

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

CYNTHIA L. BEST,
Bar No. 014731

Respondent.

PDJ-2016-9122

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 16-0318 & 16-0820]

FILED MAY 9, 2017

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on April 21, 2017, under Rule 57(a), Ariz. R. Sup. Ct., accepted the parties' proposed agreement.

Accordingly:

IT IS ORDERED Respondent, **CYNTHIA L. BEST, Bar No. 014731**, is suspended from the practice of law for sixty (60) days for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents effective thirty (30) days from the date of this order.

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

IT IS FURTHER ORDERED Ms. Best shall pay the costs and expenses of the State Bar of Arizona for \$1,232.01, within thirty (30) days from this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

DATED this 9th day of May, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 9th day of May, 2017, to:

David L. Sandweiss,
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

J. Scott Rhodes
Jennings Strouss & Salmon, PLC
One E. Washington St., Suite 1900
Phoenix, AZ 85004-2554
Email: srhodes@jsslaw.com
Respondent's Counsel

by: [AMcQueen](#)

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

CYNTHIA L. BEST,
Bar No. 014731

Respondent.

PDJ-2016-9122

**DECISION AND ORDER
ACCEPTING DISCIPLINE BY
CONSENT**

[State Bar Nos. 16-0318 & 16-0820]

FILED MAY 9, 2017

An Agreement for Discipline by Consent was filed on April 21, 2017 pursuant to Rule 57(a), Ariz. R. Sup. Ct. The complaint was filed on December 2, 2016. The answer was filed on January 11, 2017.

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 If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Ms. Best has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. Notice of this Agreement and an

opportunity to object as required by Rule 53(b)(3), Ariz. R. Sup. Ct., was provided by letter and email to the complainants on April 21, 2017. No objections have been filed.

Ms. Best conditionally admits her conduct violated Rule 42, ERs 3.1 (Meritorious Claims and Contentions, 3.4(c) (Fairness to Opposing Party and Counsel), 4.4(a) (Respect for Rights of Others), and 8.4(d) (Conduct Prejudicial to the Administration of Justice). Upon acceptance of the Agreement, Ms. Best agrees to accept a suspension for sixty (60) days.

Because of the responsible steps taken by Ms. Best there are no other terms. Remorse is best demonstrated by action. Ms. Best has paid the attorney fees assessed against her client by the Court and completed six hours of continuing legal education on family court rules of procedure. She also paid the judgment entered personally against her for attorney fees by the Court of Appeals. She also agrees to pay the costs and expenses of the disciplinary proceeding for \$1,232.01 within thirty (30) days. These would all have typically been terms of probation which are made unnecessary by her steps of remedial action. There are no costs of the Office of the Presiding Disciplinary Judge.

The twenty page Agreement details a factual basis to support the conditional admissions. Ms. Best conditionally admits to the single count complaint. Those facts are summarized.

Ms. Best was licensed to practice law in Arizona on May 15, 1993. She represented a mother in a family law case in Maricopa County Superior Court. At issue were legal decision-making and parenting time regarding the parties' two minor children, spousal maintenance and child support.

Father moved for temporary orders regarding parenting time and legal decision making. Ms. Best sought the employment records of father by subpoena and set a deposition. Errors followed, including setting the production date for the employment records for April 24, well after the April 11 setting for the temporary orders hearing. This was compounded when Ms. Best moved for attorney fees against the employer who had agreed to supply the records before the hearing despite the stated production date. Ms. Best did not serve the employer with her motion seeking attorney fees against the employer. The motion contained no certification of a good faith effort to resolve the dispute.

When the attorney for the employer was informed by the Father's attorney of the motion, that attorney demanded Ms. Best withdraw the motion. She refused. A response to the motion was filed. The employer produced the 148 pages of personnel documents on April 9. Ms. Best filed a reply to the response and then a sur-reply which was stricken. The motion of Ms. Best was denied and the Court assessed her client with attorney fees of \$3,000.

Ms. Best appealed the order and filed opening and reply briefs totaling 85 pages. The Court of Appeals affirmed the award and found “no motion should ever have been filed.” Given the frivolous nature of the appeal, the Court of Appeals assessed attorney fees personally against Ms. Best for \$13, 286.50 and costs of \$140.00. Both that order and the judgment against her client were paid within weeks by Ms. Best.

STANDARDS AND SANCTIONS ANALYSIS

Rule 58(k) provides sanctions shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, (“Standards”). The parties agree under that each of the violations by Ms. Best warrant a suspension under *Standards* 6.22 and 7.2. Ms. Best acted knowingly and her conducted violated her duties to her client, to the legal system and as a professional. The parties acknowledge there was actual harm to the client of Ms. Best and to the legal system.

In aggravation under *Standard* 9.22(a), Ms. Best has prior disciplinary offenses, 9.22(c) a pattern of misconduct, 9.22(d) multiple offenses, and 9.22(i) substantial experience in the practice of the law. In mitigation under *Standard* 9.32(k), substantial penalties or sanctions were imposed against Ms. Best.

IT IS ORDERED accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: sixty (60) days suspension and costs and expenses of the disciplinary proceeding totaling

\$1,232.01, to be paid within thirty (30) days from this date. There are no costs incurred by the office of the presiding disciplinary judge. A final judgment and order is signed this date.

DATED this May 9, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
on May 9, 2017, to:

David L. Sandweiss, Esq.
Senior Bar Counsel
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: LRO@staff.azbar.org

J. Scott Rhodes, Esq.
Jennings, Strouss & Salmon, PLC
One East Washington St., Suite 1900
Phoenix, AZ 85004-2554
Email: srhodes@jsslaw.com
Attorney for Respondent

by: AMcQueen

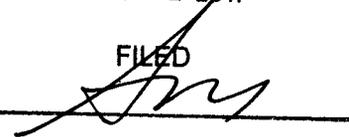
David L. Sandweiss, Bar No. 005501
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7250
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

APR 21 2017

FILED

BY



J. Scott Rhodes, Bar No. 016721
Jennings Strouss & Salmon PLC
One E. Washington St, Ste 1900
Phoenix, AZ 85004-2554
Telephone 602-262-5862
Email: srhodes@jsslaw.com
Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**CYNTHIA L. BEST
Bar No. 014731**

Respondent.

PDJ 2016-9122

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

State Bar File Nos. 16-0318 and
16-0820

The State Bar of Arizona and Respondent Cynthia L. Best, who is represented by counsel J. Scott Rhodes, hereby submit their Agreement for Discipline by

Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.¹ 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.

Pursuant to Rule 53(b)(3), bar counsel provided notice of this agreement to the complainants by letter and email on April 21, 2017. 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. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ERs 3.1 (Meritorious Claims and Contentions), 3.4(c) (Fairness to Opposing Party and Counsel), 4.4(a) (Respect for Rights of Others), and 8.4(d) (Conduct Prejudicial to the Administration of Justice). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Suspension for 60 days. Under other circumstances, the State Bar would insist that

¹ All references herein to rules are to the Arizona Rules of the Supreme Court unless stated otherwise.

Respondent satisfy probationary terms consisting of paying the trial court judgment for attorney's fees assessed against Respondent's client (Ms. Davis) in the underlying family law case in the sum of \$3,000 plus interest, and to attend six hours of continuing legal education, in addition to the annual CLE requirement, on family court rules of procedure. Respondent, however, agreed to pay and has paid the judgment, and has attended or, by the time this consent agreement is presented to this court will have attended, six hours of relevant CLE on that subject. The parties, therefore, agree that the purposes of lawyer discipline do not require adding probation to Respondent's suspension. 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.² The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

² 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.

CONDITIONALLY ADMITTED FACTS

COUNT ONE of ONE

A. State Bar File no. 16-0318

**Judicial Referral – The Hon. Peter Swann, Arizona Court of Appeals, Div.
One**

B. State Bar File no. 16-0820

Jessica Post

1. Respondent was licensed to practice law in Arizona on May 15, 1993.
2. Respondent represented Elizabeth Davis against Ms. Davis's ex-husband Ryan Davis in a family law case in Maricopa County Superior Court, Case No. FC2014-051436. At issue in the case were legal decision-making and parenting time regarding the Davis' two minor children, along with spousal maintenance and child support from Mr. Davis to Ms. Davis. Ms. Davis was unemployed and alleged that Mr. Davis became violent when he abused alcohol.
3. On March 5, 2014, Mr. Davis filed a Motion for Temporary Orders RE: Legal Decision Making and Parenting Time. By minute entry dated March 10, 2014, the trial court set a hearing on temporary orders for April 11, 2014.
4. To prepare for the temporary orders hearing, Respondent decided to obtain Mr. Davis's employment records from The Desert Highlands Association ("DHA"), to determine his income regarding the issues of spousal maintenance and

child support and gather evidence on Mr. Davis's fitness as a parent specifically relate to abuse of alcohol or drugs. On March 24, 2014, Respondent's law firm served a Notice of Deposition and a subpoena on DHA, directing it to produce several categories of personnel items since Mr. Davis's hiring date.

5. The Notice of Deposition was issued pursuant to Rules 26 and 30, Ariz. R. Civ. P., and 51 and 57, Ariz. R. Fam. L. P. The subpoena was issued pursuant to Rules 45, Ariz. R. Civ. P., and 52, Ariz. R. Fam. L. P. The production date specified in both the Notice of Deposition and the subpoena was April 21, 2014, ten days beyond the date the trial court set for the temporary orders hearing. The production date was an error.

6. On March 25, 2014, the day after serving DHA with the Notice of Deposition and subpoena, Respondent recognized the error because the temporary orders hearing already had been set for April 11 and, therefore, the April 21 records production date would be too late for the trial. March 25 was the first date Respondent reviewed the subpoena, which had been drafted and signed by an associate. Respondent had her associate contact DHA's general counsel to inform him of the mistake and request the documents in time for the April 11, 2014 trial. DHA hired the law firm Fennemore Craig to address subpoena-related issues with

Respondent. Fennemore Craig assigned the case to attorney Jessica Post, Complainant in matter no. 16-0820. On April 1, 2014, Respondent's firm received a letter from Ms. Post.

7. Respondent told Ms. Post that she needed the records for the April 11, 2014, hearing. Ms. Post asked Respondent why she needed the records for an April 11 hearing when the Notice of Deposition and subpoena called for a production date of April 21. Although there had been prior communications with DHA's general counsel on the reason for the need for accelerated production, Respondent explained it in an email to Ms. Post on April 4, 2014, stating:

It happened because we originally thought 30 days was reasonable to respond but then the judge set a temporary orders hearing for April 11 and that sped up the timetable.

8. The trial court had set the April 11 hearing on March 10, 2014, two weeks before Respondent served the Notice of Deposition and subpoena. In her appellate reply brief on Respondent and Ms. Davis's subsequent appeal, Respondent argued: "Mother's attorney did not mislead the Association; the Association misread the e-mail." The Arizona Court of Appeals later concluded that the rationale Respondent expressed for accelerating the deadline for DHA to respond to the subpoena was false.

9. Respondent's subpoena called for production of:

All non-privileged Documents or electronically stored communications pertaining to RYAN DAVIS, including but not limited to:

1. Human Resources Records;
2. Corrective actions;
3. Financial records;
4. Performance reviews;
5. Security reports and videos;
6. Memoranda; and
7. Correspondence since his date of hiring.

10. In a letter dated April 1, 2014, Ms. Post told Respondent that DHA agreed to produce Mr. Davis's Human Resource Records save for confidential medical information; Corrective Actions; W-2 Forms, and other "financial records" if Respondent described them more particularly; and Performance Reviews. Ms. Post also agreed to Respondent's accelerated timetable but objected to some of the requests. She informed Respondent that the subpoena as written would have required DHA to review more than 700 hours of security video footage and search every email sent during Mr. Davis's employment. Upon learning that information, Respondent immediately agreed not to require DHA to respond to the video and email requests.

11. Ms. Post asked Respondent and Mr. Davis (Respondent's opposing party) to agree to a protective order in view of the sensitive nature of its personnel

files and, later, for a HIPPA release. Ms. Post asked Respondent to prepare the protective order. In Respondent's experience, protective orders are rarely used in Family Law cases, and she explained to Ms. Post that she was not familiar with them and did not understand the concept of producing documents pursuant to a protective order with the opposing party's signature. Ms. Post then prepared a stipulation in lieu of a protective order, to which Respondent agreed and signed.

12. Although Respondent and Ms. Post had an ongoing dialogue over the disclosure of Mr. Davis's DHA records, Respondent grew concerned about the approaching date of the temporary orders hearing. Respondent told Ms. Post in an April 3, 2014, email that she would file an expedited motion to enforce the subpoena "so we do not run out of time." DHA already had agreed to produce most of the records before the April 11, 2014, hearing date.

13. On April 3, 2014, Respondent filed the motion ("Expedited Motion for the Court to Order Disclosure of Petitioner's File"), in which she asked the trial court for an order directing DHA to produce all requested materials by April 8, 2014. In her motion, Respondent asked the court for an order to produce the requested documents and that no protective order was required. The motion also requested an

award of attorney's fees against DHA. Respondent did not serve the motion on Ms. Post.

14. Were this matter to proceed to a contested hearing, Respondent would contend that she believed that she was not required to serve Ms. Post with the motion because the motion was aimed at the opposing party, not at DHA. She would further claim that she intended to serve Ms. Post (or at least provide her with a courtesy copy), but inadvertently neglected to do so. The State Bar would contend: (a) that Respondent's motion as drafted and served was frivolous; (b) that the motion was in actuality aimed at DHA because, first, in her April 3, 2014 email, Respondent had told Ms. Post, but not the opposing party, that she intended to file the motion; second, the Notice of Deposition and Subpoena that were the objects of the motion were served on and directed to DHA, not the opposing party; third, in her motion, Respondent asked for a court order to produce the requested materials, which, given that the subpoena was directed to DHA, could only reasonably have been interpreted as a request for an order directed at DHA; fourth, in the context of the subpoena, Respondent's request for attorney fees could reasonably have been interpreted as attorney's fees against DHA, not the opposing party; sixth, although in her later appeal, Respondent claimed, "The Expedited Motion was not against the

Association specifically. It was not against any party specifically,” she also continued to assign blame to DHA, stating: “The Association was placing conditions and roadblocks on Mother receiving the information,” and, on page 50 of her Opening Brief, she argued: “The Association should be ordered to pay Mother’s attorney fees and costs for defending this matter in the court below and for being forced to bring this appeal [emphasis added].” If this case went to a hearing, Respondent would accept that the trial court and Court of Appeals ruled against her, but would argue she did not intend to harm DHA but only intended to protect her client’s interests as the hearing quickly was approaching.

15. While Respondent did attach emails with Ms. Post demonstrating the two lawyers’ communications about the production, Respondent did not certify in writing that she had made a good faith effort to resolve the dispute. Respondent claims that she believed at the time that, due to the way she had stated the basis of the motion, such a certification was not required. Both the trial court and Court of Appeals later disagreed.

16. Ms. Post learned of Respondent’s motion on April 7, 2014, through Mr. Davis’s lawyer. Upon learning about the motion, Ms. Post demanded that Respondent immediately withdraw it. Respondent refused to immediately withdraw

her motion and told Ms. Post that, when she received DHA's personnel file on Mr. Davis, she would withdraw the motion. Ms. Post imposed a deadline on Respondent to withdraw the motion or else she would have to file a response to the motion and request attorney's fees.

17. Respondent did not withdraw the motion. Ms. Post filed a response the morning of April 8, 2014, in which she requested sanctions, including attorney's fees. On April 9, 2014, Ms. Post produced 148 pages of personnel documents to Respondent.

18. On April 10, 2014, the trial court denied Respondent's motion and assessed \$3,000 in attorney's fees against Ms. Davis. The trial court denied Respondent's motion in part because: (a) Respondent did not serve it on DHA, stating that was a violation of applicable rules of procedure; (b) Respondent did not certify in writing that she made a good faith effort to resolve the dispute, stating that was a violation of Rule 65(A) (2) (c), Ariz. R. Fam. L. P.; (c) the motion was premature given the April 21, 2014, deadline contained in the Notice of Deposition and subpoena.³

³ When the judge denied Respondent's discovery motion on April 10 as premature, the evidence before him was that the compliance date still was April 21.

19. Ms. Post, on DHA's behalf, filed a request for an award of attorney's fees with the trial court. Respondent filed a response, and Ms. Post filed a reply. Thereafter, Respondent filed a sur-reply, which the trial court struck as unauthorized under the applicable rules of procedure. The trial court awarded DHA \$3,000 in attorney's fees against Respondent's client, Ms. Davis.

20. Respondent continued to represent Ms. Davis on appeal *pro bono* to The Arizona Court of Appeals, Division One, in "*In re the Award of Attorney Fees: Elizabeth A. Davis, Respondent/Appellant v. Desert Highlands Association, Appellee,*" No. CV14-0668 FC.

21. Respondent filed Opening and Reply Briefs totaling 85 pages.

22. The Court of Appeals upheld the trial court's ruling that Respondent failed to take reasonable steps to avoid imposing an undue burden or expense on DHA, in violation of Rule 52.C.1. Ariz. R. Fam. L. P., and affirmed the award of attorney's fees against Ms. Davis. In so holding, the appellate court stated:

These facts support the conclusion by the trial court that Best did not take reasonable actions to avoid imposing undue burden or expense. Indeed, given the high level of cooperation that Best received from the Association, it is difficult to discern how the discovery dispute was anything other than imaginary. Put simply, no motion should ever have been filed.

23. The Court of Appeals emphasized a lawyer's obligation to tread lightly on non-parties to litigation from whom discovery is sought.

24. "Given the frivolous nature of the appeal," the Court of Appeals assessed attorney's fees of \$13,286.50 and costs of \$140.00 against Respondent only. After settlement negotiations with Ms. Post, Respondent paid the assessment against her five weeks after the Court of Appeals issued its mandate. As part of the resolution of this Complaint, on March 28, 2017, Respondent delivered a check to DHA for \$3,400 in full satisfaction of the judgment against Ms. Davis.

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 her conduct violated Rule 42, ERs 3.1 (Meritorious Claims and Contentions), 3.4(c) (Fairness to Opposing Party and Counsel), 4.4(a) (Respect for Rights of Others), and 8.4(d) (Conduct Prejudicial to the Administration of Justice).

CONDITIONAL DISMISSALS

The State Bar conditionally agrees to dismiss the charges that Respondent violated Rule 42, ERs 1.1, 3.3, 4.1(a), and 8.4(c). ER 1.1 is reserved for cases of chronic incompetence and does not apply to isolated conduct. Also, Respondent has addressed concerns related to ER 1.1 by voluntarily attending six hours of CLE (in addition to the annual CLE requirement) on family law rules of procedure. Were the case to proceed to a hearing, the State Bar would offer evidence that Respondent's email to Ms. Post explaining her rationale for accelerating the compliance date for the Notice of Deposition and Subpoena Duces Tecum was false and that Respondent thereby violated ERs 3.3, 4.1(a), and 8.4(c). The State Bar also would offer evidence that the email was a factor in the Court of Appeals' decision to assess sanctions against Respondent and uphold the trial court's order against Ms. Davis. Were this matter to be tried, Respondent would offer evidence that her email as literally composed did not accurately express what she wanted to communicate to Ms. Post but that she did not intentionally try to mislead her. Respondent's associate attorney had previously contacted house counsel for DHA and told him of the subpoena's mistaken compliance date, Respondent thought Ms. Post already knew about the error, and Respondent hurriedly but in good faith wrote the email explaining in

overly abbreviated fashion the reason that she needed expeditious compliance with the subpoena. In view of the challenge posed by the State Bar's burden of proof to establish violations by clear and convincing evidence, it conditionally dismisses the ER 3.3, 4.1(a), and 8.4(c) charges in exchange for Respondent's agreement to enter into this consent.

RESTITUTION

Restitution is not an issue in this matter. Respondent has paid the judgment for attorney's fees that the trial court assessed against Ms. Davis, and also paid the judgment the Court of Appeals entered against her personally.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, a sanction calling for a suspension of 60 days and payment of costs, as detailed above, is appropriate. 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 her duties to her client, to the legal system, and as a professional.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent knowingly engaged in the above-described conduct, and that such conduct constitutes the ethical violations cited herein. Were this matter to proceed to a contested hearing,

Respondent would contend that she did not know at the time that her 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 Respondent's client and to the legal system.

The parties agree that the following *Standards* are appropriate given the facts and circumstances of this matter.

Standard 6.22 - Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

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 a short-term suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22--

- (a) prior disciplinary offenses;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (i) substantial experience in the practice of law;

In mitigation:

Standard 9.32--

- (k) imposition of other penalties or sanctions – Respondent paid the \$13,000 sanction that the Court of Appeals assessed against her;
- (l) remorse – Respondent paid the judgment of \$3,000 plus interest that the trial court assessed against her client even though it was not Respondent’s legal responsibility. Also, if and to the extent that Respondent’s associate attorneys played a role in the underlying case and instigated court-imposed sanctions against Respondent and her client, Respondent takes responsibility for all of the conduct covered in and underlying this Consent as the attorney responsible for oversight of other lawyers employed by her firm.

Discussion

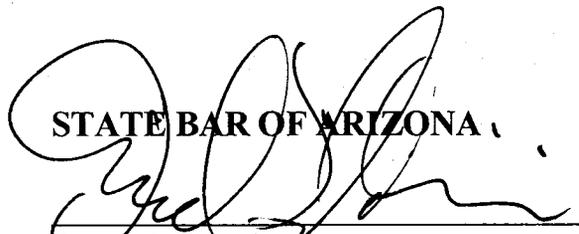
The parties conditionally agree that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate. In substance if not numerically, the aggravating and mitigating factors offset. Concerns about Respondent’s competence were addressed by her voluntary attendance at a relevant CLE program, and she has demonstrated remorse by paying a sanctions award for which she was not otherwise liable (in addition to paying the substantial sanctions awarded against her). 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 a 60-day suspension and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 21st day of April, 2017.

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. 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.

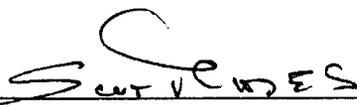
DATED this 21 day of April, 2017



Cynthia L. Best
Respondent

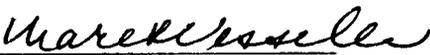
DATED this 21st day of April, 2017.

Jennings Strouss & Salmon PLC



J. Scott Rhodes
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 21st day of April, 2017.

Copy of the foregoing emailed
this 21st day of April, 2017, 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 21st day of April, 2017, to:

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One E. Washington St, Ste 1900
Phoenix, AZ 85004-2554
Email: srhodes@jsslw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 21st day of April, 2017, to:

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

by: Jack Baker

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Cynthia L. Best, Bar No. 014731, Respondent

File Nos. 16-0318 & 16-0820

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

03/14/17 Investigator Mileage to Serve Subpoena \$ 24.01

02/27/17 Bar Counsel Parking for Meeting with Judge Steiner \$ 8.00

Total for staff investigator charges \$ 32.01

TOTAL COSTS AND EXPENSES INCURRED \$1,232.01

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

CYNTHIA L BEST,
Bar No. 014731,

Respondent.

PDJ 2016-9122

**FINAL JUDGMENT AND
ORDER**

State Bar Nos. 16-0318 and 16-0820

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, **Cynthia L. Best**, is hereby suspended for 60 days for her 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, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent 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 April, 2017.

**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 April, 2017.

Copies of the foregoing mailed/emailed
this _____ day of April, 2017, to:

J Scott Rhodes
Jennings Strouss & Salmon PLC
One E. Washington St, Ste 1900
Phoenix, AZ 85004-2554
Email: srhodes@jsslaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of April, 2017, to:

David L. Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this ____ day of April, 2017 to:

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

by: _____