

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**JUDD S NEMIRO,
Bar No. 028491**

Respondent.

PDJ 2015-9080

FINAL JUDGMENT AND ORDER

[State Bar No. 14-3589]

FILED DECEMBER 22, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on December 10, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS ORDERED Respondent, **Judd S. Nemiro**, is suspended for thirty (30) days beginning January 21, 2016, for his conduct in violation of the Arizona Rules of Professional Conduct.

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

IT IS FURTHER ORDERED Mr. Nemiro 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 22nd day of December, 2015.

William J. O'Neil

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

Copies of the foregoing mailed/mailed
this _____ day of December, 2015, to:

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Phoenix, Arizona 85016-6266

by: MSmith

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

JUDD S. NEMIRO,
Bar No. 028491

Respondent.

No. PDJ-2015-9080

**DECISION ACCEPTING
CONSENT FOR DISCIPLINE**

[State Bar No. 14-3589]

FILED DECEMBER 22, 2015

A Probable Cause Order issued on July 27, 2015. The formal complaint was filed on August 24, 2015. An Agreement for Discipline by Consent ("Agreement") was filed by the parties on December 10, 2015, and submitted under Rule 57(a)(3), Ariz. R. Sup. Ct.¹. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate."

Rule 57(a)(2) requires admissions be tendered solely "...in exchange for the stated form of discipline...." Under that rule, the right to an adjudicatory hearing is waived only if the "...conditional admission and proposed form of discipline is 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 If the agreement is not accepted those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

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

Mr. Nemiro conditionally admits he violated Rule 42, ERs 3.1, 3.3(a)(1), and (b) and 8.4(c) and (d). The parties agree to a thirty day suspension and payment of costs within thirty days.

Under Rule 53(b)(3), notice of this Agreement was provided to the complainants by telephone on November 17, 2015. Complainants were notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. No objections were filed. The conditionally admitted misconduct is summarized.

Mr. Nemiro was hired to represent an individual in divorce proceedings and filed a petition for dissolution, knowing that client did not meet the jurisdictional residency requirements. He filed a petition knowing the jurisdictional requirements statements made were false. Fees of \$2,368 were assessed against him. Mr. Nemiro offered to pay those fees. His offer was declined. He refunded all attorney fees and costs paid to him by his client for a non-disclosure agreement and waiver of any malpractice claim by her.

The parties agree his actions were knowingly done and *Standard 6.12* is applicable. The mitigation is significant as Mr. Nemiro acted upon his remorse by his immediate refund of all costs and attorney fees paid by his client. He also timely moved to amend the original petition to file a petition for separation without charge. His full and complete disclosure and admission came at the first contact from the state bar.

IT IS ORDERED incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: a thirty (30) day suspension, and

costs, which shall be paid within thirty (30) days of the final judgment and order. These financial obligations shall bear interest at the statutory rate.

IT IS FURTHER ORDERED the Agreement is accepted. Judd S. Nemiro is suspended for thirty (30) days commencing January 21, 2016. Costs as submitted are approved for \$1,200.00 and are to be paid within thirty (30) days. Now therefore, a final judgment and order is signed this date.

DATED this December 22, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

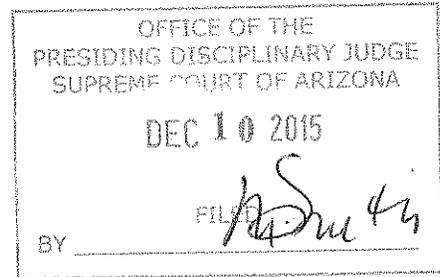
COPY of the foregoing e-mailed/mailed on December, 22, 2015, to:

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Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

JUDD S. NEMIRO,
Bar No. 028491,

Respondent.

PDJ 2015-9080

State Bar File No. **14-3589**

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Judd S. Nemiro, who is represented in this matter by counsel, Nancy A. Greenlee, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on July 27, 2015; a formal complaint was filed on August 24, 2015; and an answer was filed on September 21, 2015. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant(s) by telephone on November 17, 2015. 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 3.1, 3.3(a)(1) and (b), and 8.4(c) and (d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: 30-day suspension, beginning on January 21, 2016. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on April, 06, 2011.

COUNT ONE (File no. 14-3589/ Conrad)

2. In July 2014, Cassandra Conrad hired Respondent to represent her in divorce proceedings.
3. Prior to filing a petition for dissolution, Ms. Conrad informed Respondent she had resided in Arizona for less than ninety (90) days.

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.

4. If this matter were to proceed to a contested hearing, Respondent would testify that he told Ms. Conrad a petition for dissolution could not be filed because she did not meet the domicile requirement, but was ultimately convinced by Ms. Conrad to file the petition. Respondent would further testify that he explained to Ms. Conrad that if her husband filed a motion to dismiss based on a lack of jurisdiction, the court would likely dismiss the matter. Ms. Conrad made the decision to take the risk in the hope that her husband would not respond to the petition. Ms. Conrad would contest this testimony by stating that, while Respondent informed her of the domicile requirement, he counseled her to file the petition because doing so only constituted a slight risk if she believed her husband would not respond.

5. Respondent filed a petition for dissolution of marriage in Arizona on behalf of Conrad on July 21, 2014.

6. The petition for dissolution of marriage stated that Ms. Conrad met the jurisdictional requirement of residing in Arizona for at least ninety (90) days prior to the filing of the petition.

7. The petition was accompanied by a notarized verification in which Ms. Conrad avowed the information in the petition was true.

8. Respondent knew the provision in the petition regarding domicile jurisdiction was not true at the time Ms. Conrad signed the verification and at the time of filing.

9. Ms. Conrad's husband filed an Answer and requested dismissal for lack of jurisdiction on August 28, 2014.

10. Respondent filed a motion to amend the petition for dissolution to a petition for legal separation on August 29, 2014. A petition for legal separation does

not require that a party must have resided in Arizona for ninety (90) days prior to the filing of the petition.

11. The Court granted the motion to amend On September 3, 2014.

12. Respondent filed his response to the motion to dismiss on September 17, 2014.

13. The case was ultimately dismissed because the court determined that a child custody action was pending in the child's home state of Missouri and that Missouri was a more appropriate venue for the child custody action. The court denied Ms. Conrad's request for Arizona to take emergency jurisdiction over the child because no showing was made that emergency jurisdiction was necessary to protect the child pursuant to A.R.S. §25-1034(A).

14. The Court ordered \$2,368.00 in attorney's fees against Ms. Conrad.

15. Respondent offered to pay the attorney's fees award but Ms. Conrad declined the offer and stated that the fees were waived by agreement with her husband.

16. After the case was dismissed, Respondent refunded all attorney's fees and costs paid by Ms. Conrad, including the filing fee, administrative costs, and service of process costs in exchange for Ms. Conrad signing a non-disclosure agreement and waiving her right to any malpractice claim

17. Given that Respondent knew the court did not have jurisdiction because his client did not meet the domiciliary requirement, the petition for dissolution of marriage was not filed in good faith.

CONDITIONAL ADMISSIONS

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

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 3.1, 3.3(a)(1) and (b), and 8.4(c) and (d).

RESTITUTION

Restitution is not an issue in this matter as Respondent refunded all fees paid by Ms. Conrad.

SANCTION

Respondent and the State Bar of Arizona agree that, based on the facts and circumstances of this matter, the following sanctions are appropriate: 30-day suspension, beginning on January 21, 2016, and payment of costs.

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*.

Given the facts and circumstances of this matter, the parties agree that *Standard 6.12* is the appropriate *Standard*. *Standard 6.12* provides that suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, 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.

In this matter, Respondent knowingly filed a petition for dissolution containing a false avowal that Ms. Conrad resided in Arizona for at least 90 days prior to the filing. As a result of the proceedings in Arizona, Ms. Conrad was ordered to pay \$2,368.00 in attorney's fees and the court had to handle additional legal proceedings that would have otherwise been unnecessary.

The duty violated

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

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent knowingly filed a petition for dissolution containing false information 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 potential harm to the client and actual harm to the legal system.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(b): Dishonest or selfish motive

In mitigation:

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

Standard 9.32 (d) timely good faith effort to rectify the consequences of misconduct. Respondent amended the petition for dissolution to a petition for legal separation; he refunded to Ms. Conrad all fees and costs paid to him by her and he offered to pay the attorney's fees award against Ms. Conrad;

Standard 9.32 (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Respondent has freely and honestly admitted his mistake from the very first contact with the State Bar;

Standard 9.32 (f) inexperience in the practice of law. At the time the conduct occurred, Respondent had been in practice for about 2 ½ years;

Standard 9.32(l) remorse. Respondent's remorse is evidenced through the efforts that he took to correct the consequences of his mistake, i.e., admitting his mistake and refunding to Ms. Conrad all attorneys and costs that she paid.

Discussion

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

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: The goals of lawyer discipline are achieved by a 30-day suspension. A suspension impresses upon Respondent the seriousness of his actions thereby protecting the public and the Court from future instances of filing pleadings that contain false statements of fact or law, or that lack a good faith basis in law or fact.

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 30-day Suspension and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 10th day of December 2015

STATE BAR OF ARIZONA



Bradley F Perry
Staff Bar Counsel

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

DATED this _____ day of December, 2015.

Judd S Nemiro
Respondent

DATED this _____ day of December, 2015.

Nancy A Greenlee
Counsel for Respondent

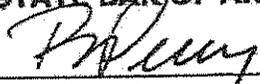
Approved as to form and content



Maret Vessella
Chief Bar Counsel

DATED this 10th day of December 2015

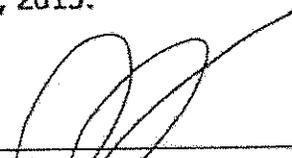
STATE BAR OF ARIZONA



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DATED this 10th day of December, 2015.



Judd S Netro
Respondent

DATED this 10th day of December, 2015.



Nancy A Greenlee
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 10th day of December, 2015.

Copy of the foregoing emailed
this 10th day of December, 2015, 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

Copy of the foregoing mailed/emailed
this 10th day of December, 2015, to:

Nancy A Greenlee
Attorney and Counselor at Law
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Email: nancy@nancygreenlee.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 10th day of December, 2015, to:

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

by: 
BFP: SAB

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Judd S. Nemiro, Bar No. 028491, Respondent

File No. 14-3589

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.

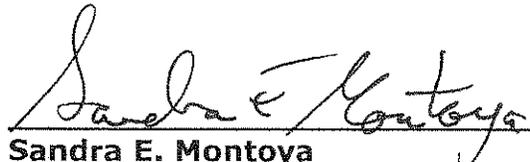
Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative 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



Sandra E. Montoya
Lawyer Regulation Records Manager

12-9-15

Date

EXHIBIT B