medical reasons he experienced in 2016, failed to provide the legal services for which he was contracted to perform. Mr. Nelson further failed to safekeep client property and return unearned fees upon request. Because of his medical issues both physical and mental, Mr. Nelson determined he was no longer able to represent clients and was forced to withdraw from all client matters. In Count Three, Mr. Nelson failed to adequately communicate and diligently represent his client when he failed to comply with requests for discovery and to respond to a motion for summary judgment.

Rule 58(k) provides sanctions shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, (“Standards”). The parties agree *Standard 4.12, Failure to Preserve the Client’s Property* applies to Mr. Nelson’s violation of ER 1.15 and provides 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. Mr. Nelson violated his duty to his clients by his knowing failure to safekeep client funds and returning any unearned fees. His misconduct caused actual harm to clients. He had a duty to safe keep client funds and to refund any unearned portions of the fees if the representation was terminated.

The parties agree that the presumptive sanction is suspension and that the following aggravating/mitigating factors are present in the record: 9.22(a) prior disciplinary offenses; 9.32(c) personal or emotional problems, 9.32(e) full and free disclosure and 9.32(l) remorse. Mr. Nelson is unable to work, has removed himself from the practice of law, and currently receives social security/disability payments.

The Presiding Disciplinary Judge finds the proposed sanctions of suspension, restitution and probation meet the objectives of attorney discipline. Now therefore,

IT IS ORDERED accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: six (6) month suspension, restitution to clients in Counts One and Two, participation in fee

arbitration in Count Four, upon reinstatement, two (2) years of probation (MAP), and payment of the State Bar's costs and expenses totaling \$1,200.00 within (30) days from the date of this order. The payment of restitution and participation in fee arbitration proceedings shall occur prior to applying for reinstatement. There are no costs incurred by the Office of the Presiding Disciplinary Judge. A final judgment and order is signed this date.

DATED this June 26, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

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

Barry Glen Nelson
Law Office of Barry Nelson
6579 West Wilhoit Way
Tucson, Arizona 85743-1161
Email: bgnelsonlaw@gmail.com
Respondent

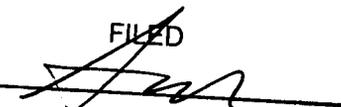
Bradley F. Perry
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: AMcQueen

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

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAY 25 2017

FILED
BY 

Barry Glen Nelson, Bar No. 006746
Law Office of Barry Nelson
6579 West Wilhoit Way
Tucson, Arizona 85743-1161
Telephone 520-668-7598
Email: bgnelsonlaw@gmail.com
Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**BARRY GLEN NELSON,
Bar No. 006746,**

Respondent.

PDJ 2017 - 9069

State Bar File Nos. 16-2136, 16-2798,
16-2229, 17-0119

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Barry Glen Nelson, 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. No probable cause orders have been entered in these matters. 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 Complainants by letter on May 23, 2017. Complainants 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 Rule 42, ERs 1.3, 1.4, 3.2, 1.5, 1.15 and 1.16. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: 6-month suspension with two (2) years of probation upon Respondent's reinstatement. Respondent shall participate in the Lawyer Assistance Program as a term of probation. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within thirty (30) days from the date of this order, and if costs are not paid within the thirty (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 May, 16, 1981.
2. On May 29, 2016, Respondent shattered his pelvis in a bicycle accident.
3. After leaving the hospital, Respondent set up an office in his home and attempted to continue representing his clients, but soon realized he was not physically or mentally capable of doing so.
4. Respondent contacted his clients and asked them to retrieve their files.
5. Respondent sent letters on April 15, 2016, and June 23, 2016, notifying his clients he was unable to continue as their attorney.

COUNT ONE (File No. 16-2136/Aragona)

1. Dominic Aragona hired Respondent on March 29, 2016, to represent him in a divorce. Mr. Aragona paid a \$2,000.00 advance fee for the representation.

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.

The fee was earned upon receipt.

2. Respondent filed a petition for dissolution on May 3, 2016. The petition contained incorrect information that Mr. Aragona was ultimately required to change.

3. The parties hereby incorporate the facts in paragraphs 2-5.

4. Mr. Aragona hired new counsel to complete his case. New counsel filed a motion or substitution of counsel in late July 2016.

5. Respondent filed a motion to withdraw in August 2016.

6. Respondent only billed \$1,280.00 prior to his accident and paid \$263.00 in filing fees.

7. Respondent failed to refund Mr. Aragona \$457.00 in unearned fees.

8. Respondent conditionally admits his conduct in this count violated Rule 42, Ariz. R. Sup. Ct. ERs 1.5, 1.15, 1.16, and 8.4(d).

COUNT TWO (File No. 16-2798/James Merkle)

9. James Merkle hired Respondent to represent him in divorce proceedings. Mr. Merkle paid Respondent \$3,000.00. The fee was earned upon receipt.

10. Respondent filed an answer to the petition for dissolution on Mr. Merkle's behalf on April 11, 2016.

11. Respondent continued to work on Mr. Merkle's case until his accident on May 29, 2016.

12. The parties hereby incorporate the facts in paragraphs 2-5.

13. Prior to his accident, Respondent billed \$820.00 in fees and paid \$194.00 in filing fees.

14. Respondent failed to refund Mr. Merkle \$1,986.00 in unearned fees.

15. Respondent conditionally admits his conduct in this count violated Rule 42, Ariz. R. Sup. Ct. ERs 1.5, 1.15, 1.16, and 8.4(d).

COUNT THREE (File No. 16-2229/Scott Bradford)

16. Scott Bradford hired Respondent in April 2015 to represent him in a lawsuit in Pima County Superior Court.

17. Respondent filed the complaint on April 29, 2015.

18. Thereafter Respondent failed to communicate with Mr. Bradford.

19. Respondent failed to comply with requests for discovery.

20. Respondent failed to respond to a motion for summary judgment.

21. Respondent withdrew from Mr. Bradford's case, thus forcing Mr. Bradford to hire another attorney to complete the matter.

22. Respondent's malpractice carrier ultimately settled a claim brought by Mr. Bradford.

23. Respondent conditionally admits his conduct in this count violated Rule 42, Ariz. R. Sup. Ct. ERs 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, and 8.4(d).

COUNT FOUR (File No. 17-0119/Joie Lech)

24. Joie Lech hired Respondent in August 2015 to represent her in divorce proceedings.

25. Ms. Lech paid Respondent \$3,500.00 at the beginning of the representation.

26. Respondent categorizes the \$3,500.00 initial payment as a true retainer as opposed to an advanced fee. Respondent did not explain the fee or the scope of the representation in writing.

27. Respondent conditionally admits his conduct in this count violated Rule 42, Ariz. R. Sup. Ct. ER 1.5.

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., specifically ERs 1.3, 1.4, 1.5, 1.15, 1.16, 3.2, and 8.4(d).

RESTITUTION

COUNT 1 (16-2136/Aragona): Respondent agrees to pay \$457.00 to Dominic Aragona. Respondent agrees that he may not be reinstated to the practice of law until restitution to Mr. Aragona is paid.

COUNT 2 (Merkle/16-2798): Respondent agrees to pay \$1,986.00 to James Merkle. Respondent agrees that he may not be reinstated to the practice of law until restitution to Mr. Merkle is paid.

COUNT 4 (Lech/17-0119): Respondent agrees to initiate fee arbitration proceedings with Joie Lech prior to applying for reinstatement to the practice of law.

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: 6-month suspension with two (2) years of probation upon Respondent's reinstatement. Respondent shall participate in the Lawyer Assistance Program as a term of probation.

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 thirty (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* 4.12 is applicable. *Standard* 4.12 states that "[s]uspension is generally appropriate when a lawyer knows or should have known that he is dealing improperly with client property and causes injury or potential injury to a client." Here, Respondent failed to safekeep client funds and was unable to return unearned fees after his accident and injury forced him to withdraw from his client's matters.

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 safekeep client funds 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 actual harm to clients.

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:

9.22(a) Prior Disciplinary Offenses – SBA Nos. 05-2191, 2153, 2152, 1848, 1621, 1651, 0782, 06-0357, 0320, 0251, 0134, six month and one day suspension for violations of 1.2, 1.3, 1.4, 1.15, 1.16(d), and Rules 43 and 44. In multiple counts, Respondent failed to diligently represent clients and preserve client property. Respondent failed to perform services requested by clients, failed to communicate with clients, failed to refund unearned fees, and failed to timely withdraw from representation. Respondent further failed to comply with trust account rules and guidelines.

In mitigation:

9.32(c) Personal or Emotional Problems – Respondent was in a severe bicycle accident that shattered his pelvis. Respondent checked himself out of the hospital early against medical advice to attempt to continue representing his clients. While confined to a wheelchair, Respondent moved his office to his home and continued representation for a period of time. During this time, Respondent’s wife left him and Respondent fell into depression. As a result, Respondent determined that he could no longer represent his clients and informed them all by letter that he was removing himself from the practice of law. Respondent now receives social security disability and is unable to work.

9.32(e) Full and free disclosure during the disciplinary process

9.32(l) Remorse

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement

was based on the following: Respondent's advance fees were earned upon receipt and thus properly not deposited into a trust account. Respondent was unable to continue representing clients due to his accident and subsequent mental health condition, both of which were circumstances out of his control. However, Respondent had a duty to keep enough money on hand to refund unearned portions of the fees should he not complete the representation.

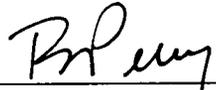
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 24th 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. 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 May, 2017.

Barry Glen Nelson
Respondent

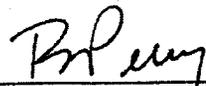
Approved as to form and content



Maret Vessella
Chief Bar Counsel

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. 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 24th day of May, 2017.



Barry Glen Nelson
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 25th day of May, 2017.

Copy of the foregoing emailed
this 25th 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 25th day of May, 2017, to:

Barry Glen Nelson
Law Office of Barry Nelson
6579 West Wilhoit Way
Tucson, Arizona 85743-1161
Email: bgnelsonlaw@gmail.com
Respondent

Copy of the foregoing hand-delivered
this 25th day of May, 2017, to:

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

by:

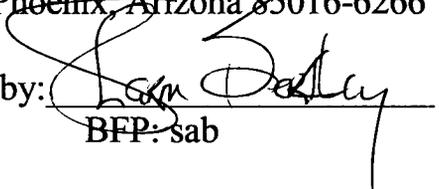

BFP: sab

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Barry Glen Nelson, Bar No. 006746, Respondent

File Nos. 16-2136, 16-2798, 16-2229, 17-0119

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,**

**BARRY GLEN NELSON,
Bar No. 006746,**

Respondent.

PDJ 2017-_____

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 17-0119]

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, Barry Glen Nelson, is hereby suspended for a period of six (6) months 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 or _____.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation for a period of two (2) years.

IT IS FURTHER ORDERED that, LRO MAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date

of his reinstatement, to schedule an assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Respondent will be responsible for any costs associated with participation with compliance.

IT IS FURTHER ORDERED that Respondent shall pay restitution in the following amounts:

COUNT 1 (16-2136/Aragona): Respondent agrees to pay \$457.00 to Dominic Aragona. Respondent may not be reinstated to the practice of law until restitution to Mr. Aragona is paid.

COUNT 2 (Merkle/16-2798): Respondent agrees to pay \$1,986.00 to James Merkle. Respondent may not be reinstated to the practice of law until restitution to Mr. Merkle is paid.

IT IS FURTHER ORDERED that Respondent shall initiate fee arbitration proceedings with Joie Lech prior to applying for reinstatement to the practice of law.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of any 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 \$ _____, within thirty (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 thirty (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:

Barry Glen Nelson
Law Office of Barry Nelson
6579 West Wilhoit Way
Tucson, Arizona 85743-1161
Email: bgnelsonlaw@gmail.com
Respondent

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

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

by: _____