

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**THOMAS E. HIGGINS, JR.,  
Bar No. 004324,**

Respondent.

**PDJ 2018-9043**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 17-2712]

**FILED JUNE 15, 2018**

The Presiding Disciplinary Judge (“PDJ”) having reviewed the Agreement for Discipline by Consent filed on June 4, 2018 pursuant to Rule 57(a), Ariz. R. Sup. Ct., requested its modification. The parties’ filed a notice of no opposition to the recommended modification, and the PDJ accepted the parties’ modified agreement.

Accordingly:

**IT IS ORDERED** Respondent, **Thomas E. Higgins, Jr., Bar No. 004324**, is reprimanded and placed on probation for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately.

**IT IS FURTHER ORDERED** Mr. Higgins shall be placed on probation for two (2) years.

**IT IS FURTHER ORDERED** Mr. Higgins shall pay restitution to Roasalia and Jesus Manuel Moran for \$4,000.00 within ninety (90) days from this order. Mr.

Higgins shall contact the State Bar Compliance Monitor at (602) 340-7258 to provide proof of timely payment of restitution.

**IT IS FURTHER ORDERED** Mr. Higgins shall complete the State Bar's Continuing Legal Education (CLE) course *Candor, Courtesy & Confidences: Common Conundrums* or other similar three (3) hour CLE course in addition to his annual CLE requirement.

**IT IS FURTHER ORDERED** Mr. Higgins shall complete a one-time Law Office Management Assistance Program (LOMAP) assessment and follow all recommendations, if any. Mr. Higgins shall contact the State Bar's Compliance Monitor at (602) 340-7258 within ten (10) days from this order to schedule the assessment.

### **NON-COMPLIANCE WITH PROBATION**

If Mr. Higgins fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, 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, whether to impose a sanction. If there is an allegation that Mr. Higgins 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.

**IT IS FURTHER ORDERED** Mr. Higgins shall pay the costs and expenses of the State Bar of Arizona for \$1,200.00, within thirty (30) days from service of this order. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge with these disciplinary proceedings.

**DATED** this 15th day of June, 2018.

*William J. O'Neil*

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

COPY of the foregoing e-mailed/mailed on this 15<sup>th</sup> day of June, 2018, to:

Thomas E. Higgins Jr.  
Law Offices of Thomas E. Higgins PLLC  
325 W. Franklin St.  
Tucson, AZ 85701-8265  
Email: [higginsinvail@aol.com](mailto:higginsinvail@aol.com)  
Respondent

Craig D. Henley  
Senior Bar Counsel  
*State Bar of Arizona*  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**THOMAS E. HIGGINS, JR.,**  
**Bar No. 004324**

Respondent.

**PDJ 2018-9043**

**DECISION ACCEPTING  
DISCIPLINE BY CONSENT**

[State Bar No. 17-2712]

**FILED JUNE 15, 2018**

Under Rule 57(a), Ariz. R. Sup. Ct.,<sup>1</sup> an Agreement for Discipline by Consent (“Agreement”), was filed June 4, 2018. A probable cause order was entered on May 4, 2018, but no formal complaint has been filed. Mr. Higgins represents himself, the State Bar of Arizona is represented by Senior Bar Counsel Craig D. Henley.

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. Higgins 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 the Agreement and an opportunity to object as

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<sup>1</sup> Unless otherwise stated all Rule references are to the Ariz. R. Sup. Ct.

required by Rule 53(b)(3), Ariz. R. Sup. Ct., was sent to the complainants by e-mail and letter on May 29, 2018, and no objections have been filed.

Under the agreement Mr. Higgins conditionally admitted he “violated ERs 1.3 ~Diligence, ER 1.4 ~ Communication, ER 1.5 ~ Unreasonable fees, ER 3.2 ~ Failure to expedite litigation, and 8.4(d) ~ Conduct prejudicial to the administration of justice.” On June 7, 2018, the PDJ recommended the agreement be modified by withdrawing the alleged violations of ER 3.2 and 8.4(d). The facts were summarized in that request. The modification was sought for the following reasons. While the agreement stipulated that ER 3.2 was violated and that *Standard 6.23, Abuse of the Legal Process* applied, this was based on the conclusion that Higgins “negligently failed to comply with a court order or rule.” The parties also stipulated that ER 8.4(d) applied because he “negligently failed to comply with a court order or rule.” There were no facts stated within the agreement that demonstrated Mr. Higgins violated any court order or rule.

Additionally, the violation of ER 1.5 was stated to relate to “Unreasonable fees.” But there were no facts stated stating the fees charged by him were not the normal fees charged for the services sought. It was clearly stated that Mr. Higgins failed to adequately provide his clients with accurate or complete information regarding the services sought.

The PDJ noted in the request for modification that the stipulated sanction of reprimand was reasonable. The negligent misconduct by Mr. Higgins caused actual

harm to his client. The parties further stipulate in aggravation factors 9.22(a) prior disciplinary offenses, and 9.22(i) substantial experience in the practice of law. In mitigation are factors 9.32(e) full and free disclosure to disciplinary board or cooperative attitude towards proceedings, and 9.32(m) remoteness of prior offenses. The agreed upon sanction of reprimand was also reasonable. It included two (2) years of probation, completion of the CLE “Candor, Courtesy & Confidences: Common Conundrums” or other similar three-hour CLE course, completion of a one-time Law Office Management Assistance Program (LOMAP) assessment, the payment of State Bar costs of \$1,200.00, and restitution for \$4,000.00, which shall be paid within ninety (90) days of this decision.

The parties filed notice of no opposition to the recommended modification on June 12, 2018.

Accordingly:

**IT IS ORDERED** accepting the Agreement as modified and incorporating the original agreement, any supporting documents and the request for modification by this reference. A final judgment and order is signed this date.

**DATED** this 15<sup>th</sup> day of June, 2018.

*William J. O’Neil*  
\_\_\_\_\_  
**William J. O’Neil, Presiding Disciplinary Judge**

COPY of the foregoing e-mailed/mailed  
on this 15th day of June 2018, to:

Thomas E. Higgins Jr.  
Law Offices of Thomas E. Higgins PLLC  
325 W. Franklin St.  
Tucson, AZ 85701-8265  
Email: [higginsinvail@aol.com](mailto:higginsinvail@aol.com)  
Respondent

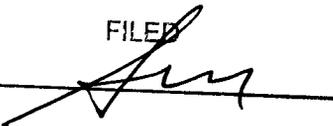
Craig D. Henley  
Senior Bar Counsel  
*State Bar of Arizona*  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: AMcQueen

Craig D. Henley, Bar No. 018801  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602) 340-7272  
Email: LRO@staff.azbar.org

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

JUN 12 2018

FILED  
BY 

Thomas E. Higgins Jr.  
Law Offices of Thomas E. Higgins PLLC  
325 W. Franklin St  
Tucson, AZ 85701-8265  
Email: [higginsinvail@aol.com](mailto:higginsinvail@aol.com)  
Respondent

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**THOMAS E. HIGGINS JR,  
Bar No. 004324,**

**Respondent.**

**PDJ 2018-9043**

**NOTICE OF NO OPPOSITION  
TO RECOMMENDED  
MODIFICATION**

State Bar No. 17-2712

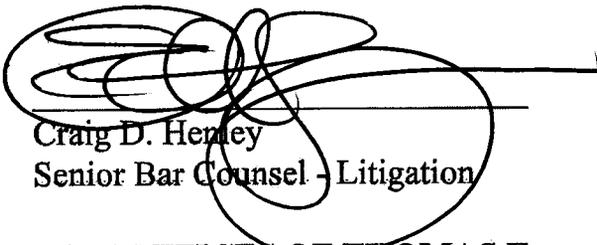
The State Bar of Arizona, by undersigned bar counsel, and Respondent,  
who is unrepresented, hereby provided the Presiding Disciplinary Judge (PDJ)

notice that neither party is opposed to the PDJ's recommendation as set forth in the June 7, 2018 Decision Recommending Modification of Agreement.

Accordingly, the parties are submitted this executed withdrawal of the violations of Rule 42, Ariz. R. Sup. Ct., ERs 3.2 and 8.4(d).

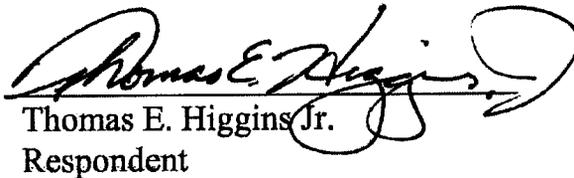
DATED this 21<sup>st</sup> day of June 2018.

**STATE BAR OF ARIZONA**



Craig D. Henley  
Senior Bar Counsel - Litigation

**LAW OFFICES OF THOMAS E.  
HIGGINS PLLC**



Thomas E. Higgins Jr.  
Respondent

Original filed with the Disciplinary Clerk of the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona this 21<sup>st</sup> day of June, 2018.

Copy of the foregoing emailed  
this 12<sup>th</sup> day of June, 2018, to:

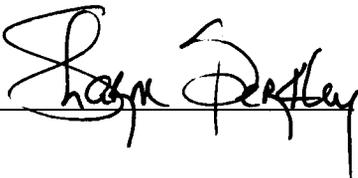
The Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

Copy of the foregoing mailed/emailed  
this 12<sup>th</sup> day of June, 2018, to:

Thomas E. Higgins Jr.  
Law Offices of Thomas E. Higgins PLLC  
325 W. Franklin St  
Tucson, AZ 85701-8265  
Email: [higginsinvail@aol.com](mailto:higginsinvail@aol.com)  
Respondent

Copy of the foregoing hand-delivered  
this 12<sup>th</sup> day of June, 2018, to:

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

by: 

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**THOMAS E. HIGGINS, JR.,**  
**Bar No. 004324**

Respondent.

**PDJ 2018-9043**

**DECISION RECOMMENDING  
MODIFICATION OF  
AGREEMENT**

[State Bar No. 17-2712]

**FILED JUNE 7, 2018**

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Under Rule 57(a), Ariz. R. Sup. Ct.,<sup>1</sup> an Agreement for Discipline by Consent (“Agreement”), was filed June 4, 2018. A probable cause order issued on May 4, 2018, but no formal complaint has been filed. Mr. Higgins represents himself, the State Bar of Arizona is represented by Senior Bar Counsel Craig D. Henley.

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. Higgins 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

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<sup>1</sup> Unless otherwise stated all Rule references are to the Ariz. R. Sup. Ct.

proposed form of discipline. Notice of the Agreement and an opportunity to object as required by Rule 53(b)(3), Ariz. R. Sup. Ct., was sent to the complainants by e-mail and letter on May 29, 2018, and no objections to date have been filed.

The Agreement details a factual basis to support some of the conditional admissions. It is incorporated by this reference. Mr. Higgins admits he violated ERs “1.3 ~Diligence, ER 1.4 ~ Communication, ER 1.5 ~ Unreasonable fees, ER 3.2 ~ Failure to expedite litigation, and 8.4(d) ~ Conduct prejudicial to the administration of justice.” The misconduct is briefly summarized.

Mr. Higgins was hired to represent a client in a Post-Conviction Relief Petition (“PCR”) matter after the Court of Appeals issued an October 18, 2011 decision upholding the Client’s convictions. Mr. Higgins did not represent client when he was convicted of multiple felonies. The client did not receive and was unaware of that Court of Appeals decision and, Mr. Higgins was also unaware of that decision and filed his PCR notice on March 27, 2012. Because the client had not received the notice, the court extended the time to file the PCR. On November 21, 2013 Mr. Higgins filed the PCR. It was denied on March 7, 2014 by the trial court.

Mr. Higgins timely moved to extend the filing date for the petition for review. The trial court extended the deadline to April 11, 2014. Needing another continuance, he sought that extension from the Court of Appeals and filed his petition with that Court on April 14, 2014. The Court of Appeals dismissed the petition as untimely and

granted leave to refile the request with the trial court. He filed no request with either the trial court or the Court of Appeals

The agreement states Mr. Higgins did not inform the Client's wife that the petition for review was denied until one year later, April 16, 2015. He also failed to inform her of the basis of the denial. On May 4, 2015, Mr. Higgins entered into an agreement to represent Client in a Petition for Habeas Corpus for \$10,000.00. Mr. Higgins was paid \$4,000.00 as a retainer.

The writ of habeas corpus was denied with prejudice because it was not filed within fourteen months of the April 14, 2014 Court of Appeals dismissal. The Court denied Mr. Higgins' request for a Certificate of Appealability based upon untimely filing. Mr. Higgins stated that he believed recent decisions would afford Client equitable tolling of the statute of limitation. He admitted that he likely did not explain the negative impact of the timeline or the success of his tolling argument to the Client.

In applying the *Standards* the parties specify the basis for each violation. *Standard 4.43, Lack of Diligence* applies to Mr. Higgins' violation of ERs 1.3 and 1.4. It provides that "Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client and causes injury or potential injury to a client." Mr. Higgins negligently failed to diligently represent and adequately communicate with his client.

The agreement states *Standard 4.63, Lack of Candor* applies to Mr. Higgins' violation of ER 1.5, but states nothing about an unreasonable fee. Instead it states, "Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information and causes injury or potential injury to a client." It is assumed there was a typographical error relating to the "unreasonable fees." ER 1.5 applies to Mr. Higgins as discussed in the *Standard 4.63* discussion.

While the agreement stipulates that ER 3.2 was violated and that *Standard 6.23, Abuse of the Legal Process* applies, this is based on the conclusion that Higgins "negligently failed to comply with a court order or rule." There are no facts stated within the agreement that demonstrates ER 3.2 was violated by his failure to comply with a court order or a rule. The PDJ declines to speculate what court order is referred to or what rule. That he erred is not tantamount to a failing to comply with a court order or rule. That he did not inform his client of that risk is already covered under ER 1.5.

The parties also stipulate that ER 8.4(d) applies because he "negligently failed to comply with a court order or rule." The comment to ER 8.4(d) is instructive.

A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice.

A lawyer's abuse of legal process can violate Rule 8.4(d). *See, e.g., In re Alexander*, 300 P.3d 536 (Ariz. 2013). But there are no facts offered that demonstrate Higgins failed "to comply with court order or rule." The stated violation appears to be a conclusion without a stated factual basis.

Notwithstanding, the stipulated sanction of reprimand is reasonable. His negligent misconduct caused actual harm to his client. The parties further stipulate in aggravation factors 9.22(a) prior disciplinary offenses, and 9.22(i) substantial experience in the practice of law. In mitigation are factors 9.32(e) full and free disclosure to disciplinary board or cooperative attitude towards proceedings, and 9.32(m) remoteness of prior offenses.

The agreed upon sanction of reprimand includes two (2) years of probation, completion of the CLE "Candor, Courtesy & Confidences: Common Conundrums" or other similar three hour CLE course, completion of a one-time Law Office Management Assistance Program (LOMAP) assessment, the payment of State Bar costs of \$1,200.00, and restitution for \$4,000.00, which shall be paid within ninety (90) days of this decision. Accordingly:

**IT IS RECOMMENDED** modification of the Agreement. The PDJ is inclined to accept the Agreement and enter a reprimand, but that the alleged violations or ER 3.2 and 8.4(d) be withdrawn. If the recommendation is followed, the parties need only file a pleading stating that withdrawal.

**IT IS ORDERED** the parties shall file within twenty (20) days an executed withdrawal of ER 3.2 and 8.4(d) or the Agreement shall be deemed rejected under Rule 57(a)(4)(B). Nothing herein precludes the parties from filing a different agreement.

**DATED** this 7<sup>th</sup> day of June, 2018.

*William J. O'Neil*  

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

COPY of the foregoing e-mailed/mailed  
on this 7<sup>th</sup> day of June 2018, to:

Thomas E. Higgins, Jr.  
*Law Offices of Thomas E. Higgins PLLC*  
325 W. Franklin St.  
Tucson, AZ 85701-8265  
Email: higginsinvail@aol.com  
Respondent

Craig D. Henley  
Senior Bar Counsel  
*State Bar of Arizona*  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: LRO@staff.azbar.org

by: AMcQueen

Craig D. Henley, Bar No. 018801  
Senior Bar Counsel - Litigation  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602) 340-7272  
Email: LRO@staff.azbar.org

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

JUN 4 2018

FILED  
BY 

Thomas E. Higgins Jr., Bar No. 004324  
Law Offices of Thomas E. Higgins PLLC  
325 W Franklin St  
Tucson, AZ 85701-8265  
Telephone 520-624-8663  
Email: [higginsinvail@aol.com](mailto:higginsinvail@aol.com)  
Respondent

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**THOMAS E. HIGGINS  
Bar No. 004324**

Respondent.

PDJ 2018-9043

State Bar File Nos. 17-2712

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Thomas E. Higgins Jr., 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 May 4, 2018, 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 29, 2018. 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 Complainant's 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., ER 1.3 ~ Diligence, ER 1.4 ~ Communication, ER 1.5 ~ Unreasonable Fees, ER 3.2 ~ Failure to Expedite Litigation and ER 8.4(d) ~ Conduct Prejudicial to the Administration of Justice.

Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand with Probation requiring Respondent to

refund Complainant \$4000.00 and complete the State Bar's Continuing Legal Education (CLE) course *Candor, Courtesy & Confidences: Common Conundrums* or other similar three (3) hour CLE course in addition to Respondent's annual CLE requirement.

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.<sup>1</sup> 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 the State of Arizona on October 11, 1975.

#### **COUNT ONE (File No. 17-2712/Moran)**

2. On January 21, 2010, Complainant was convicted of various felony offenses related to a fatal vehicular accident and sentenced to twenty eight years.

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<sup>1</sup> 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.

3. On July 21, 2011, the Court of Appeals issued a memorandum decision upholding the convictions and ordering the case closed on October 18, 2011.

4. Respondent was subsequently contacted for representation on a Post-Conviction Relief Petition.

5. On March 27, 2012, Respondent filed a PCR notice on behalf of Complainant. The notice was filed after the 90 day deadline set forth by Rule 32.4(a), Ariz. R. Crim. Pro. but allowed because the appellate ruling was not received by Complainant or counsel.

6. On November 21, 2013, Respondent filed the PCR petition and the trial court denied the petition on March 7, 2014.

7. On April 4, 2014, Respondent filed a timely motion to extend the filing date for a petition for review of the denial. On April 9, 2014, the trial court granted the motion extending the deadline to April 11, 2014.

8. Needing another continuance, Respondent then filed a request for extension with the Court of Appeals.

9. On April 14, 2014, Respondent filed a petition for review with the Court of Appeals.

10. In response to the State Bar question why he missed the deadline then filed the petition with the Court of Appeals on April 14, 2014, Respondent indicates that he was out of town on April 11, 2014 and was unable to sign. Upon returning, he signed and filed the petition on April 14<sup>th</sup>.

11. On April 15, 2014, the Court of Appeals dismissed the petition as untimely. The court did grant leave to re-file his request for an extension with the trial court.

12. In response to the State Bar question why he failed to re-file his request for extension, Respondent indicates that he was unaware if he received actual notice from the Court of Appeals that granted him leave to re-file but does not believe that it was timely if he did.

13. On April 16, 2015, Respondent e-mailed Complainant's wife informing her that the appeal was denied but did not inform her of the basis of the denial.

14. On or about May 4, 2015, Respondent entered into a written agreement to represent Complainant in a "Petition for Habeas Corpus to be filed in United States District Court in Tucson, Arizona" for \$10,000.00.

15. Rosalia and Jesus Manuel Moran paid Respondent \$4000.00.

16. On May 8, 2015, Respondent filed a writ of habeas corpus with the U.S. District Court initiating the United States District Court case of *Moran v. Ryan*, CV 15-0193-TUC-JR. Respondent did not re-file a request for an extension with the trial court or appeal the Court of Appeals' dismissal.

17. On February 13, 2017, the US District Court denied the writ of habeas corpus with prejudice finding, among other things, that the writ was untimely as it was filed more than fourteen months after the April 15, 2014 Court of Appeals dismissal. The Court also denied Respondent's request for a Certificate of Appealability as "[r]easonable jurists would not debate that (Complainant's) claims were untimely. The claims are therefore not deserving of further review."

18. In his initial response to the State Bar, Respondent claims that he believed that recent decisions would afford Complainant an argument for the equitable tolling of the two years statute of limitation.

19. In response to the State Bar question whether he explained the negative impact of the timeline and ruling on the success of his "tolling argument", Respondent indicates "[p]robably not. I instructed the law clerk to begin research on how we could get back into court. The tolling arguments were research information provided to me. I have a recollection of explaining what tolling was

either to Mr. Moran or his wife but do not have a time slip noting that conversation.”

### **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., ER 1.3 ~ Diligence, ER 1.4 ~ Communication, ER 1.5 ~ Unreasonable Fees, ER 3.2 ~ Failure to Expedite Litigation and ER 8.4(d) ~ Conduct Prejudicial to the Administration of Justice.

### **CONDITIONAL DISMISSALS**

Not applicable.

### **RESTITUTION**

Respondent agrees to refund Rosalia and Jesus Manuel Moran \$4000.00 as part of this agreement.

### **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 with Probation requiring Respondent to refund Rosalia and Jesus Manuel Moran \$4000.00 and complete the State Bar's Continuing Legal Education (CLE) course *Candor, Courtesy & Confidences: Common Conundrums* or other similar three (3) hour CLE course in addition to Respondent's annual CLE requirement.

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

#### **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 the following *Standards* are the appropriate *Standards* given the facts and circumstances of this matter:

1. **Standard 4.43** [ERs 1.3 and 1.4]

**Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.**

2. **Standard 4.63** [ER 1.5]

**Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to a client.**

3. **Standard 6.23** [ERs 3.2 and 8.4(d)]

**Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.**

**The duty violated**

As described above, Respondent's conduct violated his duty to his client and the legal system.

### **The lawyer's mental state**

For purposes of this agreement the parties agree that Respondent negligently failed to diligently represent and fully communicate with his client, charged his client \$4000.00 for legal services that were of no value to the client, failed to expedite the litigation which resulted in prejudice to the administration of justice.

The parties further agree that Respondent's conduct was in violation of the Rules of Professional Conduct set forth herein.

### **The extent of the actual or potential injury**

For purposes of this agreement, the parties agree that there was actual harm to the client and legal system.

### **Aggravating and mitigating circumstances**

The presumptive sanction in this matter is a reprimand. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

### **In aggravation:**

*Standard 9.22(a)* prior disciplinary offenses.

- SB 12-1304 – Admonition with One Year of probation (TAAEP, LOMAP) for violation of the trust account rules.

- SB 91-0021, 92-2111 and 93-0221 – Two (2) Year Suspension for violations of Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.5, 1.7, 1.9, 1.16, 3.3 and 8.4(c).
- SB 88-1885, 89-1460, 89-1998, 89-2069 and 90-0597 – Two Years of probation for violations of Rule 42, Ariz. R. Sup. Ct., ERs 1.1, 1.3, 1.15, 3.3(d), 3.2, 4.1, 8.1(b) and Rule 51, Ariz. R. Sup. Ct.
- SB 88-1686 - Informal Reprimand for violations of Rule 42, Ariz. R. Sup. Ct., ERs 1.15(b), 8.1(a).
- SB 88-1643 - Informal Reprimand for violations of Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4.
- SB 86-1129 - Informal Reprimand for violations of Rule 42, Ariz. R. Sup. Ct., ER 1.4.
- SB 86-0123 - Informal Reprimand for violations of Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4.

*Standard 9.22(i)* substantial experience in the practice of law [October 11, 1975].

**In mitigation:**

*Standard 9.32(e)* full and free disclosure to disciplinary board or cooperative attitude towards proceedings;

*Standard 9.32(m)* remoteness of prior offenses.

**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:

While the client and legal system were actually harmed as a result of Respondent's lack of diligence and communication and Respondent's failure to expedite the client's litigation which resulted in prejudice to the administration of justice, Respondent attempted to remediate his failures by providing legal services that he believed would assist the client. Respondent has also agreed to refund the entire amount of prepaid legal fees as he agrees that the legal services were of no value to the client.

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**

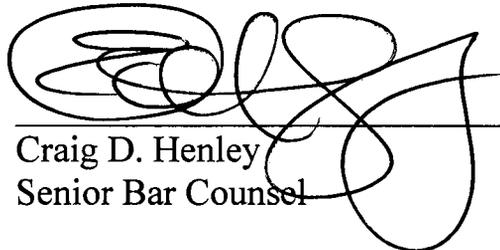
The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent

believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand with Probation and the imposition of costs and expenses.

A proposed form order is attached hereto as Exhibit B.

**DATED** this 4<sup>th</sup> day of June 2018.

**STATE BAR OF ARIZONA**

  
\_\_\_\_\_  
Craig D. Henley  
Senior Bar Counsel

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

**DATED** this \_\_\_\_\_ day of June, 2018.

\_\_\_\_\_  
Thomas E. Higgins Jr.  
Respondent

Approved as to form and content

  
\_\_\_\_\_  
Maret Vessella  
Chief Bar Counsel

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 June 2018.

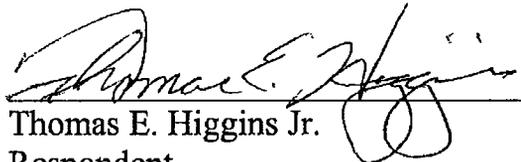
**STATE BAR OF ARIZONA**

---

Craig D. Henley  
Senior Bar Counsel

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

**DATED** this 29<sup>TH</sup> day of May, 2018.



---

Thomas E. Higgins Jr.  
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 4<sup>th</sup> day of June, 2018.

Copy of the foregoing emailed  
this 4<sup>th</sup> day of June 2018 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](mailto:officepdj@courts.az.gov)

Copy of the foregoing mailed/emailed  
this 4<sup>th</sup> day of June, 2018 to:

Thomas E. Higgins Jr.  
Law Offices of Thomas E. Higgins PLLC  
325 W Franklin St  
Tucson, AZ 85701-8265  
Email: [higginsinvail@aol.com](mailto:higginsinvail@aol.com)  
Respondent

Copy of the foregoing hand-delivered  
this 4<sup>th</sup> day of June, 2018 to:

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

by: *Karen E. Calceaga*  
QDH:nr

**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Thomas E. Higgins, Bar No. 004324, Respondent

File No. 17-2712

### 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  
CURRENT MEMBER OF  
THE STATE BAR OF ARIZONA,

**THOMAS E. HIGGINS JR.,  
Bar No. 004324,**

Respondent.

**PDJ**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 17-2712]

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, **Thomas E. Higgins Jr.**, is hereby Reprimand with Probation 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 Respondent shall be placed on probation for a period of two years.

**IT IS FURTHER ORDERED** that Respondent shall pay restitution to Rosalia and Jesus Manuel Moran in the amount of \$4000.00 within 90 days from the date of service of this Order. Respondent shall contact the State Bar Compliance Monitor at 602-340-7258 to provide proof of timely payment of restitution.

**IT IS FURTHER ORDERED** that Respondent shall complete the State Bar's Continuing Legal Education (CLE) course *Candor, Courtesy & Confidences: Common Conundrums* or other similar three (3) hour CLE course in addition to Respondent's annual CLE requirement.

**IT IS FURTHER ORDERED** that Respondent shall complete a one-time Law Office Management Assistance Program (LOMAP) assessment and follow all recommendations, if any.

**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.

### 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.

**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 June 2018.

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**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 June, 2018.

Copies of the foregoing mailed/mailed  
this \_\_\_\_\_ day of June, 2018 to:

Thomas E. Higgins Jr.  
Law Offices of Thomas E. Higgins PLLC  
325 W Franklin St  
Tucson, AZ 85701-8265  
Email: [higginsinvail@aol.com](mailto:higginsinvail@aol.com)  
Respondent

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_ day of June 2018 to:

Craig D. Henley  
Senior Bar Counsel - Litigation  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

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by: \_\_\_\_\_