

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

EDWARD D. JOHNSON,
Bar No. 027437

Respondent.

PDJ 2018-9135

[State Bar File No. 17-3787]

**FINAL JUDGMENT AND
ORDER**

FILED MAY 14, 2019

The Presiding Disciplinary Judge accepted on May 14, 2019, the Agreement for Discipline by Consent filed by the parties.

Accordingly:

IT IS ORDERED Respondent, **EDWARD D. JOHNSON, Bar No. 027437,** is suspended for ninety (90) days for his conduct in violation of the Arizona Rules of Professional Conduct effective June 14, 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 pay the costs and expenses of the State Bar of Arizona of \$1,207.19, not later than June 14, 2019. There are no

costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

NON-COMPLIANCE LANGUAGE

If Respondent fails to comply with any of the foregoing terms, and information 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, whether to enter an additional 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.

DATED this 14th day of May, 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 14th day of May 2019, to:

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

J. Scott Rhodes
Kerry A. Hodges
Jennings Strouss & Salmon PLC
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Emails: SRhodes@jsslaw.com &
KHodges@jsslaw.com

by: MSmith

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

EDWARD D. JOHNSON,
Bar No. 027437

Respondent.

PDJ-2018-9135

**DECISION ACCEPTING
DISCIPLINE BY CONSENT**

[State Bar Nos. 17-3787]

FILED MAY 14, 2019

Under Rule 57(a), Ariz. R. Sup. Ct.,¹ an Agreement for Discipline by Consent (“Agreement”), was filed on April 19, 2019. A Probable Cause Order issued on October 12, 2018 and a formal complaint has been filed in this matter. The State Bar of Arizona is represented by Bar Counsel Kelly J. Flood. Mr. Johnson is represented by J. Scott Rhodes and Kerry Hodges, *Jennings Strouss & Salmon PLC*.

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. Johnson 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 of this Agreement and the opportunity to object was not required as the State Bar is the complainant. The agreement is accepted.

The Agreement details a factual basis to support the admissions. It is incorporated by this reference. Mr. Johnson admits violating Rule 42, ER 1.3 (diligence), 1.4 (communication) and 1.16 (terminating representation). The State Bar has agreed to dismiss all other allegation of ER violations. The parties stipulate to a short-term suspension for ninety (90) days. Costs totaling \$1,207.19 shall be paid to the State Bar not later than June 14, 2019.

The misconduct is briefly summarized. Mr. Johnson represented a Maternal Aunt in her petition to adopt her two nieces (“children”). Mr. Johnson did not receive any compensation for his representation of Maternal Aunt. The children had resided with her for approximately 2.5 years. She had been serving as the court-ordered placement for them in a separate dependency action. Mr. Johnson was not involved in that action. The Department of Children Safety (“DCS”) initially supported the adoption.

After a hearing for the adoption was set, Maternal Aunt permitted the biological mother (whose rights had been severed) to have unsupervised contact with the children including a trip to Mexico. DCS withdrew support of the adoption and removed the

children, placing them with other clients of Mr. Johnson who were seeking adoption of an unrelated child.

Mr. Johnson did not oppose the DCS request to dismiss the petition to adopt. He failed to notify Maternal Aunt about DCS's position or obtain her consent to allow the petition to be dismissed. He did not inform her of the dismissal or the status of the adoption or formally withdraw as counsel of record. Later, his other clients with whom the children had been placed sought to adopt them.

The parties agree *Standard 4.4, Lack of Diligence* applies. *Standard 4.42* provides that the presumptive sanction is suspension. Mr. Johnson knowingly failed in his duty to his client. His misconduct caused potential injury to a client.

The parties have stipulated that mitigating factors 9.32(a) (absence of a prior disciplinary record), 9.32(b) (absence of a dishonest or selfish motive), 9.32(e) (full and free disclosure or cooperative attitude toward proceedings), and 9.32(l) (remorse) apply. There are no aggravating factors. The Agreement is in accordance with the *Standards*.

Now Therefore,

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

DATED this 14th day of May 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
on this 14th day of May 2019, to:

Kelly J. Flood
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
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by: MSmith

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Respondent's Counsel

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

APR 10 2019

FILED

BY



BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**EDWARD D. JOHNSON
Bar No. 027437**

Respondent.

PDJ 2018-9135

State Bar File Nos. 17-3787

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Edward D. Johnson, who is represented in this matter by counsel, J. Scott Rhodes and Kerry Hodges, hereby submit their Agreement for Discipline by

Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on October 12, 2018, and a 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.

The State Bar is the complainant in this matter, therefore no notice of this agreement is required pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, and 1.16. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Short-Term Suspension for ninety (90) days. 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.

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on December 28, 2009.

COUNT ONE (File no. 17-3787/ Judicial Referral)

2. In July 2016, Maternal Aunt retained Respondent to represent her in filing a petition to adopt her two nieces, AE and IF. At that time, the girls had resided with Maternal Aunt and her children for approximately 2½ years, Maternal Aunt was serving as the girls' court-ordered placement in a separate dependency action (in which Respondent did not represent her), and DCS was supporting her adoption of the girls. The fee agreement provided for payment of a flat fee of \$2,000 to Respondent (by the Arizona Department of Economic Security) upon completion of the adoption.

3. Respondent filed Maternal Aunt's petition to adopt AE and IF on July 18, 2016. A hearing was set on the petition for September 15, 2016. On September 6, the Adoptions Unit administratively continued the hearing to

Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

November 9 because DCS had not completed all the paperwork necessary to finalize the adoption.

4. By September 29, 2016, that paperwork had been completed, including a statement dated August 28, 2016, from DCS case worker, Momi Howard, confirming that DCS supported Maternal Aunt's adoption of her nieces. Shortly after being informed that the paperwork was in order, Respondent obtained an earlier hearing to finalize the adoption, scheduled for October 14, 2016.

5. Thereafter, on or about October 7, 2016, Momi Howard called Respondent and informed him that DCS was going to remove AE and IF from Maternal Aunt's home due to safety concerns. More specifically, Ms. Howard told Respondent that Maternal Aunt had violated the case plan by permitting the girls' biological mother (whose rights had been severed) to have unsupervised contact with them, including an out-of-country trip to Mexico. Ms. Howard further informed Respondent that DCS would no longer consent to Maternal Aunt's adoption of the girls and believed her pending adoption case should be dismissed, and asked Respondent to notify the court of DCS's position at the upcoming October 14 hearing. DCS placed AE and IF with Cassidy and Christopher B (the "Bs), for whom Respondent was handling a different adoption.

6. On October 14, 2016, Respondent appeared at the previously scheduled adoption hearing and informed the court of DCS's position, specifically, that DCS was no longer consenting to Maternal Aunt's petition to adopt AE and IF and believed the petition should be dismissed. Respondent did not oppose DCS's request to dismiss the petition because he did not believe Maternal Aunt had a legitimate basis for opposing the request. The court issued a minute entry dismissing Maternal Aunt's petition, which Respondent received.

7. Before informing the court of DCS's request to dismiss the petition, Respondent had not told Maternal Aunt about DCS's position or obtained her consent to allow the petition to be dismissed. After the dismissal of Maternal Aunt's petition, Respondent did not inform her of the dismissal or speak to her about the status of the adoption of AE and IF, or of her right to a hearing, appeal, or other options at that point, or formally withdraw from his representation of her.

8. The court presiding over the separate dependency action (in which Respondent did not represent Maternal Aunt) ultimately approved of DCS's removal of AE and IF from Maternal Aunt's custody.

9. On November 17, 2016, another relative, Maternal Grandmother, filed a petition to adopt AE and IF.

10. On December 1, 2016, the Bs filed a petition to adopt AE and IF, and arranged for a hearing on the petition the next day, which coincided with the hearing on the Bs' petition to adopt a different, unrelated child.

11. On December 2, 2016, the Bs' petition to adopt AE, IF, and a third, unrelated child was approved. The judge who approved the Bs' petition was unaware of Maternal Grandmother's petition to adopt.

12. On February 7, 2017, Maternal Aunt emailed Momi Howard about delivering some items for AE and IF. Howard informed Maternal Aunt that the girls had already been adopted and the adoptive placement did not want to receive any items. This was the first that Maternal Aunt learned that AE and IF had been adopted by someone outside of the family. Maternal Aunt expressed surprise because Maternal Grandmother had filed a petition in November, and a hearing was scheduled in that matter for February 9, 2017.

13. Maternal Grandmother sought to intervene and set aside the Bs' adoption of AE and IF. Various proceedings occurred, the judge who had approved the adoption recused herself, and an evidentiary hearing was held on October 18, 2017.

14. Shortly thereafter, a settlement was reached between Maternal Grandmother, DCS, and the Bs to set aside the Bs' adoption of AE and IF, and placement proceedings regarding the girls continued.

15. Respondent did not receive any compensation for his representation of Maternal Aunt.

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, and 1.16.

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss allegations regarding ERs 1.2, 1.6, 1.7, 1.9, 3.1, 3.3, 4.1(b), 8.4(c), and 8.4(d), and Count Two of the complaint.

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Respondent will be suspended for ninety (90) days.

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* 4.4 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.42 provides that suspension is generally appropriate when a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client. Respondent Johnson knowingly failed to communicate with his client, Maternal Aunt, about the fact that (1) DCS was withdrawing its consent to her adoption of AE and IF, (2) he advised the court that DCS withdrew its consent of her adoption of AE and IF and wanted the petition dismissed, (3) the court dismissed Maternal Aunt's petition to adopt AE and IF, (4) she had options when DCS withdrew its consent to her adoption of AE and IF and her petition was dismissed, and (5) he considered his representation of her terminated when DCS withdrew its consent to her adoption of AE and IF.

The duty violated

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

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent knowingly failed to communicate with Maternal Aunt 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 injury to the client. Maternal Aunt was not advised of her options and rights when DCS withdrew its consent to her adoption of AE and IF, and she therefore lost the opportunity to continue to pursue the adoption of her nieces.

Aggravating and mitigating circumstances

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

In aggravation: *None.*

In mitigation:

Standard 9.32(a) (absence of a prior disciplinary record). Respondent has no prior discipline.

Standard 9.32(b) (absence of a dishonest or selfish motive). Respondent's conduct was motivated by his belief that Maternal Aunt would contact him if she had any questions about the impact of the removal of the children on her adoption petition and that Maternal Aunt had no legitimate basis to oppose the dismissal of the petition. He did not receive any compensation for his representation of Maternal Aunt. He harbored no dishonest or selfish motive.

Standard 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude toward proceedings). Respondent fully and freely cooperated with the State Bar during its screening investigation and the formal proceedings.

Standard 9.32(l) (remorse). Respondent is remorseful, as demonstrated by proactive efforts he has taken to improve his policies and practices after his misconduct in the underlying case was brought to his attention.

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.

The parties have also conditionally agreed that neither a greater nor lesser sanction would be appropriate under the facts and circumstances of this matter, and

that a short-term suspension of 90 days is the appropriate resolution of this matter. This agreement was based on the parties' belief that, although Respondent knowingly failed to communicate with his client under circumstances involving the potential for serious injury, the speculative nature of the injury to the client² coupled with significant mitigating factors warrants only a short-term suspension. The parties believe that a 90-day suspension is within the range of appropriate sanctions 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 Short-Term Suspension of ninety (90) days and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

² Maternal Aunt lost the opportunity to continue to attempt to adopt her nieces, but it is uncertain whether she would have been successful under the circumstances.

DATED this _____ day of April 2019.

STATE BAR OF ARIZONA

Kelly J. Flood
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 17th day of April, 2019.



Edward D Johnson
Respondent

DATED this _____ day of April, 2019.

Jennings, Strouss & Salmon PLC

J. Scott Rhodes
Kerry Hodges
Counsel for Respondent

DATED this _____ day of April 2019.

STATE BAR OF ARIZONA

Kelly J. Flood
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 17th day of April, 2019.



Edward D Johnson
Respondent

DATED this 18th day of April, 2019.

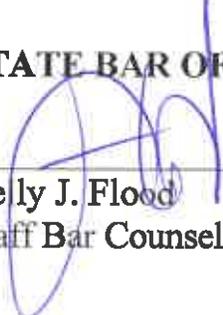
Jennings, Strouss & Salmon PLC



J. Scott Rhodes
Kerry Hodges
Counsel for Respondent

DATED this 19th day of April 2019.

STATE BAR OF ARIZONA



Kelly J. Flood
Staff Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. [I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.]

DATED this _____ day of April, 2019.

Edward D Johnson
Respondent

DATED this _____ day of April, 2019.

Jennings Strouss & Salmon PLC

J. Scott Rhodes
Kerry Hodges
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 10th day of April, 2019.

Copy of the foregoing emailed
this 19th day of April, 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 19th day of April, 2019, to:

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One E Washington St Ste 1900
Phoenix, AZ 85004-2554
Email: srhodes@jsslaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 19th day of April, 2019, to:

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

by: Margarita Good
KJF/mg