

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**PHILLIP D. HINEMAN, JR.,  
Bar No. 011887,**

Respondent.

**PDJ-2016-9103**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 16-0507, 16-0704]

**FILED NOVEMBER 1, 2016**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on October 14, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS ORDERED** Respondent, **Phillip D. Hineman, Jr.**, is reprimanded effective the date of this order for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

**IT IS FURTHER ORDERED**, Mr. Hineman shall be placed on probation for a period of eighteen (18) months.

**IT IS FURTHER ORDERED** as a term of probation, Mr. Hineman shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of entry of this order. Mr. Hineman shall submit to a LOMAP examination of his office procedures. Mr. Hineman shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. The probation period will commence at the time of entry of the final judgment and order and will conclude eighteen (18) months from that date. Mr. Hineman shall be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** as a term of probation, Mr. Hineman shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of entry of the final judgment and order to schedule a LRO MAP assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. The probation period will commence at the time of entry of the final judgment and order and will conclude eighteen (18) months from that date. Mr. Hineman shall be responsible for any costs associated with participation in MAP.

**IT IS FURTHER ORDERED** as a term of probation, Mr. Hineman shall complete the CLE program Ten Deadly Sins of Conflict within ninety (90) days from the date of entry of the final judgment and order. Mr. Hineman shall provide the State Bar Compliance Monitor with evidence of completion of the program by providing a copy of handwritten notes. Mr. Hineman shall contact the Compliance Monitor at (602) 340-7258 to make arrangements to submit this evidence. Mr. Hineman shall be responsible for the costs of the CLE.

**IT IS FURTHER ORDERED** as a term of probation, Mr. Hineman shall participate in the State Bar's Fee Arbitration Program with Luis Quintero in State Bar file no. 16-0704. Mr. Hineman shall contact the Fee Arbitration Coordinator at (602) 340-7379 within ten (10) days from the date of entry of the final judgment and order to obtain the forms necessary to participate in Fee Arbitration. Mr. Hineman shall file the necessary forms no later than thirty (30) days from the date of receipt of the forms. Mr. Hineman shall have no further obligations relating to fee arbitration if Luis Quintero fails to timely respond to Mr. Hineman's fee arbitration petition and the Fee Arbitration Coordinator dismisses Mr. Hineman's fee arbitration petition. Mr. Hineman shall have thirty (30)

days from the date of the letter of the Fee Arbitration Coordinator to comply with the award entered in the Fee Arbitration proceeding.

**IT IS FURTHER ORDERED** Mr. Hineman shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,201.60, 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 1<sup>st</sup> day of November, 2016.

*William J. O'Neil*

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

Copies of the foregoing mailed/e-mailed  
this 1<sup>st</sup> day of November, 2016 to:

Mark I. Harrison  
Osborn Maledon, PA  
2929 N. Central Avenue, Suite 2100  
Phoenix, AZ 85012-2765  
Email: [mharrison@omlaw.com](mailto:mharrison@omlaw.com)  
Respondent's Counsel

Nicole S. Kasetta  
Staff Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**PHILLIP D. HINEMAN, JR.,  
Bar No. 011887**

Respondent.

**PDJ-2016-9103**

**DECISION ACCEPTING CONSENT  
FOR DISCIPLINE**

[State Bar Nos. 16-0507, 16-0704]

**FILED NOVEMBER 1, 2016**

A Probable Cause Order was issued in File 16-0507 on August 30, 2016. No Probable Cause Order has been filed in file no. 16-0704 and no formal complaint has been filed. An Agreement for Discipline by Consent ("Agreement") was filed by the parties on October 14, 2016, and submitted under Rule 57(a)(3), Ariz. R. Sup. Ct.<sup>1</sup> Mr. Hineman is represented by Mark I. Harrison, *Osborn Maledon PA*.

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

Under Rule 53(b)(3), notice of this Agreement and the opportunity to file a written objection within five days was provided to the complainant(s) by letter on September 30, 2016. No objection was received.

The misconduct is summarized. In Count One, Mr. Hineman represented both Robert and Janice Beckhorn in an uncontested divorce and a bankruptcy matter. He

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

advised the Beckhorns to first proceed with the bankruptcy before filing for divorce. On July 20, 2015, Mr. Hineman filed a chapter 7 bankruptcy petition on behalf of both Robert and Janice. His fee agreement in the bankruptcy matter however, was deficient in that it did not contain language required by ER 1.5(d)(3).

On September 2, 2015, Mr. Hineman filed a petition for dissolution of marriage and listed only Robert as a client. The fee agreement in the dissolution proceeding also listed only Robert and not Janice as a client. On October 22, 2015, Mr. Hineman filed an application and affidavit for default in the dissolution proceedings on behalf of Robert only. On November 3, 2015, the Court entered a discharge in the bankruptcy matter. Mr. Hineman's representation in the bankruptcy matter continued until May 23, 2016 as an objection was filed by the bankruptcy trustee. He filed a default degree of dissolution of marriage on behalf of Robert only on December 11, 2015, which was entered that day.

Overall, Mr. Hineman engaged in a conflict of interest by representing both the husband and wife in a bankruptcy proceeding and subsequently, a divorce proceeding. Although an ethical violation, the clients were satisfied with the results Mr. Hineman achieved.

In Count Two, Mr. Hineman represented a client in an eviction matter. He filed the eviction complaint but the tenant had voluntarily left the property. The client had a claim for unpaid rent and property damage and Mr. Hineman agreed to draft a complaint relating to those issues. His fee agreement for those issues failed to comply with ER 1.5(b) regarding fees for additional representation. Thereafter, Mr. Hineman failed to adequately communicate with his client. The client decided to not pursue the unpaid rent and property damage matter any further because of the

litigation costs involved. The client requested the matter be dismissed (by itself) without incurring any further legal fees. Mr. Hineman however, filed a motion to dismiss on June 7, 2016, and a notice of nonresponse in July 2016. The client also requested a refund from Mr. Hineman. An invoice was provided on or about July 13, 2016 and a second invoice on or about September 20, 2016.

Mr. Hineman admits violations of Rule 42, specifically ERs 1.4 (communication), 1.5(a) (fees), 1.5(b), and (d)(3), 1.7 (conflict of interest/current clients) and 3.2 (expediting litigation). The parties stipulate to a sanction of reprimand and 18 months of probation (LOMAP, MAP and fee arbitration).

The parties stipulate the mental state of Mr. Hineman was negligent. Mr. Hineman violated his duty to his clients and the legal system causing potential injury to both the client and the legal system.

*Standard 4.33, Failure to Avoid conflicts of Interest* is applicable to Mr. Hineman's violation of ER 1.7 and provides:

Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

Mr. Hineman violated his duty to his clients and to the legal system resulting in potential injury to clients and the legal system. In Count One, Mr. Hineman was negligent in determining whether his representation of both the husband and wife in a divorce proceeding was a conflict of interest.

*Standard 4.43, Lack of Diligence* is applicable to Mr. Hineman's violations of ER 1.4 and provides:

Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

Mr. Hineman negligently failed to adequately communication with his client in Count Two.

The parties stipulate in aggravation to factors *Standard* 9.22(a) prior disciplinary offenses, and 9.22(i) substantial experience in the practice of law. Present in mitigation are factors 9.32(c) personal or emotional problems and 9.32(m) remoteness of prior offenses. Mr. Hineman has submitted documentation to support factor 9.32(c) and that documentation is subject to a protective order. The parties further stipulate that the majority of Mr. Hineman's prior discipline is remote in time having occurred over 10 years ago. However, the PDJ notes no dates were given reflecting when the prior discipline occurred so it is hard to evaluate that factor without further research. See Agreement, p. 14.

Accordingly:

**IT IS ORDERED** incorporating the Agreement and all supporting documents by this reference. The agreed upon sanctions are: reprimand, eighteen (18) months of probation under agreed terms and conditions, and costs within thirty (30) days totaling \$1,201.60, plus interest at the statutory rate.

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

**DATED** 1<sup>st</sup> day of November, 2016.

*William J. O'Neil*

---

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

Copies of the foregoing were e-mailed/mailed  
This 1<sup>st</sup> day of November, 2016 to:

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Respondent's Counsel

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

OCT 14 2016

FILED  
BY 

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**PHILLIP D. HINEMAN, JR.,  
Bar No. 011887**

Respondent.

PDJ-2016- 9103

State Bar File Nos. 16-0507, 16-0704

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

The State Bar of Arizona (State Bar), through undersigned Bar Counsel, and Respondent, Phillip D. Hineman Jr., who is represented in this matter by counsel, Mark I. Harrison, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on August 30, 2016 in State Bar file no. 16-0507, but a probable cause order has not been entered in State Bar file no. 16-0704. 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 complainants by letter on September 30, 2016. Complainants have been 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. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, Ariz. R. Sup. Ct., ERs 1.4, 1.5(a), 1.5(b), 1.5(d)(3), 1.7, and 3.2. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand with eighteen (18) months of probation to include participation in the Law Office Management Assistance Program (LOMAP) and the Member Assistance Program (LRO MAP), completion of the CLE "Ten Deadly Sins of Conflict", and fee arbitration in file no. 16-0704. 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.<sup>1</sup> 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, 1988.

### **COUNT ONE (File no. 16-0507/ Beckhorn)**

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<sup>1</sup> 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.

2. Robert Beckhorn (Robert) and his now ex-wife, Janice Beckhorn (Janice), retained Respondent to assist them in an alleged uncontested divorce and in filing for bankruptcy.

3. Respondent advised Robert and Janice to proceed with the bankruptcy before initiating the divorce proceedings.

4. On January 24, 2015, Respondent provided Robert and Janice with a fee agreement for the bankruptcy which included a \$2,000 earned upon receipt fee.

5. The fee agreement did not contain the language required by ER 1.5(d)(3).

6. The fee agreement states: "Attorneys [sic] representation of Client under this Agreement ends when Client's bankruptcy discharge is entered."

7. On July 20, 2015, Respondent filed a chapter 7 bankruptcy petition for Robert and Janice.

8. On September 1, 2015, Respondent provided Robert with an earned upon receipt fee agreement for \$1,500 "to represent me in Uncontested Petition for Dissolution of Marriage Without Children."

9. The fee agreement references only Robert and not Janice as Respondent's client.

10. Respondent admits, however, that he represented both Robert and Janice in the dissolution of marriage.

11. On September 2, 2015, Respondent filed a petition for dissolution of marriage.

12. The petition lists only Robert and not Janice as Respondent's client.

13. The petition states that all property and debts "should be divided in a fair and equitable manner. . .", that Robert should be awarded certain property as his separate property, and that Janice should be awarded certain property as her separate property.

14. On October 22, 2015, Respondent filed an application and affidavit for default in the dissolution action on behalf of Robert.

15. On November 3, 2015, the bankruptcy court entered a "discharge of debtor."

16. Respondent, however, continued to represent Robert and Janice in the bankruptcy until May 23, 2016, including because the bankruptcy trustee subsequently filed an objection to a claimed exemption.

17. On December 11, 2015, Respondent filed a default decree of dissolution of marriage on behalf of Robert.

18. The court entered the default decree on the same date.

19. Robert and Janice were both satisfied with the result of and decree entered in the divorce proceeding.

**COUNT TWO (File no. 16-0704/Quintero)**

20. Respondent assisted Luis Quintero (Quintero) with the eviction of a tenant from his property.

21. On August 18, 2015, Respondent provided Quintero with an Attorney Client Fee Agreement which acknowledges receipt of a \$2,000 payment from Quintero and identifies the scope of the representation as follows: "File Complaint for Eviction . . . in Yuma County Superior Court."

22. The Attorney Client Fee Agreement provides for a \$2,000 "retainer" with "the understanding that [Quintero] agree[s] to pay monthly charges as they are billed."

23. The Attorney Client Fee Agreement further provides that Respondent will bill at a rate of \$300 per hour, that there is a "one time file set up fee" of \$100, that minimum court appearance fees are for one hour, and that there is a "one time file closure fee" of \$100 for scanning.

24. Respondent drafted and filed the eviction complaint; however, the tenant left the property voluntarily on or about August 24, 2015 prior to Respondent filing the eviction complaint with the court.

25. Although the tenant left the property, Quintero still had a claim against the tenant for unpaid rent and property damage.

26. Respondent agreed to draft a complaint for Quintero relating to the unpaid rent and property damage.

27. Respondent did not provide Quintero with a writing complying with ER 1.5(b) relating to this additional representation.

28. On September 10, 2015, Respondent's associate emailed Quintero and attached a draft complaint for unpaid rent and property damage and an invoice. The email states: "You still have a credit balance of \$106.00. However, [Respondent] would like you to deposit an additional \$2,500 to your account for the cost of litigation, hearings, service, etc."

29. The invoice that Respondent's associate emailed to Quintero contains a "services subtotal" of \$1,910, a file set up fee of \$100, and a cost of \$264 for filing the eviction complaint.

30. Quintero responded on the same date and wrote that he thought the initial \$2,000 would fund the entire matter. Quintero further wrote: “. . . in the time we have been working together I have sent emails with concerns and question[s] which were never answered. I have had to follow up with correspondence I was told I would have but never got.”

31. In response, Quintero also asked what would happen if he was unable to provide Respondent with the additional funds requested by Respondent.

32. Respondent replied by informing Quintero that they had the following options: (a) Respondent could file the complaint for unpaid rent and property damage and Quintero would have to pay him for these services; or (b) Quintero could file the complaint on his own.

33. On September 11, 2015, Quintero paid Respondent an additional \$1,500.

34. On September 17, 2015, Respondent's assistant emailed Quintero and informed him that the complaint for unpaid rent and property damage was served on the tenant.

35. On October 13, 2015, Respondent's assistant emailed Quintero the tenant's answer to the complaint.

36. After receiving the answer to the complaint, Respondent informed Quintero that he thought the litigation would become protracted and expensive.

37. Quintero and Respondent agreed that Respondent would no longer represent Quintero in the case against the tenant for unpaid rent and property damage because of the expense of doing so.

38. On November 5, 2015, Quintero emailed Respondent and wrote: "My wife and I decided to drop pursuit of our matter in whole. . . . I am in no position to fund this case any further."

39. Respondent responded on the same date and wrote "we will file tomorrow."

40. Respondent, however, failed to dismiss the complaint around this time.

41. In December of 2015, Respondent attempted to obtain the tenant's signature on a stipulation of dismissal but was unable to do so.

42. After informing Quintero that he would "file tomorrow", Respondent stopped communicating with Quintero for a period of time.

43. Quintero requested a refund of the \$1,500 he paid Respondent but Respondent failed to provide Quintero a refund.

44. On March 21, 2016, after Quintero contacted the State Bar, Respondent emailed Quintero and wrote that he previously explained to Quintero the "downside of not being able to collect on a judgment", that he recommended dismissing the case, and that he asked the tenant to execute a stipulation to dismiss the matter.

45. Respondent further wrote that has not heard from the tenant regarding the stipulation and that "at a certain point in time, the clerks [sic] office will dismiss the case if there has been no activity in the case." If this occurs, Respondent wrote that this "will also achieve your objective."

46. Respondent also informed Quintero that he understood he missed a phone call in February, that he was unaware of the same, and that he could "have communicated better" but he believed that his staff had communicated with him.

47. Respondent concluded the email as follows: "As to your legal fees, I will send out an updated invoice. Once the case is dismissed, I will issue a final invoice."

48. Quintero responded on the next day and wrote: "Moving forward, we will allow the case to dismiss itself. No further communication with the defendant is necessary. I look forward to receiving an invoice from you and being notified when the case has been dismissed."

49. On June 7, 2016, Respondent drafted a motion to dismiss the complaint.

50. Respondent filed the motion to dismiss the complaint in the same month.

51. On June 10, 2016, Quintero emailed Respondent the following: "Concerning the matter of the Motion to Dismiss, our last agreement was to allow the case to dismiss itself as stated in the attached email. My intentions are to keep my costs to a minimum and resolve the situation. My concern is not with timeliness if it will save me money in the end, I understand you have already filed to dismiss the case but please understand I did not ask you to do that. I expect any costs associated with the Motion to Dismiss will not be on my invoice as this was never discussed or approved by myself."

52. The tenant did not file a response to the motion to dismiss.

53. In July of 2016, Respondent drafted and filed a notice of nonresponse requesting that the court grant his motion to dismiss.

54. On or about July 13, 2016, Respondent provided Quintero an invoice for "eviction civil" with fees of \$1,567.50 and costs in the amount of \$132.50. In

this invoice, Respondent charged Quintero for researching and drafting of the motion to dismiss. The invoice notes that Respondent wrote off \$200 of the bill so that there is a zero balance. Although the invoice is for "eviction civil" it includes time spent for reviewing the tenant's answer to the complaint for unpaid rent and property damage.

55. On or about September 10, 2016, Respondent provided Quintero another invoice for \$1,894 which included a discount of \$380, expenses in the amount of \$364, and a balance of zero. This invoice omits certain entries that are contained in the July 13, 2016 invoice, including regarding drafting the motion to dismiss, but then adds certain time expended in 2015 that is not contained in the July 13, 2016 invoice.

### **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 1.5(d)(3) and 1.7 in State Bar file no. 16-0507 and ERs 1.4, 1.5(a), 1.5(b), and 3.2 in State Bar file no. 16-0704.

### **RESTITUTION**

Restitution is not an issue in this matter; however, Respondent agrees to participate in fee arbitration in State Bar file no. 16-0704 with Luis Quintero.

### **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 sanctions are

appropriate: Reprimand with eighteen (18) months of probation to include participation in the Law Office Management Assistance Program (LOMAP), the Member Assistance Program (LRO MAP), the CLE "Ten Deadly Sins of Conflict", and fee arbitration in file no. 16-0704 with Quintero.

If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

### **LOMAP**

Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of entry of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures. Respondent shall sign terms and conditions of probation, including reporting requirements, which shall be incorporated herein. The probation period will commence at the time of entry of the final judgment and order and will conclude eighteen (18) months from that date. Respondent will be responsible for any costs associated with LOMAP.

### **LRO MAP**

Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of entry of the final judgment and order to schedule an assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. The probation period will commence at the time of entry of the final judgment and order and will conclude eighteen (18) months from that date. Respondent will be responsible for any costs associated with participation in LRO MAP.

## **CLE**

Respondent shall complete the CLE program Ten Deadly Sins of Conflict within ninety (90) days from the date of entry of the final judgment and order. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program by providing a copy of handwritten notes. Respondent shall contact the Compliance Monitor at (602) 340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the costs of the CLE.

## **FEE ARBITRATION**

Respondent shall participate in the State Bar's Fee Arbitration Program with Luis Quintero in State Bar file no. 16-0704. Respondent shall contact the Fee Arbitration Coordinator at (602) 340-7379 within ten (10) days from the date of entry of the final judgment and order to obtain the forms necessary to participate in Fee Arbitration. Respondent shall file the necessary forms no later than thirty (30) days from the date of receipt of the forms. Respondent will have no further obligations relating to fee arbitration if Luis Quintero fails to timely respond to Respondent's fee arbitration petition and the Fee Arbitration Coordinator dismisses Respondent's fee arbitration petition. Respondent shall have thirty (30) days from the date of the letter of the Fee Arbitration Coordinator to comply with the award entered in the Fee Arbitration proceeding.

## **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.

### **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* 4.33 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.33 provides: "Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury

or potential injury to a client.” Respondent was negligent in determining whether his representation of Robert and Janice in a divorce was a conflict of interest in State Bar file no. 16-0507. Respondent believed that he could represent both Robert and Janice in the divorce proceeding because the divorce was uncontested. Respondent was also negligent in that he did not realize that his representation of Robert or Janice in the bankruptcy could be materially limited by the impending divorce of Robert and Janice.

The parties further agree that *Standard 4.43* applies. *Standard 4.43* provides: “Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.” Respondent was negligent in his failure to adequately communicate with Quintero in State Bar file no. 16-0704. Respondent admits that he should have communicated more with Quintero but states that he believed that his staff was communicating with Quintero more than his staff was actually communicating with Quintero.

#### **The duty violated**

As described above, Respondent’s conduct violated his duty to his clients and to the legal system.

#### **The lawyer’s mental state**

For purposes of this agreement, the parties agree that Respondent negligently engaged in a conflict of interest in State Bar file no. 16-0507 and negligently failed to sufficiently communicate with Quintero in State Bar file no. 16-0704 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 Respondents' clients and the legal system.

### **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:**

*Standard 9.22(a)*, prior disciplinary offenses: (1) In State Bar file no. 14-3365, Respondent was admonished and placed on probation (TAEPP) for violating Rule 43; (2) In State Bar file no. 08-1585, Respondent was informally reprimanded and placed on probation (TAEPP) for violating ER 1.15 and Rule 43; (3) In State Bar file no. 08-0108, Respondent was censured and placed on probation (Ten Deadly Sins CLE), for violating ERs 1.1, 1.2, 1.3, 1.7, 1.14, 1.16, 3.1, 3.7, and 8.4(d); (4) In State Bar file no. 03-1581, Respondent was informally reprimanded for violating ER 1.15(b), (c); (5) In State Bar File Nos. 99-1374, 00-1054, 01-0033, and 01-055, Respondent was censured and placed on probation (LOMAP, practice monitor) for violating ERs 1.5(a), 1.5(b), and 1.8(a); (6) In State Bar file nos. 96-3100, 98-0924, 98-0924, and 98-1364, Respondent was censured and placed on probation (LOMAP, EEP, CLE) for violating ERs 1.1, 1.3, 1.4, 1.16(d), 3.2, 8.4(d).

*Standard 9.22(i)*, substantial experience in the practice of law. Respondent has been licensed to practice law in Arizona since 1988.

#### **In mitigation:**

*Standard 9.32(c)*, personal or emotional problems. Respondent is filing contemporaneous with this Agreement for Discipline by Consent documentation summarizing certain personal problems with which he was and is dealing during the time of the representation involved in these matters and which adversely affected his concentration and performance. Respondent is filing this documentation under seal with a motion for a protective order.

*Standard 9.32(m)*, remoteness of prior offenses. Some of Respondent's prior discipline is remote in that it occurred over ten years ago.

### **Discussion**

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.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: Although Respondent's disciplinary history may have warranted a greater sanction than the presumptive sanction, Respondent has presented the State Bar with mitigation demonstrating that his personal problems during the representation of complainants affected his performance and conduct in the instant matters. Given Respondent's personal problems as detailed in the accompanying documentation and his willingness to participate in LOMAP, LRO MAP, fee arbitration, and a CLE, the presumptive sanction of a reprimand is appropriate and will protect the public.

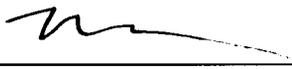
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

### 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 reprimand with eighteen (18) months of probation, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

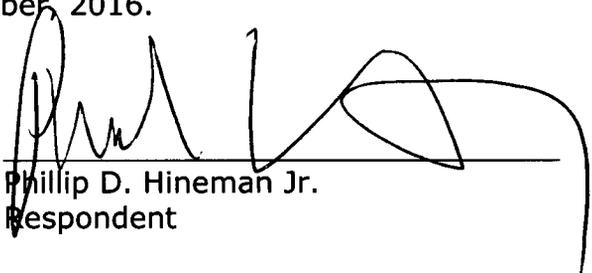
**DATED** this 14<sup>th</sup> day of October, 2016

### STATE BAR OF ARIZONA

  
\_\_\_\_\_  
Nicole S. Kaset  
Staff Bar Counsel

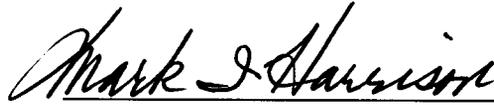
**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.**

**DATED** this 6<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
Phillip D. Hineman Jr.  
Respondent

**DATED** this 6<sup>th</sup> day of October, 2016.

Osborn Maledon, PA



Mark I. Harrison  
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 14<sup>th</sup> day of October, 2016.

Copy of the foregoing emailed  
this 14<sup>th</sup> day of October, 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](mailto:officepdj@courts.az.gov)

Copy of the foregoing mailed/emailed  
this 14<sup>th</sup> day of October, 2016, to:

Mark I. Harrison  
Osborn Maledon, PA  
2929 N. Central Ave Ste 2100  
Phoenix, AZ 85012-2765  
Email: [mharrison@omlaw.com](mailto:mharrison@omlaw.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 14<sup>th</sup> day of October, 2016, to:

Lawyer Regulation Records Manager  
State Bar of Arizona

4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by: Karen E. Calagno  
NSK/kec

# **EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Phillip D. Hineman, Bar No. 011887, Respondent

File No(s). 16-0507 & 16-0704

### **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**

05/27/16	PACER Invoice	\$	1.60
Total for staff investigator charges		\$	1.60
<b><u>TOTAL COSTS AND EXPENSES INCURRED</u></b>			<b>\$ 1,201.60</b>

# **EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**PHILLIP D. HINEMAN, JR.,  
Bar No. 011887,**

Respondent.

**PDJ-2016-**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 16-0507, 16-0704]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on October \_\_, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** that Respondent, **Phillip D. Hineman Jr**, 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 shall be placed on probation for a period of eighteen (18) months. The period of probation shall commence upon entry of this final judgment and order and will conclude eighteen (18) months from that date.

**IT IS FURTHER ORDERED** that, as a term of probation, Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of entry of this Final Judgment and Order. Respondent shall submit to a LOMAP examination of his office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be

incorporated herein. The probation period will commence at the time of entry of the final judgment and order and will conclude eighteen (18) months from that date. Respondent will be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** that, as a term of probation, Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of entry of the final judgment and order to schedule a LRO MAP assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. The probation period will commence at the time of entry of the final judgment and order and will conclude eighteen (18) months from that date. Respondent will be responsible for any costs associated with participation in MAP.

**IT IS FURTHER ORDERED** that, as a term of probation, Respondent shall complete the CLE program Ten Deadly Sins of Conflict within ninety (90) days from the date of entry of the final judgment and order. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program by providing a copy of handwritten notes. Respondent shall contact the Compliance Monitor at (602) 340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the costs of the CLE.

**IT IS FURTHER ORDERED** that, as a term of probation, Respondent shall participate in the State Bar's Fee Arbitration Program with Luis Quintero in State Bar file no. 16-0704. Respondent shall contact the Fee Arbitration Coordinator at (602) 340-7379 within ten (10) days from the date of entry of the final judgment and order to obtain the forms necessary to participate in Fee Arbitration. Respondent shall file the necessary forms no later than thirty (30) days from the date of receipt of the forms.

Respondent will have no further obligations relating to fee arbitration if Luis Quintero fails to timely respond to Respondent's fee arbitration petition and the Fee Arbitration Coordinator dismisses Respondent's fee arbitration petition. Respondent shall have thirty (30) days from the date of the letter of the Fee Arbitration Coordinator to comply with the award entered in the Fee Arbitration proceeding.

**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 Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,201.60, 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 October, 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 October, 2016

Copies of the foregoing mailed/emailed  
this \_\_\_\_\_ day of October, 2016 to:

Mark I. Harrison  
Osborn Maledon, PA  
2929 N. Central Avenue, Suite 2100  
Phoenix, AZ 85012-2765  
Email: [mharrison@omlaw.com](mailto:mharrison@omlaw.com)  
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_\_ day of October, 2016, to:

Nicole S. Kasetta  
Staff Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

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by: \_\_\_\_\_