

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

JOSH HENRY DAUGARD,
Bar No. 031996

Respondent.

PDJ 2016-9066

FINAL JUDGMENT AND ORDER

[State Bar File No. 16-0114]

FILED NOVEMBER 10, 2016

The Presiding Disciplinary Judge of the Supreme Court of Arizona, accepted the Agreement for Discipline by Consent filed by the parties on November 3, 2016. Pursuant to Accordingly, pursuant to Rule 57(a)(4)(A), Ariz. R. Sup. Ct.

IT IS ORDERED Respondent, **Josh Henry Daugard**, is suspended for one (1) year for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this order.

IT IS FURTHER ORDERED Mr. Daugard shall be subject to any additional terms imposed by a Hearing Panel and the Supreme Court, if reinstated.

NON-COMPLIANCE LANGUAGE

If Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to enter an appropriate sanction. If there is an allegation that Respondent failed

to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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

IT IS FURTHER ORDERED Mr. Daugard shall pay the costs and expenses of the State Bar of Arizona for \$1,200.00, plus interest, not later than 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 with these disciplinary proceedings.

DATED this 10th day of November, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 10th day of November, 2016, to:

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

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

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

JOSH HENRY DAUGARD,
Bar No. 031996

Respondent.

PDJ-2016-9066

**DECISION ACCEPTING CONSENT
FOR DISCIPLINE**

[State Bar No. 16-0114]

FILED NOVEMBER 10, 2016

A Probable Cause Order was issued on April 26, 2016 and the formal complaint filed on June 29, 2016. An Agreement for Discipline by Consent (“Agreement”) was filed by the parties on November 3, 2016, and submitted under Rule 57(a)(3), Ariz. R. Sup. Ct.¹ Mr. Daugard is represented by J. Scott Rhodes, *Jennings, Strouss and Salmon, PLC*.

Under Rule 53(b)(3), a complainant must be advised of any pending agreement for discipline by consent and given five business days to object. The State Bar was the complainant in this matter therefore, no formal notice to the complainant nor waiting time is required. The Agreement details a factual basis for the misconduct.

Mr. Daugard was admitted to the practice of law in Arizona on April 7, 2015 as a conditional admittee based on his history of unlawful conduct, violations of court orders, substance abuse, and neglect of financial responsibilities. Mr. Daugard signed the terms of conditional admission on November 30, 2014, one of which was to

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

"completely abstain from using alcohol, other drugs, or any other mood-altering or mind-altering chemicals except on prescription from a treating health care professional..." On November 19, 2015, Mr. Daugard tested positive for amphetamine use. Mr. Daugard failed to respond to the State Bar's compliance monitor inquiry regarding the positive test results. On December 18, 2015, he missed a mandatory SKYPE meeting with her.

On December 31, 2015 Mr. Daugard again tested positive for amphetamine use. Mr. Daugard failed to disclose his positive test results to his counselor. The State Bar received further testing results on January 13, 2016 that showed Mr. Daugard tested positive for methamphetamines. On January 14, 2016, Mr. Daugard left a message with the State Bar's compliance monitor calling the test result "absurd" and saying he would email the monitor so they could "move on." He sent no email.

Mr. Daugard failed to appear for mandatory drug testing in January and February 2016. Mr. Daugard later admitted "for a period of approximately six weeks", he relapsed from sobriety. He consumed methamphetamine two to three times per week until January 24, 2016.

Mr. Daugard admits violations of Rule 42, specifically ER 8.4(b) (engage in criminal conduct), ER 8.4(c) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and Rule 54(f) (violation of a condition of admission). Restitution is not an issue. The parties stipulate to a one (1) year suspension and the payment of costs.

The parties stipulate the mental state of Mr. Daugard was knowing and that the following factors are present in aggravation: 9.22(c) (pattern of misconduct), 9.22(e) (failing to comply with rules/orders of the disciplinary agency), 9.22(f)

(submission of a false statement to the compliance monitor), and 9.22(k) illegal conduct involving the use of a controlled substance). In mitigation is factor 9.32(c) (personal or emotional problems).

Standard 5.12, Violation of Duties Owed to the Public applies to Mr. Daugard's violation of ER 8.4(b). *Standard 5.12* provides:

Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice.

Mr. Daugard admits he knowingly violated the terms of his conditional admission resulting in potential harm to the profession. The PDJ determined the Agreement meets the objective of lawyer discipline. Accordingly:

IT IS ORDERED incorporating the Agreement and all supporting documents by this reference. The agreed upon sanctions are: a one (1) year suspension effective thirty (30) days from the date of this order. He shall pay the costs and expenses in these proceedings totaling \$1,200.00 not later than thirty (30) days from the date of this order, plus any interest at the statutory rate. Mr. Daugard may also be subject to a term of probation if reinstated.

IT IS FURTHER ORDERED the Agreement is accepted. A final judgment and order is signed this date.

DATED 10th day of November, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

///

COPY of the foregoing e-mailed/mailed
this 10th day of November, 2016, to:

Shauna R. Miller
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

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

by: AMcQueen

Shauna R. Miller, Bar No. 015197
Senior Bar Counsel - Litigation
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602) 340-7278
Email: LRO@staff.azbar.org

J. Scott Rhodes, Bar No. 016721
Jennings Strouss & Salmon PLC
One E Washington St Ste 1900
Phoenix, AZ 85004-2554
Telephone 602-262-5862
Email: srhodes@jsslaw.com
Respondent's Counsel

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

NOV 3 2016

FILED
BY 

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

JOSH HENRY DAUGARD
Bar No. 031996

Respondent.

PDJ 2016-9066
[State Bar File No. 16-0114]

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Josh Henry Daugard, who is represented in this matter by counsel, J. Scott Rhodes, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on April 26, 2016, and a formal complaint was filed on June 29, 2016. 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, ERs 8.4(b) and (c), and Rule 54(f), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **one year suspension**. 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. At all times relevant, Respondent was licensed to practice law in the state of Arizona, having been admitted on April 07, 2015, under the terms of conditional admission signed by him on November 30, 2014.

COUNT ONE (File no. 16-0114/Arizona)

2. Respondent was admitted to the State Bar under terms of conditional admission based on the Committee on Character and Finesses' concerns about unlawful conduct, violation of court orders, substance abuse, and neglect of financial responsibilities.

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.

3. One of Respondent's conditions of admission was to "completely abstain from using alcohol, other drugs, or any other mood-altering or mind-altering chemicals except on prescription from a treating health care professional...."

4. On November 20, 2015, the State Bar was notified by TASC Drug Detection Laboratory that on November 19, 2015, Respondent tested positive for amphetamine use.

5. On December 15, 2015, State Bar compliance monitor, Yvette Penar, emailed Respondent concerning his positive drug test. Ms. Penar asked Respondent to have TASC perform a GCMS test to determine the amount of amphetamines in his system. Ms. Penar also asked Respondent to tell her what he had taken to cause the positive test. Respondent failed to tell Ms. Penar what he had taken to cause the positive test.

6. On December 18, 2015, Respondent missed his required SKYPE meeting with Ms. Penar.

7. On January 2, 2016, the State Bar was notified by TASC Drug Detection Laboratory that on December 31, 2015, Respondent tested positive for amphetamine use.

8. On January 5, 2016, Respondent's counselor submitted her quarterly report. Respondent did not tell his counselor about his positive drug tests, even though one of the purposes of the counseling is relapse prevention.

9. On January 13, 2016, the State Bar received the results of the GCMS test, which show that Respondent tested positive for methamphetamines. The test quantity was 909 NG/ML; the cutoff level is 500 NG/ML.

10. On January 14, 2016, Respondent called and left a message for Ms. Penar. In the message, Respondent says the test result is "absurd" and that he has had problems with TASC in the past. The message also said that he would email Ms. Penar so they can "move forward." Respondent failed to email Ms. Penar.

11. Respondent did not test with TASC in either January or February 2016.

12. On January 15, 2016, the State Bar sent Respondent a screening letter and asked him to provide an explanation for the positive drug tests.

13. Respondent acknowledged that "for a period of approximately six weeks, beginning late 2015 and ending January 24, 2016, [Respondent] relapsed from his lengthy period of sobriety. He did not start consuming alcohol again, which had been his original addiction, but instead used methamphetamine. During the six-week period of relapse, he consumed methamphetamine two to three times per week. He had no problem stopping its use and did so on January 24, 2016."

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:

- a. ER 8.4(b) (Misconduct) (It is professional misconduct for a lawyer to commit a criminal act);
- b. ER 8.4(c) (Misconduct) (It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation), and

c. Rule 54 (f) Ariz. R. Sup. Ct. (Grounds for Discipline) (Violation of a condition of admission).

CONDITIONAL DISMISSALS

There are no conditional dismissals.

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:

one year suspension.

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 5.12* is the appropriate *Standard* given the facts and circumstances of this matter. *Standard 5.12* provides that “[s]uspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard 5.11* and that seriously adversely reflects on the lawyer’s fitness to practice.” Respondent is a conditional admittee who tested positive for methamphetamine use, in violation of his terms of admission. Respondent made misrepresentations to the State Bar about his positive drug test and stopped communicating with the State Bar compliance monitor for a period of time.

The duty violated

As described above, Respondent’s conduct violated his duty to the profession.

The lawyer’s mental state

For purposes of this agreement the parties agree that Respondent knowingly violated the terms of his conditional admission 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 profession.

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 Factors to be considered in aggravation.

- (c) a pattern of misconduct (his prior alcohol abuse);
- (e) failing to comply with the rules or orders of the disciplinary agency;
- (f) submission of a false statement to the compliance monitor;
- (k) illegal conduct, including that involving the use of a controlled substance.

In mitigation:

Standard 9.32 Factors to be considered in mitigation

- (c) personal or emotional problems

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

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that a one year suspension 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 and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 2nd day of November 2016.

STATE BAR OF ARIZONA



Shauna R. Miller
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 _____, 2016.

Josh Henry Daugard
Respondent

DATED this _____ day of _____, 2016.

Jennings Strouss & Salmon PLC

J Scott Rhodes
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

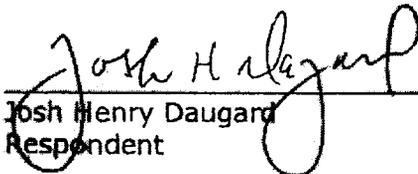
DATED this _____ day of _____, 2016.

STATE BAR OF ARIZONA

Shauna R Miller
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 2 day of November, 2016.



Josh Henry Daugard
Respondent

DATED this 2 day of November, 2016.

Jennings Strouss & Salmon PLC



J Scott Rhodes
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 3rd day of November, 2016.

Copy of the foregoing emailed
this 3rd day of November, 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 3rd day of November, 2016, 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 3rd day of November, 2016, to:

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

by: 
SRM:bln

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Josh H. Daugard, Bar No. 031996, Respondent

File No. 16-0114

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,

JOSH HENRY DAUGARD,
Bar No. 031996,

Respondent.

PDJ 2016-9066

[State Bar File No. 16-0114]

FINAL JUDGMENT AND ORDER

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, **Josh Henry Daugard**, is hereby suspended for a period of one year for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by a Hearing Panel as a result of reinstatement hearings held.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached

and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that, 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 \$1,200.00, 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 November, 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 November, 2016.

Copies of the foregoing mailed/mailed
this _____ day of November, 2016, 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 emailed/hand-delivered
this _____ day of November, 2016, to:

Shauna R. Miller
Senior Bar Counsel - Litigation
State Bar of Arizona
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Lawyer Regulation Records Manager
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Phoenix, Arizona 85016-6266

by: _____