

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

BRENT J. KLEINMAN,
Bar No. 028455

Respondent.

PDJ 2015-9062

FINAL JUDGMENT AND ORDER

[State Bar File Nos. 14-3352, 15-0146,
15-0217, and 15-0285]

FILED OCTOBER 1, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on September 21, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED Respondent, **Brent J. Kleinman**, is hereby suspended for a period of four (4) years for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this Order.

IT IS FURTHER ORDERED upon reinstatement, Mr. Kleinman shall be placed on probation with the terms and conditions of probation, including the length of probation, to be determined upon reinstatement.

IT IS FURTHER ORDERED Mr. Kleinman shall pay restitution to the following persons in the following amounts within thirty (30) days of entry of this Order: (1) \$300.00 to Roger and Afton Johnson; (2) \$500.00 to Primula Keel; (3) \$400.00 to Michael Stalford; and (D) \$2,000.00 to Chance Mora.

IT IS FURTHER ORDERED Mr. Kleinman shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

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

IT IS FURTHER ORDERED Mr. Kleinman shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,251.15, within thirty (30) days from the date of service 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 1st day of October, 2015

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing were mailed/emailed
this 1st day of October, 2015 to:

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Respondent

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Lawyer Regulation Records Manager
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Phoenix, Arizona 85016-6266

by: JAlbright

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**BRENT J. KLEINMAN,
Bar No. 028455**

Respondent.

PDJ-2015-9062

**DECISION ACCEPTING CONSENT
FOR DISCIPLINE**

[State Bar Nos. 14-3352, 15-0146,
15-0217, 15-0285]

FILED OCTOBER 1, 2015

By Order of the Presiding Disciplinary Judge (PDJ) filed May 5, 2015 in PDJ-2015-9033, Mr. Kleinman was found in contempt and suspended from the practice of law until further order of the Court. Mr. Kleinman ultimately purged himself from the contempt, but was summarily suspended for nonpayment of dues effective June 23, 2015, and remains suspended.

Thereafter, Probable Cause Order was filed on June 23, 2015 and the formal complaint was filed on July 1, 2015. An Agreement for Discipline by Consent ("Agreement") was filed on September 21, 2015, and submitted under Rule 57(a)(3), Ariz. R. Sup. Ct¹. A 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

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

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 was provided to the complainant(s) by letter dated September 14, 2015. Complainants were 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. No objection was received. The admitted misconduct is summarized.

In multiple counts, Mr. Kleinman accepted retainers from clients to perform legal services and then abandoned the clients. Specifically, in Count One, Mr. Kleinman represented clients in a landlord/tenant dispute. Mr. Kleinman failed to contact the tenant’s attorney and failed to adequately communicate with his clients regarding their case. In Count Two, Mr. Kleinman represented a client in a criminal matter. Mr. Kleinman failed to seek an order allowing his client to serve her sentence in Nevada and failed to attend a hearing on behalf of the client. His failure caused a warrant to be issued. In Count Three, Mr. Kleinman failed to adequately communicate with his client and failed to perform the agreed upon legal services. In Count Four, Mr. Kleinman failed to file necessary pleadings to have his client appointed as executor of his father’s estate and misrepresented the status of the matter. Mr. Kleinman virtually abandoned 3 of the 4 clients. Furthermore, Mr. Kleinman failed to respond to the State Bar’s inquiries.

Mr. Kleinman conditionally admits his misconduct violated Rule 42, ERs 1.1, 1.2(a), 1.3, 1.4, 1.5(a), 1.16(d), 8.1(b), 8.4(d) and Rule 54(d). The parties stipulate to a sanction of a four (4) year suspension, probation upon reinstatement, restitution

and the payment of costs and expenses totaling \$1,251.15 to be paid within thirty (30) days from this Decision and Order.

Presumptive Sanction

The parties agree suspension is the presumptive sanction and *Standard 4.42* of the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") apply to these conditional admissions. *Standard 4.42* provides suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client,
- or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Standard 7.2 provides:

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Mr. Kleinman conditionally admits he knowingly violated his duties to his clients, the legal system, and the profession by failing to perform the agreed-upon legal services and knowing failure to cooperate with the State Bar. His failures caused actual and potential harm to clients and actual harm to the profession and the legal system. Had his failures caused serious harm or potentially serious harm, disbarment may have been appropriate.

Aggravation and Mitigation

The agreed upon aggravating factors include: 9.22(a) (prior disciplinary offenses), 9.22(c) (pattern of misconduct), 9.22(d) (multiple offenses), and (e) (bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with

rules or orders of the disciplinary agency). The parties agree there are no mitigating factors present.

The object of lawyer discipline is to protect the public, the legal profession, the administration of justice, and to deter other attorneys from engaging in unprofessional conduct. *Peasley*, 208 Ariz. 27, 38, 90 P.3d 764, 775 (2004). Attorney discipline is not intended to punish the offending attorney, although the sanctions imposed may have that incidental effect. *Id.* In that context, the PDJ finds the proposed sanction meets the objectives of discipline.

IT IS ORDERED incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: a four (4) year suspension, probation upon reinstatement with the length and terms and conditions to be determined during reinstatement proceedings, and the payment of costs and expenses totaling \$1,251.15, which shall be paid within thirty (30) days of the final judgment and order. These financial obligations shall bear interest at the statutory rate.

IT IS FURTHER ORDERED the Agreement is accepted. Costs as submitted are approved for \$1,251.15, to be paid within thirty (30) days of the final order. Now therefore, a final judgment and order is signed this date.

DATED 1st day of October, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing were mailed/emailed this 1st day of October, 2015 to:

Brent J. Kleinman
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Respondent

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Respondent

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**BRENT J. KLEINMAN,
Bar No. 028455**

Respondent.

PDJ 2015-9062

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar File Nos. State Bar Nos. 14-
3352, 15-0146, 15-0217, and 15-
0285

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Brent J. Kleinman, who has chosen not to seek the assistance of counsel, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an aggravation/mitigation hearing¹, 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.

¹ Respondent failed to answer the State Bar's complaint. Consequently, the Presiding Disciplinary Judge entered a default on August 4, 2015 and subsequently scheduled an aggravation/mitigation hearing for September 23, 2015. In lieu of that hearing, the parties submit this Agreement for Discipline by Consent.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainants by letter on September 14, 2015. 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.1, 1.2(a), 1.3, 1.4, 1.5(a), 1.16(d), 8.1(b), and 8.4(d), and Rule 54(d), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline:

- A. Respondent shall be suspended from the practice of law in Arizona for a period of four (4) years. A period of suspension of more than six (6) months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona;
- B. Upon reinstatement, Respondent shall be placed on probation with terms and conditions of probation to be determined at the time of reinstatement.
- C. Respondent shall pay restitution to the following persons in the following amounts within thirty (30) days of entry of the final judgment and order:
(1) \$300 to Roger and Afton Johnson; (2) \$500 to Primula Keel; (3) \$400 to Michael Stalford; and (D) \$2,000 to Chance Mora.

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.² The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

FACTS

GENERAL ALLEGATIONS

1. Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on March 16, 2011.

COUNT ONE (File no. 14-3352/Johnston)

2. On December 17, 2013, Respondent met with Roger and Afton Johnston ("the Johnstons") regarding a landlord/tenant dispute.

3. The Johnstons sought legal advice because their tenants intended to breach their lease with the Johnstons and the Johnstons wanted to recover lost rent from their tenants.

4. The tenants informed the Johnstons that they had retained an attorney. The Johnstons provided the name of the tenants' attorney to Respondent so that he could contact this attorney.

5. Respondent informed the Johnstons that he would contact the tenants' legal counsel after the holidays.

6. The Johnstons paid Respondent \$300.

7. After paying Respondent, the Johnstons heard nothing further from Respondent.

² 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.

8. The Johnstons called Respondent in May of 2014 to obtain a status update and Respondent indicated to the Johnstons that he would contact the tenants' attorney.

9. Respondent has not communicated with the Johnstons since then and Respondent has done nothing to recoup the Johnstons' lost rent payments.

10. On August 4, 2014, the Johnstons sent a letter to Respondent stating: "To refresh your memory, we met with you on December 17, 2013 regarding the breaking of our lease by tenants. . . . At that time[,] we paid you \$300 to pursuit [sic] of lost rent. We have heard nothing from you. We contacted you by phone in May of this year to determine the status of our case. At that time[,] you indicated that you would look into the matter, and get back to us. To date[,] we have received no follow up, or any information or feedback regarding this matter, and are requesting a full refund of the \$300 deposit we paid you to pursue this matter.

11. Respondent never responded to this letter and never refunded the Johnstons their \$300.

12. On February 12, 2015, bar counsel sent Respondent a screening letter requesting a response by March 5, 2015.

13. Respondent did not timely respond to this screening letter.

14. On March 9, 2015, bar counsel filed a request for a subpoena and, on the same date, chief bar counsel issued the subpoena.

15. A staff investigator personally served the subpoena on Respondent on March 16, 2015.

16. The subpoena required Respondent to produce his client file and respond to bar counsel's screening letter by April 1, 2015 at 9:30 a.m.

17. Respondent did not produce his files and did not respond to the screening letter by April 1, 2015 at 9:30 a.m. Instead, ten minutes before his response to the subpoena was due, Respondent emailed bar counsel and requested an extension of time to respond to the subpoena until April 8, 2015.

18. Respondent did not produce his client file or respond to the screening letter by April 8, 2015 despite requesting the extension of time to do so.

19. On April 8, 2015, bar counsel emailed Respondent and informed him that she would file a petition for order to show cause if bar counsel did not receive Respondent's response to the subpoena by April 10, 2015.

20. Respondent did not respond to this email and, on April 14, 2015, bar counsel filed a petition for order to show cause.

21. The Presiding Disciplinary Judge entered a show cause order on April 24, 2015, held a show cause hearing on May 5, 2015, and found Respondent in contempt.

COUNT TWO (File no. 15-0217/Keel)

22. Primula Keel ("Keel") was charged with solicitation for prostitution in Goodyear Municipal Court.

23. Keel accepted a plea deal of 15 days of work release.

24. After accepting this plea deal, Keel hired Respondent in March or April 2014 to obtain an order allowing her to serve her sentence in Las Vegas, Nevada because Keel resided in Las Vegas, Nevada.

25. Keel also hired Respondent so that he could appear on her behalf at any court proceedings in Arizona.

26. Keel paid Respondent \$500.

27. In October of 2014, approximately seven months after Keel first retained Respondent, Respondent informed Keel that "everything should be good to go" and that Keel needed to choose which day to commence her sentence.

28. Keel spoke with Respondent the day before she reported to the Clark County Detention Center in Nevada and Respondent informed her to call him if there was any issue regarding serving her sentence in Clark County.

29. The next day, Keel reported to the Clark County Detention Center in Nevada.

30. The Clark County Detention Center did not permit Keel to serve her sentence there as it did not have any record of her in its system.

31. Accordingly, Keel called Respondent twice and left him two messages.

32. Respondent did not return her calls so Keel contacted her Nevada attorney who then called Respondent. Respondent spoke to Keel's Nevada attorney, the Nevada attorney explained the situation to Respondent, and Respondent informed the Nevada attorney to inform Keel that he would call her within the next couple of hours.

33. Respondent did not call Keel and has not since communicated with her.

34. A few days after Keel attempted to serve her work release in Clark County Detention Center, Keel realized that Respondent was abandoning her case. Accordingly, Keel informed the Goodyear Municipal Court Clerk regarding the same. The clerk informed Keel that she could not hire a new attorney until Respondent withdrew.

35. Keel subsequently called Respondent and left him a message informing him that he needed to withdraw from the case.

36. Respondent did not return this message and did not file a motion to withdraw.

37. Keel and Respondent failed to attend a subsequent court hearing and the court issued a warrant for Keel.

38. Keel wrote a letter to the court explaining her situation with Respondent and the court quashed the warrant.

39. In April of 2015, Keel served her sentence in Arizona.

40. On February 12, 2015, bar counsel sent Respondent a screening letter requesting a response by March 5, 2015.

41. Respondent did not timely respond to this screening letter.

42. On March 9, 2015, bar counsel filed a request for a subpoena and, on the same date, chief bar counsel issued the subpoena.

43. A staff investigator personally served the subpoena on Respondent on March 16, 2015.

44. The subpoena required Respondent to produce his client file and respond to bar counsel's screening letter by April 1, 2015 at 9:30 a.m.

45. Respondent did not produce his files and did not respond to the screening letter by April 1, 2015 at 9:30 a.m. Instead, ten minutes before his response to the subpoena was due, Respondent emailed bar counsel and requested an extension of time to respond to the subpoena until April 8, 2015.

46. Respondent did not produce his client file or respond to the screening letter by April 8, 2015 despite requesting the extension of time.

47. On April 8, 2015, bar counsel emailed Respondent and informed him that she would file a petition for order to show cause if bar counsel did not receive Respondent's response to the subpoena by April 10, 2015.

48. Respondent did not respond to this email and, on April 14, 2015, bar counsel filed a petition for order to show cause.

49. The Presiding Disciplinary Judge entered a show cause order on April 24, 2015, held a show cause hearing on May 5, 2015, and found Respondent in contempt.

COUNT THREE (File No. 15-0146/Stalford)

50. On November 9, 2014, Michael Stalford ("Stalford") located Respondent on avvo.com.

51. Stalford wanted Respondent to draft a buyout agreement for him wherein Stalford purchased his business partner's interest in a certain business.

52. Respondent and Stalford subsequently spoke on the phone and, on November 14, 2014, Stalford emailed Respondent the details of the buyout agreement that he wanted Respondent to draft for him.

53. On November 18, 2014, Respondent emailed Stalford an "engagement letter" which provided for a flat fee of \$400.

54. On November 26, 2014, Stalford emailed Respondent: "I sent emailed [sic] a signed copy last week [of the engagement letter]. Just wanted to confirm that you received it."

55. On December 1, 2014, Respondent replied: "I have received the signed letter of engagement. I am finalizing a draft of your agreement. I do still

need payment to be made before I can send you a draft for your review. You can mail a check or call with a credit card number.”

56. On December 2, 2014, Stalford paid Respondent \$400.

57. On December 3, 2014, Stalford emailed Respondent “[d]o you have the draft for me to review.”

58. Respondent did not respond to this email.

59. On December 4, 2014, Stalford emailed Respondent and informed him that he intended to have certain property related to the buyout agreement appraised.

60. Respondent did not respond to this email.

61. On December 10, 2014, Stalford emailed Respondent: “You around? It has been more than a week since you said you would email the draft. I’ve called and let [sic] you a message and emailed. I would like to get this resolved.”

62. Respondent did not respond to this email.

63. On December 16, 2014, Stalford again emailed Respondent: “It has been 2 weeks since I paid, and you said you would have a draft copy to me. Please respond with a status of the agreement.”

64. Respondent did not respond to this email.

65. On January 3, 2015, Stalford again emailed Respondent: “It has been one month since you billed my credit card and I have not seen a draft of the document. Now that the holidays are over[,] could you please email me a copy[?]”

66. Respondent did not respond to this email.

67. On January 12, 2015, Stalford again emailed Respondent: “I just called and left you another voice mail. It has been over a month and you haven’t

replied to my emails or returned my calls since taking my money. Please give me a call or respond to this email. Better yet, send over the draft copy of the agreement you were creating. You mentioned when you took my payment that it was ready to go. If I don't hear from you[,] I will be forced to file a complaint with the State Bar of Arizona."

68. Respondent did not respond to this email.

69. On January 21, 2015, Stalford submitted his bar charge to the State Bar.

70. On January 27, 2015, bar counsel sent Respondent a screening letter requesting a response by February 16, 2015.

71. Respondent did not timely respond to this screening letter.

72. On February 3, 2015, after Stalford submitted his bar charge, Respondent emailed Stalford a draft of an agreement. The email contains no message but only a forward of the agreement.

73. According to Stalford, the draft agreement was not "exactly" what he requested because Respondent drafted a stock purchase agreement from the perspective of a company buying shares of stock rather than Stalford, as an individual, buying shares of stock.

74. According to Stalford, the draft agreement is essentially a "template" that Respondent copied and pasted from another document.

75. On March 9, 2015, bar counsel filed a request for a subpoena and, on the same date, chief bar counsel issued the subpoena.

76. A staff investigator personally served the subpoena on Respondent on March 16, 2015.

77. The subpoena required Respondent to produce his client file and respond to bar counsel's screening letter by April 1, 2015 at 9:30 a.m.

78. Respondent did not produce his files and did not respond to the screening letter by April 1, 2015 at 9:30 a.m. Instead, ten minutes before his response to the subpoena was due, Respondent emailed bar counsel and requested an extension of time to respond to the subpoena until April 8, 2015.

79. Respondent did not produce his client file or respond to the screening letter by April 8, 2015 despite requesting the extension of time.

80. On April 8, 2015, bar counsel emailed Respondent and informed him that she would file a petition for order to show cause if bar counsel did not receive Respondent's response to the subpoena by April 10, 2015.

81. Respondent did not respond to this email and, on April 14, 2015, bar counsel filed a petition for order to show cause.

82. The Presiding Disciplinary Judge entered a show cause order on April 24, 2015, held a show cause hearing on May 5, 2015, and found Respondent in contempt.

COUNT FOUR (File No. 15-0285/Mora)

83. On January 1, 2014, Chance Mora's ("Mora") father died.

84. Mora's father received royalties from an independent film and also had another movie script in progress.

85. Mora retained Respondent to assist him with these issues and to file the paperwork necessary for Mora to be appointed as the executor of his father's estate.

86. Mora paid Respondent \$2,000 on February 7, 2014.

87. Mora also provided certain documents to Respondent, including a copy of his father's death certificate, a copy of a legal contract between his father and his production company, and a copy of his birth certificate.

88. On May 6, 2014, Mora emailed Respondent: "I'm still waiting to hear back from you Brent. To be perfectly honest, even if all you have to tell me is that nothing has been done/you're waiting for something, I still want to know. I don't believe I'm asking too much."

89. On the same day, Mora's personal attorney, Richard Gaxiola, emailed Respondent too and wrote: "Can you provide a time frame for completion as I need to inform the production company in LA. We are all waiting for this issue to be resolved."

90. The next day, Respondent replied: "I cannot complete the paperwork until I receive a copy of the Death certificate. I am waiting for it. . . ."

91. On May 28, 2014, Mr. Gaxiola emailed Respondent again and asked him to obtain the death certificate by contacting the funeral home and submitting a HIPAA release form."

92. On July 14, 2014, Mr. Gaxiola emailed Respondent, informed Respondent that he obtained a copy of the death certificate, and wrote "[I]et's get the ball rolling."

93. Respondent replied: "I will pick it up from you tomorrow morning and file the docs with the court tomorrow."

94. On July 15, 2014, Respondent attempted to file in the probate court an Affidavit for Collection of All Personal Property and a probate court coversheet.

95. The probate court, however, did not accept the filing.

96. On August 23, 2014, Mora emailed Respondent: "So, what's going on with everything?"

97. On August 25, 2014, Mr. Gaxiola emailed Respondent and Mora. Mr. Gaxiola attached to his email the documents that Respondent attempted to file with the probate court and wrote: "My understanding after speaking with Brent is that we are very close. I did speak to Jeff Santos this weekend, he has a few checks from the residuals . . . [of the movie] for you. . . . Brent: am I correct?"

98. On September 30, 2014, Mr. Gaxiola emailed Respondent: ". . . how much longer? What else needs to be completed[?]"

99. Respondent replied the next day: "We are simply waiting for the deadline for creditors to make a claim against the estate. That ends, I believe the last week of October. Then we can close the Estate. Since the amount is so small we do not have to submit a final accounting of the assets."

100. On November 4, 2014, Mora emailed Respondent: "Here we are at the beginning of the 11th month source [sic] my dad's death. What's the status? It would be wonderful to hear back from you Brent, as I've heard nothing from you in something like 5, maybe 6 **MONTHS**." (emphasis in original).

101. On the same date, Respondent replied to Mora and copied Mr. Gaxiola: "Chance, You have been given all necessary powers to handle your father's dealings with the production company. October was the final month that any creditor could make a claim against your father's estate. Since that has not happened[,] there is no need to continue the probate of the estate in court. You are the Personal Representative of your dad's estate and able to move forward."

102. On the same date, Mr. Gaxiola emailed Respondent and copied Mora: "Is there some documentation that [Complainant] needs to sign [to] cash checks made payable to his father."

103. Mora replied: "I'm almost certain there's a court document I need in order to cash checks in dad's name."

104. On November 20, 2014, Mora emailed Respondent and copied Mr. Gaxiola: "So, what's going on now? What are we waiting for?"

105. Mr. Gaxiola responded: "I believe we are waiting on final court order granting you full legal authority. I requested this from Brent a few days ago and he indicated that he would look into it. Brent: any news???"

106. Respondent did not respond to either of these emails.

107. On December 17, 2014, Mora emailed Respondent and Mr. Gaxiola: "I'd like an update on the situation. Last I heard we were getting close to having all this court stuff sorted out. I haven't heard anything from anyone in a while."

108. Respondent did not respond to this email.

109. On January 10, 2015, Mora again emailed Respondent and Mr. Gaxiola: "So, what's going on? I thought we were nearly finished with all the court stuff and ready to start moving forward. Any updates? At all?"

110. Respondent did not respond to this email.

111. On January 14, 2015, Mr. Gaxiola emailed Respondent: "I went down to Probate Court today and verified that nothing was ever filed regarding establishing [Mora] as the executor of [his father's] estate. In fact, according to the probate court, you used wrong forms. I paid you \$2,000.00 to accomplish the task of establishing [Mora] as the executor or [sic] [his father's] estate so that, if

necessary, he could engage in future contractual negotiations with Natural Nine Productions. You have completely [sic] in this regard and your services are hereby terminated. You have seven (7) days to provide me and [Mora] with a copy of the retainer agreement, an itemization for billed work and a full retainer return to my office."

112. Respondent never returned to Mora his retainer, his client papers, and never provided to Mora an accounting of his time.

113. According to Mora, Respondent "was terrible on communication and quite frequently over the course of several months failed to communicate with [Mora] regarding [his] father's probate or respond to [his] multiple emails and telephone calls."

114. Despite the fact that the probate court rejected his filing, Respondent often informed Mora that "everything was fine and that the court documents he provided [Mora] should resolve everything."

115. As a result of Respondent's lack of diligence, Mora did not receive his father's residual checks and the court did not appoint him as executor of his father's estate.

116. On February 12, 2015, bar counsel sent Respondent a screening letter requesting a response by March 4, 2015.

117. Respondent did not timely respond to this screening letter.

118. On March 9, 2015, bar counsel filed a request for a subpoena and, on the same date, chief bar counsel issued the subpoena.

119. A staff investigator personally served the subpoena on Respondent on March 16, 2015.

120. The subpoena required Respondent to produce his client file and respond to bar counsel's screening letter by April 1, 2015 at 9:30 a.m.

121. Respondent did not produce his files and did not respond to the screening letter by April 1, 2015 at 9:30 a.m. Instead, ten minutes before his response to the subpoena was due, Respondent emailed bar counsel and requested an extension of time to respond to the subpoena until April 8, 2015.

122. Respondent did not produce his client file or respond to the screening letter by April 8, 2015 despite requesting the extension of time.

123. On April 8, 2015, bar counsel emailed Respondent and informed him that she would file a petition for order to show cause if bar counsel did not receive Respondent's response to the subpoena by April 10, 2015.

124. Respondent did not respond to this email and, on April 14, 2015, bar counsel filed a petition for order to show cause.

125. The Presiding Disciplinary Judge entered a show cause order on April 24, 2015, held a show cause hearing on May 5, 2015, and found Respondent in contempt.

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 in count one violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2(a), 1.3, 1.4, 1.5(a), and 8.1(b), and Rule 54(d), Ariz. R. Sup. Ct. Respondent also conditionally admits that his conduct in count two violated Rule 42, Ariz. R. Sup. Ct., specifically, 1.2(a), 1.3, 1.4, 1.16(d),

8.4(d), and 8.1(b), and Rule 54(d), Ariz. R. Sup. Ct. Respondent also conditionally admits that his conduct in count three violated Rule 42, Ariz. R. Sup. Ct., ERs 1.2(a), 1.3, 1.4, 1.5(a), and 8.1(b), and Rule 54(d), Ariz. R. Sup. Ct. Finally, Respondent also conditionally admits that his conduct in count four violated Rule 42, Ariz. R. Sup. Ct., ERs 1.1, 1.2(a), 1.3, 1.4, 1.5(a), 1.16(d), 8.4(c), and 8.1(b), and Rule 54(d).

RESTITUTION

Respondent agrees and shall pay restitution to the following persons in the following amounts within thirty (30) days of entry of the final judgment and order: (1) \$300 to Roger and Afton Johnson; (2) \$500 to Primula Keel; (3) \$400 to Michael Stalford; and (D) \$2,000 to Chance Mora

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:

- A. Respondent shall be suspended from the practice of law in Arizona for a period of four (4) years. A period of suspension of more than six (6) months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona;
- B. Upon reinstatement, Respondent shall be placed on probation with terms and conditions of probation to be determined at the time of reinstatement.
- C. Respondent shall pay restitution to the following persons in the following amounts within thirty (30) days of entry of the final judgment and order:

(1) \$300 to Roger and Afton Johnson; (2) \$500 to Primula Keel; (3) \$400 to Michael Stalford; and (D) \$2,000 to Chance Mora.

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

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any probation terms, and information thereof is received by the State Bar, 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 thirty (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 the foregoing terms, the burden of proof shall be on the State Bar 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* 4.42 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.42 provides: "Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client." Respondent knowingly failed to perform services for four clients, causing injury or potential injury to these clients. Specifically, in count one, Respondent knowingly failed to contact the attorney representing the Johnstons' tenants and knowingly stopped communicating with the Johnstons causing potential injury to the Johnstons. In count two, Respondent knowingly failed to seek an order for Keel permitting her to serve her sentence in Nevada and knowingly failed to attend a hearing for Keel. This caused actual injury to Keel in that the court issued a warrant to Keel, which the court subsequently quashed after Keel wrote a letter to the court explaining her situation with Respondent. In count three, Respondent knowingly stopped communicating with Stalford and initially knowingly failed to complete the agreed-upon services for Stalford, causing potential injury to Stalford. In count four, Respondent knowingly failed to file the documents necessary for Mora to become the executor of his father's estate and knowingly misrepresented to Mora the status of the matter. Respondent's actions caused actual injury to Mora in that Mora did not receive funds from his father's estate for approximately one year.

Although Respondent abandoned at least three of the above four clients, the parties do not believe that the disbarment standard applies, *Standard 4.41*, because there does not appear to have been serious or potentially serious injury to Respondent's clients.

The parties further agree that *Standard 7.2* is the appropriate *Standard* given the facts and circumstances of this matter. *Standard 7.2* provides: "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system." Respondent failed to respond to the State Bar's screening letters and the State Bar served a subpoena on Respondent, requiring that he submit responses to the screening letters and copies of his client files. Respondent failed to comply with the subpoena, the State Bar had to request a show cause hearing, and Respondent did not comply with the subpoena until the Presiding Disciplinary Judge found Respondent in contempt. The failure to cooperate with the State Bar causes actual injury to the legal profession.

The duty violated

As described above, Respondent's conduct violated his duty to his clients, the legal system, and as a professional.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent knowingly failed to perform agreed upon services for his clients and knowingly failed to cooperate with the State Bar, 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 actual harm to Keel and Mora and potential harm to the Johnstons and to Stalford. The parties further agree that there was also actual harm to the profession as a result of Respondent's refusal to cooperate with the State Bar. The parties further agree that there was actual harm to the legal system in that Respondent failed to attend a hearing in count two which resulted in the court having to issue and then quash a warrant.

Aggravating and mitigating circumstances

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

In aggravation:

- *Standard 9.22(a):* Prior disciplinary offenses. In File No. 13-3627, Respondent was reprimanded and placed on probation (CLE) for violating ERs 1.7, 1.9, 8.4(d), 8.1(b), and Rule 54(d).
- *Standard 9.22(c):* A pattern of misconduct.
- *Standard 9.22(d):* Multiple offenses.
- *Standard 9.22(e):* Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent failed to respond to the bar charges and, therefore, the State Bar issued a subpoena requiring Respondent to produce his client files and respond to the bar charges. Respondent did not timely comply with the subpoena and only complied

with it after a show cause hearing and after the Presiding Disciplinary Judge found Respondent in contempt.

In mitigation:

There are no applicable mitigating factors.

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: A four (4) year suspension, combined with restitution, will protect the public and serve the purposes of lawyer discipline.

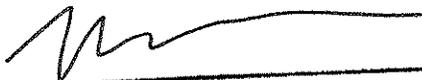
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

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 four (4) year suspension, probation to be determined upon reinstatement, restitution, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 21st day of September, 2015.

STATE BAR OF ARIZONA



Nicole S. Kasetta
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 15th day of September, 2015.



Brent J. Kleinman
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 21st day of September 2015.

Copies of the foregoing mailed/emailed
this 21st day of September, 2015, to:

Brent J. Kleinman
The Kleinman Law Firm PLLC
125 North 2nd Street, Suite 110
Phoenix, AZ 85004-2370
brent@kleinmanlawaz.com
Respondent

Copy of the foregoing emailed
this 21st day of September, 2015, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov

Copy of the foregoing hand-delivered
this 21st day of September, 2015, to:

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

by: Jackie Dorender
NSK: jld

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Suspended Member of the State Bar of Arizona,
Brent J. Kleinman, Bar No. 028455, Respondent

File No(s). 14-3352, 15-0146, 15-0217, and 15-0285

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.

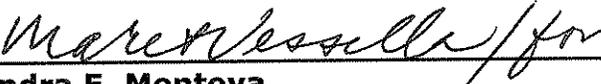
General Administrative Expenses for above-numbered proceedings

\$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

03/11/15	Travel and mileage attempt to serve Respondent	\$	6.90
03/12/15	Travel and mileage attempts to serve Respondent	\$	2.30
03/13/15	Travel and mileage attempt to serve Respondent	\$	2.30
03/16/15	Travel and mileage to serve Respondent	\$	5.75
04/10/15	Computer investigation reports, Accurint	\$	33.90
Total for staff investigator charges		\$	51.15
TOTAL COSTS AND EXPENSES INCURRED			\$1,251.15


Sandra E. Montoya
Lawyer Regulation Records Manager


Date

EXHIBIT B

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

Brent J. Kleinman,
Bar No. 028455,

Respondent.

PDJ 2015-9062

FINAL JUDGMENT AND ORDER

[State Bar File Nos. State Bar Nos. 14-3352, 15-0146, 15-0217, and 15-0285]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on September __, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Brent J. Kleinman**, is hereby suspended for a period of four (4) years 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 final judgment and order.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation with the terms and conditions of probation, including the length of probation, to be determined upon reinstatement.

IT IS FURTHER ORDERED that Respondent shall pay restitution to the following persons in the following amounts within thirty (30) days of entry of this final judgment and order: (1) \$300 to Roger and Afton Johnson; (2) \$500 to Primula Keel; (3) \$400 to Michael Stalford; and (D) \$2,000 to Chance Mora.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the 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 \$1,251.15, 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 September, 2015

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 September, 2015.

Copies of the foregoing mailed/emailed
this _____ day of September, 2015.

Brent J. Kleinman
The Kleinman Law Firm PLLC
125 N 2nd St Ste 110
Phoenix, AZ 85004-2370
Email: brent@kleinmanlawaz.com]
Respondent

Copy of the foregoing emailed/hand-delivered
this _____ day of September, 2015, to:

Nicole S. Kasetta
Bar Counsel - Litigation
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this _____ day of September, 2015 to:

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

by: _____