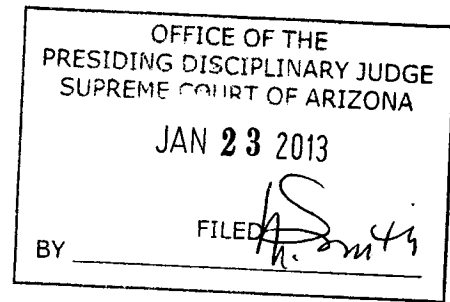


Shauna R. Miller, Bar No. 015197
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7247
Email: LRO@staff.azbar.org



Diana McCulloch, Bar No. 009885
McCulloch Law Offices, PLLC
4635 South Lakeshore Drive, Suite 120
Tempe, Arizona 85282-7127
Telephone: (480) 963-5200
Email: mccullochslaw@gmail.com
Respondent

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

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

DIANA MCCULLOCH
Bar No. 009885

Respondent.

PDJ-2012-9090
[State Bar File No. 12-0349]

**AMENDED AGREEMENT FOR
DISCIPLINE BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Diana McCulloch, who has chosen not to seek the assistance of counsel, and pursuant to the Presiding Disciplinary Judge's (PDJ) Amended Order Recommending Modification of Consent for Discipline dated December 28, 2012, hereby submit their Amended 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.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, Ariz.R.Sup.Ct., ER(s) 3.4(c), 4.4(a), and 8.4(d). 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

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was an active member of the State Bar of Arizona. She was admitted to practice on October 20, 1984.

COUNT ONE (Franks)

2. On February 28, 2011, David Goodman (Mr. Goodman) filed a petition for paternity, child custody, parenting time and child support against Julie Robinson (Ms. Robinson), who had a child with Mr. Goodman.

3. Emile J. Harmon (Mr. Harmon) represented Ms. Robinson in Maricopa County Superior Court, FC2011-001345; Respondent was co-counsel. The matter was set for trial on October 20, 2011.

4. In a prior unrelated matter, Mr. Goodman obtained a divorce from Betsy Pregulman (Ms. Pregulman) in Maricopa County Superior Court, FC2005-002212.

5. In Ms. Pregulman's matter, a custody evaluation regarding Mr. Goodman was performed and placed under seal by the Court. A separate

¹Respondent 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.

confidential juvenile proceeding was also undertaken which resulted in the termination of Mr. Goodman's parental rights to his child in common with Ms. Pregulman.

6. Sometime in August 2011, Ms. Robinson informed Mr. Harmon and Respondent that Mr. Goodman's parental rights had been severed in Ms. Pregulman's matter.

7. On October 13, 2011, Respondent requested and obtained a subpoena duces tecum (subpoena) demanding that a nonparty, Ms. Pregulman, provide a copy of "any and all custody evaluations relating to FC2005-002212" and "any and all orders relating to custody and termination of parental rights of David Goodman in relation to FC2005-002212."

8. On October 19, 2011, attorney Todd Franks (Mr. Franks), on behalf of Ms. Pregulman, filed a request to quash Respondent's subpoena on the grounds that the custody evaluation was protected by order of the court, that Respondent did not take appropriate steps to unseal the records, and that Ms. Pregulman would be subjected to fines and contempt proceedings if she complied with the subpoena.

9. On October 20, 2011, prior to the start of the trial, oral argument was held regarding Mr. Frank's motion. The Court granted Mr. Frank's motion to quash and took his request for attorney's fees under advisement.

10. On December 13, 2011, the Court granted judgment to Ms. Pregulman and against Respondent and Mr. Harmon, jointly and severally, for \$4,573.80. The Court ordered that the judgment amount was to be paid to Ms. Pregulman within thirty days.

11. On December 27, 2011, Mr. Franks wrote a letter to Respondent and Mr. Harmon requesting confirmation that they would pay the fees as ordered by the Court by the imposed deadline. Respondent did not respond to Complainant's letter.

12. Neither Respondent nor Mr. Harmon paid the court ordered attorney's fees by January 12, 2012. If this matter were to proceed to hearing, Respondent would testify that she did not pay the court ordered fee because she did not have the money and at the time she was in bankruptcy proceedings. For purposes of this agreement, the State Bar does not contest Respondent's proffered testimony.

13. On February 23, 2012, Mr. Franks petitioned the Court to initiate contempt proceedings against Respondent and Mr. Harmon for failure to pay the court ordered sanction.

14. On February 27, 2012, Mr. Harmon paid \$6,519.68 to Ms. Pregulman encompassing the court ordered sanction, interest, and additional costs for Mr. Frank's fees in preparing the petition for contempt.

15. On March 1, 2012, Mr. Franks withdrew his request for contempt proceedings.

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 ER(s) 3.4(c), 4.4(a), and 8.4(d).

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: Reprimand

LEGAL GROUNDS IN SUPPORT OF SANCTION

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

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

The parties agree that *Standard* 6.2 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 6.22 provides that Suspension is generally appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding. *Standard* 6.23 provides that Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order

or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. Respondent issued the subpoena *duces tecum* (SDT) instead of using the proper procedure to unseal the custody evaluation sealed in the 2005 dissolution proceeding to obtain the requested documents. Respondent's failure to follow proper procedures to unseal documents caused delays in the system, unnecessarily used court resources, and inconvenienced a nonparty that could not comply with the SDT based on the court orders/confidential nature of the documents requested. Respondent was ordered to pay attorney's fees, but failed to comply with that order because she had recently filed for bankruptcy.

The duty violated

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

The lawyer's mental state

For purposes of this agreement, 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 legal system and the public.

Aggravating and mitigating circumstances

The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22(a) prior disciplinary offenses. Except for the censure (reprimand) Respondent received over two years ago, all of her discipline is fairly

old, between seven and sixteen years ago. The most current sanction did not involve the same conduct.

a) On August 19, 1996, Respondent received an Order of Informal Reprimand in State Bar file no. 96-0126, for filing a verification containing a false response in violation of Rule 42, Ariz. R. Sup. Ct., ERs 8.4(c) and 8.4(d) (1996).

b) On October 27, 1998, Respondent received an Informal Reprimand in State Bar file no. 98-0735, for attempting to have her client sign a backdated fee agreement in violation of Rule 42, Ariz. R. Sup. Ct., ER 8.1(a) (1998).

c) On May 1, 2002, Respondent was suspended for six months with probation for two years following reinstatement by Judgment and Order of the Supreme Court of Arizona file no. SB-02-0024-D, State Bar file no. 99-0044; for refusing to provide any records for her trust account during the State Bar's investigation of an overdraft on the trust account until compelled to provide records she provided some records though she did not maintain complete records since 1997 in violation of Rule 42, Ariz. R. Sup. Ct., ERs 1.15 & 8.1(b), and Rules 43, 44, and 51, Ariz. R. Sup. Ct. (1999).

d) On April 15, 2003, Respondent received an Order of Restitution in State Bar file no. 02-0366; for charging an unreasonable fee and failing to respond to the State Bar's screening investigation in violation of Rule 42, Ariz. R. Sup. Ct., ERs 1.5, 1.6, & 8.1, and Rule 51, Ariz. R. Sup. Ct. (2002).

e) On November 10, 2003, Respondent received an Order of Informal Reprimand (and restitution), Restitution and Costs in State Bar file no. 03-1391; for refusing to repay certain monies she received from a conservator estate after ordered to make repayments by the court and further failed to respond to the screening investigation in violation of Rule 42, Ariz. R. Sup. Ct., ERs 1.5, 3.4(c), & 8.1, and Rule 51, Ariz. R. Sup. Ct. (2003).

f) On August 17, 2011, Respondent was censured in PDJ2011-9020, State Bar file no. 10-1631; for using a fee agreement containing various contradictory terms that was confusing and failing to provide a copy of her client file to her client in a timely manner in violation of Rule 42, Ariz. R. Sup. Ct., ERs 1.5(b) and 1.16(d) (2010).

Standard 9.22(i) substantial experience in the practice of law. Respondent has been an Arizona attorney for 21² years.

In mitigation:

Standard 9.32(b) absence of a dishonest or selfish motive.

Standard 9.32(c) personal or emotional problems. Respondent was in bankruptcy during the time period of the misconduct and did not have the funds to pay the court ordered attorney's fees.

Standard 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

Standard 9.32(m) remoteness of prior offenses. Respondent has been sanctioned before for similar misconduct; however, it was almost 10 years ago.

Discussion

The parties have conditionally agreed that a Reprimand, rather than Suspension, is the appropriate sanction 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

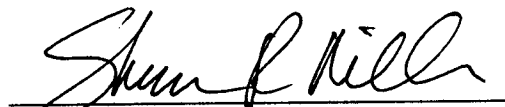
The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of

² It would have been 27 years, but Respondent did not apply to be reinstatement from the 6-month suspension for 6 years.

discipline will be met by the imposition of the proposed sanction of Reprimand and the imposition of costs and expenses.

DATED this 23rd day of January, 2013.

STATE BAR OF ARIZONA



Shauna R. Miller
Senior Bar Counsel

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

DATED this 18 day of January, 2013.



Diana McCulloch
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 23rd day of January, 2013.

Copies of the foregoing mailed/emailed
this 23rd day of January, 2013, to:

Diana McCulloch
McCulloch Law Offices PLLC
4635 South Lakeshore Drive, Suite 120
Tempe, Arizona 85282-7127
Email: mccullochslaw@gmail.com
Respondent

Copy of the foregoing emailed
this 23rd 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 23rd day of January, 2013, to:

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

by: Ariana Quintz
SRM:aq