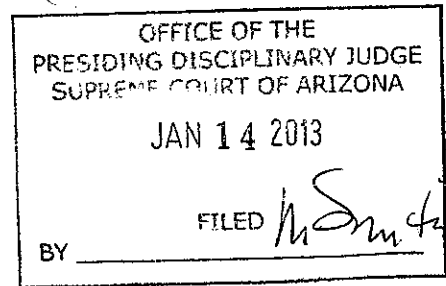


David L. Sandweiss, Bar No. 005501
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7272
Email: LRO@staff.azbar.org



Mark D. Rubin, Bar No. 007092
Mesch Clark & Rothschild PC
259 N. Meyer
Tucson, Arizona 85701-1090
Telephone: 520-624-8886
Email: mrubin@mccrazlaw.com
Respondent's Counsel

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

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

**Michelle Ann Armitage,
Bar No. 020351,**

Respondent.

PDJ-2012-9054

**AGREEMENT TO TERMINATE
STAY; AGREEMENT FOR
DISCIPLINE BY CONSENT**

State Bar No. 11-2855

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Michelle Ann Armitage, who is represented by counsel Mark D. Rubin, 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. The parties hereto, through their respective counsel undersigned, also agree that the stay currently in effect herein should be terminated.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ERs 1.2, 1.3, 1.4, 1.5, 5.5, 8.1(b), Rule 54. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Admonition. The State Bar waives the assessment of costs against Respondent.

FACTS

1. Respondent was admitted to practice law in Arizona on July 15, 2005. From June 14, 2011-September 23, 2011, and again since June 19, 2012, Respondent was and remains administratively suspended for non-payment of State Bar dues.

2. By order of this court dated August 15, 2012, this discipline proceeding was stayed pending the outcome of separate proceedings relating to Respondent's Petition for Transfer to Disability Inactive Status. Those proceedings are the subject of a separate consent agreement. The parties hereto agree that the August 15, 2012 stay order herein may be terminated.

3. On January 29, 2009, Complainant, Victoria A. Kolt (Ms. Kolt) retained Respondent to represent her and her husband in connection with a civil case involving breaches of contract, fiduciary duties; the covenant of good faith and fair dealing; conversion; fraud; accounting; and dissolution of a business.

4. Ms. Kolt paid Respondent \$3,200.00 over the course of the representation.

5. Were this matter to proceed to a contested hearing, Ms. Kolt would testify that Respondent told her that she would file and serve a suit within three weeks, whereas Respondent would testify that she told Ms. Kolt she would not be able to start work on her case for at least three weeks.

6. When Respondent failed to file suit as promised, Ms. Kolt tried to contact her by email, phone, and personal visits.

7. Respondent failed to respond to most of Ms. Kolt's efforts to communicate and when she did respond, she resorted to various excuses for not taking promised action. Those excuses included several computer crashes and hospitalizations.

8. Respondent finally filed suit on October 29, 2009. The opposing parties filed an Answer and Counterclaim, and a Motion to Dismiss Ms. Kolt's suit based on certain defects in the complaint Respondent prepared. However, the defects were cured in January 2010 and the case went forward.

9. There was very little activity in the case from January of 2010 to July of 2011.

10. In June of 2011, Respondent's license to practice law was suspended for nonpayment of bar dues. She did not inform Ms. Kolt of this.

11. Respondent failed timely to serve a mandatory disclosure statement or communicate with defense counsel.

12. Ms. Kolt's phone calls to Respondent were met with a message that the phone number no longer was a working number.

13. On July 20, 2011, the court set a hearing date of August 1 for the parties to appear with counsel to determine the status of Ms. Kolt's representation and whether the case could proceed to trial.

14. On August 1, 2011, Respondent filed a Motion to Withdraw, identifying her suspension as the reason. She asked that the court continue the trial date for at

least six months to allow her time to be reinstated and regain her health. Defense counsel did not object.

15. The court noted that Respondent may not represent Ms. Kolt while suspended, continued the trial to December 2011, set deadlines for completion of discovery and disclosure, and ruled that no depositions may be taken.

16. Respondent was reinstated to practice law on or about September 23, 2011, and the case proceeded to a settlement conference in October.

17. At the first session of the October settlement conference, Respondent did not appear. The judge reached her by phone, and Respondent appeared late.

18. A second session of the settlement conference occurred later in October and the case settled. The parties and defense counsel signed a Stipulation for Dismissal in early November. Respondent did not sign it.

19. Defense counsel filed a Notice with the court on November 28, 2011, stating that Respondent claimed that she did not have printing abilities but would find a place to print the stipulation, then sign and mail it to defense counsel. Respondent did not follow through, however, so defense counsel asked the court to accept the stipulation without Respondent's signature. The court did so, on December 1.

20. On December 5, 2011, Respondent sent a handwritten note to Ms. Kolt enclosing a signed copy of the stipulation, apologizing for the delay, and advising that she had a new phone number.

21. During the State Bar's screening investigation, Respondent requested extensions due to an unstated illness. The State Bar granted three extensions of the deadline by which she was to respond, from January 15, 2012 to February 27, 2012.

22. Respondent failed to respond.

23. On April 2, 2012, Respondent requested and was granted a 48-hour extension to respond to the bar counsel's Report of Investigation that was submitted to the Attorney Discipline Probable Cause Committee.

24. In her April 2, 2012, faxed request, Respondent stated she would provide a written response to bar counsel by 3:00 p.m., Wednesday, April 4, 2012.

25. Respondent failed to provide a response by April 4, 2012, and did not make any further attempts to communicate with bar counsel.

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 her conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 1.4, 1.5, 5.5, 8.1(b), and Rule 54, Ariz. R. Sup. Ct.

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Admonition

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 her duties to her client and the profession.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent's mental state was "knowing."

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual harm to the client in the form of delay.

The *Standards* applicable herein are:

ERs 1.2-1.4

Standard 4.42

Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client

ERs 1.5, 5.5, and 8.1(b)

Standard 7.2

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

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*

- (d) multiple offenses;
- (i) substantial experience in the practice of law.

In mitigation: *Standard 9.32*

- (a) absence of a prior disciplinary record (Respondent has two administrative suspensions for failure to pay bar dues but no formal disciplinary history);
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems (Respondent provided documentary medical and psychiatric evidence to the State Bar's satisfaction of personal, emotional, and physical problems and disability);
- (h) physical disability; and
- (l) remorse.

Discussion

The parties conditionally agree that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. While the presumptive sanction in this matter is suspension, Respondent provided compelling documentary evidence of significant mitigation that warrants reducing her sanction substantially. 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

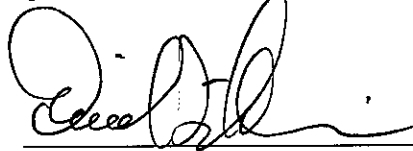
within the range of appropriate sanction and will serve the purposes of lawyer discipline.

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 admonition. A proposed form order is attached hereto as Exhibit "A."

DATED this 14th day of January, 2013.

STATE BAR OF ARIZONA

A handwritten signature in black ink, appearing to read "David L. Sandweiss", written over a horizontal line.

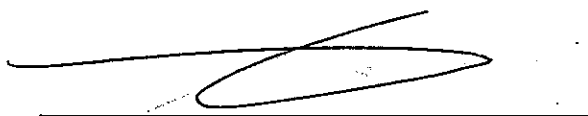
David L. Sandweiss
Senior Bar Counsel

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

DATED this 11th day of January, 2013.


Michelle Ann Armitage
Respondent

DATED this 10th day of January, 2013.


Mark D. Rubin
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
this ____ day of _____, 201__.

Copies of the foregoing mailed/emailed
this ____ day of _____, 201__, to:

Mark D. Rubin.
Mesch Clark & Rothschild PC
259 North Meyer
Tucson, Arizona 85701-1090
Email: mrubin@mcrazlaw.com
Respondent's Counsel

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

DATED this _____ day of _____, 201__.

Michelle Ann Armitage
Respondent

DATED this _____ day of _____, 201__.

Mark D. Rubin
Counsel for Respondent

Approved as to form and content

Maret Vessella
Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 14th day of January, 2013.

Copies of the foregoing mailed/emailed
this 14th day of January, 2013, to:

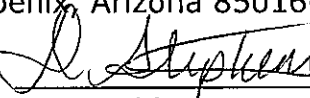
Mark D. Rubin
Mesch Clark & Rothschild PC
259 North Meyer
Tucson, Arizona 85701-1090
Email: mrubin@mcrazlaw.com
Respondent's Counsel

Copy of the foregoing emailed
this 14th day of January, 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 14th day of January, 2013, to:

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

By: 
DLS:dds