

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

DAVID K. ROSEN,
Bar No. 018589

Respondent.

PDJ 2018-9008

**FINAL JUDGMENT AND
ORDER**

[State Bar Nos. 17-0593, 17-2119,
17-2461]

FILED MAY 10, 2018

The Presiding Disciplinary Judge, having reviewed the Agreement for Discipline by Consent filed on May 2, 2018, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepted the parties' proposed agreement.

Accordingly:

IT IS ORDERED Respondent, **David K. Rosen, Bar No. 018589**, is suspended for a period of two (2) years effective forty-five (45) days from the date of this order, for his conduct in violation of the Arizona Rules of Professional Conduct as outlined in the consent documents.

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

IT IS FURTHER ORDERED Mr. Rosen shall pay the costs and expenses of the State Bar of Arizona in the amount of \$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 10th day of May, 2018.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 10th day of May, 2018, to:

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

David K. Rosen
Rosen Law Firm PLLC
15849 N. 71st Street, Ste 100
Scottsdale, AZ 85254-2179
Email: davidrosen@rosenlawaz.com

by: [AMcQueen](#)

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

DAVID K. ROSEN,
Bar No. 018589

Respondent.

PDJ 2018-9008

**DECISION ACCEPTING
DISCIPLINE BY CONSENT**

[State Bar Nos. 17-0593, 17-2119,
17-2461]

FILED MAY 10, 2018

Under Rule 57(a), Ariz. R. S. Ct.,¹ an Agreement for Discipline by Consent (“Agreement”), was filed May 2, 2018. A probable cause order was entered on December 22, 2017. The complaint was filed on January 17, 2018. Rosen represents himself. The State Bar of Arizona is represented by Staff Bar Counsel Hunter F. Perlmeter.

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. Rosen has voluntarily waived the right to an adjudicatory hearing, and waived all

¹ Unless otherwise stated all Rule references are to the Ariz. R. Sup. Ct.

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 required by Rule 53(b)(3), Ariz. R. S. Ct., was sent to the complainants by e-mail. The agreement certifies that no objections have been filed.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Rosen admits he violated ERs 1.3 (diligence), 1.4 (communication), 1.5, (fees), 1.15 (safekeeping property), 1.16, (declining or terminating/withdrawing from representation), 5.5, (unauthorized practice of law), 8.4(c), (misconduct) Rule 54(d) (violation of obligation in disciplinary matter) and Rule 72, (notice requirements).

In PDJ 2016-9028, under an agreement for discipline by consent, Rosen served a disciplinary suspension from September 16, 2016 to April 19, 2017. He was reinstated in PDJ 2017-0939-R. In this proceeding, Rosen agrees to accept the imposition of the sanction of a two-year suspension from the practice of law and the full payment of costs of these proceedings within 30 days.

Facts in Support of Sanction

In Count One, Rosen was hired to file a personal injury complaint for a client who had fallen in a casino. Rosen failed to keep client informed which resulted in client driving from out of state to Arizona to hearings that had been continued. Rosen failed to respond to discovery and defendant moved for default which was granted.

Rosen failed to appear for the hearing on the motion to dismiss. The case was dismissed. Rosen did not tell client of the dismissal. During this time, Rosen became suspended from the practice of law and did not inform client of that fact. Rosen stopped responding to client calls and when client requested her file on several occasions, Rosen took no action to deliver it.

In Count Two, Rosen represented a client while he was suspended and settled her case in December of 2016. When the client asked him about the status of medical liens, Rosen failed to provide that information because he had failed to satisfy several of her medical liens. By July 2017, Rosen still had distributed none of the funds. The client filed a State Bar charge against him. When Rosen finally distributed money to client he failed to pay the medical liens. On March 9, 2018, the client reported that Rosen had paid the liens.

In Count three, Rosen represented a client in a products liability case. He failed to timely file a lawsuit resulting in dismissal of the claim. A legal malpractice claim was made against Rosen based on his disclosure to the State Bar that he possessed professional liability insurance. He misrepresented that he had such coverage. He also failed to respond to the State Bar charge.

Legal Ground in Support of Sanction

Rule 58(k) requires that “Sanctions imposed shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions*. Rule

57(a)(2)(E) requires the consent agreement include a discussion of those *Standards*. The parties agree that *Standard 4.42, Lack of Diligence* applies and provides that suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Rosen knowingly failed to diligently perform services for his clients and caused actual harm to those clients. He violated his duty to his clients, the profession, and the legal system.

The parties stipulate that the presumptive sanction is suspension. The parties further stipulate in aggravation are factors 9.22(a) prior disciplinary offenses, and 9.22(b) dishonest or selfish behavior, 9.22(c), a pattern of misconduct, 9.22(d), multiple offenses, 9.22(e), bad faith obstruction of the disciplinary process, and 9.22(i), substantial experience in the practice of law. Factor 9.32(c), personal or emotional problems is the only mitigating factor the parties list.

IT IS ORDERED accepting the Agreement and incorporating it and any supporting documents by this reference. Costs are stipulated to be \$1,200.00. A final judgment and order is signed this date.

DATED this 10th day of May, 2018.

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

COPY of the foregoing e-mailed/mailed
on this 10th day of May 2018, to:

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

David K. Rosen
Rosen Law Firm PLLC
15849 N 71st Street, Ste 100
Scottsdale, AZ 85254-2179
Email: davidrosen@rosenlawaz.com
Respondent

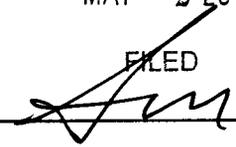
by: AMcQueen

Hunter F. Perlmeter, Bar No. 024755
Bar Counsel - Litigation
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4201 N. 24th Street, Suite 100
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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAY 2 2018

FILED

BY 

David K. Rosen, Bar No. 018589
Rosen Law Firm PLLC
15849 N 71st St Ste. 100
Scottsdale, AZ 85254-2179
Telephone 480-281-1810
Email: davidrosen@rosenlawaz.com
Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**DAVID K. ROSEN
Bar No. 018589**

Respondent.

PDJ 2018-9008

State Bar File Nos. **17-0593, 17-2119,
17-2461**

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, David K Rosen, 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 December 22, 2017. On January 17, 2018,

the State Bar filed its Complaint. The Complaint was served on Respondent on January 18, 2018. Respondent failed to timely answer and the Court issued a Notice of Default on February 13, 2018. Respondent filed his answer during the default period. On April 2, 2018, the parties filed a Notice of Settlement. Thereafter, the PDJ ordered that an agreement for discipline be filed by May 2, 2018.

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 all complainants by email notifying them 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. None of the Complainants have objected to the agreement.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.3, 1.4, 1.5, 1.15, 1.16, 5.5, 8.4(c), 8.4(d), Rule 54(d) and Rule 72. Upon acceptance of this agreement, Respondent agrees to accept imposition of the sanction of a two year suspension from the practice of law. 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, 18, 1997.
2. Respondent served a disciplinary suspension from September 16, 2016 to April 19, 2017 and was reinstated in PDJ 17-0939-R.

COUNT ONE (File no. 17-0593/ Atler-Montoya)

3. In August of 2011, Linda Atler-Montoya fell at a casino on tribal land.
4. In January of 2013, Atler-Montoya hired Respondent to file a personal injury claim.
5. In August of 2013, Respondent's firm filed a complaint on Atler-Montoya's behalf.

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.

6. The court initially set a hearing for November 12, 2014, that was continued. Adler-Montoya appeared in Phoenix on that date (driving from Albuquerque) because, according to Adler-Montoya, Respondent failed to tell her that the hearing had been continued.

7. On July 3, 2014, the defendant served its second set of interrogatories and second request for production of documents on Respondent. Respondent failed to respond.

8. As a result, the defendant moved for a notice of default. The motion was granted and a notice of default was issued on March 17, 2015.

9. On April 14, 2015, Respondent failed to appear for a hearing on a motion to dismiss the case. The court noted Respondent's failure to appear for the hearing, failure to respond to discovery, and failure to respond to the default entered by the court on March 17, 2015. The court dismissed the case without prejudice.

10. Respondent failed to inform Adler-Montoya of the motion to dismiss, the hearing on the motion, or the court's dismissal of the case.

11. Atler-Montoya's position is that throughout the representation, Respondent also failed to return phone calls. Respondent believes that most phone calls were timely returned by his paralegal.

12. Prior to filing her bar charge, Atler-Montoya requested her file on several occasions, but Respondent failed to take action.

13. Respondent also failed to inform Atler-Montoya of his six month disciplinary suspension that began on September 19, 2016.

14. In Count One Respondent violated ERs 1.3, 1.4, 1.16, 5.5, 8.4(c), 8.4(d), and Rule 72.

COUNT TWO (File No. 17-2119/O'Meara)

15. On July 3, 2016, Judy O'Meara was involved in a car accident. She hired Respondent for legal representation.

16. Respondent settled the case in December of 2016 while suspended from the practice of law.

17. When Respondent notified O'Meara of the settlement, she asked Respondent for information concerning the status of medical liens in the case. Respondent failed to provide such information.

18. O'Meara eventually learned that Respondent failed to satisfy several of her medical liens. Respondent had not disbursed funds at the time.

19. O'Meara filed a bar charge in July of 2017. At the time, she had not received any settlement monies from Respondent.

20. After the bar charge was filed, Respondent paid O'Meara \$25,038.78 and left O'Meara with remaining liens of \$313.34 and \$919.34.

21. Respondent failed to respond to the Bar charge despite requesting an extension to respond in August of 2017.

22. On March 9, 2018, bar counsel spoke with O'Meara who indicated that Respondent has now satisfied her outstanding lien amounts and that there may have been a misunderstanding concerning the discrepancies in the settlement figures conveyed by Respondent. She further indicated that she is not owed any restitution.

23. In Count Two, Respondent violated ERs 1.3, 1.4, 1.5, 1.15, ER 5.5, 8.4(d), and Rule 54(d).

COUNT THREE (File No. 17-2461/Entrekin)

24. In 2017, attorney Lance Entrekin agreed to take on a client's legal malpractice claim against Respondent based in part upon Respondent's disclosure to the SBA that he possessed professional liability insurance.

25. Respondent had represented Entrekin's client, Maria Perparos, in 2013 in a products liability case. He failed to file Perparos' case timely leading to the dismissal of the case in September of 2015.

26. In April of 2017, Entrekin filed a malpractice suit against Respondent on Perparos' behalf.

27. In a June 30, 2017, email to Entrekin, Respondent admitted to Entrekin that he did not have liability insurance to cover the malpractice claim despite his contrary representation to the SBA.

28. Respondent failed to respond to the Bar charge.

29. In Count Three, Respondent violated ER 8.4(c) and Rule 54(d).

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, 5.5, 8.4(c), 8.4(d), Rule 54(d) and Rule 72.

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, a suspension of two years is appropriate. 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 *Standard 4.42* is the appropriate ABA *Standard*: Suspension is generally appropriate when a lawyer knowingly fails to perform services for a client or engages in a pattern of neglect 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 profession, and the legal system

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent knowingly failed to perform legal services for his clients 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 his 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:

Standard 9.22(a): prior disciplinary offenses.

- 14-3190 and 15-0902: six month suspension effective September 19, 2016 and probation to MAP and LOMAP (1.3, 3.2, 4.3, 8.4(d), Rule 54). R failed to comply with court orders and failed to file responses to multiple motions resulting in summary judgment and sanctions against his client. Respondent failed to respond to the bar charge.

Standard 9.22(b): dishonest or selfish behavior (violation of ER 8.4(c))

Standard 9.22(c): a pattern of misconduct (This is Respondent's second suspension related to failure to perform work for clients)

Standard 9.22(d): multiple offenses (Respondent violated all of the ERs indicated above)

Standard 9.22(e): bad faith obstruction of the disciplinary process (Respondent failed to timely respond to bar charges.)

Standard 9.22(i): substantial experience in the practice of law (Respondent was admitted in Arizona in 1997.)

In mitigation:

Standard 9.32(c): personal or emotional problems; (Respondent is currently participating in MAP as a result of his prior suspension/probation.)

Discussion

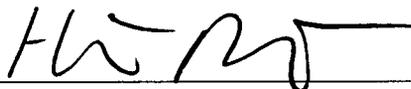
The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction of suspension is appropriate. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree 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 a suspension of two years and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 1st day of May 2018

STATE BAR OF ARIZONA



Hunter F Perlmeter
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 1st day of May, 2018.



David K Rosen
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 2nd day of May, 2018.

Copy of the foregoing emailed
this 2nd day of May, 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

Copy of the foregoing mailed/emailed
this 2nd day of May, 2018, to:

David K. Rosen
Rosen Law Firm PLLC
15849 N 71st St Ste 100
Scottsdale, AZ 85254-2179
Email: davidrosen@rosenlawaz.com
Respondent

Copy of the foregoing hand-delivered
this 2nd day of May, 2018, to:

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

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
David K. Rosen, Bar No. 018589, Respondent

File Nos. 17-0593, 17-2119, & 17-2461

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,

DAVID K ROSEN,
Bar No. 018589,

Respondent.

PDJ 2018-9008

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 17-0593, 17-2119 17-
2461]

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, **David K Rosen**, is hereby suspended for two years for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 45 days from the date of this order or _____.

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

IT IS FURTHER ORDERED that, 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 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, 2018

**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, 2018.

Copies of the foregoing mailed/mailed
this _____ day of May, 2018, to:

David K Rosen
Rosen Law Firm PLLC
15849 N 71st St Ste 100
Scottsdale, AZ 85254-2179
Email: davidrosen@rosenlawaz.com]
Respondent

Copy of the foregoing emailed/hand-delivered
this _____ day of May, 2018, to:

Hunter F Perlmeter
Bar Counsel - Litigation
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, 2018 to:

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

Phoenix, Arizona 85016-6266

by: _____