

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

KENT M. NICHOLAS,
Bar No. 015220

Respondent.

PDJ 2018-9076

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 17-3043]

FILED MARCH 13, 2019

The Presiding Disciplinary Judge accepted the parties' Agreement for Discipline by Consent filed on February 15, 2019.

Accordingly:

IT IS ORDERED Respondent, **KENT M. NICHOLAS, Bar No. 015220**, is suspended two (2) years for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective May 10, 2019.

IT IS FURTHER ORDERED 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 Respondent shall be subject to any terms imposed through any reinstatement hearings held.

IT IS FURTHER ORDERED Respondent shall pay the costs and expenses of the State Bar of Arizona in the amount of \$2,480.55, within thirty (30) days from this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

DATED this 13th day of March, 2019

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed on this 13th day of March 2019, and mailed March 14, 2019, to:

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

Brian Holohan
Broening Oberg Woods & Wilson PC
2800 North Central Ave, Suite 1600
Phoenix, Arizona 85004
Email: bh@bowwlaw.com
Respondent's Counsel

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

KENT M. NICHOLAS,
Bar No. 015220

Respondent.

PDJ-2018-9076

**DECISION ACCEPTING
DISCIPLINE BY CONSENT**

[State Bar No. 17-3043]

FILED MARCH 13, 2019

Under Rule 57(a), Ariz. R. Sup. Ct.,¹ an Agreement for Discipline by Consent (“Agreement”), was filed on February 15, 2019. A Probable Cause Order issued on August 30, 2018, and the formal complaint was filed on September 7, 2018. The State Bar of Arizona is represented by Senior Bar Counsel Hunter F. Perlmeter. Mr. Nicholas is represented by Brian Holohan, *Broening, Oberg, Woods & Wilson*.

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. Nicholas 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. Under Rule 53(b)(3), notice and an opportunity to object was provided to the complainant by phone on January 30, 2019. No objections were received.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Mr. Nicholas admits to violating Rule 42, ERs 1.7 (conflict of interest/current clients), 1.8(j) (conflict of interest/current clients/sexual relations with client), ER 8.4(d) (conduct prejudicial to the administration to the administration of justice) and Rule 41(g) (unprofessional conduct) and 54(d) (refusal to cooperate/furnish information). Upon acceptance of the agreement the parties stipulate to a two (2) year suspension effective sixty (60) days from this order, and the payment of costs totaling \$2,480.55 within thirty (30) days from this order.

The misconduct is briefly summarized. In 2014, Mr. Nicholas represented a client in criminal matters involving identity theft, shoplifting, and probation revocation. He repeatedly engaged in a conflict of interest by continuing a sexual relation with this client. To cover his sorties he lied to his wife, ignored that his sexual relationship with his client began after he became her lawyer, and then actively avoided his professional responsibilities. In August of 2014, Respondent fathered a child with the client. He willfully ignored the possibility of his paternity through apparent self-interest, avoidance and lack of caring. He avoided his parental responsibilities with a

will. The DNA evidence confirmed he was the child's father in December 2017. As with his professional responsibilities he took no personal responsibilities. The messages between them, that he hid from the State Bar, evidences more than avoidance to his responsibilities as a lawyer but rather blatant disregard for even his own child.

One need not be clairvoyant to recognize by the messages of his client that his use of her had left her betrayed, and the resulting damage to the client-lawyer relationship predictable and impaired. Respondent's sexual misconduct assured that his representation would be materially limited by the relationship. He did not blink. Instead he actively failed to preserve and produce evidence of text messages between him and the client when he knew the State Bar was investigating this matter.

Mr. Nicholas was on probation with the Member's Assistance Program in File No. PDJ-2017-9010, which involved Respondent's criminal assault of his incarcerated client. Like his client in this matter, that client was also helpless and handcuffed to a table when he struck him. Mr. Nicholas violated Rule 41(g) and ER 8.4(b) and (d).

Through MAP, the tools to avoid his misconduct were before him but he demonstrated again that his preference is to embrace his lack of self-control. It is exceedingly serious when an attorney is so lacking in self-control that he has no ability, even when in counseling, to so no let alone stop. His driving desire and lack of control is strong evidence of his complete absence of professionalism.

The PDJ is mindful that Agreements for Discipline by Consent bring certainty where there is seen and unforeseen uncertainty in aspects of evidence, testimony, and persuasive force. This Agreement provides certainty and requires that Respondent prove by clear and convincing evidence in formal reinstatement proceedings that he is not a danger to the public and should be permitted to return to the practice of law.

The parties agree *Standard 4.32, Failure to Avoid a Conflict of Interest* applies to Mr. Nicholas' violation of ERs 1.7 and 1.8 and provides that suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict and causes injury or potential injury to a client. The parties agree Mr. Nicholas knowingly violated his duties to his client, the profession, the legal system and the public. His misconduct caused potential harm to the client, the profession, the legal system and the public.

In aggravation, the parties have stipulated to factors 9.22 (a) prior disciplinary offenses, (b) selfish or dishonest motive, 9.22(d) multiple offenses, 9.22(h) vulnerability of victim, and 9.22(i) substantial experience in the practice of law are present in the record. There are no mitigating factors present. The PDJ determined a long-term suspension complies with the *Standards* and fulfills the purposes of discipline.

IT IS ORDERED accepting the Agreement and incorporating it with any supporting documents by this reference. A final judgment and order is signed this date.

DATED this 13th day of March 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed on this 13th day of March 2019, and mailed March 14, 2019, to:

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

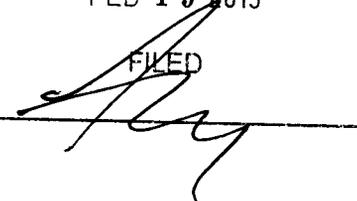
Brian Holohan
Broening Oberg Woods & Wilson, PC
2800 North Central Avenue, Suite 1600
Phoenix, AZ 85004
Email: bh@bowwlaw.com

by: AMcQueen

Hunter F. Perlmeter, Bar No. 024755
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7278
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

FEB 19 2019

FILED
BY 

Brian Holohan, Bar No. 009124
Broening Oberg Woods & Wilson PC
2800 North Central Ave, Suite 1600
Phoenix, Arizona 85004
Telephone 602-271-7713
Email: bh@bowwlaw.com
Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**KENT M. NICHOLAS
Bar No. 015220**

Respondent.

PDJ 2018-9076

State Bar File Nos. **17-3043**

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Kent M. Nicholas, who is represented in this matter by counsel, Brian Holohan, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a),

Ariz. R. Sup. Ct. A formal complaint was filed in this matter on September 7, 2018. Respondent timely answered.

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 by phone on January 30, 2019. Complainant was 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. Complainant indicated that she has no objection to the terms of the agreement.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER 1.7, ER 1.8, ER 8.4(d), Rule 41(g) and Rule 54(d). Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: suspension of two years. 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.

Respondent requests that the PDJ postpone the effective date of Respondent's suspension by an additional thirty days so that Respondent's suspension begins sixty days after the entry of an order accepting this Agreement for Discipline by Consent. The additional time is sought so that Respondent (who is a sole practitioner and whose practice is limited to criminal defense) can wind up his practice in an orderly fashion, resolve (if possible) the remaining cases for clients who have paid his fee in advance and assist clients to find substitute counsel in those cases that cannot be resolved before Respondent's suspension commences. Respondent has not taken, and is not now taking, new clients, and will not accept new clients between now and the commencement of his suspension. The Bar does not object to the additional thirty day delay in the effective date of the suspension.

FACTS

GENERAL ALLEGATIONS

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.

1. Respondent was licensed to practice law in Arizona on October, 23, 1993.

COUNT ONE (File no. 17-3043/ Curdie)

2. On January 24, 2014, Scottsdale Police interviewed Complainant Brittany Curdie as part of an identity theft investigation after she used a fake name at a dentist's office to obtain pain pills.

3. At the time, Curdie was a 24 year old attending community college with an 8 year old daughter. She was living with her fiancé, Blake Noon.

4. On or about January 27, 2014, Curdie met with Respondent at his office for an initial consultation. She had never met or spoken with Respondent before the meeting.

5. On the afternoon of February 10, 2014, Respondent sent Curdie a fee agreement via email. The fee agreement stated "Client agrees to pay attorney's fees at a non-refundable flat rate of \$4,000.00. CLIENT PAID \$400 ON FEBRUARY 10, 2014. If no charges are filed within 6 months, Client does not owe any additional funds."

6. Curdie believed that she engaged Respondent as of February 10, 2014.

7. Respondent did not think his attorney/client relationship with Curdie began at that time. Nevertheless, for purposes of this agreement, Respondent admits that his belief was both mistaken and unreasonable. On June 21, 2014, Curdie was arrested on ID theft charges. On June 23, 2014, Respondent filed a notice of appearance in the case (CR2014-001948.)

8. On June 30, 2014, Respondent appeared at Curdie's arraignment.

9. When their sexual relationship began is disputed. Respondent claims that it began after February 10, 2014, at a time he mistakenly and unreasonably believed that Curdie was not a client. Curdie claims the relationship began after Respondent formally appeared in CR2014-001948.

10. Regardless of when the relationship in fact began, Respondent admits being aware of, and consciously considering, the prohibition against lawyers having sexual relations with their clients before engaging in sexual relations with Curdie but nonetheless had a sexual relationship with Curdie.

11. On July 3, 2014, Respondent emailed Curdie a copy of the grand jury transcript in her case. Respondent produced a copy of this email in responding to a request from the SBA for all correspondence with Curdie.

12. On the same day, Respondent also wrote Curdie the following email: "I've left u messages - are you okay?" Respondent did not produce this email during the SBA's investigation.

13. During their relationship, Curdie's opioid dependency was "very bad." Respondent learned Curdie was in treatment in August 2014

14. During July and August, Respondent came to Curdie's house during the day while her fiancé was at work. He would leave his phone at work because his wife had begun tracking the location of his cellphone.

15. Respondent and Curdie conceived a daughter in early August of 2014.

16. After learning she was pregnant, Curdie told Respondent she believed the baby might be his. Respondent told Curdie that he did not believe it was.

17. On August 14, 2014, Respondent received a letter from Curdie's psychiatrist that stated, "This letter is to inform you that Brittany has been in outpatient counseling treatment and receiving medication assistance for Opioid Dependency since 1/29/2014 at Scottsdale Treatment Institute." Respondent had requested the letter in order to prepare a deviation request in Curdie's criminal case.

18. On September 2, 2014, Respondent filed a Notice of Appearance for Curdie in a Mesa Municipal Court shoplifting case.

19. On September 25, 2014, Respondent appeared with Curdie in the ID theft case during which Curdie entered into a plea agreement. The corresponding probation report noted: "She is currently pregnant," but did not mention that Respondent, the defense attorney on the case, was the father.

20. On November 25, 2014, Curdie emailed Respondent:

Let me know what works best for you. If you really just don't want to see me, then tell me. However, stop with the excuses. I'm a big girl, I can handle it. You have to focus on paying clients? Really Kent? Not the ones you get pregnant and leave them to deal with it?! I have to go through loop holes to get your opinion about the conversation that took place and in light of the situation I would assume you wouldn't be such a dick. Your either going to make time for me or your not. Let me know.

21. Respondent's wife discovered this email in Respondent's inbox and forwarded it to Respondent with the message, "You crossed the line again -."

22. On November 26, 2014, Respondent requested \$7,000 from Curdie and the two entered into a new fee agreement.

23. In a sentencing memorandum filed by Respondent on December 3, 2014, Respondent did not mention that Curdie was pregnant.

24. Little to no communication took place between Respondent and Curdie during 2015. In May of 2015, Curdie gave birth to Respondent's daughter. Respondent did not visit the child or make any financial contributions. Respondent's position is that he did not know for certain that he was the father until DNA testing in December 2017.

25. Respondent had contact in 2016 with Curdie when the Maricopa County Adult Probation Department filed a petition to revoke Curdie's probation.

26. Late in 2016 or early in 2017, the two started having sex again and continued the sexual relationship until August of 2017, when Curdie was again incarcerated.

27. On August 26, 2016, Curdie was arrested for shoplifting in Gilbert, AZ. The arrest was related to Curdie's theft of several items from Target, including a baby monitor and toys.

28. On October 10, 2016, a petition to revoke Curdie's probation was filed. Respondent filed a notice of appearance in the probation revocation proceeding on October 18, 2016.

29. Curdie paid Respondent a total of \$1,000 for representation in the probation revocation proceeding.

30. On February 24, 2017, Curdie and Respondent entered into a fee agreement for a “non-refundable flat rate of \$10,000 which encompassed fees for the 2017 felony charge and all fees on 2014 felony case.”

31. On March 20, 2017, Curdie’s mother paid Respondent \$5,000.

32. On March 23, 2017, Respondent emailed Curdie and her mother informing them that the State was requesting prison time and memorializing that he had agreed to a \$7,500 fee for continued representation. Respondent also informed Curdie and her mother that he would introduce them to a mitigation specialist, Rennee Desaye.

33. On April 1, 2017, Curdie and Respondent entered into a new fee agreement for a flat fee of \$7,500.

34. On April 6, 2017, Respondent emailed Curdie and her mother telling them he had a strategy for obtaining a dismissal in one of her cases; he also requested clarification as to whether Curdie wished for him to continue as her lawyer.

35. That evening, Curdie sent Respondent the following two emails:

I do not expect you to be available every second of every day.
I don't expect to be blocked nor play these damn games. Are
you saying that the court appointed advisor called you?! Also

my probation officer? I will be contacting both of them now explaining everything! I haven't been able to communicate with my attorney about what the hell he is thinking that could result in a dismissal because he blocks me! What I don't expect is to have sex with you two days in a row and the third you ignore me after insulting me! ... This is way too much drama for me and I can't take it anymore! ! I've tried to be patient. I've tried to see things from your perspective but if you think you can play these kinds of games, your wrong! Very wrong! I wasn't out looking to destroy your life or cause more drama. I highly doubt you really have anything that could get a dismissal. If you did it would be nice to hear from you soon because brandon is drafting up a petition for me to file with family court

The second email reads in pertinent part:

... it would just be Nice no [sic] to feel like I'm a piece of ass. ... Then you block me all day Wednesday, and Thursday but send a text about my PO calling you, and the CAA calling, and you brought up something about a dismissal which I didn't understand. I feel like in those situations, I should be able to contact you.

36. In responding to the SBA's request for all correspondence, Respondent did not produce the two prior emails.

37. In April of 2017, Desaye found out about the sexual relationship between Curdie and Respondent. DeSaye told Respondent that Curdie "has a fantasy that you're going to dump your wife and be with her."

38. Curdie was charged in May 2017 with shoplifting. She engaged Respondent to represent her. A \$2,500 non-refundable, flat fee agreement was executed.

39. On May 31, 2017, Curdie paid Respondent \$2,500 using her fiancé's Discover card.

40. Curdie's fiancé would later dispute the charges with Discover.

41. On June 7, 2017, Respondent appeared at a hearing on Curdie's behalf.

42. Around June or July of 2017, Curdie expressed to her probation officer that she was experiencing stress related to the paternity issue involving Respondent. Respondent still had not paid any support for the care of the child. In paragraph 5 of the relevant probation records, the probation officer noted: "School, Stress of daughter/Blake/Old Attorney (Paternity issue) Kent [Respondent] knew she had a pending case during that time, Blake [fiancé] wants nothing to do with Kent."

43. Curdie was arrested for shoplifting in June 2017. On June 10, 2017, Respondent and Curdie executed a new fee agreement for a \$1,500 non-refundable

flat fee for Respondent to handle the case which was filed as a misdemeanor in Chandler.

44. On June 12, 2017, Respondent charged Curdie's fiance's credit card—this time in the amount of \$1,500.

45. On July 10 2017, Respondent contacted Curdie's mother asking for money. This angered Curdie who wrote, "I am your client, she made a one-time payment that's it."

46. On the same day, Curdie emailed Respondent, "Are you really going to leave me to represent myself in a situation that u know I can't handle half as good as u can" Curdie further wrote:

You totally left me hanging this past Friday u didn't give a damn what happened to me I had to find out how to post my bail on my own because advise (sic) u gave me was wrong. I went to get money for u in addition to calling discover when u haven't even talked to me about the probation situation you are representing me on. Then you bring up blake [Curdie's fiancé] and how he apparent doesn't even like me... when he went crazy because of your name. He knows that he isn't the dad and that you are. Have I involved u at all? No! Would I? Never! ... I have so many questions and unless u want to give me the money my mom paid, back so I can get another lawyer, stop blocking me and let's figure this out. There is no reason to keep fighting. You Played me, I get it... I read

our past text message and it makes me sick because u really did lead me to believe you cared and I fell for it ...

47. Respondent responded, "You have not hired me for the probation revocation of new pending criminal charges. You have not finished payment on the 2017 felony case. You have not paid on the Chandler case."

48. After Respondent again contacted Curdie's mother concerning Curdie's cases and payment, Curdie texted Respondent "leave my poor mom alone." Respondent responded, "She's had bigger issues in life than you being a fuck up."

49. On July 11, 2017, Respondent drafted a "Proposed Fee Addendum due to Additional Criminal Charges." The document noted that Curdie's mother had initially paid \$5,000 down. The agreement called for payment of a total of \$15,000 for four new matters, and indicated that \$10,000 was due no later than August 4, 2017.

50. In July of 2017, Curdie and Respondent exchanged numerous text messages of a sexual nature including Respondent's request for a naked picture of Curdie.

51. Respondent also authored the following text:

Respondent: “No – I just said the case is difficult as your push the boundaries of your PO [Parole Officer]. You want me to tell him you’re just a serious hot piece of ass?!” Curdie responded: “Oh yeah that will go over well he doesn’t think we’re sleeping together anymore. But u do what u want let me know how that goes lol he’ll probably call in a bomb threat to our office lol.” Respondent responded, “You could send him a video – show him how heteros do it. Curdie: “LOL oh for sure that wouldn’t be weird at all.” Respondent: “Or coach him on head. Correct his mistakes – take the teeth out of the equation.”

Respondent: “Can we get your mom to respond before continuing to discuss your wet pussy?” Curdie: “I have already texted her telling her to call me right when she’s up it’s important.” Later in the conversation, Respondent responded: “Dude I’m trying to wrap this up with your mom and all I get is a crank call from your drunk gay bro who thinks you whore yourself out to me.”

52. Thereafter, additional discord, particularly regarding money, led to Respondent’s decision to file a motion to withdraw and to vacate an upcoming settlement conference.

53. On July 20, 2017, Curdie sent the following email to Respondent:

No matter how sad I am about today, I can't get myself to hurt you the way you hurt me today. Apparently my moms money isn't enough for u so I'm going to do everything I can in order to come up with more money for you today. I'm sorry, I can't get another lawyer, I refuse, I'm sorry. I never ever said I wanted another lawyer! I also never thought I would be this upset that I actually had to call into work today. I will do what I have to in order to come

up with more money for u and hopefully it will be good enough. I don't want anything to do with Renee though!

54. On the same day, Curdie further emailed in pertinent part: "... I'll deny it all. I've never asked you to break up your family nor would I."

55. Respondent did not produce the prior two emails in responding to the SBA's request for all correspondence.

56. On July 21, 2017, the prosecutor in the probation violation case emailed Respondent, "I see you have asked for the settlement conference to be vacated. Are there any issues I need to be aware of?"

57. Respondent then emailed the prosecutor a motion to withdraw.

58. Respondent had sex with Curdie shortly after filing his motions to withdraw.

59. On July 22, 2017, Curdie emailed:

I'm sorry for whatever I did for you to hate me so bad. You have helped me so much and I'm sorry! I'm going to send that lady a message denying everything and tell everyone you are not the dad and I'm so sorry (even though we all know that you are) please just don't let her end up in Mexico. I'm going to drop the check off for you. Don't worry u don't have to see me I ruin everyone's life and I never meant to do that to u I'm so sorry I'm so sorry I'm not strong enough I'm sorry kent I hate my family I fucking hate them. Please tell Morgan to leave u alone and just forget about me. I'm sure it won't be hard. Goodbye Kent and

thanks for helping me make it this far I couldn't have done it without you.

60. Respondent did not produce the prior email in responding to the SBA.

61. Also on July 22, 2017, Curdie emailed Respondent regarding his paternity of her child, "I'm 1009999999% sure so why won't u do a DNA test? That will prove once and for all that what we both already know."

62. Respondent did not produce the prior email in responding to the SBA's request for all correspondence.

63. On August 2, 2017, the court granted Respondent's motion to withdraw.

64. On August 15, 2017, Curdie next sent Respondent a message informing him that she had been pulled over by police. She would be taken into custody and remain incarcerated until June of 2018. During her incarceration, Curdie's fiancé and mother cared for the child fathered by Respondent.

65. On August 23, 2017, a new attorney, David Rubin filed his notice of appearance for Curdie following her arrest.

66. On August 30, 2017, while Rubin was representing Curdie, Respondent made an unannounced visit to Curdie at the Estrella Jail.

67. After Respondent's jail visit, Curdie placed an angry call to David Rubin telling him that she had just learned from Respondent that the motion Rubin filed on her behalf was a "waste of time." Rubin was concerned that Respondent was meeting with his client outside of his presence and discussing her case without his consent.

68. Thereafter Curdie filed a bar charge against Respondent with Rubin's assistance.

69. On September 15, 2017, Rubin filed a Motion for Modification of Terms and Conditions of Release in the superior court. In the motion Rubin addressed Respondent and Curdie's relationship. The relevant paragraphs follow:

The Defendant also communicated to probation issues she was having with her attorney that were impacting her emotional and mental state. The attorney previous to present counsel was involved in a personal relationship with Ms. Curdie just a few years ago. The personal relationship ended when Ms. Curdie became pregnant with a child who she is certain is this attorney's child and he wanted no part of the child's life as he was married with a family of his own. Upon learning of his marital status and lack of desire to have a relationship with his child the relationship ended. The personal relationship resumed when Ms. Curdie contacted this attorney for help following her new 2017 charge in March of 2017.

The six (6) month window of seeing this attorney both professionally and personally from March to August

caused challenges in her existing relationship and during this period she was physically assaulted by her boyfriend Blake Noon resulting in police contact.

Ms. Curdie began fearing her child would be taken from her by Mr. Noon, who she is certain is not the child's father. She requested a DNA test from the biological father, but he refused. Ms. Curdie's brother did not approve of her prior attorney's conduct and posted a picture of their child on his family members (sic) social media. This prompted the prior attorney to withdrawal (sic) from her cases while Ms. Curdie wanted him to remain on her cases and felt she was being abandoned.

70. In the same motion, Rubin noted: "Defendant has been subject to further unsolicited contact by her prior counsel, who contacted her by facilitating a 'legal visit' on August 30, 2017." Rubin attached the visitation list to the motion and a statement authored by Curdie.

71. With the filing, Rubin attached the following statement by Curdie:

During his visit, Mr. Nicholas began to speak sexually with me, asking if I "have a girlfriend in here" and stated he hasn't "gotten laid" since I was arrested. Mr. Nicholas asked me if Estrella Jail conducts conjugal visits and if we could resume our sexual relationship once I was out of custody. Mr. Nicholas attempted to hold my hand during the course of his visit, but I did not let him.

In addition to Mr. Nicholas' sexually explicit remarks, he asked me what was happening in my pending cases. I stated that my lawyer filed a Motion to Modify Terms and Conditions of Release. Mr. Nicholas stated that filing such

a motion is “pointless and provided me with unsolicited legal advice and information.”

72. In responding to Curdie’s bar charge, Respondent’s through counsel stated: “Mr. Nicholas denies Ms. Curdie’s allegations essentially in their entirety and particularly to the extent they suggest or imply that he had a relationship with her that violated the Rules of Professional Conduct. Ms. Curdie was a former client of Mr. Nicholas’, and he did have a relationship with her. Any relationship existed before he was Ms. Curdie’s lawyer, however, or when there was no attorney-client relationship ...” At a minimum, a portion of this statement was not accurate.

73. In responding to the bar charge, Respondent did not state to the SBA that he may have or did father a child with Curdie. Respondent’s explanation is that he neither knew for certain, nor believed, that he was the father.

74. On December 11, 2017, after Rubin threatened Respondent with a paternity suit on Curdie’s behalf, Respondent agreed to take a DNA test. The test confirmed him to be the father of Curdie’s three year old daughter.

75. On January 23, 2018, Rubin filed a settlement memorandum for Curdie’s criminal matter in which he requested that the State deviate from its offer. Paragraph 17 of the memorandum reads:

... Brittany [Curdie] was represented by the father of her child, an attorney who had previously represented her and was also called upon to represent her in the present matters prior to undersigned counsel. She communicated to her probation officer that she was having issues with this attorney which were exacerbating her emotional and mental state as she continued to see him and commit shopliftings for a six (6) month window from March to August of 2017. The attorney has been confirmed as the child's father as a result of a recent DNA test.

76. On June 14, 2018, while the SBA's investigation was pending, Curdie was released from Perryville prison.

77. On the same evening, Respondent traveled to the hotel at which Curdie was staying and had drinks with her. Later in the evening, after Respondent departed, Curdie was found unconscious and was transported by ambulance to the hospital where she had her stomach pumped. Respondent's position is that he departed before Curdie passed out.

78. On June 15, 2018, after Curdie was hospitalized, Respondent wrote to Curdie, "You probably shouldn't have alcohol on probation – but ask your lawyer – ha."

79. Later in the conversation, Curdie wrote to Respondent: "Hunter [bar counsel] called Tuesday. I told him I didn't want to pursue anything and he asked if I had talked to u since I've been out.. I said no." Respondent responded, "Called

Tuesday?” Curdie responded, “Friday night.. sry lol. He wanted to meet Tuesday so I figured I would let u know. I won’t be meeting him though.”

80. Respondent responded, “I understand. I know you had to do what you had to do under the circumstances of facing A LOT of prison time. If they knew you were doing drugs in county and made shit up for the purpose of the ‘release hearing’ then they’d have a different perspective. You would have had 8 girlfriends instead of only 4. Ha!” Curdie responded, “I don’t get it.. why would I have had 8?” Respondent replied, “You would have been in much longer and you ‘go through’ your women pretty quickly – hehehehe.”

81. Respondent also wrote to Curdie on June 15, 2018, “You get out of the pokey and...” Respondent failed to preserve and failed to produce the remaining portion of the text message. When he did so, he knew that the SBA’s investigation was pending.

82. Although Respondent did not consciously allow his sexual relationship with Curdie to negatively impact the representation, Respondent acknowledges that the relationship, regardless of when it started, created a significant risk that the representation could have been materially limited by the relationship.

83. Respondent admits that he should have done more to ensure that his responses to the Bar (both to the Bar charge and request for documents) were complete.

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 ER 1.7(a), ER 1.8(j), ER 8.4(d), Rule 41(g) and Rule 54(d).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss ERs 3.4(b), 8.1 and 8.4(c) in reaching this negotiated settlement.

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 from the practice of law of two (2) years is appropriate.

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* 4.32 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.32 provides that suspension is generally appropriate when a lawyer knows of a conflict of interest and does not

fully disclose to a client the possible effect of that conflict, 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, the legal system, and the public.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent knowingly engaged in a conflict of interest and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

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

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 (PDJ-2017-9010)

- *Standard 9.22(b)* - dishonest or selfish motive
- *Standard 9.22(d)* - multiple offenses
- *Standard 9.22(h)* – vulnerability of the victim
- *Standard 9.22(i)* – substantial experience in the practice of law

There are no mitigating factors in this matter.

Discussion

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

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 (2) years and the imposition of costs and expenses.

A proposed form of order is attached hereto as Exhibit B.

DATED this 15th day of February 2019

STATE BAR OF ARIZONA



Hunter F. Perlmeter
Senior 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 15 day of February, 2019.



Kent M. Nicholas
Respondent

DATED this _____ day of February, 2019.

Brian Holohan
Broening Oberg Woods & Wilson PC
Counsel for 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

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 February, 2019.

Kent M. Nicholas
Respondent

DATED this 5th day of February, 2019.



Brian Holohan
Broening Oberg Woods & Wilson PC
Counsel for 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 15th day of February, 2019.

Copy of the foregoing emailed
this 15th day of February, 2019, 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 15th day of February, 2019, to:

Brian Holohan
Broening Oberg Woods & Wilson PC
2800 North Central Ave, Suite 1600
Phoenix, Arizona 85004
Email: bh@bowwlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 15th day of February, 2019, to:

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

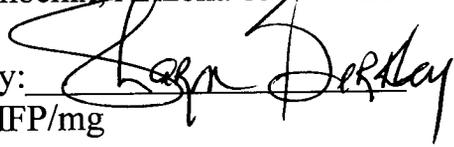
by: 
HFP/mg

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Kent M. Nicholas, Bar No. 015220, Respondent

File No. 17-3043

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

\$1200.00

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

03/15/18	Investigator Mileage to Interview Complainant	\$ 30.90
03/21/18	Accurint invoice	\$ 50.52
05/23/18	Investigator Mileage to review contents of Curdie file	\$ 23.98
06/20/18	Investigator Mileage to Complainant's home	\$ 32.48
06/25/18	T-Mobile Phone Records	\$ 195.00
08/03/18	T-Mobile Invoice for Records	\$ 150.00
08/17/18	Accurint Invoice	\$ 29.86
12/06/18	Investigator Mileage to conduct witness interview	\$ 15.26
12/13/18	Alliance Reporting Invoice: Deposition of Respondent	\$ 752.55

Total for staff investigator charges \$ 1280.55

TOTAL COSTS AND EXPENSES INCURRED \$ 2,480.55

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

KENT M. NICHOLAS
Bar No. 015220

Respondent.

PDJ 2018-9076

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 17-3043]

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

IT IS ORDERED that Respondent, **Kent M. Nicholas**, is suspended two (2) years for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective sixty (60) days from the date of this order.

IT IS FURTHER ORDERED that Respondent shall be subject to any 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 thirty (30) days from the date 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 February, 2019

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 February, 2019.

Copies of the foregoing mailed/mailed
this _____ day of February, 2019, to:

Brian Holohan
Broening Oberg Woods & Wilson PC
2800 North Central Ave, Suite 1600
Phoenix, Arizona 85004
Email: bh@bowwlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of February, 2019, to:

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

Copy of the foregoing hand-delivered
this ____ day of February, 2019 to:

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

by: _____
HFP/mg