

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**KIRK A. GUINN,
Bar No. 015448,**

Respondent.

PDJ-2015-9112

FINAL JUDGMENT AND ORDER

[State Bar No. 15-0660]

FILED MARCH 29, 2016

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on March 23, 2016, accepted the parties' proposed agreement pursuant to Rule 57(a), Ariz. R. Sup. Ct.

Accordingly:

IT IS ORDERED Respondent, **Kirk A. Guinn**, is reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately.

IT IS FURTHER ORDERED Mr. Guinn shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,207.56, within thirty (30) days from the date of this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 29th day of March, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/mailed
this 29th day of March, 2016, to:

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

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by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**KIRK A. GUINN,
Bar No. 015448**

Respondent.

PDJ-2015-9112

**DECISION ACCEPTING CONSENT
FOR DISCIPLINE**

[State Bar No. 15-0660]

FILED MARCH 29, 2016

A Probable Cause Order was issued on September 18, 2015. The complaint was filed on October 29, 2015. An Agreement for Discipline by Consent ("Agreement") listing one charge ("Count") was filed by the parties on March 23, 2016, and submitted under Rule 57(a)(3), Ariz. R. Sup. Ct.¹ Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate."

Rule 57(a)(2) 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 If the agreement is not accepted those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

Under Rule 53(b)(3), no notice of this Agreement had to be provided as the complainant was the State Bar of Arizona. The parties stipulate to a sanction of

¹ Unless stated otherwise, all rules referenced are the Arizona Rules of the Supreme Court.

reprimand and the payment of costs of the State Bar totaling \$1,207.56, to be paid thirty (30) days from the date of this order.

Accordingly:

IT IS ORDERED incorporating the Agreement and any supporting documents by this reference.

IT IS FURTHER ORDERED, the Agreement is accepted. A final judgment and order is signed this date. All prehearing deadlines and hearings are vacated in favor of the judgment.

DATED 29th day of March, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

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Bar Counsel
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**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

KIRK A GUINN,
Bar No. 015448,

Respondent.

PDJ 2015-9112

State Bar File Nos. **15-0660**

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Kirk A Guinn, who is represented in this matter by attorneys James Belanger and Denise Quinterri, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on September 18, 2015. A formal complaint was filed on October 29, 2015. 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, ER 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand. 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 May, 21, 1994.
2. Respondent began practicing bankruptcy law in approximately 2008.

COUNT ONE (File no. 15-0660/State Bar of Arizona)

3. In 2005, Respondent invested in a development project in Mexico. The project was called Desarrolla Diamond Village, S.A. de C.V. a Mexican Corporation ("Diamond Village"). If this matter were to proceed to hearing, Respondent would testify that after approximately two years, the Diamond Village development failed.

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.

4. In 2009, Respondent was named a Third Party Defendant in the State of Arizona, Maricopa County Superior Court, civil action Case No. CV2009-031485, Birnbaum v. Beach Bunny, LLC, et seq., and a Defendant in the State of Arizona, Maricopa County Superior Court, civil action Case No. CV2011-095288, Beach Companies, S.A. de C.V. v. Kirk A. Guinn (collectively "Arizona state lawsuits").

5. The plaintiffs in the Arizona state lawsuits were Beach Companies, S.A. de C.V., a Mexican corporation ("Beach Companies"), and Beach Bunny, LLC, a Nevada limited liability company ("Beach Bunny"), and their claims arose out of the failed Diamond Village development. If this matter were to proceed to hearing, Respondent would testify that by the end of 2012, the costs associated with the Arizona state lawsuits had exhausted his savings.

4. Respondent retained Jason Romero, then at the law firm of Osborn Maledon, and filed for protection under Chapter 7 of the United States Bankruptcy Code on October 10, 2012 in the United States Bankruptcy Court for the District of Arizona. (No. 2:13-ap-00547-GBN.) On May 9, 2013, the U.S. Trustee filed a Complaint Objecting to Discharge Under 11 U.S.C. § 727.

5. Within the nine months before the bankruptcy filing, Respondent sold four vehicles and miscellaneous jewelry. Three of the four vehicles and the jewelry were transferred to family members.

6. The transfer of assets left Respondent without any unencumbered, non-exempt property and caused him to accrue \$63,700 in sale proceeds. Respondent failed to disclose the \$63,700.00 in answering a question regarding income in filing his Petition and Schedules. However, Respondent did list the sale transfers as having

occurred during the applicable pre-petition period in another section of his filings (Question 10 of the SOFA) and identified the buyers as family members.

7. At the time of his bankruptcy filing, Respondent was a joint-owner, with his daughter, of a checking account ending in 6249. During the nine months prior to the bankruptcy filing, Respondent transferred more than \$12,000.00 into the account. Respondent failed to disclose the account on his Schedule B. The parties agree that Respondent's failure was negligent, as the jointly-held account was used primarily by his college-age daughter for her living expenses, and because Respondent did identify on Schedule J of his bankruptcy paperwork, Item Number 15, payment of support in the amount of \$1,500 per month for dependents not living at home.

8. Respondent testified in his schedules and at the 2004 Exam, that at the time of filing, he had not paid himself since July, 2012. His account, however, reflects that between August 1, 2012, and the date of the filing, unidentified deposits of just under \$30,000.00 were made. Respondent has explained that the deposits came from cash savings and was not payment to him through his law firm.

9. Respondent attested on his Statement of Financial Affairs that his gross income from his law practice was \$75,307.00 for the year 2010, \$84,532.00 for the year 2011, and \$60,000.00 for the period of January 1, 2012, to October 10, 2012. However, after filing for bankruptcy, Respondent set his yearly post-petition salary at \$120,000.00 per year. The parties agree that the estimated salary was a purely aspirational estimate and was not improper.

10. On October 7, 2014, Respondent and the Trustee filed a Joint Stipulated Judgment and Waiver of Discharge based upon the above facts in which Respondent agreed to be permanently denied a discharge in this bankruptcy or any future

bankruptcy, of his debts, whether sole and separate or community, which were listed on the Schedules in this bankruptcy case, or could have been included on the Schedules in the case, e.g., "debts that arose or were incurred before the date of the order for relief in this case."

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 to violating ER 8.4(d).

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 sanction of Reprimand is appropriate. Respondent understands that this Consent Agreement resolves only the State Bar's inquiry into Respondent's conduct in the bankruptcy action detailed in the Complaint and does not preclude the State Bar from investigating Respondent's conduct related to transactions in Mexico mentioned solely to provide background information in paragraphs 2-5 of the Complaint.

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 conditionally agree that *Standard* 6.13 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 6.13 provides that Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

The duty violated

As described above, the parties conditionally agree that Respondent's conduct violated his duty to the legal system and the public.

The lawyer's mental state

For purposes of this agreement the parties conditionally agree that Respondent negligently omitted certain information from his bankruptcy schedules (or the correct location on the bankruptcy schedules) 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 conditionally agree that there was potential harm to the legal system and the public.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is Reprimand. 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

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

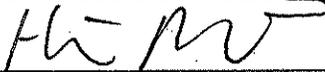
CONCLUSION

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

DATED this 23rd day of March 2016

DATED this 23rd day of March 2016

STATE BAR OF ARIZONA



Hunter F. Perimeter
Staff Bar Counsel

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

DATED this _____ day of March, 2016.

Kirk A. Guinn
Respondent

DATED this 23rd day of March, 2016.

The Law Office of Denise M. Quinterri, PLLC



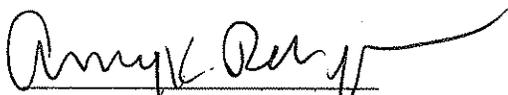
Denise M. Quinterri
Counsel for Respondent

Coppersmith Brockelman, PLC



James J. Belanger
Counsel for Respondent

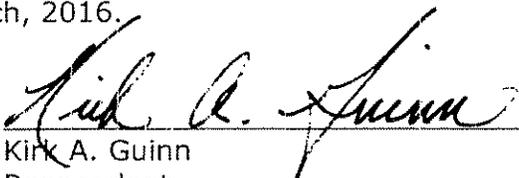
Approved as to form and content



Maret Vessella
Chief Bar Counsel

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

DATED this 22nd day of March, 2016.


Kirk A. Guinn
Respondent

DATED this _____ day of March, 2016.

The Law Office of Denise M. Quinterri, PLLC

Denise M. Quinterri
Counsel for Respondent

Coppersmith Brockelman, PLC

James J. Belanger
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 ___ day of March, 2016.

Copy of the foregoing emailed
this 23rd day of March, 2016, 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 23rd day of March, 2016, to:

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Respondent's Counsel

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Respondent's Counsel

Copy of the foregoing hand-delivered
this 23rd day of March, 2016, to:

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

by:

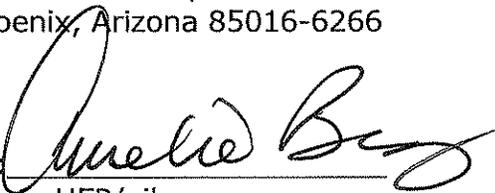

HFP/aib

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Kirk A Guinn, Bar No. 015448, Respondent

File No. 15-0660

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

02/25/16 Investigator Mileage to Serve Subpoena \$ 7.56

TOTAL COSTS AND EXPENSES INCURRED **\$1,207.56**

EXHIBIT B

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

KIRK A GUINN,
Bar No. 015448,

Respondent.

PDJ 2015-9112

FINAL JUDGMENT AND ORDER

[State Bar No. 15-0660]

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, **Kirk A Guinn**, is hereby Reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

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 March, 2016

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 March, 2016.

Copies of the foregoing mailed/emailed
this _____ day of March, 2016, to:

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by: _____