

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**DAVID K. ROSEN,  
Bar No. 018589**

Respondent.

**PDJ 2016-9028**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 14-3190 & 15-0902]

**FILED JULY 29, 2016**

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on July 21, 2016, accepted the parties' proposed agreement under Rule 57(a), Ariz. R. Sup. Ct.

Accordingly:

**IT IS ORDERED** Respondent, **David K. Rosen, Bar No. 018589** is suspended from the practice of law for six (6) months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective September 19, 2016. Mr. Rosen shall continue with his current counseling schedule and all prescribed medication during the period of suspension.

**IT IS FURTHER ORDERED** upon reinstatement, Mr. Rosen shall be placed on probation (LOMAP and LRO MAP) for two (2) years.

**IT IS FURTHER ORDERED** Mr. Rosen shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of reinstatement to schedule the assessments. Mr. Rosen shall submit to a LOMAP examination of his office procedures. The Compliance Monitor shall develop "Terms and Conditions" as

warranted as a results of the assessments and the terms are incorporated herein by reference. Mr. Rosen shall also identify and secure a Practice Monitor, who shall provide the Complainant Monitor with quarterly reports. Mr. Rosen shall be responsible for any costs associated with participation and compliance.

**IT IS FURTHER ORDERED** Mr. Rosen shall be subject to any additional terms imposed by the Presiding Disciplinary Judge because of any reinstatement hearings held.

### **NON-COMPLIANCE LANGUAGE**

If Respondent fails to comply with any terms of his agreement, this judgment or the probation terms, the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, under 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 a 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** under Rule 72 Ariz. R. Sup. Ct., Mr. Rosen shall immediately comply with the requirements relating to notification of clients and others.

**IT IS FURTHER ORDERED** Mr. Rosen shall pay the costs and expenses of the State Bar of Arizona for \$1,442.96, within thirty (30) days from this Order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary

Judge's Office with these disciplinary proceedings.

**DATED** this 29<sup>th</sup> day of July, 2016.

*William J. O'Neil*

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

COPIES of the foregoing e-mailed  
this 29th day of July, 2016, and  
mailed on August 1, 2016, to:

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by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**DAVID K. ROSEN,  
Bar No. 018589**

Respondent.

**PDJ-2016-9028**

**DECISION AND ORDER ACCEPTING  
DISCIPLINE BY CONSENT**

[State Bar Nos. 14-3190 & 15-0902]

**FILED JULY 29, 2016**

An Agreement for Discipline by Consent (Agreement) was filed on July 21, 2016, under Rule 57(a), Ariz. R. Sup. Ct. Orders of Probable Cause issued on October 16, 2015 and January 27, 2016. The formal complaint was filed March 24, 2016. Upon filing such Agreement, the Presiding Disciplinary Judge (PDJ), "shall accept, reject or recommend modification of the agreement as appropriate".

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), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant in file no. 14-3190 by telephone on June 22, 2016, and to complainant in file no. 15-0902 by letter on June 21, 2016. Complainants were notified of the opportunity to file a written objection within five days. No objection was received.

The Agreement details a factual basis for the admissions to the charges in the Agreement. Mr. Rosen's most serious misconduct occurred in Count Two by failing to comply with court orders. Mr. Rosen failed to file responses to multiple motions including motions for summary disposition and sanctions. Default was entered against his client due to Mr. Rosen's inaction. Mr. Rosen was sanctioned by the trial court for those failures. He also intentionally failed to respond to the State Bar's requests for information during the investigation and the State Bar was forced to take his deposition.

Mr. Rosen conditionally admits he violated Supreme Court Rule 42, ERs 4.3 (dealing w/unrepresented person) ER 1.3 (diligence), 3.2 (expediting litigation) (8.4(d) (conduct prejudicial to the administration of justice), and Rules 54(c) (knowing violation of any rule or court order), 54(d)(2) (failure to furnish information) and 54(e) (violation of condition of probation or diversion). The agreed upon sanctions include: a six (6) month suspension effective September 19, 2016, two (2) years of probation upon reinstatement (MAP assessment/LOMAP with PM) evaluation), and the costs and expenses of the disciplinary proceeding totaling \$1,442.96 within thirty (30) days from the final judgment and order. The agreement also disposes of State Bar File No. 15-1704. No probable cause order has been issued regarding that charge and the charge is dismissed in light of the present stipulated sanction.

The parties agree that *Standard 6.22, Abuse of the Legal Process* applies to Mr. Rosen's violation of ER 3.2 and 8.4(d) and provides:

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Although the parties agree Mr. Rosen's conduct in Count One was negligent, suspension is the presumptive sanction based on the knowing and intentional violations in Count Two. Mr. Rosen conditionally admits he violated his duty to his client, the profession, the legal system, and the public resulting in actual harm to the profession, the legal system and the public. There was also potential harm to the client in Count Two. Mr. Rosen however, succeeded in having the default judgment set aside. Mr. Rosen also took sole responsibility for the misconduct leading to the sanctions imposed by the court and the matter was resolved by a settlement agreement. Such demonstrable remorse leads credence to that stipulated mitigator. The parties agree the following aggravating factors are present: *Standards* 9.22(a) (prior discipline), 9.22(c) (pattern of misconduct), 9.22(d) (multiple offenses), 9.22(e) (bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency) and 9.22(i) (substantial experience in the practice of law). Mitigating factors include: *Standards* 9.32(c) (personal or emotional problems) and 9.32(l) remorse. Medical evidence to support mitigating factor 9.32(c) and Mr. Rosen's ongoing treatment was submitted and requested sealed. Accordingly:

**IT IS ORDERED** incorporating by this reference the Agreement and any supporting documents by this reference. The agreed upon sanctions are: six month suspension effective September 19, 2016, two (2) years of probation (MAP assessment/LOMAP with PM) and the payment of costs and expenses of the disciplinary proceedings totaling \$1,442.96 to be paid within thirty (30) days from this order.

**IT IS FURTHER ORDERED** the Agreement is accepted. Costs as submitted are approved for \$1,442.96. Now therefore, a final judgment and order is signed this date. Mr. Rosen is suspended effective September 19, 2016 and placed on probation upon reinstatement for two (2) years under the conditions in the Agreement.

**DATED** this 29<sup>th</sup> day of July, 2016.

*William J. O'Neil*

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

COPIES of the foregoing e-mailed this 29th day of July, 2016, and mailed on August 1, 2016, to:

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Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**DAVID K. ROSEN,**  
**Bar No. 018589,**

Respondent.

**PDJ 2016-9028**

State Bar File Nos. 14-3190, 15-0902

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, David K. Rosen, who is represented in this matter by counsel, Nancy A. Greenlee, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered in State Bar File No. 14-3190 on October 16, 2015, and on January 27, 2016 in 15-0902.<sup>1</sup> A Complaint was filed on March 24, 2016. Respondent voluntarily waives the right to an adjudicatory hearing,

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<sup>1</sup> This Agreement also disposes of State Bar File No. 15-1704. No probable cause order has been issued in that case, which the State Bar has agreed to dismiss in light of the sanction agreed to herein and Respondent's satisfaction of the judgment obtained against him by the Complainant for attorney fees paid during the representation.

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 Complainant in 14-3190 by telephone on June 22, 2016, and by letter dated June 21, 2016, in 15-0902. 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. Neither Complainant has objected to the agreement.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER 4.3 [Dealing with Unrepresented Person] in File No. 14-3190, and ERs 1.3 [Diligence], 3.2 [Expediting Litigation], 8.4(d) [Conduct Prejudicial to the Administration of Justice] and Rule 54(c) [Violation of Rule or Order of the Court], 54(d)(2) [Failure to Furnish Information] and 54(e) [Violation of a Condition of Probation or Diversion] in File No. 15-0902. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Six (6) Month Suspension and Probation for two (2) years. 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>2</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

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<sup>2</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.

## FACTS

### GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on October 18, 1997.

#### COUNT ONE (File no. 14-3190/ Irwin)

2. Complainant Jennifer Irwin (Irwin) was engaged to Paul Kruse (Kruse) until August 2014. Respondent David K. Rosen (Respondent) knew Kruse and had acted as his attorney from time-to-time.

3. On August 27, 2014, and after they had broken up, Kruse came to Irwin's home to retrieve his personal property. At that time, Kruse allegedly attacked Irwin who got in her truck and accidentally put it into drive and crashed into Kruse's motorbikes, among other things. The police were called and Kruse was arrested. He was eventually charged with Assault, Criminal Damage and Theft in the Phoenix Municipal Court, Case No. 14-477510 (the Criminal Case).

4. On September 29, 2014, Kruse called Respondent about representation relating to 1) unpaid wages allegedly owed to him by a company owned by Irwin's father; and 2) an insurance claim for the damaged motorbikes. Kruse told Respondent that Irwin had damaged the bikes when he tried to retrieve them from her. He told Respondent that Irwin had put in a claim with her automobile insurance company, but he did not know if she had included the damaged motorbikes. Kruse told Respondent that he and Irwin had competing restraining orders and that they were not communicating. If this matter were to go to hearing, Respondent would testify that Kruse did not tell him about any pending criminal charges at that time. Respondent asked Kruse for the documents relating to the matters, which Kruse provided.

5. Respondent agreed to represent Kruse with respect to the unpaid wages claim, which he was able to resolve through settlement.

6. Respondent agreed to represent Kruse on a "limited basis to review documents and gather information bearing on the merits and collectability of the claim" relating to the damaged motorbikes.

7. On October 14, 2014, Kruse called Respondent and asked if he would represent him at a hearing scheduled the next day in a criminal case. Kruse gave Respondent the case number and told Respondent that a neighbor cop was setting him up and thought that Kruse had damaged and/or stolen property. If this matter were to go to hearing, Respondent would testify that Kruse did not give him any paperwork related to the Criminal Case; did not tell him that Irwin was the alleged victim in the Criminal Case; and did not tell him that Kruse had been charged with assault.

8. Respondent agreed to represent Kruse in the Criminal Case upon receipt of attorney's fees and a signed fee agreement. Respondent then prepared a notice of appearance and request for continuance, which were filed in the Criminal Case at 2:18 pm that afternoon.

9. A few hours later, Respondent called Irwin. If this matter were to go to hearing, Respondent would testify that he called Irwin to get her insurance information, to find out if she had made a claim to her insurance company, and if so, whether she had included the damage to Kruse's motorbikes in the claim.

10. During that telephone conversation, Respondent and Irwin spoke about people that they knew in common and the fact that they did not recall if they had ever actually met before in person. If this matter were to go to hearing, Irwin would testify

that she knew "of" Respondent and she would testify she believed Respondent and Kruse were "friends", but that she had never met him in person.

11. Respondent told Irwin that he was filing an insurance claim on behalf of Kruse for damages to the motorbike. Respondent did not tell Irwin that he was representing Kruse in the Criminal Case. During their conversation, Respondent asked Irwin about the incident that had resulted in the damage to the motorbikes and Kruse's state of mind during the incident. Irwin told Respondent about Kruse's alleged drug abuse and its negative impact on his personality. If this matter were to go to hearing, Irwin would testify that she told Respondent "[e]very detail" and her "entire side of the story was shared" about the incident. Respondent would testify that Irwin made "unsolicited comments" about Kruse's alleged drug use; her fear of Kruse and the fact that she had obtained a restraining order against him. Respondent would also testify that during the conversation, he was unaware that Irwin was involved in the Criminal Case.

12. On October 22, 2014, Respondent received a copy of the City of Phoenix Prosecutor's Office's eDiscovery application, which included a copy of the police report. If this matter were to go to hearing, Respondent would testify that it was at this time that he learned that Irwin was the victim and that Kruse had not provided him with accurate information. Respondent would testify that he told Kruse that his communication with Irwin could impair his ability to represent him in the civil and criminal matters, but that Kruse decided to continue with the representation.

13. On November 12, 2014, during a pretrial disposition conference at the Phoenix Municipal Court, the prosecutor and Respondent discussed his contact with Irwin and then proceeded to discuss a plea offer.

14. On November 17, 2014, the prosecutor provided Respondent with a revised plea agreement, which Kruse ultimately accepted. However, Kruse failed to appear for a December 15, 2014 hearing at which he was to sign a plea agreement and enter a change of plea. Respondent advised the Court that Kruse was aware of the hearing date; that he was unable to contact Kruse; and that he had no idea where Kruse was at that time.

15. Respondent ultimately withdrew from the Criminal Case before it was resolved.

**COUNT TWO (File no. 15-0902/Judicial Referral)**

16. In or about November 2013, Respondent was retained to represent the defendants in *Leonard v. Eischens*, CV 2013-012935, which was pending in the Maricopa County Superior Court.

17. Beginning in February 2014, Respondent failed to file responses to a number of motions.

a. On February 28, 2014, Plaintiffs filed a Motion To Compel the Defendants to respond to discovery requests and to provide their Rule 26.1 Disclosure Statement. Respondent did not respond to the motion. On March 25, 2014, Plaintiff filed a Motion For Summary Disposition, to which the Respondent failed to respond. On April 3, 2014, the Court granted the motion. On April 9, 2014, the Plaintiffs filed an application for attorney's fees, to which the Respondent failed to respond. On May 1, 2014, Plaintiff filed a Motion For Summary Disposition, to which the Respondent failed to respond. On May 12, 2014, the Court awarded fees and costs totaling \$718 as a sanction against both Respondent and the Defendants.

b. On April 4, 2014, Plaintiffs filed a Motion For Partial Summary Judgment on the conversion claim in the Complaint. Respondent did not respond to the motion. If the matter were to proceed to a contested hearing, Respondent would testify that during his client's deposition, she had made admissions that formed the basis for the partial summary judgment motion, yet at that time, his client would not agree to any stipulations regarding the conversion claim. On May 12, 2014, Plaintiff filed a Motion For Summary Disposition, to which the Respondent failed to respond. By Order dated May 14, 2014, the Court granted the Motion For Partial Summary Judgment.

c. On June 4, 2014, Plaintiff filed a Motion For Rule 37(b)(2) and Rule 37(c) Sanctions Against Defendants for Failure To Provide Disclosure Statement. The Court ordered Defendants to provide their initial disclosure statement by June 16, 2014. They did not do so. On June 24, 2014, Plaintiffs filed a Motion For Summary Disposition. By Minute Entry dated July 8, 2014, the Court denied the motion, but provided that the Plaintiffs could file another motion for sanctions if the Defendants failed to comply with deadlines set forth in a June 16, 2014 scheduling order.

d. On July 9, 2014, Plaintiff filed another Motion For Rule 37(b)(2) and Rule 37(c) Sanctions Against Defendants For Failing To Provide Disclosure Statement, after Defendants failed to serve the initial disclosure statement by June 16, 2014. Respondent did not respond to the motion. On July 25, 2014, Plaintiff filed a Motion For Summary Disposition, to which the Respondent failed to respond.

18. By Minute Entry filed August 15, 2014, the Court granted the July 25, 2014 Motion For Summary Disposition and the July 9, 2014 Motion For Sanctions. The Court struck the Defendants' Answer and entered default against them. The Court

further ordered that pending matters, including the issue of attorney fees, would be addressed through the default proceedings.

19. Thereafter, Respondent filed a Motion To Set Aside The Default Judgment. A hearing was held on the motion on February 13, 2015. At that time, Respondent avowed that the underlying discovery violation "was his fault alone, and not due [to] any action or in action (sic) by his clients." In response to Respondent's avowal, the parties stipulated to 1) plaintiffs' withdrawal of the objection to the motion to set aside; 2) and Respondent's payment of \$2,500 to plaintiffs for their reasonable attorney fees and costs.

20. By order filed February 24, 2015, the Court approved the Stipulation of the parties and ordered Respondent to pay the \$2,500 sanction within thirty (30) days of the date of the order. Shortly thereafter, the parties settled the litigation.

21. By letter dated April 2, 2015, Judge Dawn M. Bergin forwarded a copy of the August 14, 2014 Minute Entry and February 24, 2015 Order For Sanctions to the State Bar for its consideration.

22. By letter dated April 24, 2015, Bar Counsel sent Respondent a screening letter and asked that he respond to the allegations set forth in the Bar charge by May 14, 2015.

23. On May 15, 2015, Respondent asked Bar Counsel for an extension of time within which to respond to the Bar charge. Respondent's request was granted and he was given to June 4, 2015, to respond to the screening letter. He failed to do so.

24. By letter dated June 8, 2015, Bar Counsel requested that Respondent provide a response to the screening letter on or before June 18, 2015. He failed to do so.

25. Bar Counsel made numerous attempts to communicate with Respondent and finally did so on September 15, 2015. At that time, Respondent agreed to provide a response to the screening letter on or before September 21, 2015. He failed to do so.

26. On October 20, 2015, Bar Counsel secured a Subpoena Duces Tecum and Order to Appear for Respondent to appear for his deposition on November 12, 2015.

27. On October 30, 2015, State Bar Investigator Mike D. Fusselman served Respondent with a copy of the Subpoena and Notice to Appear at Deposition by serving Respondent's wife at Respondent's residence.

28. Thereafter, Respondent secured counsel and the deposition was rescheduled to November 20, 2015.

29. By letter dated November 19, 2015, Respondent responded to the Bar charge and Bar Counsel deposed Respondent the following day.

### **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. as follows:

- 1) Count One: ER 4.3
- 2) Count Two: ERs 1.3, 3.2, 8.4(d), Rule 54(c), Rule 54(d)(2), and Rule 54(e).

### **CONDITIONAL DISMISSALS**

The State Bar has conditionally agreed to dismiss the allegations of a violation of ERs 4.4 and 8.4(d) in Count One because through the course of settlement negotiations, the State Bar determined that there was not clear and convincing evidence to support the violations.

### **RESTITUTION**

Restitution is not an issue in this matter.

### **SANCTION**

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Six (6) month suspension, starting on September 19, 2016. Respondent avows that he is not accepting any new clients, but is working diligently to attempt to resolve his few remaining cases and believes that the additional time will allow him to do so. Respondent shall continue to participate in counseling during the period of suspension. Upon reinstatement, Respondent shall be on probation for two (2) years, the terms of which shall include the following: a MAP Assessment, which shall include

an alcohol/drug assessment; LRO LOMAP; and a Practice Monitor to be identified and secured by Respondent. The Practice Monitor shall provide the Compliance Monitor with quarterly reports.

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

### **LEGAL GROUNDS IN SUPPORT OF SANCTION**

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The parties agree that *Standard* 6.2 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 6.2 provides that suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. In Count Two, Respondent failed to comply with various trial court

rules during the underlying litigation, which resulted in the filing of numerous motions that had to be considered and ruled upon by the trial court and ultimately resulted in Respondent being sanctioned. Respondent also failed to furnish information or respond promptly Bar Counsel during the investigation into the bar charges, which necessitated the taking of Respondent's deposition by Bar Counsel.

**The duty violated**

As described above, Respondent's conduct violated his duty to his client, the profession, the legal system and the public.

**The lawyer's mental state**

For purposes of this agreement, the parties agree that with respect to Count One, Respondent's conduct was negligent. With respect to Count Two, Respondent's conduct regarding violations related to the client and the court were knowing while his conduct in failing to cooperate with the State Bar's investigation was intentional. The parties agree that Respondent's conduct violated 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 the profession, legal system and public. There was potential harm to the client in Count Two (File No. 15-0902). In that matter, Respondent was able to have the default set aside, and he was solely responsible for payment of the sanctions; the case ultimately resolved by way of settlement.

**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. SBA File No. 11-3932. Respondent was given a Reprimand and placed on Probation for one (1) year with terms that included participation in the Member Assistance Program and the Law Office Management Assistance Program. Respondent violated ERs 1.2(a), 1.3, 1.4(a)(3) and (4), 1.16(a) and (b), and 8.4(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. As detailed in the factual statement supporting Count Two herein, Respondent failed to respond to requests for information from Bar Counsel, which ultimately necessitated that Bar Counsel take Respondent's deposition.

*Standard 9.22(i)* substantial experience in the practice of law. Respondent was admitted to practice law in Arizona in 1997.

**In mitigation:**

*Standard 9.32(l)* remorse. During his deposition, Respondent exhibited his remorse by candidly admitting his failures with regard to Count Two. After his deposition was taken, Respondent determined that he needed to focus on addressing his work issues. He began attending counseling on a more frequent and regular basis than in the past to ensure that he did not ever again neglect client matters or the State Bar.

The parties agree that *Standard 9.32(c)*, personal or emotional problems, should be given some weight even though it was used in mitigation in Respondent's

prior disciplinary case. As a result of Count Two, Respondent shifted the focus of his counseling sessions from personal, relationship issues to developing better coping mechanisms to address his medical condition as detailed more fully in the Stipulated Supplement to Agreement for Discipline by Consent and Request for Protective Order, which is being filed contemporaneously herewith.

### **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. Bar Counsel has interviewed Respondent's counselor and based upon that interview, the parties believe that Respondent now has a much greater appreciation and understanding of how his medical condition affects his work. With the help of his counselor, Respondent has developed more effective office measures, systems, and coping skills to ensure that his work is timely completed and deadlines are met. In addition, Respondent understands the importance of, and is committed to ensuring that he has, a full-time legal assistant to assist in calendaring, prioritizing, and completing his tasks. The parties believe upon Respondent's reinstatement to the practice after his suspension, with the addition of a practice monitor and LOMAP monitoring, there will be adequate protections in place to guard against future, similar violations.

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 Probation and Short-Term Suspension and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

**DATED** this 10<sup>th</sup> day of July 2016

**STATE BAR OF ARIZONA**



Stacy L Shuman  
Staff Bar Counsel

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

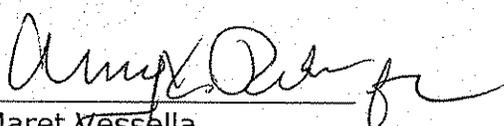
**DATED** this \_\_\_\_\_ day of July, 2016.

\_\_\_\_\_  
David K Rosen  
Respondent

**DATED** this \_\_\_\_\_ day of July, 2016.

\_\_\_\_\_  
Nancy A Greenlee  
Counsel for Respondent

Approved as to form and content

  
\_\_\_\_\_  
Maret Vessella  
Chief Bar Counsel

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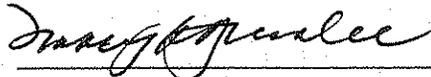
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property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

DATED this 20<sup>th</sup> day of July, 2016.



David K Rosen  
Respondent

DATED this 20<sup>th</sup> day of July, 2016.



Nancy A Greenlee  
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 21<sup>st</sup> day of July, 2016.

Copy of the foregoing emailed  
this 21<sup>st</sup> day of July, 2016, to:

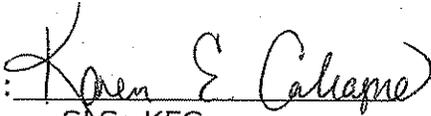
The Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

Copy of the foregoing mailed/emailed  
this 21<sup>st</sup> day of July, 2016, to:

Nancy A Greenlee  
Attorney and Counselor at Law  
821 E Fern Dr North  
Phoenix, AZ 85014-3248  
Email: [nancy@nancygreenlee.com](mailto:nancy@nancygreenlee.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 21<sup>st</sup> day of July, 2016, to:

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

by:   
SLS: KEC

# **EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
DAVID K. ROSEN Bar No. 018589, Respondent

File No(s). 14-3190, 15-0902

### **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**

10/29/15	Investigator Mileage to Serve Subpoena	\$ 18.40
10/30/15	Investigator Mileage to Serve Subpoena	\$ 29.56
11/20/15	Alliance Invoice – Deposition of Respondent	\$ 195.00

Total for staff investigator charges \$ 242.96

**TOTAL COSTS AND EXPENSES INCURRED** **\$1,442.96**

# **EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**DAVID K ROSEN,**  
**Bar No. 018589,**

Respondent.

**PDJ 2016-9028**

**FINAL JUDGMENT AND ORDER**

[State Bar No. 14-3190]

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

**IT IS HEREBY ORDERED** that Respondent, **David K Rosen**, is hereby suspended from the practice of law for six (6) months for his or her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective on September 19, 2016. Respondent shall continue with his current counseling schedule and all prescribed medication during the period of suspension.

**IT IS FURTHER ORDERED** that, upon reinstatement, Respondent shall be placed on probation for a period of two (2) years.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall participate in LOMAP and LRO MAP. Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of reinstatement to schedule the assessments. Respondent shall submit to a LOMAP examination of his office procedures. The Compliance Monitor shall develop "Terms and Conditions"

if the results of the assessments so indicate and their terms shall be incorporated herein by reference. Respondent shall be responsible for any costs associated with participation and compliance.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall have a Practice Monitor. Respondent shall identify and secure the Practice Monitor, who shall submit quarterly reports to the State Bar Compliance Monitor.

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

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

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ \_\_\_\_\_, 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 July, 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 July, 2016.

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

Nancy A Greenlee  
821 E Fern Dr North  
Phoenix, AZ 85014-3248  
Email: nancy@nancygreenlee.com  
Respondent's Counsel

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

Stacy L Shuman  
Bar Counsel - Litigation  
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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