BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JOHN G. SCHAUS, Bar No. 010107** Respondent.	**PDJ 2018-9118** **FINAL JUDGMENT AND ORDER** [State Bar Nos. 17-3828, 18-1871, 18-1938] **FILED MAY 9, 2019**

The Acting Presiding Disciplinary Judge accepted the parties Agreement for Discipline by Consent filed on April 18, 2019. Accordingly:

IT IS ORDERED Respondent, **JOHN G. SCHAUS, Bar No. 010107,** is suspended for sixty (60) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective May 31, 2019.

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

IT IS FURTHER ORDERED Mr. Schaus shall participate in the following programs:

1. Law Office Management Assistance Program (LOMAP): Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of reinstatement. 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. Respondent shall be responsible for any costs associated with LOMAP.
2. Lawyer Regulation Office Member Assistance Program (MAP): Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this 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. Respondent shall be responsible for any costs associated with participation with compliance.

IT IS FURTHER ORDERED Mr. Schaus shall commit no further violations of the Rules of Professional Conduct.

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

IT IS FURTHER ORDERED Mr. Schaus shall pay the costs and expenses of the State Bar of Arizona in the amount of $1,575.00, within thirty (30) days from the date of this order.

DATED this 9th day of May, 2019.

Penny L. Willrich
Judge Penny L. Willrich (Ret.),
Acting Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 9th day of May, 2019, to:

John G. Schaus
4435 E. Broadway Rd Ste 3
Mesa, AZ 85206-2012
Email: schausjohng1@qwestoffice.net
Respondent

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

by: MSmith

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JOHN G. SCHAUS,** **Bar No. 010107** Respondent.	**PDJ 2018-9118** **DECISION ACCEPTING DISCIPLINE BY CONSENT** [State Bar Nos. 17-3828, 18-1871, 18-1938] **FILED MAY 9, 2019**

Under Rule 57(a), Ariz. R. Sup. Ct.,[1] an Agreement for Discipline by Consent ("Agreement"), was filed on April1 9, 2019. A Probable Cause Order issued in File No. 17-3828 on October 31, 2018 and the formal complaint was filed on November 29, 2018. The remaining files were not presented to the Attorney Discipline Probable Cause Committee but are included in this Agreement. Mr. Schaus is self-represented, and the State Bar of Arizona is represented by Bar Counsel Rebecca Kennelly.

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. Mr.

[1] Unless otherwise stated all Rule references are to the Ariz. R. Sup. Ct.

Schaus has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. Notice of the Agreement and an opportunity to object within five (5) days pursuant to Rule 53(b)(3), was provided by email and mail to the complainant on April 2, 2019. No objections have been filed.

The Agreement details a factual basis to support the conditional admissions and are briefly summarized. It is incorporated by this reference. Mr. Schaus admits to violating Rule 42, specifically, ERs 1.2 (scope of representation), 1.3 (diligence), 1.4 (communication), 1.5(c) (fees), 1.7(a)(2) (conflict of interest/current clients), 1.14 (client with diminished capacity), 1.16 (terminating representation), 3.2 (expediting litigation), 3.4(c) (knowingly disobey obligation under rules of tribunal), 4.2 (communication with persons represented by counsel) and 8.4(d) (conduct prejudicial to the administration of justice). The parties stipulate to the imposition of an a sixty (60) day suspension effective May 31, 2019 and upon reinstatement, two years of probation with the State Bar's Law Office Management Assistance Program (LOMAP) and Member Assistance Program (MAP) assessment. Mr. Schaus further stipulates to the payment of costs and expenses in the amount of $1,575.00 within 30 days from the date of this order.

For purposes of the Agreement, the parties stipulate that Mr. Schaus overall engaged in a pattern of neglect in his representation of clients. He failed to adequately

communicate with clients and diligently represent them and discuss the objectives of representation. He further failed to obtain a signed contingency fee agreement and repeatedly failed to provide the successor attorney with a copy of the client's file.

The parties agree Mr. Schaus knowingly violated his duties to clients and the legal profession and his misconduct caused actual harm to clients. *Standards* 4.42, *Lack of Diligence* I applicable to Mr. Schaus' violations of ER 1.2, 1.3, and 1.4. *Standard* 7.2, *Violations of Other Duties Owed as a Professional* are applicable to Mr. Schaus' violations of ERs 1.5, 1.14 and 1.16. Suspension is the presumptive sanction.

The parties further agree aggravating factors 9.22(c) pattern of misconduct, 9.22 (h) vulnerability of victim, and 9.22(i) (substantial experience in the practice of law are present. In mitigation are factors 9.32 (a) absence of prior disciplinary record, 9.32 (d) timely good faith effort to make restitution or to rectify consequences of misconduct, 9.32(g) character or reputation (character letters were submitted), and 9.32(l) remorse. The acting PDJ has considered the Agreement and determine the agreed upon sanction it fulfills the purposes of attorney discipline. Accordingly

IT IS ORDERED accepting the Agreement and incorporating it with any supporting documents by this reference. A final judgment and order is signed this date.

DATED this 9th day of May 2019.

Penny L. Willrich

Judge Penny L. Willrich (Ret.)
Acting Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
on this 9th day of May 2019, to:

Rebecca N. Kennelly
Bar Counsel
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4201 N 24th Street, Suite 100
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Respondent

by: MSmith

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
APR 10 2019
FILED
BY

John G. Schaus, Bar No. 010107
4435 E. Broadway Rd Ste 3
Mesa, AZ 85206-2012
Telephone 480-832-0222
Email: schausjohng1@qwestoffice.net
Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JOHN G. SCHAUS** **Bar No. 010107** Respondent.	**PDJ 2018-9118** State Bar File Nos. **17-3828, 18-1871, 18-1938** **AGREEMENT FOR DISCIPLINE BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, John G Schaus, 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. In File Number 17-3828, a probable cause order was entered on

October 31, 2018, and a formal complaint was filed on November 29, 2018. File Numbers 18-1871 and 18-1938 have not been presented to the Attorney Discipline Probable Cause Committee but are included in this Agreement for Discipline by Consent.

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 email and letter on April 2, 2019. 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. Complainants have not submitted any objections or indicated any intent to object, but if any objections are received, they will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.2, 1.3, 1.4, 1.5(c), 1.7(a)(2), 1.14, 1.16, 3.2, 3.4(c), 4.2, and 8.4(d), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent

agrees to accept imposition of the following discipline: Suspension of sixty days, effective 30 days from the date of entry of the final judgment and order, and, upon reinstatement, two years' probation to include participation in the State Bar's Law Office Management Assistance Program (LOMAP) and completion of a Member Assistance Program (MAP) assessment. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.[1] The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on May 18, 1985.

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[1] Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

COUNT ONE (File no. 17-3828/Spivey)

2. Gay Spivey retained Respondent to file a personal injury case on her behalf due to significant injuries she sustained from a dog bite on December 7, 2014.

3. Respondent was Ms. Spivey's family friend, and Ms. Spivey contacted him on or about December 8, 2014, to report that she was attacked by a pit bull while she was visiting her daughter. Ms. Spivey's daughter lived with the dog owners in a house owned by one of the dog owner's parents.

4. Respondent instructed Ms. Spivey to send him medical documents and photographs of her face on a regular basis.

5. Ms. Spivey regularly emailed photos to Respondent but did not hear from him for several months.

6. Respondent received text messages from Ms. Spivey in October 2015 on the 7th, 15th, and 22nd, wherein Ms. Spivey asked if she could meet with Respondent, if Respondent had reached out to the homeowners or Ms. Spivey's plastic surgeon, and if Respondent had filed a civil complaint on her behalf. Ms. Spivey noted in her messages that she had not heard from Respondent in weeks. Respondent did not respond to those inquiries.

7. In November 2015, Respondent received a text message from Ms. Spivey stating that she had not heard from him in three weeks.

8. On December 3, 2015, Respondent emailed Ms. Spivey a contingency fee agreement and asked her to look it over. Ms. Spivey never signed the agreement and never received a copy in the mail.

9. Respondent never obtained a signed copy of the contingency fee agreement.

First Civil Complaint (2015 Complaint)

10. On December 4, 2015, Respondent filed a Complaint on Ms. Spivey's behalf in Superior Court, listing himself as the attorney of record for Ms. Spivey.

11. Respondent sent Ms. Spivey a rough draft of the 2015 Complaint on December 3, 2015, but did not send other drafts or documents for the remainder of his representation.

12. Respondent responded to a text message from Ms. Spivey on December 7, 2015, and confirmed that the complaint had been filed.

13. Respondent incorrectly stated in his written response to the Bar that Ms. Spivey's lawsuit was filed in December 2015 "as negotiations with the

insurance company were to no avail." Respondent did not attempt to contact the insurance company until after service of the lawsuit.

14. Respondent did not keep Ms. Spivey reasonably informed about the status of her case after filing the complaint.

15. Respondent did not return phone calls placed by Ms. Spivey on his office phone or his cellular phone or promptly comply with Ms. Spivey's reasonable requests for information.

16. On February 3, 2016, Respondent received a text message from Ms. Spivey stating that Ms. Spivey had not heard from Respondent since he filed the 2015 Complaint in December. The text noted that Respondent had not responded to Ms. Spivey's phone calls and text messages.

17. On February 23, 2016, Respondent sent a text message to Ms. Spivey assuring her that he would call her later that day or the next. Respondent did not call Ms. Spivey on February 23rd or February 24th.

18. On February 29, 2016, Respondent received a text message from Ms. Spivey reporting that Respondent had not called.

19. Respondent did not follow through with his statements made in text messages in March 2016 to Ms. Spivey about his intention to call her.

20. Respondent received multiple text messages from Ms. Spivey in April 2016 requesting an update about the status of her case and indicating that Ms. Spivey had left Respondent voicemails.

21. Respondent corresponded with Defendants knowing that they were represented by counsel by sending them demand letters on March 23, 2016 and June 19, 2016.

22. Ms. Spivey messaged Respondent on May 23, May 25, and July 5, 2016, asking Respondent to provide her the 2015 Complaint case number. Respondent did not respond to those messages or provide Ms. Spivey with her case number.

23. Ms. Spivey informed Respondent that she located her case information on her own after contacting Superior Court.

24. On August 14, 2016, Respondent received a text message from Ms. Spivey stating that she reviewed the 2015 Complaint but could not locate any responses from the defendants and was unaware of what was happening in her case.

25. On August 24, 2016, Respondent received a text message from Ms. Spivey stating that Respondent had not contacted Ms. Spivey in the last three months.

26. In September 2016, Respondent received a text message from Ms. Spivey inquiring about the 150-day order entered in her case. Respondent responded to Ms. Spivey that he would call her on September 9th or September 10th. Respondent did not call despite receiving reminders from Ms. Spivey on September 19th and 25th.

27. In October 2016, Respondent received a text message from Ms. Spivey inquiring if there had been a new case filed on her behalf given the lack of documentation filed in the current case. Respondent did not respond to these communications.

28. Respondent filed a Notice of Dismissal without Prejudice on November 1, 2016, and Ms. Spivey's case was subsequently dismissed.

29. Respondent received text messages from Ms. Spivey in November 2016 asking for information and noting that Respondent had not called her in months.

30. Respondent told Ms. Spivey that he would get her case reopened.

Second Civil Complaint (2016 Complaint)

31. Respondent opened a new case for Ms. Spivey by filing a new Complaint on December 5, 2016. The 2016 Complaint was similar to the 2015 Complaint but for the lack of a statutory liability claim because the statute of limitations had expired by the time of filing.

32. Respondent did not send Ms. Spivey a copy of the 2016 Complaint or provide Ms. Spivey with the case number. Respondent received at least six text messages from Ms. Spivey asking for the case number.

33. Ms. Spivey informed Respondent that she learned of the new case number herself and reviewed the 2016 Complaint.

34. Respondent received text messages from Ms. Spivey asking for an update about the case on December 7th, 12th, and 31st. Respondent did not respond to any of those communications.

35. Respondent failed to respond to Ms. Spivey's requests for information in January 2017.

36. In February 2017, Respondent received a text message from Ms. Spivey noting that she had not heard from Respondent in two months and was

considering contacting Respondent's wife. Respondent called Ms. Spivey and discussed his intention to set depositions.

37. Respondent did not inform Ms. Spivey that he was struggling to have the defendants served with the 2016 Complaint.

38. Respondent received two text messages from Ms. Spivey in March 2017 asking if there was any progress on setting depositions. Respondent did not respond.

39. Respondent received requests for information from Ms. Spivey on April 11th and 22nd. Respondent responded on April 23, 2017, to ask for the contact information for Ms. Spivey's daughter. Respondent did not address Ms. Spivey's requests for information about the case.

40. Defendants were served in May 2017. Shortly thereafter, the Court issued the 150-day order and placed the case on the dismissal calendar for November 2017.

41. Respondent received four text messages from Ms. Spivey in May 2017 asking about the status of the depositions and the possibility of settling the case. Respondent had not spoken to Ms. Spivey in three months and did not respond to those messages.

42. On June 6, 2017, Respondent received a text message from Ms. Spivey about pleadings that had been filed by the defendants faulting Ms. Spivey for her injuries. Ms. Spivey relayed to Respondent that she was upset about the lack of communication.

43. Respondent told Ms. Spivey that he would call her on June 9th, 13th, and 22nd, but Respondent did not call.

44. In July 2017, Respondent told Ms. Spivey that he was working on her case and would call her. Respondent did not call her.

45. On July 26, 2017, Respondent told Ms. Spivey that he was "Waiting to hear back from other attorneys to set depos in next couple weeks"; however, Respondent had not contacted the attorneys or communicated with them in any way until he mailed a demand letter to them on October 23, 2017. Respondent never discussed depositions with opposing counsel.

46. In July and August 2017, Respondent received text messages from Ms. Spivey asking if Ms. Spivey could meet with Respondent on his office. Respondent received a text message from Ms. Spivey on August 30, 2017, noting that he had not communicated with her for a month.

47. In September 2017, Respondent received more text messages from Ms. Spivey about a possible meeting or at least a phone call. Respondent responded on September 20, 2017, to say that he would file a request to set the trial date. Respondent did not file anything in September and did not respond to Ms. Spivey's requests for information.

48. In October 2017, Respondent received text messages from Ms. Spivey on the 1st, 2nd, 5th, 9th, 11th, and 13th, asking if Respondent had filed the motion to set the trial date. Respondent responded on October 19th to say that he was working on her case and received a reply from Ms. Spivey that she was "freaking out" and had been "crying at work."

49. Respondent did not respond to requests for information from Ms. Spivey on October 20th or 23rd, or to the message on the 25th that simply read "Answer me PLEASE PLEASE PLEASE!!!!!!!!!"

50. On October 30, 2017, Respondent filed a Motion to Continue on Inactive Calendar/Motion to Set to Trial and Order.

51. Defendants objected to the Motion to Continue on Inactive Calendar, citing Ms. Spivey's failure to prosecute her claim. Defendants pointed out that

Respondent never submitted an initial disclosure statement, joint report, or scheduling order.

52. The Court denied Respondent's motion and dismissed the case without prejudice on December 14, 2017.

53. Respondent did not inform Ms. Spivey that her case had been dismissed but instead learned of the dismissal from Ms. Spivey. Respondent did not inform Ms. Spivey that the defendants had requested reimbursement for costs.

54. The Court ordered Ms. Spivey to pay Defendant dog owners' $280.00 in fees and Defendant homeowners' $250.00 in fees.

55. Respondent told opposing counsel that he would personally satisfy the judgments. Respondent did not pay either judgment but did eventually settle with Ms. Spivey for a monetary sum that more than covered the fees.

56. In January 2018, Respondent contacted Ms. Spivey to apologize for how he handled her claim. During that exchange, Ms. Spivey requested that Respondent send him a copy of her client file. Respondent did not comply with that request.

57. Ms. Spivey initiated a malpractice claim against Respondent.

58. Ms. Spivey's malpractice attorney, Michael York, sent multiple requests over a series of months to Respondent requesting a copy of Ms. Spivey's client file.

59. Respondent did not provide a copy of Ms. Spivey's file to Mr. York, prompting Mr. York to file a Motion to Compel with the Court.

60. Respondent delivered the client file to Mr. York on August 27, 2018, after being directed to do so by Bar Counsel.

61. The client file did not contain any discovery or attempts to notice depositions. Respondent did not file disclosure statements.

62. Respondent did not diligently work on Ms. Spivey's case, causing it to be dismissed twice.

63. Ms. Spivey was harmed by Respondent's failure to prosecute her claim, but the parties have since reached an amical settlement.

COUNT TWO (File no. 18-1871/Lazo)

64. In December 2015, Bill Castillo ("Castillo") filed a Petition for Paternity, Child Legal Decision-Making, Parenting Time and Child Support in Pinal County Superior Court. Complainant ("Mother") filed an Answer and Motion to Dismiss in January 2016 and argued that Castillo had no legal standing to

establish paternity because she was married at the time of the child's birth to her husband ("Husband"), Husband's name was on the birth certificate, Castillo had no relationship with the child, and Castillo did not make a timely challenge to paternity.

65. Based on "the level of contention" in the matter, the Court appointed Respondent as Best Interest Attorney ("BIA") on behalf of the minor child ("BL") in March 2016 and set a hearing on the Motion to Dismiss in April 2016.

66. Respondent visited with Mother and BL in their home in March 2016, when Husband was out of town. BL's date of birth is July 6, 2013, so BL was not yet three years old at the time of the meeting.

67. Respondent had several conversations with Mother and Castillo prior to the April 2016 hearing. At the hearing, Respondent made statements about the paternity statute and indicated that he was not clear on the evidence of the relationship between BL and Castillo but was confident that BL had a good relationship with Mother and Husband. Respondent also stated that if the dismissal was denied, an evidentiary hearing would be necessary. After hearing arguments from the parties, the Court took the matter under advisement.

68. In May 2016, the Court granted Mother's Motion to Dismiss based on Mother's arguments. The Court noted that Respondent had "opined that there may have been fraud in the marriage, due to [Mother's] infidelity" but that "the Court does not find this to be what was contemplated by the Legislature when A.R.S. §25-812(E) was created."

69. Castillo appealed the decision, the Arizona Court of Appeals reversed the ruling, and Mother's Petition for Review with the Arizona Supreme Court was denied. The case was remanded back to the family court division of Pinal County Superior Court.

70. Still assigned as BL's BIA, Respondent appeared at a status hearing in August 2017. Because paternity had not been established yet, the Court ordered genetic testing. Trial was set for October 2017.

71. Genetic testing confirmed Castillo was BL's biological father, and the Court granted Castillo's Motion for Summary Judgment as to Paternity.

72. Respondent made no efforts to visit BL prior to the trial and chose to communicate with Mother's counsel instead of Mother for the duration of the litigation.

73. Respondent was not present for the start of trial on October 17, 2017, as he had matters set in other courtrooms. The Court was made aware of Respondent's need to attend to other cases, and the parties did not object to Respondent's absences during the trial. Respondent arrived after one witness had completed testifying and another witness was in the process of testifying. Respondent then left the Court during Castillo's testimony to handle another case, and when he returned, Castillo had finished his testimony. The Court asked Respondent if he wanted to question Castillo, and Respondent declined. Respondent did examine Husband before the conclusion of the first day of trial, and his questions focused on Mother's credibility and the family's ability to adjust to the reintegration of Castillo into BL's life should the Court determine that it was in BL's best interest.

74. Trial was continued to December 4, 2017, but between the October trial date and December trial date, Mother filed a Petition for Termination of Parent-Child Relationship ("Severance") in Pinal County Juvenile Court. In November 2017, Respondent was appointed as attorney for BL. Respondent interpreted this appointment as a continuation of his original appointment as BIA.

The Court in the severance matter ordered a stay in the family court matter pending the termination action.

75. Respondent did not contact BL after being appointed as his attorney. Respondent did not communicate with BL, advise him of any upcoming hearings, or ascertain BL's objectives regarding the potential severance.

76. The contested severance trial was set for March 2018, and over the objection of Respondent and Counsel for Castillo, the Court reset trial for April 2018 so that Mother's proposed exhibits could be translated. The exhibits primarily consisted of several hundred pages of exchanges on Facebook between Mother and Castillo.

77. Mother emailed Respondent on March 8, 2018, stating, "this email to express our deepest concern about the fact that you have not come and visit our home since March 2016," "[BL is] able to communicate with people more," and "please make some time on your busy schedule to come and see [BL] interacting with [his] dad" because that was something Respondent had never observed. Mother noted that BL was almost five years old and could express himself very clearly on the things he wanted and did not want, had never spent a night or holiday away from his family, and Castillo was a stranger to him.

78. Respondent did not respond to the email, did not meet with his client, and did not communicate with him in any way. Respondent made a brief record of this in Court.

79. Mother emailed Respondent again on March 22, 2018, stating that she continued to be concerned that Respondent had not visited with BL to learn what BL desired.

80. Respondent did not respond to the email, did not meet with his client, and did not communicate with his client prior to the severance trial. Respondent made a brief record of this in Court.

81. At the severance trial on April 2, 2018, the Court permitted Respondent to leave as necessary to attend to other matters. The parties did not object to these brief absences. After a discussion about testimony and exhibits, Respondent was excused at 9:29 a.m. after Husband had started to testify, and he returned at 10:04 a.m., after Husband had concluded his testimony and Mother had begun to testify. Respondent was then excused at 2:06 p.m. during Castillo's testimony and returned at 2:33 p.m. as Castillo's examination continued. Respondent examined Castillo and Mother.

82. Respondent made closing arguments to the Court and said, "I don't think it's in [BL's] best interest to terminate Mr. Castillo's rights, Judge. That's my bottom-line conclusion. I'm not even – you know, I'm not even going to go to the statutory grounds. I mean, I think if you can't get best interest, you don't even have to get the statutory grounds. But I cannot come to the conclusion that, based upon the history and the conduct of the parties in this case, particularly [Mother], I cannot support that."

83. Respondent noted that Mother had sent him "several emails recently, since this most recent litigation, wanting me to see [BL] interact with [Husband]." Respondent said he did not dispute that BL loved Husband, and Husband was BL's "psychological father right now."

84. Mother's Counsel made a comment to the Court that Respondent was not the best interest attorney and was not a GAL but was "the attorney for BL. And I'm just concerned that I didn't hear anything about – from [Respondent] other than a side comment about what [BL] wanted legally. And I think it would be easy to determine. He's quite verbal, I understand."

85. There was an exchange on the record regarding Respondent's belief that he was appointed as the BIA, and Mother's Counsel correcting him "in this

case, [Respondent] is the attorney for [BL]." Respondent then incorrectly asserted that BL was "what, 2 and a half, 3 years old the whole time, so ..." BL was three months shy of five-years-old at the time of the hearing.

86. On June 1, 2018, the Court issued a ruling denying Mother's petition to terminate, finding that paternity was already legally established in the family court case, that Castillo had not abandoned the child, and that it would not be in the child's best interests to grant the petition for termination.

87. Mother contacted the State Bar on June 27, 2018, and alleged that Respondent failed to advocate for BL or review evidence to determine what would be best for his client given that he had only visited with BL at Mother's home one time for twenty minutes in March of 2016.

88. After the case came back on appeal in the summer of 2017, several text messages and graphic photographs between Mother and Castillo were submitted by Castillo, and Mother could not get Respondent to respond to her March 2018 requests that he visit BL.

89. Respondent acknowledged that Mother requested that he visit BL to see how he interacted with his family, but Respondent did not question BL's wellbeing in the home.

90. Respondent chose to communicate with Mother's Counsel, and he declined to make any further visits of BL "because of the litigious and uncertainty of the ultimate fate of this case." Respondent claimed he did not want to "emotionally disturb or involve this very young child any more than he already was." Respondent also pointed out to the Bar that Mother was initially dishonest with Respondent and her credibility was questioned by two judges on at least three occasions. Additionally, the Court determined that Mother lied during her deposition.

91. Mother's appeal of the severance decision was denied, and a status conference was set in the family court case for January 25, 2019. At the hearing, the Court ordered that the parties submit briefs regarding decision-making authority.

92. Following the status conference, Respondent met with Castillo, and he separately met with Mother and Husband at their residence while BL was in school. Respondent was granted access to BL at his school, and Respondent has since visited with BL at his school.

93. Respondent arranged for Mother and Husband to bring BL to McDonalds to introduce BL to Castillo on February 9, 2019. Respondent was also present. This was Respondent's second visit with BL in three years.

94. Respondent was also present to observe when Mother brought BL to the library to visit with Castillo on February 20, 2019.

95. Respondent submitted a BIA report to the Court on February 28, 2019, recommending that Castillo be given joint decision-making authority and proposing a schedule of contact that moves short frequent visits to equal parenting time by summer. Respondent also made statements about speeding up the reintegration process because "children are typically resilient and adaptive to change." However, Respondent stated earlier in his representation that he did not want to meet with BL because he feared he would emotionally disturb him.

96. Respondent did not attempt to get to know BL for the first three years he was assigned as his BIA. Yet as a BIA, Respondent has credibility when making recommendations to the Court.

97. At the time of the severance trial, Respondent was assigned as BL's attorney. BL was nearly five years old and potentially capable of verbalizing his

position. Respondent did not meet with BL prior to the hearing and did not know of BL's position so could not advocate for BL's position.

98. Respondent maintains that a five-year-old is unable to voice his legal opinion, particularly given the facts of BL's case since BL did not know or remember Castillo.

COUNT THREE (File no. 18-1938/Sanchez)

99. On October 7, 2016, Respondent was appointed by the Pinal County Superior Court to represent Marco Antonio Sanchez ("Sanchez") on charges of participating in a prison riot and committing an aggravated assault against a corrections officer. The assault was captured on videotape, and Sanchez was identified by victims as the subject in the video swinging his arms to punch correctional officers.

100. During the nearly two years that Respondent was Sanchez's attorney, Respondent failed to adequately communicate with him or defend his case. Respondent told Sanchez at his hearings that he would visit Sanchez at the prison, but Respondent never visited.

101. Respondent appeared in Court and met with Sanchez for the first time at the Pretrial Conference on November 7, 2016. Respondent sent Sanchez a letter

on November 16, 2016, with a Copy of the Minutes from the Pretrial Conference and a note that Respondent would get discovery to Sanchez "within the next week or so and thereafter we will be in a better position to intelligently discuss this case."

102. Respondent sent a coverage attorney to the hearing on December 19, 2016, and the coverage attorney emailed Respondent to say that Sanchez wanted to schedule a teleconference and was requesting discovery. Respondent mailed Sanchez a letter on January 2, 2017, stating that he would see him at the next hearing on January 30th and would send him discovery as soon as he printed it. Respondent also said he was working on setting up a conference call.

103. After appearing in Court with Sanchez on January 30, 2017, Respondent mailed a packet of discovery to Sanchez but noted that the video could not be sent to the prison due to prison policy.

104. Respondent and Sanchez had a legal conference call in February 2017, attended a status conference in March 2017, and participated in a settlement conference in April 2017. During the settlement conference, the parties viewed the video of the prison riot, and a plea offer was relayed by the State.

105. Respondent appeared with Sanchez at a hearing in May 2017, and following the hearing, Respondent told Sanchez that he would work on contacting the prison and arranging a conference so that Sanchez could again view the video. A meeting and subsequent viewing did not occur.

106. Following a hearing in July 2017, Respondent informed Sanchez that the State filed a Motion to Sever "so that all of the co-defendants are not tried at the same time. I will be responding." Respondent did not draft or file a responsive pleading.

107. Respondent sent a coverage attorney to Court on August 14, 2017. Respondent appeared at the next hearing on September 11, 2017, but Sanchez did not appear because Respondent failed to file a transport motion and order. The Court reset the hearing and ordered Respondent to prepare a Motion and Order to Transport.

108. Respondent mailed Sanchez a letter on September 12th stating "I appeared in Court on your behalf on September 11, 2017. For some reason, you were not transported. This may have been an oversight on my part as I have been in a Trial for the better part of the last 3-4 weeks." Respondent acknowledged that

Sanchez's next hearing was set for October 2nd and he had requested a continuance of the October 17th trial date.

109. On September 13, 2017, Respondent filed a Motion to Continue Trial with Sanchez's knowledge and approval. In his motion, Respondent cited his "challenging trial schedule" as a basis for the continuance because he "need[ed] more time to adequately prepare to effectively and competently represent [Sanchez]."

110. Respondent appeared with Sanchez at hearings in October 2017 and November 2017. Following the November hearing, Respondent mailed Sanchez a letter confirming that his next hearing was set for December 18th and Respondent stated, "I will have you transported."

111. Respondent did prepare the motion for transport for the December 18, 2017, hearing, but he failed to file the motion and order, so Sanchez was not transported. On December 19, 2017, Respondent wrote Sanchez an apology for not having him transported, stating that the motion was not filed timely but that he would be transported for his status conference on January 22, 2018.

112. Respondent sent a coverage attorney to the status conference on January 22nd. Though Respondent prepared the motion for transport, he again

failed to file it, so Sanchez was not transported. Respondent's letter to Sanchez on January 30, 2018, simply stated that his pretrial conference was reset to April 2nd, his trial remained set for May 8, 2018, and he enclosed the Court Minutes from the last hearing.

113. Prison phone log notes were provided to the State Bar documenting the correctional officers' attempts to contact Respondent by leaving him voicemails on March 5th and March 9th but, the officers did not receive any returned calls from Respondent.

114. Respondent appeared in Court with Sanchez in April 2018.

115. Additional prison phone logs documented correctional officers' unsuccessful attempts to reach Respondent on April 23rd and April 24th.

116. Respondent attended an interview of the case agent on May 9th and then appeared in Court with Sanchez on May 21, 2018.

117. On May 22, 2018, Sanchez filed a Motion to Waive Counsel.

118. Prison phone logs reflected contact attempts on June 15th with a note "no return calls, emails, etc." When Sanchez requested the officer try again on June 20th, the officer wrote, "I've called this attorney multiple times, [voicemails]

and no return calls on numerous attempts. I would suggest that you write him and his office to try to get a response."

119. Sanchez's Motion to Waive Counsel was provided to Respondent by the courtroom clerk at a hearing on July 16, 2018, but Sanchez was not present at the hearing because Respondent failed to have him transported. The Court directed Respondent to contact Sanchez to discuss Sanchez's concerns as addressed in the Motion.

120. On August 6, 2018, Respondent appeared in Court for a status conference, but again had failed to motion for Sanchez to be transported, so the matter was reset to August 13, 2018.

121. On August 13, 2018, Respondent appeared in Court with Sanchez and engaged in lengthy negotiations to secure Sanchez his desired plea agreement. When those efforts failed, Respondent and Sanchez addressed the Court regarding Sanchez's Motion to Waive Counsel, and Respondent was withdrawn as counsel of record.

122. During the nearly two years of representation, Respondent never visited with his client at the prison, conducted somewhere between one and three

teleconferences but otherwise failed to return calls and emails from correctional officers, and failed to have Sanchez transported to Court on five occasions.

123. Respondent acknowledged to the State Bar that he never visited his client in custody and failed to return calls but noted that he saw Sanchez at numerous court hearings and participated in a settlement conference with Sanchez.

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 1.2, 1.3, 1.4, 1.5(c), 1.7(a)(2), 1.14, 1.16, 3.2, 3.4(c), 4.2, and 8.4(d).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss allegations that Respondent violated Ethical Rule 8.4(c) as part of this negotiated resolution.

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: Suspension of sixty days and two years' probation with participation in LOMAP and MAP upon reinstatement. 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 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* 4.42 and 7.2 are the appropriate *Standards* given the facts and circumstances of this matter. *Standard* 4.42 provides that 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. In all three counts, Respondent did not act with reasonable diligence and promptness when representing his clients, and he failed to communicate with his clients. In Count One, Respondent failed to prosecute Ms. Spivey's claim, though he assured her several times that he was working on her case, resulting in Ms. Spivey's case being dismissed twice. Respondent also failed to respond promptly to Ms. Spivey's requests for information or updates in her case. In Count Two, Respondent failed to meet with his client to discuss BL's objectives prior to the severance hearing and did not permit BL to make any informed decisions regarding the representation. In Count Three, Respondent failed to file the necessary motions to get his client transported to Court on five separate occasions, and he failed to respond to his client's requests for legal conferences.

Standard 7.2 provides that 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. In Count One, Respondent failed to obtain a signed contingency fee agreement, and he failed to provide Ms. Spivey or her malpractice attorney with a copy of the client file despite several requests for the file over a series of months.

Respondent knew that the client file would reveal that he failed to effectively represent Ms. Spivey, and that this information was necessary for use in her malpractice case. In Count Two, Respondent was appointed in the severance matter as the attorney for BL, but Respondent failed to maintain a normal client-lawyer relationship with BL by refusing to meet with BL or communicate with BL in any way prior to the severance hearing. Respondent's conduct deprived BL of an opportunity to make decisions about important matters concerning his custody.

The duty violated

As described above, Respondent's conduct violated his duty to his clients and the profession.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent acted knowingly in terms of his failure to act with reasonable promptness in Ms. Spivey's case and his failure to respond to her text messages, his refusal to meet with BL after he appointed as his attorney in order to discuss BL's objectives, and his repeated failures to file the necessary motions to get Sanchez transported and his subsequent failures to respond to calls from Sanchez to discuss his case.

Respondent's conduct in all three counts 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 the clients and potential harm to the profession.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(c) a pattern of misconduct: Respondent allowed Ms. Spivey's case to be dismissed twice, he failed to visit with BL over a period of two years, and he failed to file several motions to have Sanchez transported for his hearings.

Standard 9.22(h) vulnerability of victim: BL is a minor and Sanchez was incarcerated.

Standard 9.22(i) substantial experience in the practice of law: Respondent was admitted to practice in Arizona in 1985.

In mitigation:

Standard 9.32(a) absence of a prior disciplinary record.

Standard 9.32(d) timely good faith effort to make restitution: Respondent entered into a settlement agreement with Ms. Spivey in the malpractice case, at his own personal expense, and Ms. Spivey reported to the State Bar that she is "satisfied with the outcome."

Standard 9.32(g) character or reputation. (Attached as Exhibit C).

Standard 9.32(l) remorse. (Attached as Exhibit C).

Discussion

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

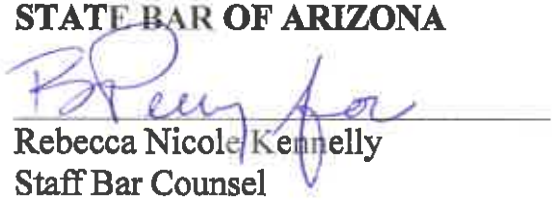
The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is 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 suspension for sixty days, probation for two years upon reinstatement, and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this 19th day of April, 2019.

STATE BAR OF ARIZONA



Rebecca Nicole Kennelly
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 19 day of April, 2019.

John G. Schaus
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 19th day of April, 2019.

Copy of the foregoing emailed
this 19th day of April, 2019, to:

The Honorable Penny L. Willrich
Acting Presiding Disciplinary Judge
Supreme Court of Arizona

1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 19th day of April, 2019, to:

John G. Schaus
4435 E Broadway Rd Ste 3
Mesa, AZ 85206-2012
Email: schausjohng1@qwestoffice.net
Respondent

Copy of the foregoing hand-delivered
this 19th day of April, 2019, to:

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

by: Lui Palu
RNK/sab-110