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OFFICE OF THE PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF ARIZONA	
DEC 11 2013	
BY _____	FILED 

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

Robert C. Billar,
Bar No. 006662,

Respondent.

PDJ-2013-9085

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

State Bar No. 13-0497

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Robert C. Billar, who has chosen not to seek the assistance of counsel, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant by email dated December 5, 2013, directed to his prison case manager at the Department of Corrections facility in Kingman, AZ, where Complainant currently resides. The case manager was requested to relay notice of this agreement to Complainant and to relay Complainant's objection, if any, to the State Bar by return email within five days. As such, Complainant has

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, and 8.4(d). The State Bar conditionally agrees to dismiss charges related to ERs 1.1 and 1.5. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: reprimand. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on May 16, 1981.

COUNT ONE of ONE (State Bar File No. 13-0497)

2. Complainant, DeQuinton Taylor, was indicted on four counts of various drug charges. Those charges included promoting prison contraband, possession of marijuana, possession or use of narcotic drugs, and possession or use of drug paraphernalia. That case was prosecuted in Maricopa County Superior Court as *State v. Taylor*, CR 2008-154025 ("drug case"). Mr. Taylor retained Respondent to represent him in that case and another in which Mr. Taylor was charged with violating probation imposed in a prior case in CR 2005-119113 ("probation case").

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

3. Complainant and Respondent signed a fee agreement for legal services on January 2, 2009. The fee agreement called for an earned upon receipt \$5,000 fee, of which Complainant paid \$4,000.

4. At a January 7, 2009, initial pretrial conference in the drug case, the state offered Complainant a plea agreement by which Complainant would plead guilty to promoting prison contraband (Count 1) and possession of marijuana (Count 3) with a prison term on Count 1 only, to be determined by the court within applicable guidelines. The state's plea offer included its agreement to dismiss counts 2 and 4 relating to possession of narcotics and paraphernalia, and to dismiss allegations of the prior felony conviction and felony probation stemming from the probation case.

5. Respondent did not appear at the pretrial conference. A coverage attorney appeared for Respondent but did not discuss with Complainant the terms of the plea, stating that Respondent would discuss it with Complainant later.

6. The day before trial began on May 5, 2009, Respondent received the state's motion *in limine* to preclude the defense from arguing that Complainant's actions in promoting prison contraband were not voluntary, pursuant to *State v. Alvarado*, 219 Ariz. 540, 200 P.3d 1037 (App. Div. 1 2008). Respondent's strategy had been to contend that marijuana fell from Complainant's body during a strip search in jail following his arrest. The strategy included the contention that since Complainant was compelled to enter jail due to his arrest, he did not "voluntarily" bring drugs there. *State v. Alvarado* defined "voluntary" in that context in such a way as to preclude the defense from making that argument.

7. Respondent was not familiar with *State v. Alvarado*; it had been decided and published in December 2008. He did review it, however, and presented a brief oral argument that it ought not prevent him and Complainant from asking the jury to decide whether Complainant brought drugs into jail voluntarily.

8. The trial judge was not persuaded by Respondent's argument and granted the state's motion. Respondent did not then seek a continuance to discuss the court's ruling with Complainant and counsel him on its ramifications including the fact that it undercut Complainant's defense.

9. The state reoffered the original plea and the judge and prosecutor gave a *State v. Donald* advisement. Although they correctly advised Complainant of the range of penalty if convicted of the drug case charges, they did not explain the effect of a conviction on Complainant's probation violation case, including that probation would be revoked, Complainant would receive prison time, the probation violation increased the presumptive length of imprisonment in the drug case, and that the prison terms would be served consecutively rather than concurrently.

10. When the prosecutor and judge concluded the *Donald* advisement, Respondent did not elaborate; rather, he merely asked Complainant if he had any questions and what he wanted to do.

11. Complainant denied that he possessed narcotics, marijuana, or paraphernalia, or that he tried to smuggle marijuana into jail. He declined the plea offer and chose to go to trial. Complainant was convicted on Counts 1 and 3, and acquitted on Counts 2 and 4.

12. Complainant hired new counsel for sentencing for \$1,000 and was sentenced to concurrent prison terms of 9.25 years on Count 1 and 1.75 years on

Count 3, and consecutive prison terms of 9.25 years on Count I and 4 years in the probation case. A public defender was appointed to handle Complainant's appeal. The Court of Appeals affirmed Complainant's conviction and the Supreme Court denied review. Complainant hired new counsel to handle his Petition for Post Conviction Relief in which he alleged ineffective assistance of counsel by Respondent.

13. After a March 9, 2012 hearing, Judge Brnovich decided that Complainant did not meet his burden of proof with respect to his claim that Respondent did not discuss the initial plea offer with him, including the prospect of a lengthier prison term if Complainant rejected the plea and was found guilty at trial.

14. Judge Brnovich decided that Complainant did meet his burden of proof with respect to Respondent's ineffective assistance of counsel in failing to explain to Complainant the ramifications of a conviction on his probation case and the change in status of Complainant's case once the court granted the state's motion *in limine*. Judge Brnovich vacated the judgments of guilt and a short time later Complainant entered a plea by which he was sentenced to three years in prison with credit for time already served.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.4, and 8.4(d).

Respondent violated ERs 1.3 and 1.4 when he failed to counsel Complainant about the effect of the court's ruling on the state's motion *in limine* that eviscerated Complainant's defense on the most serious charge, and when he failed to communicate and explain to Complainant the ramifications of a conviction on his probation case and resulting length of imprisonment.

Respondent violated ER 8.4(d) by engaging in misconduct that was prejudicial to the administration of justice; the courts were forced to expend resources addressing Complainant's appeal and post conviction relief proceedings, and grant Complainant a new trial that otherwise would or may not have been necessary.

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss ERs 1.1 and 1.5.

RESTITUTION

None. Complainant charged that he paid Respondent \$10,000 for the representation but the clear and convincing evidence is that he paid Respondent only \$4,000 (on a \$5,000 fee agreement). Complaint also charged that he paid his Rule 32 lawyer \$40,000 to handle the petition for post-conviction relief, but the clear and convincing evidence is that he agreed to and actually did pay only \$15,000.

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 sanction is appropriate: Reprimand with assessment of costs.

LEGAL GROUNDS IN SUPPORT OF SANCTION

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

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

The parties agree that *Standards* 4.43, 7.3, 8.3, and 8.4 are the appropriate *Standards* given the facts and circumstances of this matter. *Standard* 4.43 states: "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* 7.3 states: "Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system."

Standard 8.3 provides: "Reprimand is generally appropriate when a lawyer: ... (b) has received an admonition for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client,

the public, the legal system or the profession." See "Aggravating Factors," below. *Standard 8.4* adds: An admonition is generally not an appropriate sanction . . . when a lawyer has engaged in the same or similar misconduct in the past.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent conducted himself negligently and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

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

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22:

(a) prior disciplinary offenses--

1. February 9, 2010, 09-1146, informal reprimand (currently, admonition) and probation, ERs **1.3**, 3.2, and **8.4(d)**;
2. October 28, 2009, 09-1218, Diversion (LOMAP and fee arbitration), ERs **1.4** and 5.1²;

²Although diversion is not considered "discipline" it is imposed for the commission of offenses. If diversion meets the criteria and is pursued, it serves to "remedy the immediate problem and likely prevent any recurrence of it." Rule 56(b), Ariz. R. Sup. Ct.

3. April 12, 2007, 06-1358, Diversion (LOMAP, TAEPP, EEP, and fee arbitration), ERs 1.4, 1.5, 1.15, and 1.16;
4. April 13, 2007, 06-1180, Diversion (LOMAP, TAEPP, EEP, ERs 1.2, 1.3, 1.4, 1.5, and 1.16; and
5. April 12, 2007, 06-0595, Diversion (LOMAP, TAEPP, EEP, and fee arbitration), ERs 1.4, 1.5, and 1.15.

(c) a pattern of misconduct;

(d) multiple offenses;

(g) refusal to acknowledge wrongful nature of conduct;

(h) vulnerability of victim;

(i) substantial experience in the practice of law (admitted 1981).

In mitigation:

Standard 9.32:

(b) absence of a dishonest or selfish motive;

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

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

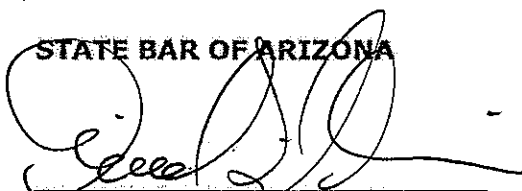
CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent

believe that the objectives of discipline will be met by the Imposition of the proposed sanction of reprimand and the Imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 10th day of December, 2013.

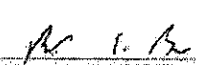
STATE BAR OF ARIZONA



David L. Sandweiss
Senior Bar Counsel

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

DATED this 9th day of December, 2013.



Robert C. Billar
Respondent

Approved as to form and content.

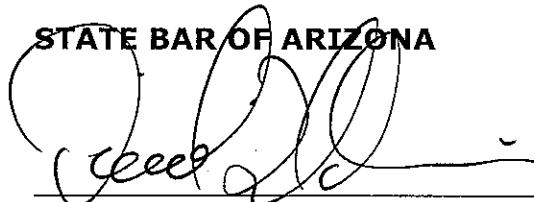
Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this _____ day of December, 2013.

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STATE BAR OF ARIZONA



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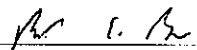
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STATE BAR OF ARIZONA

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Robert C. Billar
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
this ____ day of December, 2013.

Copies of the foregoing mailed/emailed
this 11th day of December, 2013, to:

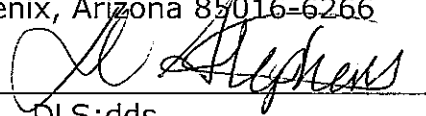
Robert C. Billar
Law Offices of Robert C. Billar
2700 North Central Avenue, Suite 320
Phoenix, Arizona 85004-1189
Email: billar@lbalawfirm.com
Respondent

Copy of the foregoing emailed
this 11th day of December, 2013, to:

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

Copy of the foregoing hand-delivered
this 11th day of December, 2013, to:

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

By: 

DLS:dds

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**ROBERT C. BILLAR,
Bar No. 006662,**

Respondent.

PDJ-2013-9085

FINAL JUDGMENT AND ORDER

State Bar No. 13-0497

FILED DECEMBER 20, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on December 11, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Robert C. Billar**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,364.10. 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 20th day of December, 2013.

William J. O'Neil

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 20th day of December, 2013.

Copies of the foregoing mailed/emailed
this 20th day of December, 2013, to:

Robert C. Billar
Law Offices of Robert C. Billar
2700 N. Central Ave., Ste. 320
Phoenix, Arizona 85004-1189
Email: billar@lbalawfirm.com
Respondent

Copy of the foregoing hand-delivered/emailed
this 20th day of December, 2013, to:

David L. Sandweiss
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Phoenix, Arizona 85016-6266
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Sandra Montoya
Lawyer Regulation Records Manager
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4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: MSmith