

(Do not write above this line.)

State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION

<p>Counsel For The State Bar</p> <p><b>Terese Laubscher</b> Deputy Trial Counsel 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1239</p> <p><b>PUBLIC MATTER</b></p> <p>Bar # 272207</p>	<p>Case Number(s): 16-J-16531 16-J-17773</p>	<p>For Court use only</p> <p><b>FILED</b> <i>ML</i> FEB 27 2018 STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p><b>Scott Allan Maasen</b> Scott Maasen Law Firm 8707 E Vista Bonita Dr #230 Scottsdale, AZ 85255 (480) 778-1500</p> <p>Bar # 185735</p>	<p>Submitted to: <b>Assigned Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: <b>SCOTT ALLAN MAASEN</b></p> <p>Bar # 185735</p> <p>A Member of the State Bar of California (Respondent)</p>		

**Note:** All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted **December 16, 1996**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **15** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



(Do not write above this line.)

- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
  - Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - Costs are to be paid in equal amounts prior to February 1 for the following membership years: (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - Costs are entirely waived.

**B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.**

- (1)  **Prior record of discipline**
  - (a)  State Bar Court case # of prior case
  - (b)  Date prior discipline effective
  - (c)  Rules of Professional Conduct/ State Bar Act violations:
  - (d)  Degree of prior discipline
  - (e)  If Respondent has two or more incidents of prior discipline, use space provided below.
- (2)  **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
- (3)  **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by, misrepresentation.
- (4)  **Concealment:** Respondent's misconduct was surrounded by, or followed by, concealment.
- (5)  **Overreaching:** Respondent's misconduct was surrounded by, or followed by, overreaching.
- (6)  **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code, or the Rules of Professional Conduct.
- (7)  **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(Do not write above this line.)

---

- (8)  **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. (See Attachment at page 12.)
- (9)  **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (10)  **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct, or to the State Bar during disciplinary investigations or proceedings.
- (11)  **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. (See Attachment at page 12.)
- (12)  **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
- (13)  **Restitution:** Respondent failed to make restitution.
- (14)  **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable. (See Attachment at page 12.)
- (15)  **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.**

- (1)  **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2)  **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3)  **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct or to the State Bar during disciplinary investigations and proceedings.
- (4)  **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5)  **Restitution:** Respondent paid \$ \_\_\_\_\_ on \_\_\_\_\_ in restitution to \_\_\_\_\_ without the threat or force of disciplinary, civil or criminal proceedings.
- (6)  **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7)  **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8)  **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

- (9)  **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10)  **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11)  **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12)  **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13)  **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

**No prior record of discipline and pretrial stipulation. See Attachment at pages 12-13.**

**D. Discipline:**

- (1)  **Stayed Suspension:**
- (a)  Respondent must be suspended from the practice of law for a period of **two (2) years**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1) Standards for Attorney Sanctions for Professional Misconduct.
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:
- (b)  The above-referenced suspension is stayed.
- (2)  **Probation:**
- Respondent must be placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3)  **Actual Suspension:**
- (a)  Respondent must be actually suspended from the practice of law in the State of California for a period of **ninety (90) days**.
- i.  and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and fitness to practice and present learning and ability in the general law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct
- ii.  and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii.  and until Respondent does the following:

### E. Additional Conditions of Probation:

- (1)  If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and present learning and ability in the general law, pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- (2)  During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3)  Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4)  Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5)  Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6)  Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7)  Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8)  Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.  
 No Ethics School recommended. Reason: **Please see section F(5) below.**
- (9)  Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10)  The following conditions are attached hereto and incorporated:

(Do not write above this line.)

- |   |   |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions         | <input type="checkbox"/> Financial Conditions             |

**F. Other Conditions Negotiated by the Parties:**

- (1)  **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason:
- (2)  **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3)  **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4)  **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5)  **Other Conditions:** As a further condition of probation, because Respondent lives out of state, Respondent must either 1) attend a session of the State Bar Ethics School, pass the test given at the end of that session, and provide satisfactory proof of same to the Office of Probation within one (1) year of the effective date of discipline herein, or 2) complete six (6) hours of live, in person, or live online webinar Minimum Continuing Legal Education ("MCLE") courses approved in legal ethics offered through a certified MCLE provider in California, and provide satisfactory proof of same to the Office of Probation within one (1) year of the effective date of the discipline.



time and no longer had a good faith basis to continue the DMV hearing. Respondent did not inform the client of these events.

7. On the March 17, 2015 DMV hearing, Respondent sent an associate who waived the client's appearance. The hearing judge ordered the client's driver's license be suspended for ninety days effective April 16, 2015.

8. On March 20, 2015 Respondent's legal assistant notified the client of this result by e-mail. The client replied to the e-mail and asked Respondent why he did not seek a continuance of the hearing as they previously agreed.

9. On March 25, 2015, Respondent replied by stating that he did not seek to postpone the DMV hearing because now that the blood alcohol content analysis was complete, there was no good faith basis to seek a postponement of the hearing.

10. The client was not satisfied with Respondent's response and e-mailed Respondent over the next four months asking why he did not request a continuance of the DMV hearing and why he sent an associate to the DMV hearing when Respondent knew that the client was counting on him to personally attend to his cases. The client made repeated requests for Respondent to provide him an accounting. Respondent did not respond.

11. On July 3, 2015, the client terminated Respondent's services and asked for his file. Respondent did not return the file.

12. On July 28, 2015, after Arizona State Bar Counsel became involved, Respondent sent the client an accounting and his file.

13. Pursuant to the Order of Admonition, Respondent was required to participate in the Arizona State Bar's Fee Arbitration Program, but the client declined to participate.

14. On June 29, 2016, the committee found that Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.2 [Scope of Representation and Allocation of Authority Between Client and Lawyer] by not abiding by the client's decision to seek a continuance of the DMV hearing, and not communicating to the client his decision not to seek a continuance. He violated ER 1.3 [Diligence] by not preparing for or attending the DMV hearing, and not seeking a continuance of the hearing. He violated ER 1.4 [Communication] by not communicating or explaining to the client his decision and reason not to seek a postponement of the DMV hearing, by not consulting with the client about the client's expectation that he would offer assistance not permitted by the Rules of Professional Conduct or other law, and by not responding to the client's many requests for information about his cases. He violated ER 1.5 [Fees] by keeping all \$7,500 after the representation ended. He violated ER 1.15 [Safekeeping Property] by not promptly rendering a full accounting to the client, upon the latter's request, regarding fees and services rendered.

*Turkeltaub (Arizona State Bar Case No. 16-0138)*

15. On July 30, 2015, the client hired Respondent to represent him in enforcing orders of protection against his ex-wife. He paid Respondent a flat fee of \$7,500.



16. The client told Respondent that he would not be satisfied unless the police arrested his ex-wife, the prosecuting authority tried and convicted her of a felony, and the court jailed her.

17. Between August and October 2015, the client acquired video evidence of his ex-wife stalking him and gave it to the police. The police interviewed the ex-wife and forwarded the evidence to the City Attorney, who declined to prosecute.

18. Respondent did not take any action to file motions to hold the ex-wife in contempt of court for violating the orders of protection, and instead limited his activities to gathering and funneling evidence of the ex-wife's conduct to the police and City Attorney.

19. The client had difficulty reaching Respondent on the telephone to find out the status of his case. He scheduled several telephone conferences in advance, but Respondent did not take or place the calls at the appointed times.

20. In October 2015, the client grew frustrated at the lack of activity and communication and terminated the representation.

21. Respondent provided the client with an itemized statement of services totaling \$7,750, with most of the entries reflecting trading phone messages and e-mails and acting as an informational conduit between the client and the police.

22. Pursuant to the Order of Admonition, Respondent was to participate in the Arizona State Bar's Fee Arbitration Program, but the client did not respond to the request for fee arbitration.

23. On June 29, 2016, the committee found that Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.3 [Diligence] by not filing any contempt action asking a court to enforce the client's orders of protection. He violated ER 1.4 [Communication] by missing his prearranged telephone conferences with the client. He violated ER 1.5 [Fees] by keeping all \$7,500 after the representation ended. He violated ER 3.2 [Expedited Litigation] by not expediting enforcement of the client's orders of protection.

*Adams (Arizona State Bar Case No. 16-0606)*

24. In November 2015, Respondent was hired to represent a client on criminal charges and an order of protection. Respondent was paid a flat fee of \$10,000 which was to cover all stages of the case until the court set a trial date on the criminal case.

25. Respondent performed services including negotiating a modification of the protective order, and the criminal case was dropped on November 22, 2015.

26. Respondent told the client he did not need to attend an early court hearing related to the protective order.

27. The client tried to get confirmation from Respondent and his office regarding an amendment to the protective order which would allow him to return home, but was unable to receive prompt or accurate information. The client was served with the amended protective order on December 9, 2015, but his inquiries to Respondent about the legal effect of the order were not returned.

28. On January 15, 2016, the client fired Respondent and hired new counsel. The client and his new counsel requested a refund from Respondent.

29. On February 8, 2016, Respondent's office e-mailed the client's new counsel and explained that Respondent was preparing an accounting and a refund would be issued that week. After receiving no response, the client's counsel sent two additional letters demanding a refund and accounting. As of April 1, 2016, Respondent had not responded to the client or his new counsel.

30. On April 5, 2016, after bar counsel became involved, Respondent provided a copy of the client file and accounting. On April 8, 2016, Respondent refunded \$4,185 in fees and paid the client an additional \$2,000 for the inconvenience.

31. Pursuant to the Order of Admonition, Respondent participated in the Arizona State Bar's Fee Arbitration Program. The matter was heard on March 15, 2017. The arbitrator found that the \$5,685 fee Respondent charged was reasonable. Because Respondent had voluntarily reduced his fee from \$5,185 to \$3,815, the client did not owe Respondent any additional sum.

32. On June 29, 2016, the committee found that Respondent violated Rule 42, Ariz. R. Sup. Ct., ER 1.4 [Communication] by not communicating with the client adequately both during and after the representation. He violated ER 1.15 [Safekeeping Property] by not promptly rendering a full accounting to the client upon his request. He violated ER 1.16 [Declining or Terminating Representation] by not taking reasonably practicable steps to give the client and his new counsel the information and refund requested until April 2016.

#### CONCLUSIONS OF LAW:

33. As a matter of law, Respondent's culpability of professional misconduct determined in the proceedings in Arizona warrants the imposition of discipline under the laws and rules binding upon respondent in the State of California at the time Respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

#### Case No. 16-J-17773 (Discipline in Other Jurisdiction)

#### PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

34. On May 17, 1997, Respondent was admitted to practice in the State of Arizona.

35. On September 9, 2016, Respondent and the State Bar of Arizona entered into an Agreement for Discipline by Consent (Public Reprimand) in Arizona State Bar case no. 15-1775 in which Respondent admitted violations of the following Arizona Rules of Professional Conduct in connection with one client matter: ER 1.3 [Diligence], ER 1.4 [Communication], ER 1.5(a) [Fees], and ER 8.(d) [Misconduct – conduct prejudicial to the administration of justice].

36. On September 16, 2016, the Supreme Court of Arizona finalized the Public Reprimand. The Supreme Court of Arizona ordered Respondent reprimanded and placed him on probation for two years with required participation in the law office management program and fee arbitration for violations of

ER 1.3 [Diligence], ER 1.4 [Communication], 1.5(a) [Fees], and 8.4(d) [Misconduct—conduct prejudicial to the administration of justice].

37. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

#### FACTS FOUND IN OTHER JURISDICTION:

##### *Torres-Hawk (Arizona State Bar Case No. 15-1775)*

38. On or about January 2014, Respondent was hired to represent a mentally disabled young adult in a sex crimes case involving ten felony counts. The client was a minor when the offenses were committed. Respondent charged a flat fee of \$15,000, which was paid up front by the parents of the client and another relative.

39. Respondent's associate, who was a certified specialist in criminal law, was initially responsible for performing all work on the client's case. The associate was in the process of reviewing the client's school and medical records to determine whether the client qualified for Rule 11<sup>1</sup> treatment.

40. On May 13, 2014, Respondent's associate left the firm and Respondent took over the representation without familiarizing himself with the client's file. Respondent erroneously believed that the associate had determined the client did not qualify for Rule 11 protection.

41. Before a May 19, 2014 court appearance, Respondent advised the client to change his plea to guilty and accept the state's plea bargain. The client's mother questioned Respondent about the status of the Rule 11 examination, but Respondent did not give a response. Following Respondent's advice, the client plead guilty at the hearing. On the record before sentencing, the client told the judge that he suffered from retardation, muscular dystrophy, foot problems, and a heart condition. In exchange for his plea, the client was released from jail, but sentenced to lifetime probation and registration as a sex offender.

42. In September 2014, the client filed a handwritten Petition for Post Conviction relief with the assistance his mother. The court then appointed counsel to assist the client. The new counsel asked the court for retroactive Rule 11 determination, and the State did not object.

43. The client's court appointed counsel obtained jail logs showing that no lawyer at Respondent's office visited the client from January 2014 to his release in June 2014, and there were only three two-minute legal calls to the client from Respondent's office.

44. Following supplemental expert evaluations of the client and the court's review of the transcript of the client's plea proceedings, the court ruled that the client was not competent at the time of entering the change of plea and sentencing. The judge vacated the plea, judgment of guilt, and sentencing, and released the client from all obligations related to his sentencing.

---

<sup>1</sup> Rule 11.1, Ariz. R. Crim. P.: "A person shall not be tried, convicted, sentenced or punished for a public offense. . . while, as a result of a mental illness, defect, or disability, the person is unable to understand the proceedings against him or her or assist in his or her own defense."

45. Pursuant to Respondent's Agreement for Discipline by Consent, he participated in fee arbitration with the client and agreed to return \$1,600 in fees to payable to the client's mother pursuant to a pre-hearing settlement. Respondent paid the settlement on October 3, 2017.

46. On September 9, 2016, Respondent conditionally admitted and the court accepted that his conduct in this matter violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3 [Diligence], Rule 1.4 [Communication], 1.5(a) [Fees], and 8.4(d) [Conduct Prejudicial to the Administration of Justice].

#### CONCLUSIONS OF LAW:

47. As a matter of law, Respondent's culpability of professional misconduct determined in the proceeding in Arizona warrants the imposition of discipline under the laws and rules binding upon respondent in the State of California at the time Respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

#### ADDITIONAL FACTS RE AGGRAVATING CIRCUMSTANCES.

**Multiple Acts of Wrongdoing (Std. 1.5(b)):** Respondent's misconduct in the State of Arizona violated the following California statutes or rules: Business and Professions Code section 6068(m) (three counts), Rule of Professional Conduct 3-110(A) (two counts), Rule of Professional Conduct 3-700(D)(2) (one count), and Rule of Professional Conduct 4-100(B)(3) (two counts). Respondent's multiple acts of misconduct are an aggravating circumstance.

**Harm to the Client and Administration of Justice (Std. 1.5(f)):** Respondent's failures to perform and communicate caused significant harm to his clients and the administration of justice. In one matter, the client had to seek court appointed counsel to move the court for post-conviction relief due to the damage caused by Respondent's misconduct. The plea Respondent negotiated had to be vacated, using unnecessary court time and resources, and harming the administration of justice.

**High Level of Vulnerability of Victim (Std. 1.5(n)):** Respondent's client in one matter was incarcerated during the representation, had an IQ of 52, suffered from muscular dystrophy and a rare, life threatening heart condition. Respondent was aware of the client's vulnerable condition and should have been aware of the client's incompetence to enter a plea agreement, yet Respondent recklessly failed to protect the client's interests.

#### ADDITIONAL FACTS RE MITIGATING CIRCUMSTANCES.

**No Prior Record of Discipline.** On December 16, 1996, the State Bar of California admitted Respondent to the practice of law in California. On May 17, 1997, the State Bar of Arizona admitted Respondent to the practice of law in Arizona. Respondent has no prior record of discipline in Arizona prior to these matters, and no prior record of discipline in California, though Respondent has been inactive in California for approximately fifteen of the twenty-one years he's been licensed. At the time of the misconduct, Respondent had practiced law in Arizona for seventeen years without discipline, which is worth significant weight in mitigation. (See *Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [attorney's ten years of discipline-free practice warranted significant weight in mitigation].)

**Pretrial Stipulation:** By entering into this stipulation, Respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar

significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

#### **AUTHORITIES SUPPORTING DISCIPLINE.**

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, the Arizona Supreme Court found Respondent culpable of professional misconduct in the State of Arizona, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, Respondent’s misconduct in the State of Arizona demonstrates violations of Business and Professions Code section 6068(m) (three counts), Rule of Professional Conduct 3-110(A) (two counts), Rule of Professional Conduct 3-700(D)(2) (one count), and Rule of Professional Conduct 4-100(B)(3) (two counts).

Standard 1.7(a) requires that where a Respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction available is found in Standard 2.7(b) which provides for actual suspension for Respondent’s violations of section 6068(m), Rule 3-110(A), and Rule 4-100(B)(3) in multiple client matters.

To determine the appropriate level of discipline, consideration must also be given to the aggravating and mitigating circumstances. In aggravation, Respondent committed multiple violations. Specifically,

Business and Professions Code section 6068(m) (three counts), Rule of Professional Conduct 3-110(A) (two counts), Rule of Professional Conduct 3-700(D)(2) (one count), and Rule of Professional Conduct 4-100(B)(3) (two counts). Respondent's misconduct is also aggravated by harm to the clients and the administration of justice and the high level of vulnerability of his victim. However, Respondent is entitled to mitigation for entering into a pretrial stipulation and his discipline free record merits significant mitigating weight.

In light of Respondent's misconduct, the aggravating and mitigating circumstances surrounding the misconduct, and the relevant standards and case law, the appropriate level of discipline is two years stayed suspension, two years probation, and ninety days actual suspension. This discipline is sufficient to achieve the purposes of discipline expressed in Standard 1.1, including protecting the public, maintenance of high professional standards, and preservation of public confidence in the legal profession.

This level of discipline is consistent with case law. In *Harris v. State Bar* (1990), 51 Cal. 3d 1082, the California Supreme Court ordered a three year period of stayed suspension, with three years of probation including a ninety day actual suspension for an attorney who abandoned a client in one matter where significant factors in aggravation were found, including the attorney's lack of candor and failure to appreciate the danger of her actions to the client.

Respondent's conduct is similar to that of the attorney in *Harris*, but with more acts of misconduct in four client matters, as opposed to the single client matter in *Harris*. Respondent's conduct involves significant factors in aggravation similar to *Harris*. In light of the factors in aggravation and mitigation, a ninety day actual suspension will adequately protect the public and the profession.

#### **COSTS OF DISCIPLINARY PROCEEDINGS.**

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of January 30, 2018, the discipline costs in this matter are approximately \$4,784. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

#### **EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT**


Respondent may not receive MCLE credit for completion of State Bar Ethics School or Continuing Legal Education in General Legal Ethics. (Rules Proc. of State Bar, rule 3201.)


(Do not write above this line.)

In the Matter of: <b>SCOTT ALLAN MAASEN</b>	Case number(s): <b>16-J-16531</b> <b>16-J-17773</b>
--	---

**SIGNATURE OF THE PARTIES**

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

2/7/18            Scott Allan Maasen  
Date      Respondent's Signature      Print Name

2/15/18            Terese Laubscher  
Date      Deputy Trial Counsel's Signature      Print Name

(Do not write above this line.)

In the Matter of: <b>SCOTT ALLAN MAASEN</b>	Case Number(s): <b>16-J-16531</b> <b>16-J-17773</b>
--	---

**ACTUAL SUSPENSION ORDER**

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

February 27, 2018  
Date

Cynthia Valenzuela  
CYNTHIA VALENZUELA  
Judge of the State Bar Court





## AFFIDAVIT

STATE OF ARIZONA            )  
  ) ss.  
County of Maricopa         )

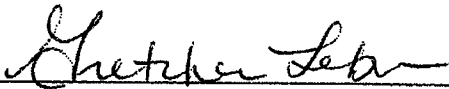
I, Gretchen I. Lebron, do under oath depose and say:

I am the Lawyer Regulation Records Administrator for the State Bar of Arizona.

I have reviewed the disciplinary record, for Respondent Scott Allan Maasen Bar No. 018073, State Bar of Arizona discipline file 15-1787.

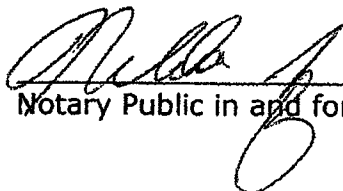
I affirm the attached documents to be 1) a copy of the Order of Admonition, Probation, (LOMAP and Fee Arbitration), and Costs; 2) a confidential copy of the State Bar of Arizona Report of Investigation (ROI), imposed in discipline file 15-1787, which is in the file maintained by the State Bar of Arizona; to the best of my knowledge and belief.

IN WITNESS WHEREOF, and under penalty of perjury under the laws of the State of Arizona, I affix my hand September 13, 2016.

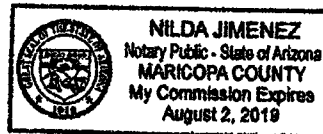


Gretchen I. Lebron  
Lawyer Regulation Records Administrator

I, Nilda Jimenez, do hereby certify that on September, 13, 2016 personally appeared before me, Gretchen I. Lebron, Lawyer Regulation Records Administrator, known to be the person who executed the foregoing instrument.



Notary Public in and for the State of Arizona.



BEFORE THE ATTORNEY DISCIPLINE  
PROBABLE CAUSE COMMITTEE  
OF THE SUPREME COURT OF ARIZONA

**FILED**  
JUN 29 2016  
STATE BAR OF ARIZONA  
BY *[Signature]*

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

No. 15-1787

**SCOTT ALLAN MAASEN**  
Bar No. 018073

**ORDER OF ADMONITION,  
PROBATION, (LOMAP and FEE  
ARBITRATION), AND COSTS**

Respondent.

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on May 13, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Complainant's Response.

By a vote of 6-0-3<sup>1</sup>, the Committee finds probable cause exists that Respondent violated the following Rules of the Supreme Court of Arizona:

- 1. Rule 42, ER 1.2** by not abiding by Complainant's decision to seek a continuance of the DMV hearing, and not communicating to Complainant his decision not to seek a continuance.
- 2. Rule 42, ER 1.3** by not preparing for or attending the DMV hearing, and not seeking a continuance of the hearings.
- 3. Rule 42, ER 1.4** by not communicating or explaining to Complainant his decision and reason not to seek a postponement of the DMV hearing; by not consulting with Complainant about Complainant's expectation that Respondent would offer assistance not permitted by the Rules of Professional

<sup>1</sup> Committee member Daisy Flores, Ella G. Johnson, and Charles J. Muchmore did not participate in this matter.

Conduct or other law; and by not responding to Complainant's many requests for information about his cases.

4. **Rule 42, ER 1.5** by keeping all \$7,500.00 after the representations ended.
5. **Rule 42, ER 1.15** by not promptly rendering a full accounting to Complainant, upon the latter's request, regarding fees and services rendered.

**IT IS THEREFORE ORDERED** issuing an Order of Admonition for Respondent's conduct pursuant to Rules 55(c)(1)(D) and 60(a)(4), Ariz. R. Sup. Ct.

**IT IS FURTHER ORDERED** that pursuant to Rules 55(c)(1)(D) and 60(a)(5), Ariz. R. Sup. Ct., Respondent is placed on Probation under the following terms and conditions:

- (1) The probation period will begin at the time this Order is served upon Respondent, and will conclude two years from that date.
- (2) Respondent shall participate in and successfully complete the following programs:

**a) LOMAP:**

Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order. Respondent shall submit to a LOMAP examination of his office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. The probation period will begin at the time this Order is served on Respondent and will conclude two years from

that date. Respondent will be responsible for any costs associated with LOMAP.

**b) FEE ARBITRATION:**

Respondent shall participate in the State Bar's Fee Arbitration Program. Respondent shall contact the Fee Arbitration Coordinator at 602-340-7379 within 10 days from the date of service of this Order to obtain the forms necessary to participate in Fee Arbitration. Respondent shall file the necessary forms no later than 30 days from the date of receipt of the forms. Respondent shall have 30 days of the date of letter from the Fee Arbitration Coordinator to comply with the award entered in the Fee Arbitration proceeding.

- (3) Respondent shall commit no further violations of the Rules of Professional Conduct.
- (4) Respondent shall report, in writing, compliance with the terms of probation to the State Bar's Phoenix Office.
- (5) If Respondent fails to comply with any of the foregoing conditions and the State Bar receives information about non-compliance, bar counsel shall report material violations to the Presiding Disciplinary Judge, who may hold a hearing to determine if the terms of probation have been violated and to determine if an additional sanction should be imposed. In a probation violation hearing, the State Bar must prove a violation by preponderance of the evidence.

**IT IS FURTHER ORDERED**, pursuant to Rule 60(b), Ariz. R. Sup. Ct., that Respondent shall pay the costs and expenses of these proceedings, as set forth in the attached Statement of Costs and Expenses, within thirty (30) days from the date of service of this Order.

**PURSUANT** to Rules 60(a)(4) and 70(a)(2), Ariz. R. Sup. Ct., this order will be entered in the Respondent's permanent record at the State Bar and is not confidential. Pursuant to Rule 48(k)(3), Ariz. R. Sup. Ct., it may be considered by the Attorney Discipline Probable Cause Committee, the Presiding Disciplinary Judge, a Hearing Panel, or the Supreme Court in recommending or imposing discipline in a subsequent disciplinary proceeding against Respondent.

#### **NOTICE OF RIGHT**

Parties may not file motions for reconsideration of this Order.

**PURSUANT** to Rule 55(c)(4)(B), Ariz. R. Sup. Ct., within ten (10) days of service of this Order, Respondent has the right to demand that a formal proceeding be instituted and issuance of an Order to Vacate this Order whereupon this order will be vacated and the matter disposed of in the same manner instituted before the Presiding Disciplinary Judge.

This demand shall be filed with the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona, 1501 W. Washington, Suite 104, Phoenix, AZ 85007-3231 with a copy to the State Bar of Arizona. The demand must comply with Rule 8(c), Ariz. R. App. Proc.

**DATED** this 29 day of June, 2016.

Lawrence F. Winthrop  
Judge Lawrence F. Winthrop, Chair  
Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona

Original filed this 29<sup>th</sup> day  
of June, 2016, with:

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

Copy mailed this 30<sup>th</sup> day  
of June, 2016, to:

Scott Allan Maasen  
Maasen Law Firm  
8707 East Vista Bonita Drive, Suite 230  
Scottsdale, Arizona 85255-3214  
Respondent

Gary A. Kester  
PO Box 12791  
Scottsdale, Arizona 85267  
Complainant

Copy emailed this 30<sup>th</sup> day  
of June, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Compliance Monitor  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

Fee Arbitration Coordinator  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by: Jackie Bohan



## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Scott Allan Maasen, Bar No. 018073, Respondent

File Nos. 15-1787, 16-0606, 16-0138

### 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***

**\$600.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

### **Staff Investigator/Miscellaneous Charges**

Total for staff investigator charges \$ 00.00

**TOTAL COSTS AND EXPENSES INCURRED** **\$600.00**



**LAWYER REGULATION  
REPORT OF INVESTIGATION**

**File: 15-1787**

**Date: April 13, 2016**

**Respondent:**

Scott Allan Maasen  
Scottsdale, AZ

**Complainant:**

Gary A. Kester  
Client

**Respondent's Counsel:** None

**Respondent's Bar No:** 018073

**Respondent Admitted On:** May 17, 1997

**Respondent's License Status:** Current

**Respondent's Disciplinary History:** None

**Respondent's Diversion History:**

- 2011, 10-1970, LOMAP for one year, fee arbitration, and CLE in criminal law, ERs 1.3, 1.5(a), and 1.15.
- 2011, 10-1402, LOMAP for six months, CLE in dissolution of a law practice, ERs 1.15 and 7.5(a), and Rule 43.
- 2006, 06-0340 and 06-0126, LOMAP consult re: fee agreements, ERs 1.4, 1.15, and 1.16.
- 2003, 03-0934, expunged

**Bar Counsel:** David L. Sandweiss

**Investigator:** None

**Recommendation:** Admonition and probation for two years (LOMAP and fee arbitration).

**Summary of Complaint:** Complainant charged that Respondent failed to provide the contracted legal services, failed to communicate, and failed to give Complainant billing information and his file.

**Summary of Investigative Procedure:** Bar counsel reviewed Complainants' charge, Respondent's response, and related court filings.

**Summary of Factual Findings of Investigation:**

1. In December 2014, Complainant was arrested for DUI (alcohol and marijuana), and was issued civil traffic violations for failing to stop short of a sidewalk while emerging from a

- driveway and failure to show proof of financial responsibility. The DUI arrest instigated an Arizona Dept. of Motor Vehicle ("DMV") driver's license suspension administrative case. Complainant's license would be suspended for 90 days if his blood alcohol concentration ("BAC") was .08% or higher. Complainant is a lawyer, formerly worked for Respondent, and had Respondent represent him in two prior DUI cases. He hired Respondent for a flat fee of \$7,500.00 to represent him in the DUI (pre-filing), civil traffic, and DMV administrative cases. The written fee agreement contains a fee arbitration clause.
2. The police completed the blood lab work in late January 2015. Complainant learned that his BAC was .09 and relayed that information to Respondent on February 4, 2015. A March 2, 2015, memorandum to Respondent's file specifies that the BAC was .092%. Also in February, Complainant received notice that the DMV initiated the administrative case. He notified Respondent, and Respondent requested a hearing. DMV set it for March 17, 2015. Complainant and Respondent agreed that Respondent would request a continuance of the DMV hearing for as long as possible to prolong Complainant's ability to drive, a necessary component of his work.
  3. In the civil traffic cases, Complainant sent proof of insurance to the court. He had witness affidavits to the effect that he did stop short of the sidewalk while emerging from a business driveway prior to entering the street. He, the witnesses, and Respondent appeared for the civil traffic hearing on March 12, 2015, but the arresting officer did not appear so the court dismissed the civil tickets. Afterward, Complainant and Respondent confirmed their strategy to postpone the DMV case, and Respondent told Complainant not to appear for the DMV hearing on March 17, 2015.
  4. Respondent did not seek a continuance of the DMV case, and did not tell Complainant. On March 16, 2015, Respondent's legal assistant Toni asked Respondent in an email, "Do you need coverage? STIP?" Respondent answered, "Yes - client will not go. Void bc of prior." Toni replied that associate attorney Janna Johnson would cover the hearing. Complainant was oblivious to any of this.
  5. Administrative Law Judge Constance Tatham conducted the DMV hearing on March 17, 2015. Ms. Johnson appeared and waived Complainant's presence. Based on the arresting police officer's testimony and the blood work, Judge Tatham affirmed Complainant's driver's license suspension for 90 days, effective April 16, 2015. On March 20, 2015, Toni emailed Complainant with this news. He replied, "I thought Scott continued the hearing? I guess this means he did not and the officer showed up?" When Complainant did not get an answer, he asked again, "[T]his hearing was supposed to be continued. What happened and why? I copied Scott on this so he can tell me what happened. Scott, I am sure you already know my thoughts on this."
  6. Respondent replied on March 25, 2015, purporting to confirm an understanding he had with Complainant that they had planned to continue the MVD hearing because the BAC result was not then available. However, when the BAC result became available prior to the hearing, there was no longer a good faith basis to seek a postponement. Neither statement is true. When they left the civil traffic hearing together on March 12, 2015, and confirmed their agreement to postpone the DMV hearing Respondent already had known Respondent's BAC result for five weeks. Even if the BAC result became known more recently, Respondent had a legitimate ground to postpone the hearing to challenge the state's evidence, or test the second blood sample that the police earlier obtained from Complainant.

7. Complainant was not satisfied with Respondent's answer as to why Respondent did not request a continuance of the DMV hearing. Over the ensuing four months, he asked Respondent, by email, why he did not request a continuance; why he sent an associate to the DMV hearing when Respondent knew Complainant was counting on Respondent personally attending to his cases; and for an accounting. Although Respondent's fee agreement states that any lawyer at Respondent's office might become involved in the case, Respondent at one point told Complainant, "Let me Tom Brady this." That statement proves Respondent's awareness that Complainant depended on Respondent's personal attention to the cases.
8. By July 2015, Respondent had not responded to Complainant's questions. Complainant terminated Respondent's services on July 3, 2015, and asked for his file. The State Bar's intake counsel got involved and on July 28, 2015, Respondent finally sent Complainant an accounting and his file. Respondent claims 29.2 hours for him and his office staff from December 22, 2014-April 12, 2015.
9. The fee agreement refers to "pre-filing" services in connection with the DUI case. Respondent and others in his firm did perform some services including obtaining and reviewing the police reports, and interviewing the arresting officer, but Complainant now is being prosecuted. He has new defense counsel.
10. Respondent claims that the difficulties encountered in this representation owed to a breakdown in communications. He believes diversion with LOMAP would assist him.

**Summary of Rule Violations:**

Rule 42, Ariz. R. Sup. Ct.:

**ER 1.2. Scope of Representation and Allocation of Authority between Client and Lawyer**

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued.

Respondent did not abide by Complainant's decision to seek a continuance of the DMV hearing, and did not communicate to Complainant his decision not to seek a continuance.

**ER 1.3. Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

Respondent did not prepare for or attend the DMV hearing, and did not seek a continuance of the hearing.

**ER 1.4. Communication**

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Respondent did not communicate or explain to Complainant his decision and reason not to seek a postponement of the DMV hearing. He did not consult with Complainant about Complainant's expectation that Respondent would offer assistance not permitted by the Rules of Professional Conduct or other law. Respondent did not respond to Complainant's many requests for information about his cases.

#### **ER 1.5. Fees**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) the degree of risk assumed by the lawyer.

It was not unreasonable for Respondent to charge or collect \$7,500.00 up front for the representations, but it was unreasonable for him to keep all \$7,500.00 after the representations ended.

#### **ER 1.15. Safekeeping Property**

\* \* \*

(d) [A] lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Respondent did not promptly render a full accounting to Complainant, upon the latter's request, regarding fees and services rendered.

**Diversion Consideration:** A matter generally will not be diverted when:

8. The Respondent has . . . other open cases that would suggest that the Respondent's participation in the Diversion program would not be appropriate or in furtherance of the goals of the program;

11. Participation by the attorney is not likely to benefit the attorney and further the goal of protection of the public.

**Conclusion:** Admonition and probation for two years (LOMAP and fee arbitration).



## AFFIDAVIT

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

I, Gretchen I. Lebron, do under oath depose and say:

I am the Lawyer Regulation Records Administrator for the State Bar of Arizona.

I have reviewed the disciplinary record, for Respondent Scott Allan Maasen Bar No. 018073, State Bar of Arizona discipline file 16-0138.

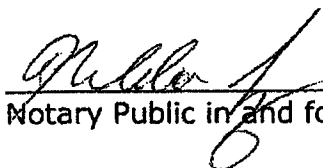
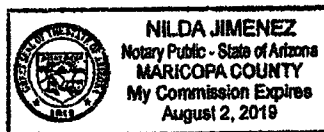
I affirm the attached documents to be 1) a copy of the Order of Admonition, Probation, (LOMAP and Fee Arbitration), and Costs; 2) a confidential copy of the State Bar of Arizona Report of Investigation (ROI), imposed in discipline file 16-0138, which is in the file maintained by the State Bar of Arizona; to the best of my knowledge and belief.

IN WITNESS WHEREOF, and under penalty of perjury under the laws of the State of Arizona, I affix my hand September 13, 2016.



Gretchen I. Lebron  
Lawyer Regulation Records Administrator

I, Nilda Jimenez, do hereby certify that on September, 13, 2016 personally appeared before me, Gretchen I. Lebron, Lawyer Regulation Records Administrator, known to be the person who executed the foregoing instrument.



Notary Public in and for the State of Arizona.



BEFORE THE ATTORNEY DISCIPLINE  
PROBABLE CAUSE COMMITTEE  
OF THE SUPREME COURT OF ARIZONA

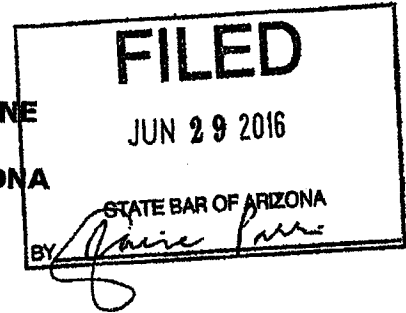
IN THE MATTER OF A MEMBER OF  
THE STATE BAR OF ARIZONA,

SCOTT ALLAN MAASEN  
Bar No. 018073

Respondent.

No. 16-0138

ORDER OF ADMONITION,  
PROBATION, (LOMAP and FEE  
ARBITRATION), AND COSTS



The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 10, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation, Complainant's Response and Respondent's Response.

By a vote of 6-0-3<sup>1</sup>, the Committee finds probable cause exists that Respondent violated the following Rules of the Supreme Court of Arizona:

1. **Rule 42, ER 1.3** by not filing any contempt action asking a court to enforce Complainant's Orders of Protection.
2. **Rule 42, ER 1.4** by missing his prearranged telephone conferences with Complainant.
3. **Rule 42, ER 1.5** by keeping all \$7,500 after the representation ended.
4. **Rule 42, ER 3.2** by not expediting enforcement of Complainant's Orders of Protection.

**IT IS THEREFORE ORDERED** issuing an Order of Admonition for Respondent's conduct pursuant to Rules 55(c)(1)(D) and 60(a)(4), Ariz. R. Sup. Ct.

<sup>1</sup> Committee member Daisy Flores, Ella G. Johnson, and Charles J. Muchmore did not participate in this matter.

**IT IS FURTHER ORDERED** that pursuant to Rules 55(c)(1)(D) and 60(a)(5), Ariz. R. Sup. Ct., Respondent is placed on Probation under the following terms and conditions:

- (1) The probation period will begin at the time this Order is served upon Respondent, and will conclude two years from that date.
- (2) Respondent shall participate in and successfully complete the following programs:

**a) LOMAP:**

Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order. Respondent shall submit to a LOMAP examination of his office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. The probation period will begin at the time this Order is served on Respondent and will conclude two years from that date. Respondent will be responsible for any costs associated with LOMAP.

**b) FEE ARBITRATION:**

Respondent shall participate in the State Bar's Fee Arbitration Program. Respondent shall contact the Fee Arbitration Coordinator at 602-340-7379 within 10 days from the date of service of this Order to obtain the forms necessary to participate in Fee Arbitration. Respondent shall file the necessary forms no later than 30 days from the date of receipt of the forms. Respondent shall have 30 days of

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

- (3) Respondent shall commit no further violations of the Rules of Professional Conduct.
- (4) Respondent shall report, in writing, compliance with the terms of probation to the State Bar's Phoenix Office.
- (5) If Respondent fails to comply with any of the foregoing conditions and the State Bar receives information about non-compliance, bar counsel shall report material violations to the Presiding Disciplinary Judge, who may hold a hearing to determine if the terms of probation have been violated and to determine if an additional sanction should be imposed. In a probation violation hearing, the State Bar must prove a violation by preponderance of the evidence.

**IT IS FURTHER ORDERED**, pursuant to Rule 60(b), Ariz. R. Sup. Ct., that Respondent shall pay the costs and expenses of these proceedings, as set forth in the attached Statement of Costs and Expenses, within thirty (30) days from the date of service of this Order.

**PURSUANT** to Rules 60(a)(4) and 70(a)(2), Ariz. R. Sup. Ct., this order will be entered in the Respondent's permanent record at the State Bar and is not confidential. Pursuant to Rule 48(k)(3), Ariz. R. Sup. Ct., it may be considered by the Attorney Discipline Probable Cause Committee, the Presiding Disciplinary Judge, a Hearing Panel, or the Supreme Court in recommending or imposing discipline in a subsequent disciplinary proceeding against Respondent.

**NOTICE OF RIGHT**

Parties may not file motions for reconsideration of this Order.

**PURSUANT** to Rule 55(c)(4)(B), Ariz. R. Sup. Ct., within ten (10) days of service of this Order, Respondent has the right to demand that a formal proceeding be instituted and issuance of an Order to Vacate this Order whereupon this order will be vacated and the matter disposed of in the same manner instituted before the Presiding Disciplinary Judge. This demand shall be filed with the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona, 1501 W. Washington, Suite 104, Phoenix, AZ 85007-3231 with a copy to the State Bar of Arizona. The demand must comply with Rule 8(c), Ariz. R. App. Proc.

**DATED** this 29 day of June, 2016.

*Lawrence F. Winthrop*

\_\_\_\_\_  
Judge Lawrence F. Winthrop, Chair  
Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona

Original filed this 29<sup>th</sup> day  
of June, 2016, with:

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

Copy mailed this 30<sup>th</sup> day  
of June, 2016, to:

Scott Allan Maasen  
Maasen Law Firm  
8707 East Vista Bonita Drive, Suite 230  
Scottsdale, Arizona 85255-3214  
Respondent

Steven H. Turkeltaub  
10290 North 92nd Street, Suite 207  
Scottsdale, Arizona 85258  
Complainant

Copy emailed this 30<sup>th</sup> day  
of June, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Compliance Monitor  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016

Fee Arbitration Coordinator  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016

by: Justin Graham

**Statement of Costs and Expenses**

In the Matter of a Member of the State Bar of Arizona,  
Scott Allan Maasen, Bar No. 018073, Respondent

File Nos. 15-1787, 16-0606, 16-0138

**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***

**\$600.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

**Staff Investigator/Miscellaneous Charges**

Total for staff Investigator charges \$ 00.00

**TOTAL COSTS AND EXPENSES INCURRED** **\$600.00**



**LAWYER REGULATION  
REPORT OF INVESTIGATION**

**File 16-0138**

**Date: April 20, 2016**

**Respondent:**  
Scott Allan Maasen  
Scottsdale

**Complainant:**  
Dr. Steven H. Turkeltaub, M.D.  
Position: client

**Respondent's Counsel:** None

**Respondent's Bar No:** 018073

**Respondent Admitted On:** May 17, 1997

**Respondent's License Status:** Current

**Respondent's Disciplinary History:** Respondent has no discipline history that has become final. He does, however, have two pending recommendations to ADPCC for Admonition and Probation for two years (LOMAP and fee arbitration) in 15-1775 and 15-1787.

**Respondent's Diversion History:**

- 2011, 10-1970, LOMAP for one year, fee arbitration, and CLE in criminal law, ERs 1.3, 1.5(a), and 1.15.
- 2011, 10-1402, LOMAP for six months, CLE in dissolution of a law practice, ERs 1.15 and 7.5(a), and Rule 43.
- 2006, 06-0340 and 06-0126, LOMAP consult re: fee agreements, ERs 1.4, 1.15, and 1.16.
- 2003, 03-0934, expunged

**Bar Counsel:** David L. Sandweiss

**Investigator:** None

**Recommendation:** Admonition and probation (two years with LOMAP, and fee arbitration).

**Summary of Complaint:** Complainant charged that Respondent neglected his legal matter and accomplished nothing substantive for him.

**Summary of Investigative Procedure:** Bar counsel reviewed Complainant's charge and related items, Respondent's response and related items, and relevant court filings.

**Summary of Factual Findings of Investigation:**

1. Complainant is a busy and successful plastic surgeon. He filed for divorce from his wife Donna in 2010 but almost immediately thereafter dismissed the case. He moved out of their home in 2012 and filed for divorce again in 2014. The case involves money and property

issues only, and was tried to a Special Master in March 2016. They are awaiting the outcome.

2. In 2014 and 2015, Complainant filed Petitions for Orders of Protection against Donna, and obtained them. Donna harassed Complainant at his apartment, office, and at the hospitals where he worked; accosted him in restaurants; obtained patient medical and financial records from his office; followed him on trips by learning his whereabouts through Verizon cell phone records; and nearly ran him over in her car while he was on his bicycle. Complainant feared for his safety and that of his girlfriend.
3. Complainant's divorce lawyer referred him to Respondent for representation in connection with enforcing the Orders of Protection. On July 30, 2015, Complainant paid Respondent a flat fee of \$7,500 for the following scope of representation: "**State v. Stephen Turkeltaub** [s/c]. Representation of Enforcing Court Orders Regarding Stalking and Restraining Order Violations by Ex-Wife Donna Danto Turkeltaub." The fee agreement contains a State Bar fee arbitration provision.
4. Complainant told Respondent in emails that he would not be satisfied unless the police arrested Donna, the prosecuting authority tried and convicted her of a felony, and the court jailed her. Based on the documents and emails presented to the State Bar, Respondent did not plan to file any actions or motions to, for example, hold Donna in contempt of court for violating the Orders of Protection. His activities were limited to accumulating evidence of Donna's conduct and funneling it to the Scottsdale Police Department. It was up to the Scottsdale P.D. and City Attorney to decide whether to take action.
5. Complainant acquired video evidence of Donna's stalking and gave it to the police. A police officer interviewed Donna and told Complainant that her story (about why she was in prohibited proximity to Complainant at various times) did not make sense. He gave the evidence to the City Attorney, but the latter declined to prosecute.
6. Due to Complainant's schedule it was difficult to get Respondent on the phone with one phone call. He scheduled several telephone conferences with Respondent in advance but Respondent did not place or take the calls at the appointed times. In October 2015, Complainant finally grew frustrated at the lack of activity and communication, and terminated the representation.
7. Respondent provided an itemized statement of services, totaling \$7,750, at \$450/hr. for him and \$165/hr. for his legal assistants. Most of the entries reflect trading phone messages and emails, and acting as an informational conduit between Complainant and the police.

**Summary of Rule Violations:**

Rule 42, Ariz. R. Sup. Ct.:

**ER 1.3. Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

Respondent did not file any contempt action asking a court to enforce Complainant's Orders of Protection.

**ER 1.4. Communication**



(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter; [and]
- (4) promptly comply with reasonable requests for information . . . .

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Respondent missed his prearranged telephone conferences with Complainant.

#### **ER 1.5. Fees**

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) the degree of risk assumed by the lawyer.

It was not unreasonable for Respondent to charge or collect \$7,500 up front for the representation, but it was unreasonable for him to keep all \$7,500 after the representation ended.

#### **ER 3.2. Expediting Litigation**

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Respondent did not expedite enforcement of Complainant's Orders of Protection.

**Diversion Consideration:** A matter generally will not be diverted when:

8. The Respondent has . . . other open cases that would suggest that the Respondent's participation in the Diversion program would not be appropriate or in furtherance of the goals of the program;

11. Participation by the attorney is not likely to benefit the attorney and further the goal of protection of the public.

**Conclusion:** Admonition and probation for two years (LOMAP and fee arbitration).

**AFFIDAVIT**

**STATE OF ARIZONA**       )  
  )  
County of Maricopa       ) ss.

RE: Files 15-1787, 16-0138, and 16-0606

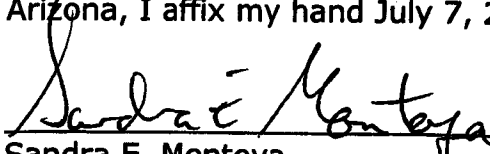
I, Sandra E. Montoya, do under oath depose and say:

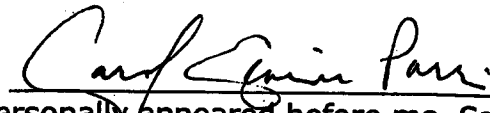
I am the Legal Administration Manager for the State Bar of Arizona.

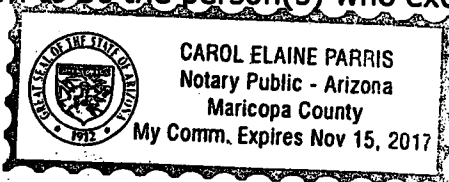
I have reviewed the disciplinary records indicated above, against current member Scott Allan Maasen Bar No. 018073, and found that the Attorney Discipline Probable Cause Committee issued Orders of Admonition with Probation in the above-numbered cases. Mr. Maasen had the right to reject those orders and demand that the State Bar initiate formal proceedings but chose not to exercise that right. Therefore, the Orders of Admonition with Probation became final.

I affirm the statements above to be true to the best of my knowledge and belief.

IN WITNESS WHEREOF, and under penalty of perjury under the laws of the State of Arizona, I affix my hand July 7, 2017.

  
\_\_\_\_\_  
Sandra E. Montoya  
Legal Administration Manager

I,  \_\_\_\_\_, do hereby certify that on July 7, 2017 personally appeared before me, Sandra E. Montoya, Legal Administration Manager, known to be the person(s) who executed the foregoing instrument.



\_\_\_\_\_  
Notary Public in and for the State of Arizona.

**AFFIDAVIT**

**STATE OF ARIZONA**            )  
  ) ss.  
County of Maricopa            )

I, Gretchen I. Lebron, do under oath depose and say:

I am the Lawyer Regulation Records Administrator for the State Bar of Arizona.

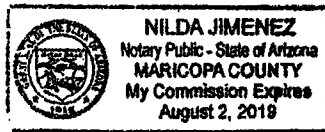
I have reviewed the disciplinary record, for Respondent Scott Allan Maasen Bar No. 018073, State Bar of Arizona discipline file 16-0606.


I affirm the attached documents to be 1) a copy of the Order of Admonition, Probation, (LOMAP and Fee Arbitration), and Costs; 2) a confidential copy of the State Bar of Arizona Report of Investigation (ROI), imposed in discipline file 16-0606, which is in the file maintained by the State Bar of Arizona; to the best of my knowledge and belief.

IN WITNESS WHEREOF, and under penalty of perjury under the laws of the State of Arizona, I affix my hand September 13, 2016.

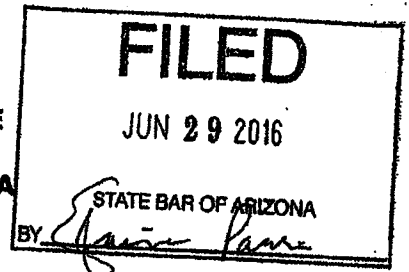
  
\_\_\_\_\_  
Gretchen I. Lebron  
Lawyer Regulation Records Administrator

I, Nilda Jimenez, do hereby certify that on September, 13, 2016 personally appeared before me, Gretchen I. Lebron, Lawyer Regulation Records Administrator, known to be the person who executed the foregoing instrument.



  
\_\_\_\_\_  
Notary Public in and for the State of Arizona.

BEFORE THE ATTORNEY DISCIPLINE  
PROBABLE CAUSE COMMITTEE  
OF THE SUPREME COURT OF ARIZONA



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

No. 16-0606

SCOTT ALLAN MAASEN  
Bar No. 018073

ORDER OF ADMONITION,  
PROBATION, (LOMAP and FEE  
ARBITRATION), AND COSTS

Respondent.

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 10, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 6-0-3<sup>1</sup>, the Committee finds probable cause exists that Respondent violated the following Rules of the Supreme Court of Arizona:

1. **Rule 42, ER 1.4** by not communicating with Complainant adequately both during the representation and after it terminated.
2. **Rule 42, ER 1.15** by not promptly render a full accounting to Complainant, upon the latter's request regarding fees and services rendered.
3. **Rule 42, ER 1.16** by not taking "reasonably practicable" steps to give Complainant the information and refund he and Mr. Lorona requested and deserved sooner than April 8, 2016.

**IT IS THEREFORE ORDERED** issuing an Order of Admonition for Respondent's conduct pursuant to Rules 55(c)(1)(D) and 60(a)(4), Ariz. R. Sup. Ct.

<sup>1</sup> Committee member Daisy Flores, Ella G. Johnson, and Charles J. Muchmore did not participate in this matter.

**IT IS FURTHER ORDERED** that pursuant to Rules 55(c)(1)(D) and 60(a)(5), Ariz. R. Sup. Ct., Respondent is placed on Probation under the following terms and conditions:

- (1) The probation period will begin at the time this Order is served upon Respondent, and will conclude two years from that date.
- (2) Respondent shall participate in and successfully complete the following programs:

**a) LOMAP:**

Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order. Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. The probation period will begin at the time this Order is served on Respondent and will conclude two years from that date. Respondent will be responsible for any costs associated with LOMAP.

**b) FEE ARBITRATION:**

Respondent shall participate in the State Bar's Fee Arbitration Program. Respondent shall contact the Fee Arbitration Coordinator at 602-340-7379 within 10 days from the date of service of this Order to obtain the forms necessary to participate in Fee Arbitration. Respondent shall file the necessary forms no later than 30 days from the date of receipt of the forms. Respondent shall have 30 days of

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

- (3) Respondent shall commit no further violations of the Rules of Professional Conduct.
- (4) Respondent shall report, in writing, compliance with the terms of probation to the State Bar's Phoenix Office.
- (5) If Respondent fails to comply with any of the foregoing conditions and the State Bar receives information about non-compliance, bar counsel shall report material violations to the Presiding Disciplinary Judge, who may hold a hearing to determine if the terms of probation have been violated and to determine if an additional sanction should be imposed. In a probation violation hearing, the State Bar must prove a violation by preponderance of the evidence.

**IT IS FURTHER ORDERED**, pursuant to Rule 60(b), Ariz. R. Sup. Ct., that Respondent shall pay the costs and expenses of these proceedings, as set forth in the attached Statement of Costs and Expenses, within thirty (30) days from the date of service of this Order.

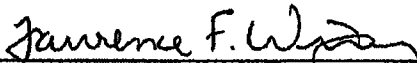
**PURSUANT** to Rules 60(a)(4) and 70(a)(2), Ariz. R. Sup. Ct., this order will be entered in the Respondent's permanent record at the State Bar and is not confidential. Pursuant to Rule 48(k)(3), Ariz. R. Sup. Ct., it may be considered by the Attorney Discipline Probable Cause Committee, the Presiding Disciplinary Judge, a Hearing Panel, or the Supreme Court in recommending or imposing discipline in a subsequent disciplinary proceeding against Respondent.

**NOTICE OF RIGHT**

Parties may not file motions for reconsideration of this Order.

**PURSUANT** to Rule 55(c)(4)(B), Ariz. R. Sup. Ct., within ten (10) days of service of this Order, Respondent has the right to demand that a formal proceeding be instituted and issuance of an Order to Vacate this Order whereupon this order will be vacated and the matter disposed of in the same manner instituted before the Presiding Disciplinary Judge. This demand shall be filed with the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona, 1501 W. Washington, Suite 104, Phoenix, AZ 85007-3231 with a copy to the State Bar of Arizona. The demand must comply with Rule 8(c), Ariz. R. App. Proc.

**DATED** this 29 day of June, 2016.

  
\_\_\_\_\_  
Judge Lawrence F. Winthrop, Chair  
Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona

Original filed this 29<sup>th</sup> day  
of June, 2016, with:

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

Copy mailed this 30<sup>th</sup> day  
of June, 2016, to:



Scott Allan Maasen  
Maasen Law Firm  
8707 East Vista Bonita Drive, Suite 230  
Scottsdale, Arizona 85255-3214  
Respondent

Gregory Adams  
7355 West Solano Drive N  
Glendale, Arizona 85303  
Complainant

Copy emailed this 30<sup>th</sup> day  
of June, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Compliance Monitor  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

Fee Arbitration Coordinator  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by: *Jechi Biakaw*

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Scott Allan Maasen, Bar No. 018073, Respondent

File Nos. 15-1787, 16-0606, 16-0138

### 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**

**\$600.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

### Staff Investigator/Miscellaneous Charges

Total for staff investigator charges

\$ 00.00

TOTAL COSTS AND EXPENSES INCURRED

\$600.00



**LAWYER REGULATION  
REPORT OF INVESTIGATION**

**File 16-0606**

**Date: May 4, 2016**

**Respondent:**  
Scott Allan Maasen  
Scottsdale

**Complainant:**  
Gregory Adams  
Position: client

**Respondent's Counsel:** None

**Respondent's Bar No:** 018073

**Respondent Admitted On:** May 17, 1997

**Respondent's License Status:** Current

**Respondent's Disciplinary History:** Respondent has no discipline history that has become final. He does, however, have three pending recommendations to ADPCC for Admonition and Probation for two years (LOMAP and fee arbitration) in 15-1775, 15-1787, and 16-0138.

**Respondent's Diversion History:**

- 2011, 10-1970, LOMAP for one year, fee arbitration, and CLE in criminal law, ERs 1.3, 1.5(a), and 1.15.
- 2011, 10-1402, LOMAP for six months, CLE in dissolution of a law practice, ERs 1.15 and 7.5(a), and Rule 43.
- 2006, 06-0340 and 06-0126, LOMAP consult re: fee agreements, ERs 1.4, 1.15, and 1.16.
- 2003, 03-0934, expunged.

**Bar Counsel:** David L. Sandweiss

**Investigator:** None

**Recommendation:** Admonition and probation (LOMAP and fee arbitration).

**Summary of Complaint:** Complainant charged that Respondent did not provide the contracted services, was uncommunicative, and failed to respond to Complainant's requests for an accounting and refund.

**Summary of Investigative Procedure:** Bar counsel reviewed Complainant's charge and related documents, and Respondent's response and related documents.

**Summary of Factual Findings of Investigation:**

1. On Halloween 2015, Complainant got very drunk and, at home and in the presence of his three children hit his wife, threatened to shoot her, and then told her he was kidding. She left home with the kids. Complainant called his sister and told her he was going to kill

himself, but didn't. Instead, with no one else present, he shot his gun (that he kept on his hip at all times) through a cabinet and broke some cookware. Family members called the police and eventually Complainant was arrested on one felony and three misdemeanor charges. His wife obtained an Order of Protection ("OOP").

2. Complainant hired Respondent in mid-November to represent him on the criminal charges and OOP, for a flat fee of \$10,000 (covering all stages of the cases until the court set a trial date in the criminal case). The written fee agreement includes an SBA fee arbitration provision.
3. Respondent was attentive to Complainant's cases in the early stages and negotiated a modification of the OOP so Complainant could have more time with his children. On November 22, 2015, the criminal case was scratched and Complainant was able to remove his ankle bracelet. Thereafter, all legal services related to the OOP.
4. Complainant then encountered problems with Respondent:
  - a. Respondent told Complainant he did not have to attend an early court matter. On the day of the matter, however, Respondent's office emailed Complainant asking him why he was not in court. Someone in Respondent's office later explained to him that they confused Complainant with another client with the same name. Although Complainant was in a panic over the missed court appearance, he did not produce evidence of any negative consequence of his non-appearance;
  - b. After negotiating the amended OOP, Respondent told Complainant he would tell Complainant when the amended order issued allowing him to return home and to talk to his children on the phone. He called Respondent a few times in early December 2015 but staff told him they had not heard anything yet. On December 9, the MCSO served Complainant with the amended order so Complainant called Respondent's office to relay that news and to say that he was returning home. On December 10, staff called Complainant and reached him while he was home, to tell him he should be able to go home soon;
  - c. Complainant called Respondent several times into January 2016 but was unable to reach him. Complainant did not receive promised return calls. Respondent texted Complainant that he would call Complainant after court ended (in a different case) but did not do so.
5. Complainant hired Jess Lorona and, on January 15, 2016, fired Respondent. He and Mr. Lorona asked Respondent for a refund. On January 18 Respondent texted Complainant to try to resurrect the relationship but Complainant told him he already hired new counsel.
6. Respondent's assistant emailed Mr. Lorona on February 8, 2016, explaining that Respondent was preparing an accounting and would issue a refund "this week." Complainant talked to the assistant several times but did not obtain any further useful information. He filed this charge on February 20, and persisted in his communications with the assistant. Mr. Lorona sent two additional demand letters to Respondent demanding an accounting and refund. As of April 1, 2016, Respondent did not respond to either Complainant or Mr. Lorona.
7. With his response to the charge (hand delivered on April 5, 2016), Respondent enclosed a copy of the client file and an accounting. He itemized \$5,815 worth of services in lawyer and legal assistant time. Respondent "admittedly dropped the ball" providing Complainant a timely accounting and refund. He apologized to Complainant and, on April 8, refunded \$4,185 in fees, and paid Complainant an additional \$2,000 for the inconvenience. Thus, Complainant is out \$3,815; nevertheless, he challenges the legitimacy of the charges "when

they did very little for me and I was the one that kept having to tell them what was going on with my own case because they were too busy to do what I was paying them for."

8. Respondent explained that toward the end of Complainant's case his firm experienced unprecedented turnover in lawyers and support staff. The sole paralegal took six weeks of leave due to a complicated pregnancy. The training and re-training of new employees stretched the firm thin and client communication suffered as a result.

**Summary of Rule Violations:**

Rule 42, Ariz. R. Sup. Ct.:

**ER 1.4. Communication**

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter; [and]

(4) promptly comply with reasonable requests for information . . . .

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Respondent did not communicate with Complainant adequately both during the representation and after it terminated.

**ER 1.15. Safekeeping Property**

\* \* \*

(d) [A] lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Respondent did not promptly render a full accounting to Complainant, upon the latter's request, regarding fees and services rendered.

**ER 1.16. Declining or Terminating Representation**

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned. Upon the client's request, the lawyer

shall provide the client with all of the client's documents, and all documents reflecting work performed for the client.

Respondent did not take "reasonably practicable" steps to give Complainant the information and refund he and Mr. Lorona requested and deserved sooner than April 8, 2016.

**Diversion Consideration:** A matter generally will not be diverted when:

8. The Respondent has . . . other open cases that would suggest that the Respondent's participation in the Diversion program would not be appropriate or in furtherance of the goals of the program;

11. Participation by the attorney is not likely to benefit the attorney and further the goal of protection of the public.

**Conclusion:** Admonition and probation for two years (LOMAP and fee arbitration).

**AFFIDAVIT**

**STATE OF ARIZONA**            )  
  ) **ss.**  
County of Maricopa         )

RE: Files 15-1787, 16-0138, and 16-0606

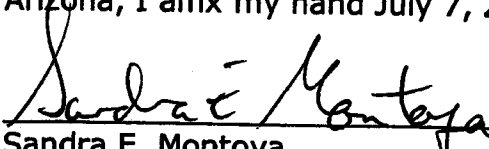
I, Sandra E. Montoya, do under oath depose and say:

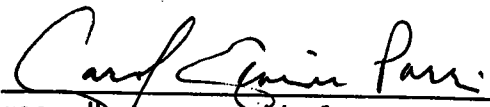
I am the Legal Administration Manager for the State Bar of Arizona.

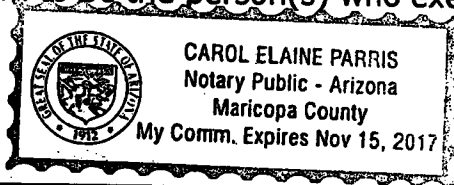
I have reviewed the disciplinary records indicated above, against current member Scott Allan Maasen Bar No. 018073, and found that the Attorney Discipline Probable Cause Committee issued Orders of Admonition with Probation in the above-numbered cases. Mr. Maasen had the right to reject those orders and demand that the State Bar initiate formal proceedings but chose not to exercise that right. Therefore, the Orders of Admonition with Probation became final.

I affirm the statements above to be true to the best of my knowledge and belief.

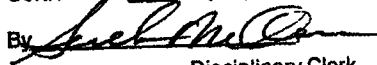
IN WITNESS WHEREOF, and under penalty of perjury under the laws of the State of Arizona, I affix my hand July 7, 2017.

  
\_\_\_\_\_  
Sandra E. Montoya  
Legal Administration Manager

I,  \_\_\_\_\_, do hereby certify that on July 7, 2017 personally appeared before me, Sandra E. Montoya, Legal Administration Manager, known to be the person(s) who executed the foregoing instrument.



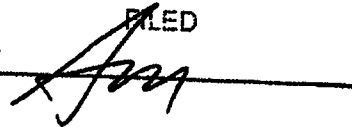
\_\_\_\_\_  
Notary Public in and for the State of Arizona.

This foregoing instrument is a full, true, and correct copy of the original on file in this office  
Certified this 15<sup>th</sup> day of Nov., 2016  
By   
Disciplinary Clerk  
Supreme Court of Arizona

David L. Sandweiss, Bar No. 005501  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602)340-7250  
Email: LRO@staff.azbar.org

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

SEP 9 2016

FILED  
BY 

Scott Allan Maasen, Bar No. 018073  
Maasen Law Firm  
8707 E Vista Bonita Dr., Suite 230  
Scottsdale, AZ 85255-3214  
Telephone 480-778-1500  
Email: [scott@maasenlaw.com](mailto:scott@maasenlaw.com)  
Respondent

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

IN THE MATTER OF A MEMBER OF THE  
STATE BAR OF ARIZONA,  
  
**SCOTT ALLAN MAASEN,**  
**Bar No. 018073,**  
  
Respondent.

**PDJ 2016-9088**  
  
**AGREEMENT FOR DISCIPLINE BY  
CONSENT**  
  
State Bar File No. 15-1775

The State Bar of Arizona through undersigned Bar Counsel, and Respondent Scott Allan Maasen 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.<sup>1</sup> A probable cause order was entered on July 1, 2016, but a formal complaint has not been filed. 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 admissions and proposed form of discipline are approved.

<sup>1</sup> All references to rules are to the Arizona Rules of the Supreme Court unless otherwise stated.



Pursuant to Rule 53(b)(3), notice of this agreement was provided to the complainants by mail, email and telephone on September 8, 2016. Complainants have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice.

Respondent conditionally admits that his conduct as set forth below violated Rule 42, ERs 1.3, 1.4, 1.5(a), and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand and probation (fee arbitration with Complainant Crystal Torres and with Mr. Keith Hawk to be completed (including payment of any award) within six months from the entry of the final judgment, and LOMAP for two 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.

**WARNING RE: NON-COMPLIANCE WITH PROBATION**

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

---

<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.

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.

### **FACTS**

#### **COUNT ONE of ONE (File no. 15-1775/Torres)**

1. Respondent was licensed to practice law in Arizona on May 17, 1997.
2. Complainant Austin Torres-Hawk ("Austin") was indicted on 10 felony counts of luring a minor for sex, commercial exploitation of a minor under 15 for sex, and furnishing obscene materials to a minor. Austin was 17 years old when he committed the crimes but was not charged until he was 18.
3. The Prescott Police Department assembled a persuasive case that Austin contacted several 13-15 year old girls on Facebook and engaged in explicit sex talk with them. They arrested him after obtaining by subpoena from Facebook about 2,000 pages of sex-related chats with minor girls.
4. Austin is mildly to moderately mentally retarded with a 52 IQ. He also suffers from muscular dystrophy and QT, a rare life-threatening heart condition. Austin spent most of his life in self-contained special education classes and had no criminal record.
5. Austin was jailed on a \$150,000 bond from January 2014 until he was released following his lifetime probation plea agreement in June 2014.
6. Austin's mother, Complainant Crystal Lee Torres ("Crystal"), who has a power of attorney for Austin, learned that Respondent had experience defending minors in sex crime cases and hired Respondent to represent Austin.
7. Respondent entered into a fee agreement with Austin but Crystal, Austin's father Keith Hawk, and a relative, combined to pay the \$15,000 flat fee for

pre-trial representation (Mr. Hawk later repaid the relative). The fee agreement contains a fee arbitration provision.

8. Respondent delegated Austin's defense to his associate, Todd Coolidge, a certified specialist in criminal law. Mr. Coolidge sought relevant school and medical records and was in the process of evaluating Austin's case when he left Respondent's firm on May 13, 2014.

9. The prosecutor offered a plea agreement on May 15, 2014, that called for lifetime probation with associated stipulations (e.g., sex offender registration; agreement to undergo highly personal physical examinations; fees, fines, and surcharges) and a recommendation to the court of no more jail time.

10. Respondent thought that Mr. Coolidge already had decided that Austin did not qualify for Rule 11<sup>3</sup> treatment. He also thought that Mr. Coolidge decided that the school and medical records supported, at best, a mitigation claim as part of a plea bargain for a reduced sentence. The case file that Mr. Coolidge left for Respondent, however, did not document that Mr. Coolidge had made those decisions.

11. When Mr. Coolidge left Respondent's firm he had not yet decided whether the evidence supported a Rule 11 finding, as he had not yet compiled all of

---

<sup>3</sup> Rule 11.1, Ariz. R. Crim. P.: "A person shall not be tried, convicted, sentenced or punished for a public offense . . . while, as a result of a mental illness, defect, or disability, the person is unable to understand the proceedings against him or her or to assist in his or her own defense."

Rule 11.2.a., Ariz. R. Crim. P.: "At any time after an . . . indictment [is] returned, any party may request in writing . . . an examination to determine whether a defendant is competent to stand trial, or to investigate the defendant's mental condition at the time of the offense."

the requested records. Had he decided on the Rule 11 matter one way or the other, he would have documented that fact in the file.

12. Respondent attended court on May 19, 2014, for a change of plea. Crystal appeared with her friend Bernice Landcaster. Crystal asked Respondent why he did not request a Rule 11 examination. According to her, Respondent pushed her away and proceeded with the change of plea.

13. Yavapai County Superior Court Judge Tina Ainley questioned Austin extensively (the transcript is 15 pages) and concluded that his guilty plea was knowing, intelligent, and voluntary. At one point, however, the following dialogue transpired:

THE DEFENDANT: I just want to say one thing.

THE COURT: You'll be given a chance at sentencing, Mr. Hawk, to talk to me. Do you have any questions about this plea, Mr. Torres-Hawk, for me, your attorney or the prosecutor?

MR. MAASEN: Your Honor, could I have a second?

THE COURT: Absolutely. [Austin and Respondent conferred.] Mr. Torres-Hawk, do you have any questions about this plea agreement for me, your attorney or the prosecutor?

THE DEFENDANT: I don't know. I don't know what to say.

THE COURT: Let me ask you, Mr. Torres-Hawk: Is this plea agreement how you want to handle your case?

THE DEFENDANT: (Nodding head affirmatively.)

MR. MAASEN: You need to -

THE DEFENDANT: Yes, Your Honor.

14. Respondent prepared a sentencing memorandum that detailed Austin's disabilities. A Yavapai County senior adult probation officer prepared a pre-sentence

report with many of the same details. Included in the materials was Austin's handwritten note expressing his awareness of and remorse for what he'd done. On June 16, 2014, Judge Ainley suspended sentencing, placed Austin on lifetime probation, and ordered him released from jail.

15. Although the crimes were charged as dangerous offenses, and Austin signed the seven-page single-spaced plea agreement designating the crimes as such, the court ruled that the counts to which Austin pled were nondangerous and nonrepetitive. The transcript is nine pages. At one point the following dialogue transpired:

THE COURT: Mr. Torres-Hawk, is there anything you would like to tell me prior to sentencing?

THE DEFENDANT: Yes. I've been locked down and in jail for 23 and a half hours in protected custody. I have mild intellectual retardation disorder and I have muscular dystrophy problems and I have major feet problems and I have bad heart problems, and every day I sit in jail and people scare me and I'm - every day it's just - I'm scared to go out of my cell ever because I'm scared that -- people scare me. I got serious problems with my heart. It's arrhythmia and it has a lot to do with people, I just stress and everything involved and I got autism. And -

MR. MAASEN: Can I have just a second, please?

THE COURT: Sure.

(Attorney-client off-the-record discussion.)

THE DEFENDANT: I'm sorry, Judge Ainley, for what I did. I know it wasn't right. I'm sorry. I'm very sorry.

16. In September 2014, Austin filed a handwritten Petition for Post Conviction Relief. On a form furnished by the court clerk's office, Austin checked the box indicating that there was an "unconstitutional suppression of evidence by the state" and stated that he had been sentenced "to a term of 25 years." In a different

space, Austin wrote (seemingly for his mother -- errors are as in the original), "They would not recognize my son mild retardation and him a minor. National council state legislater [sic] states AZ does not require a minor to register as sex offender if they act was not physical contact." Judge Ainley appointed counsel, Damon Rossi, to represent Austin.

17. Mr. Rossi believed Austin was not competent to understand his plea. In January 2015 he had Austin undergo neuropsychological testing by Dr. Conner, Ed. D., who agreed. Mr. Rossi moved for production of the audio record of the plea proceedings in order to demonstrate Austin's manner and demeanor that were not discernible from the written transcripts. Unfortunately, when proceedings were reported stenographically, the court system re-used the audio tapes after one week.

18. At a status hearing, Mr. Rossi asked the court for a retroactive Rule 11 determination. The state did not object. Judge Ainley ordered a supplemental examination by Dr. Conner, and a psychiatric evaluation by Dr. Raney, M.D.

19. Based on the reports, Judge Ainley concluded that Austin was not competent but left open the question as to whether he was capable of being restored to competency. At a July 2, 2015 evidentiary hearing Judge Ainley decided that Austin was not restorable and asked for legal memoranda as to whether Austin was competent at the time he entered into the plea.

20. The state anticipated that Mr. Rossi would move to withdraw Austin from the plea. It urged the court to defer ruling until it heard testimony from Respondent and Mr. Coolidge regarding the steps they took to ensure that Austin understood the plea proceedings.

21. Mr. Rossi attached jail logs to his memorandum showing that no lawyer at Respondent's office visited Austin in jail, and Austin had three two-minute legal phone calls with someone from Respondent's office.

22. Dr. Raney testified at the July hearing that Austin might have been competent to enter into a very simple plea agreement in June 2014 but not the one into which Austin actually entered. Dr. Conner had "no difficulty" determining that Austin was incompetent at the time of the plea.

23. Mr. Rossi argued that it was not necessary to take testimony from Mr. Coolidge or Respondent. It was impossible to explain the terms of the plea agreement to Austin at the time of the plea or since. "Even if Clarence Darrow, Atticus Finch and F. Lee Bailey were to somehow represent Austin, it would make no difference."

24. On August 31, 2015, Judge Ainley ruled that during the plea proceedings, "while the Defendant was able to give simple responses to the Court's questions, he was also anxious about being released from jail and was able only to give the most basic responses to the questions asked." She reviewed all of the same materials as those produced during the plea proceedings, plus the doctors' reports and testimony, and concluded that Austin was not competent currently or at the time of the change of plea and subsequent sentencing.

25. Judge Ainley vacated the plea agreement and the judgment of guilt and sentencing, released Austin from all obligations related to his sentencing, and dismissed the Rule 32 PCR proceeding.

### **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, ERs 1.3, 1.4, 1.5(a), and ER 8.4(d).

### **RESTITUTION**

Restitution is not an issue in this matter; the fee dispute will be resolved through fee arbitration as a probationary term.

### **SANCTION**

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter as set forth above the following sanctions are appropriate: Reprimand, probation (fee arbitration with Complainant Crystal Torres and with Mr. Keith Hawk to be completed, including payment of any award, within six months from the entry of the final judgment, and LOMAP for two years), and payment of costs and expenses as set forth above. 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 duty violated**

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

#### **The lawyer's mental state**

For purposes of this agreement the parties agree that Respondent negligently recommended and proceeded with the guilty plea without familiarizing himself fully with the status of Mr. Coolidge's evaluation of Austin's Rule 11 prospects; and negligently failed to review the reasonableness of his fee, and account to Crystal and Mr. Hawk for it, when the representation ended.

#### **The extent of the actual or potential injury**

For purposes of this agreement, the parties agree that there was actual harm to the client and the legal system.

The parties agree that the following *Standards* are appropriate:

*Standard 4.43* - Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

*Standard 4.63* - Reprimand is generally appropriate when a lawyer negligently fails to provide a client with accurate or complete information, and causes injury or potential injury to the client.

*Standard 6.13* - Reprimand is generally appropriate when a lawyer is negligent . . . in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

**Aggravating and mitigating circumstances**

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

**In aggravation:**

*Standard 9.22--*

(a) prior disciplinary offenses - the following offenses are prior to this consent but were not prior to the conduct in this case:

June 2016, Admonition/Probation for two years (LOMAP, fee arbitration), 15-1787, for violating ERs 1.2, 1.3, 1.4, 1.5(a), and 1.15(d);

June 2016, Admonition/Probation for two years (LOMAP, fee arbitration), 16-0138, for violating ERs 1.3, 1.4, 1.5(a), and 3.2;

and

June 2016, Admonition/Probation for two years (LOMAP, fee arbitration), 16-0606, for violating ERs 1.4, 1.5(a), 1.15(d), and 1.16(d).

- (b) selfish motive;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (l) substantial experience in the practice of law;
- (j) indifference to making restitution.

**In mitigation:**

*Standard 9.32--*

(a) absence of a prior disciplinary record – see aggravating factor 9.22(a), above - Respondent has a record prior to entering into this consent but not prior to the conduct in this case;

(b) absence of a dishonest motive;

(c) personal problems – in connection with his LOMAP assessment in 15-1787, 16-0138, and 16-0606, Respondent detailed for the State Bar's LOMAP officer the office administration and lawyer turnover issues he faced during the times relevant to the events in this case;

(e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings.

**Discussion**

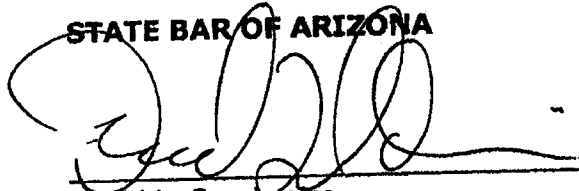
The parties conditionally agree that, upon application of the aggravating and mitigating factors, the presumptive sanction is appropriate and is within the range of appropriate sanctions. The purposes of lawyer discipline will be served by adding the indicated probationary terms to a reprimand, especially when considered with the admonition and probation Respondent currently is serving in the three cases listed in his discipline history.

**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 reprimand and probation, and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this 8<sup>th</sup> day of ~~August~~ <sup>September</sup> 2016.

STATE BAR OF ARIZONA



David L. Sandweiss  
Senior Bar Counsel

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

DATED this 7 day of ~~August~~ <sup>September</sup>, 2016.



Scott Allan Maasen  
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 9<sup>th</sup> day of ~~August~~ <sup>September</sup>, 2016.

Copy of the foregoing emailed  
this 9<sup>th</sup> day of ~~August~~ <sup>September</sup>, 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/mailed  
this 9<sup>th</sup> day of ~~August~~, 2016, to:  
September

Scott Allan Maasen  
Maasen Law Firm  
8707 E. Vista Bonita Dr., Ste. 230  
Scottsdale, AZ 85255-3214  
Email: scott@maasenlaw.com  
Respondent

Copy of the foregoing hand-delivered  
this 9<sup>th</sup> day of ~~August~~, 2016, to:  
September

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

by: John Broder  
DLS: JLB

**EXHIBIT A**

**Statement of Costs and Expenses**

In the Matter of a Member of the State Bar of Arizona,  
Scott Allan Maasen, Bar No. 018073, Respondent

File No. 15-1775

**Administrative Expenses**

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

***General Administrative Expenses  
for above-numbered proceedings*** **\$1,200.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

**Staff Investigator/Miscellaneous Charges**

Total for staff investigator charges \$ 0.00

**TOTAL COSTS AND EXPENSES INCURRED** **\$ 1,200.00**

**EXHIBIT B**



**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**SCOTT ALLAN MAASEN,**  
**Bar No. 018073,**

Respondent.

**PDJ**

**FINAL JUDGMENT AND ORDER**

State Bar No. 15-1775

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, **Scott Allan Maasen**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order or \_\_\_\_\_.

**IT IS FURTHER ORDERED** that Respondent is placed on probation on the following terms: He shall participate with the State Bar's Law Office Management Assistance Program ("LOMAP") for two years, and complete Fee Arbitration (including payment of any resulting awards) with Complainant Crystal Torres and Mr. Keith Hawk within six (6) months from the entry of this order.

**WARNING RE: NON-COMPLIANCE WITH PROBATION**

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

**IT IS FURTHER ORDERED** that Respondent shall 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 August, 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 August, 2016.

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

Scott Allan Maasen  
Maasen Law Firm  
8707 E. Vista Bonita Dr., Ste. 230  
Scottsdale, AZ 85255-3214  
Email: scott@maasenlaw.com  
Respondent

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

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

Copy of the foregoing hand-delivered  
this \_\_\_\_ day of August, 2016 to:

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

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

The foregoing instrument is a full, true, and correct copy of the original on file in this office  
Certified this 15<sup>th</sup> day of Nov., 2016  
By [Signature]  
Disciplinary Clerk  
Supreme Court of Arizona

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**SCOTT ALLAN MAASEN,  
Bar No. 018073**

Respondent.

**PDJ-2016-9088**

**DECISION AND ORDER  
ACCEPTING DISCIPLINE BY  
CONSENT**

[State Bar No. 15-1775]

**FILED SEPTEMBER 16, 2016**

A Probable Cause Order issued on July 1, 2016. No formal complaint has been filed. An Agreement for Discipline by Consent (Agreement) was filed on September 9, 2016 and submitted under Rule 57(a)(3) Ariz. R. Sup. Ct.<sup>1</sup> Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject, or recommend the agreement be modified." Rule 57(a)(3)(b).

Rule 57 requires admissions be tendered solely "...in exchange for the stated form of discipline...." Under that rule, the right to an adjudicatory hearing is waived only if the "...conditional admission and proposed form of discipline is approved...." If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

Under Rule 53(b)(3), notice of this Agreement was provided to the complainant by telephone, email and letter on September 8, 2016. Complainant was informed of the opportunity to file a written objection within five (5) business days. No objection has been received.

<sup>1</sup> Unless otherwise stated, all rule references are to the Rules of the Supreme Court of Arizona.

The Agreement details a factual basis to support the admissions to the charge. Complainant was an eighteen year old with a 52 IQ, muscular dystrophy and QT, a rare life-threatening heart condition, indicted on ten (10) felony counts. He had no prior criminal record and had spent most of his life in self-contained special education classes. Mr. Maasen was hired to represent Complainant for a paid flat fee of \$15,000. Mr. Maasen delegated the defense of Complainant to his associate, a certified specialist in criminal law. That attorney was evaluating whether the evidence supported a Rule 11 finding when he left Mr. Maasen's firm on May 13. The prosecutor made a plea offer on May 15 for probation with no jail and associated stipulations.

Mr. Maasen negligently thought his associate had already decided that Complainant did not qualify for Rule 11 Ariz.R.Crim.P., treatment. Mr. Maasen also thought that his associate had decided that the school and medical records supported, at best, a mitigation claim as part of a plea bargain for a reduced sentence. The case file left by his associate did not document those decisions had been made. Mr. Maasen permitted his client to enter into the plea agreement on May 19. On June 16 the judge suspended sentencing and placed complainant on probation and ordered him released from jail.

Apparently the mother of Complainant helped him write a handwritten Petition for Post- Conviction Relief in Complainant's name. The court appointed counsel to represent Complainant. That court appointed counsel moved the court for a retroactive Rule 11 determination. The state did not object. Complainant had been jailed from January 2014 to June 16, 2014. Court appointed counsel attached jail logs to a later memorandum showing no lawyer at Mr. Maasen's office visited

Complainant during his time in jail and there were only three two-minute legal calls to Complainant from someone from Mr. Maasen's office. Complainant was a minor when the offenses were committed over the internet. Based on the multiple expert opinions each finding Complainant not competent, the judge found Complainant was not competent currently or at the time of the change of plea and subsequent sentencing nor restorable to competency. The judge vacated the plea agreement and the judgment of guilt and sentencing,

Mr. Maasen conditionally admits he violated Rule 42, ER 1.3 (diligence), ER 1.4 (communication), ER 1.5(a) (fees), and ER 8.4(d) (conduct prejudicial to the administration of justice).

The parties stipulate to reprimand, fee arbitration, and upon reinstatement, two (2) years of probation with the State Bar's Law Office Management Assistance Program (LOMAP) for two years and costs of these proceedings.

Mr. Maasen admits he negligently recommended and proceeded with the guilty plea without familiarizing himself with the status of his associate's evaluation of the Rule 11 prospects. He failed to review the reasonableness of his view and did not account for that fee when the representation ended. The parties stipulate Mr. Maasen negligently violated his duty to his client and the legal system. There was actual harm to the client and the legal system. The parties agree that *Standards* 4.43, 4.63 and 6.13 apply to Mr. Maasen's violations.

The parties further agree that the following aggravating factors are present in the record: 9.22(a) (prior disciplinary offenses), which involves three admonitions with probation and fee arbitration in June 2016; 9.22(b) (selfish motive), 9.22(g), (refusal to acknowledge the wrongful nature of his conduct), 9.22(h) (vulnerability

of victim), 9.22(i) (substantial experience in the practice of law) and 9.22(j) (indifference to making restitution). Agreed upon mitigating factors include: 9.32(a) absence of a prior disciplinary record as his prior record was not prior to the conduct in this case; 9.32(b) absence of a dishonest motive; 9.32(c) (personal problems) relating to lawyer turnover issues during this conduct; and 9.32(e) (full and free disclosure to a disciplinary board or cooperative attitude toward proceedings) are present.

The PDJ finds that the proposed sanctions of reprimand, probation, fee arbitration, and costs meet the objectives of attorney discipline. The Agreement and any attachments are accepted and incorporated by this reference.

**IT IS ORDERED** Respondent, **Scott Allan Maasen, Bar No. 018073**, is reprimanded for 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** Mr. Maasen is placed on probation under the Agreement, shall participate in LOMAP for two (2) years and complete fee arbitration (including payment of any resulting awards) as required within the Agreement.

**IT IS FURTHER ORDERED** Mr. Maasen shall pay the costs and expenses of the State Bar of Arizona totaling \$1,200 within thirty (30) days of the date of this order. If costs are not paid within thirty (30) days, interest will begin to accrue at the legal rate. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

**DATED** this 16<sup>th</sup> day of September, 2016.

*William J. O'Neil*

---

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

Copies of the foregoing emailed  
this 16th day of September, 2016,  
and mailed September 19, 2016, to:

Scott Allan Maasen  
Maasen Law Firm  
8707 E. Vista Bonita Drive Suite 230  
Scottsdale, AZ 8525-3214  
Email: [scott@maasenlaw.com](mailto:scott@maasenlaw.com)  
Respondent

David L. Sandweiss  
Senior Bar Counsel  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Fee Arbitration Coordinator  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by: [AMcQueen](#)



The foregoing instrument is a full, true, and correct copy of the original on file in this office  
Certified this 15<sup>th</sup> day of Nov. 2016  
By *[Signature]*  
Disciplinary Clerk  
Supreme Court of Arizona

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**SCOTT ALLAN MAASEN,  
Bar No. 018073,**

Respondent.

**PDJ 2016-9088**

**FINAL JUDGMENT AND ORDER**

[State Bar No. 15-1775]

**FILED SEPTEMBER 16, 2016**

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on September 9, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** Respondent, **Scott Allan Maasen**, is hereby reprimanded 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** Mr. Maasen is placed on probation on the following terms and conditions: Mr. Maasen shall participate with the State Bar's Law Office Management Assistance Program ("LOMAP") for two (2) years, and complete Fee Arbitration (including payment of any resulting awards) with Complainant Crystal Torres and Mr. Keith Hawk within six (6) months from the date of any award order. Within ten (10) days from the date of this order, Mr. Maasen shall contact the State Bar's Compliance Monitor the State Bar Compliance Monitor at (602) 340-7258, to develop terms and conditions of participation as outlined in the consent documents, which terms are incorporated by this reference. Mr. Masen shall be responsible for any costs associated with participation with compliance.

**NON-COMPLIANCE WITH PROBATION**

If Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, 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 Respondent breached a term of probation and, if so, to impose 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** Mr. Maasen shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00, within thirty (30) days from the date of this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

**DATED** this 16th day of September, 2016.

*William J. O'Neil*

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

Copies of the foregoing emailed  
this 16th day of September, 2016,  
and mailed September 19, 2016, to:

Scott Allan Maasen  
Maasen Law Firm  
8707 E. Vista Bonita Dr., Ste. 230  
Scottsdale, AZ 85255-3214  
Email: scott@maasenlaw.com  
Respondent

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

Fee Arbitration Coordinator  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

by: [AMcQueen](#)

Arizona Revised Statutes Annotated  
Rules of the Supreme Court of Arizona (Refs & Annos)  
V. Regulation of the Practice of Law  
D. Lawyer Obligations  
Rule 42. Arizona Rules of Professional Conduct  
Client-Lawyer Relationship

A.R.S. Sup.Ct.Rules, Rule 42, Rules of Prof.Conduct, ER 1.2

ER 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

Currentness

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Credits

Amended June 9, 2003, effective Dec. 1, 2003.

17A Pt. 2 A. R. S. Sup. Ct. Rules, Rule 42, Rules of Prof. Conduct, ER 1.2, AZ ST S CT RULE 42 RPC ER 1.2  
Current with amendments received through 4/15/17

Arizona Revised Statutes Annotated  
Rules of the Supreme Court of Arizona (Refs & Annos)  
V. Regulation of the Practice of Law  
D. Lawyer Obligations  
Rule 42. Arizona Rules of Professional Conduct  
Client-Lawyer Relationship

A.R.S. Sup.Ct.Rules, Rule 42, Rules of Prof.Conduct, ER 1.3

ER 1.3. Diligence

Currentness

A lawyer shall act with reasonable diligence and promptness in representing a client.

**Credits**

Amended June 9, 2003, effective Dec. 1, 2003.

**Editors' Notes**

**COMMENT [2003 AMENDMENT]**

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See ER 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in ER 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about

the possibility of appeal before relinquishing responsibility for the matter. See ER 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See ER 1.2.

Notes of Decisions (69)

17A Pt. 2 A. R. S. Sup. Ct. Rules, Rule 42, Rules of Prof. Conduct, ER 1.3, AZ ST S CT RULE 42 RPC ER 1.3  
Current with amendments received through 4/15/17

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Rules of the Supreme Court of Arizona (Refs & Annos)  
V. Regulation of the Practice of Law  
D. Lawyer Obligations  
Rule 42. Arizona Rules of Professional Conduct  
Client-Lawyer Relationship

A.R.S. Sup.Ct.Rules, Rule 42, Rules of Prof.Conduct, ER 1.4

ER 1.4. Communication

Currentness

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) In a criminal case, a lawyer shall promptly inform a client of all proffered plea agreements.

**Credits**

Amended June 9, 2003, effective Dec. 1, 2003.

**Editors' Notes**

**COMMENT [2003 AMENDMENT]**

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

**Communicating with Client**

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or reject the offer. See ER 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations--depending on both the importance of the action under consideration and the feasibility of consulting with the client--this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

#### **Explaining Matters**

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in ER 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See ER 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See ER 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

#### **Withholding Information**

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a



psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. ER 3.4(c) directs compliance with such rules or orders.

Notes of Decisions (57)

17A Pt. 2 A. R. S. Sup. Ct. Rules, Rule 42, Rules of Prof. Conduct, ER 1.4, AZ ST S CT RULE 42 RPC ER 1.4  
Current with amendments received through 4/15/17

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Rules of the Supreme Court of Arizona (Refs & Annos)  
V. Regulation of the Practice of Law  
D. Lawyer Obligations  
Rule 42. Arizona Rules of Professional Conduct  
Client-Lawyer Relationship

A.R.S. Sup.Ct.Rules, Rule 42, Rules of Prof.Conduct, ER 1.5

ER 1.5. Fees

Currentness

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) the degree of risk assumed by the lawyer.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing before the fees or expenses to be billed at higher rates are actually incurred. The requirements of this subsection shall not apply to:

(1) court-appointed lawyers who are paid by a court or other governmental entity, and

(2) lawyers who provide pro bono short-term limited legal services to a client pursuant to ER 6.5.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof;

(2) a contingent fee for representing a defendant in a criminal case; or

(3) a fee denominated as "earned upon receipt," "nonrefundable" or in similar terms unless the client is simultaneously advised in writing that the client may nevertheless discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to paragraph (a).

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer receiving any portion of the fee assumes joint responsibility for the representation;

(2) the client agrees, in a writing signed by the client, to the participation of all the lawyers involved and the division of the fees and responsibilities between the lawyers; and

(3) the total fee is reasonable.

#### Credits

Amended June 9, 2003, effective Dec. 1, 2003; Sept. 1, 2011, effective Jan. 1, 2012. Amended on an emergency basis Dec. 5, 2012, effective Jan. 1, 2013, amendment adopted on a permanent basis Aug. 28, 2013. Amended Aug. 27, 2015, effective Jan. 1, 2016.

17A Pt. 2 A. R. S. Sup. Ct. Rules, Rule 42, Rules of Prof. Conduct, ER 1.5, AZ ST S CT RULE 42 RPC ER 1.5  
Current with amendments received through 4/15/17

Arizona Revised Statutes Annotated  
Rules of the Supreme Court of Arizona (Refs & Annos)  
V. Regulation of the Practice of Law  
D. Lawyer Obligations  
Rule 42. Arizona Rules of Professional Conduct  
Client-Lawyer Relationship

A.R.S. Sup.Ct.Rules, Rule 42, Rules of Prof.Conduct, ER 1.15

ER 1.15. Safekeeping Property

Currentness

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account only for the following purposes and only in an amount reasonably estimated to be necessary to fulfill the stated purposes:

(1) to pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account; or

(2) to pay any merchant fees or credit card transaction fees or to offset debits for credit card chargebacks.

(3) Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the lawyer does not use a credit card processing service that permits the lawyer to direct such funds to the lawyer's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement between the client and the third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer possesses property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer. The lawyer shall promptly distribute any portions of the property as to which there are no competing claims. Any other property shall be kept separate until one of the following occurs:

(1) the parties reach an agreement on the distribution of the property;

(2) a court order resolves the competing claims; or

(3) distribution is allowed under section (f) below.

(f) Where the competing claims are between a client and a third party, the lawyer may provide written notice to the third party of the lawyer's intent to distribute the property to the client, as follows:

(1) The notice shall be served on the third party in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure, and must inform the third party that the lawyer may distribute the property to the client unless the third party initiates legal action and provides the lawyer with written notice of such action within 90 calendar days of the date of service of the lawyer's notice.

(2) If the lawyer does not receive such written notice from the third party within the 90-day period, and provided that the disbursement is not prohibited by law or court order, the lawyer may distribute the funds to the client after consulting with the client regarding the advantages and disadvantages of disbursement of the disputed funds and obtaining the client's informed consent to the distribution, confirmed in writing.

(3) If the lawyer is notified in writing of an action filed within the 90-day period, the lawyer shall continue to hold the property separate unless and until the parties reach an agreement on distribution of the property, or a court resolves the matter.

(4) Nothing in this rule is intended to alter a third party's substantive rights.

#### **Credits**

Amended June 9, 2003, effective Dec. 1, 2003; June 8, 2004, effective Dec. 1, 2004. Amended on emergency basis effective Jan. 1, 2009. Adopted on a permanent basis and amended effective Sept. 3, 2009. Amended Sept. 2, 2010, effective Jan. 1, 2011; Aug. 28, 2013, effective Jan. 1, 2014.

17A Pt. 2 A. R. S. Sup. Ct. Rules, Rule 42, Rules of Prof. Conduct, ER 1.15, AZ ST S CT RULE 42 RPC ER 1.15  
Current with amendments received through 4/15/17

Arizona Revised Statutes Annotated  
Rules of the Supreme Court of Arizona (Refs & Annos)  
V. Regulation of the Practice of Law  
D. Lawyer Obligations  
Rule 42. Arizona Rules of Professional Conduct  
Client-Lawyer Relationship

A.R.S. Sup.Ct.Rules, Rule 42, Rules of Prof.Conduct, ER 1.16

ER 1.16. Declining or Terminating Representation

Currentness

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
- (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer shall comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned. Upon the client's request, the lawyer shall provide the client with all of the client's documents, and all documents reflecting work performed for the client. The lawyer may retain documents reflecting work performed for the client to the extent permitted by other law only if retaining them would not prejudice the client's rights.

**Credits**

Amended June 9, 2003, effective Dec. 1, 2003.

17A Pt. 2 A. R. S. Sup. Ct. Rules, Rule 42, Rules of Prof. Conduct, ER 1.16, AZ ST S CT RULE 42 RPC ER 1.16  
Current with amendments received through 4/15/17

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

Arizona Revised Statutes Annotated  
Rules of the Supreme Court of Arizona (Refs & Annos)  
V. Regulation of the Practice of Law  
D. Lawyer Obligations  
Rule 42. Arizona Rules of Professional Conduct  
Advocate

A.R.S. Sup.Ct. Rules, Rule 42, Rules of Prof. Conduct, ER 3.2

ER 3.2. Expediting Litigation

Currentness

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

**Credits**

Amended June 9, 2003, effective Dec. 1, 2003.

**Footnotes**

1 So in original. There is no "[2]".

17A Pt. 2 A. R. S. Sup. Ct. Rules, Rule 42, Rules of Prof. Conduct, ER 3.2, AZ ST S CT RULE 42 RPC ER 3.2

Current with amendments received through 4/15/17



Arizona Revised Statutes Annotated  
Rules of the Supreme Court of Arizona (Refs & Annos)  
V. Regulation of the Practice of Law  
D. Lawyer Obligations  
Rule 42. Arizona Rules of Professional Conduct  
Maintaining the Integrity of the Profession

A.R.S. Sup.Ct.Rules, Rule 42, Rules of Prof.Conduct, ER 8.4

ER 8.4. Misconduct

Currentness

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable Code of Judicial Conduct or other law.
- (g) file a notice of change of judge under Rule 10.2, Arizona Rules of Criminal Procedure, for an improper purpose, such as obtaining a trial delay or other circumstances enumerated in Rule 10.2(b).

**Credits**

Amended on an experimental basis effective from July 1, 2001 to June 30, 2002. Extended May 31, 2002 until Dec. 31, 2002; June 9, 2003, until Jan. 23, 2004. Amended June 9, 2003, effective Dec. 1, 2003. Extended Jan. 26, 2004, until July 1, 2004; June 8, 2004, until Sept. 30, 2004. Adopted in final form June 8, 2004, effective Oct. 1, 2004.

17A Pt. 2 A. R. S. Sup. Ct. Rules, Rule 42, Rules of Prof. Conduct, ER 8.4, AZ ST S CT RULE 42 RPC ER 8.4  
Current with amendments received through 4/15/17

**CERTIFICATE OF SERVICE**

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 27, 2018, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

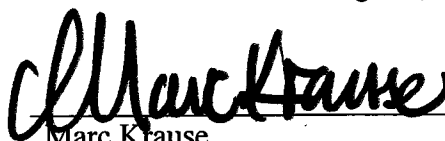
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

SCOTT A. MAASEN  
SCOTT MAASEN LAW FIRM  
8707 E VISTA BONITA DR #230  
SCOTTSDALE, AZ 85255

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

TERESE E. LAUBSCHER, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on February 27, 2018.



Marc Krause  
Court Specialist  
State Bar Court