

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**THOMAS A. GERMUSKA, JR.,  
Bar No. 016508**

Respondent.

**PDJ 2017-9103**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 17-1134]

**FILED DECEMBER 20, 2017**

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on December 14, 2017, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepted the parties' agreement.

Accordingly:

**IT IS ORDERED THOMAS A. GERMUSKA, JR., Bar No. 016508**, is suspended for one (1) year for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective *nunc pro tunc* to his June 13, 2017 interim suspension entered in PDJ 2016-9068.

**IT IS FURTHER ORDERED** pursuant to Rule 72 Ariz. R. Sup. Ct., Thomas A. Germuska, Jr. shall immediately comply with the requirements relating to notification of clients and others.

**IT IS FURTHER ORDERED** upon reinstatement, Thomas A. Germuska, Jr. shall be placed on two (2) years of probation with the State Bar's Member Assistance

Program (LRO/MAP). Mr. Germuska shall complete State Bar's LRO MAP program at his own expense.

**IT IS FURTHER ORDERED** Thomas A. Germuska, Jr. shall be subject to any additional terms imposed by the Presiding Disciplinary Judge because of any reinstatement hearings held.

### **NON-COMPLIANCE WITH PROBATION**

If Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5). The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, whether to impose a sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

**IT IS FURTHER ORDERED** Thomas A. Germuska, Jr. shall pay the costs and expenses of the State Bar of Arizona of \$1,200.00 within thirty (30) days from this order. There are no costs associated with the Presiding Disciplinary Judge's Office in these disciplinary proceedings.

**DATED** this 20th day of December, 2017.

*William J. O'Neil*  

---

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

COPY of the foregoing e-mailed on this 20th day of December, 2017,  
and mailed December 21, 2017, to:

Counsel for State Bar

Nicole S. Kasetta  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6266  
Email: lro@staff.azbar.org

Counsel for Respondent

Larry J. Cohen  
The Cohen Law Firm  
P.O. Box 10056  
Phoenix, AZ 85064  
Email: ljc@ljcohen.com

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**THOMAS A. GERMUSKA, JR.,  
Bar No. 016508**

Respondent.

**PDJ-2017-9103**

**DECISION AND ORDER  
ACCEPTING DISCIPLINE BY  
CONSENT**

[State Bar No. 17-1134]

**FILED DECEMBER 20, 2017**

A Probable Cause Order issued on July 21, 2017. The complaint was filed on August 22, 2017. The answer was filed on September 13, 2017. The parties filed a notice of settlement on November 14, 2017. Pursuant to Rule 57(a), Ariz. R. Sup. Ct., an agreement for discipline by consent was filed on December 14, 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. The State Bar is the complainant in this single count matter, therefore no notice of this agreement is required under Rule 53(b)(3), Ariz. S. Sup. Ct.

The Agreement details a factual basis to support the conditional admissions. Mr. Germuska conditionally admits he violated Rule 42, ER 8.4(d), and Rule 54(g). The agreed upon sanctions include a one (1) year suspension, retroactive to June 13, 2017, the date the interim suspension of Mr. Germuska commenced and upon reinstatement, Mr. Germuska shall be placed on probation for two (2) years to include participation and successful completion of LRO MAP at his own expense. Mr. Germuska shall pay the costs and expenses for this disciplinary proceeding of \$1,200 within thirty (30) days of this order or interest shall accrue as provided by law. The conditional admissions are briefly summarized.

Mr. Germuska has been a licensed attorney in Arizona since October 21, 1995. On July 6, 2016, he was charged with aggravated assault a class 4 felony, domestic violence, and assault, a class 1 misdemeanor, domestic violence arising from his act of violence on June 26, 2016. On March 29, 2017, a jury found Mr. Germuska guilty of both counts and the Court entered judgment on that same day. There is no restitution in this proceeding. Mr. Germuska was placed on interim suspension by order of the PDJ on June 13, 2017.

***The ABA Standards for Imposing Lawyer Sanctions (“Standards”)***

The parties stipulate *Standard* 5.12 is applicable given the facts and circumstances. Mr. Germuska knowingly engaged in criminal conduct that serious adversely reflect on his fitness to practice. The parties stipulate Mr. Germuska

violated a duty to the public with potential harm to the public. The presumptive sanction is suspension. In aggravation, Mr. Germuska has substantial experience in the practice of law and by his commission of a felony and misdemeanor, the aggravating factor of illegal conduct is applicable. In mitigation, the factors of an absence of a prior disciplinary record, that he made full and free disclosure in this proceeding or had a cooperative attitude toward the proceedings and there were other sanctions imposed for his conduct through the criminal court. The PDJ finds the stipulated sanction of suspension and probation to be appropriate.

Now therefore,

**IT IS ORDERED** accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are a one (1) year suspension, upon reinstatement, two (2) years of probation (LRO MAP), and payment of State Bar costs of \$1,200.00 within thirty (30) days. Mr. Germuska shall be subject to any additional terms imposed as a result of any reinstatement hearings held. There are no costs incurred by the Office of the Presiding Disciplinary Judge. A final judgment and order is signed this date.

**DATED** this 20<sup>th</sup> day of December, 2017.

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

COPY of the foregoing e-mailed on this 20th day of December 2017,  
and mailed December 21, 2017, to:

Counsel for State Bar

Nicole S. Kaseta  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
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OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

DEC 14 2017

FILED  
BY 

Larry J. Cohen, Bar No. 010192  
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Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**THOMAS A. GERMUSKA  
Bar No. 016508**

Respondent.

**PDJ 2017-9103**

State Bar File Nos. 17-1134

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Thomas A. Germuska Jr, who is represented in this matter by counsel, Larry J. Cohen, hereby submit their Agreement for Discipline by Consent,

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

The State Bar is the complainant in this matter, therefore no notice of this agreement is required pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct.

Respondent conditionally admits that his conduct, as set forth below, violated Ariz. R. Sup. Ct. 42, ER 8.4(b) and Rule 54(g), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Respondent shall be suspended from the practice of law in Arizona for a period of one year retroactive to June 13, 2017, the date his interim suspension commenced, and, upon reinstatement, Respondent shall be placed on probation for two years to include participation in LRO MAP. 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.<sup>1</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

## **FACTS**

### **GENERAL ALLEGATIONS**

1. At all relevant times, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 21, 1995.
2. On May 24, 2017, the State Bar filed a Notice of Felony Conviction in case number PDJ 2017-9068 and notified the Presiding Disciplinary Judge (PDJ) that Respondent was convicted of a felony.
3. On June 13, 2017, the PDJ entered an Order of Interim Suspension suspending Respondent from the practice of law immediately on an interim basis.

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<sup>1</sup> 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.

**COUNT ONE (File No. 17-1134/ Germuska)**

4. On July 6, 2016, Respondent was charged with aggravated assault, a class 4 felony domestic violence, and assault, a class 1 misdemeanor domestic violence, arising out of an incident that occurred on June 26, 2016.

5. The direct complaint that the Maricopa County Attorney's Office filed against Respondent alleges the following:

**COUNT 1:**

THOMAS A GERMUSKA, on or about June 26, 2016, intentionally did place Lori Von Walcker in reasonable apprehension of imminent physical injury and THOMAS A GERMUSKA intentionally or knowingly impeded the normal breathing or circulation of blood of Lori Von Walcker by applying pressure to the throat or neck or by obstructing the nose and mouth either manually or through the use of an instrument and the relationship between the victim and the defendant is currently or was previously a romantic and/or sexual relationship, in violation of . . . A.R.S. §§ 13-1203, 13-1204, 13-3601, 13-701, 13-702, and 13-801.

**COUNT 2:**

THOMAS A GERMUSKA, on or about June 26, 2016, intentionally or knowingly did cause physical injury to Lori Von Walcker, (to wit: bruising to upper arms), in violation of A.R.S. §§ 13-1203(A)(1), (B), 13-707, and 13-802.

6. On August 5, 2016, Respondent pled not guilty.

7. Trial occurred in March of 2017.

8. On March 29, 2017, a jury found Respondent guilty of both counts.

9. On the same date, the court entered a judgment finding Respondent guilty of aggravated assault, a class 4 felony domestic violence, and assault, a class 1 misdemeanor domestic violence.

10. The court suspended imposition of sentence and placed Respondent on unsupervised probation for six months.

### **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 ER 8.4(b) and Rule 54(g), 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 sanctions are appropriate: Respondent shall be suspended from the practice of law in Arizona for

a period of one year retroactive to June 13, 2017, the date his interim suspension commenced, and, upon reinstatement, Respondent shall be placed on probation for two years to include participation in LRO MAP.

If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

#### **NON-COMPLIANCE LANGUAGE**

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

#### **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* 5.12 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 5.12 provides that "suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in Standard 5.11 and that seriously adversely reflects on the lawyer's fitness to practice." In the present case, Respondent knowingly engaged in criminal conduct. Respondent was convicted of aggravated

assault, a class 4 felony domestic violence, and assault, a class 1 misdemeanor domestic violence.

**The duty violated**

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

**The lawyer's mental state**

For purposes of this agreement, the parties agree that Respondent knowingly engaged in the above described criminal conduct 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 public.

**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(i)*, substantial experience in the practice of law. Respondent has been licensed to practice law since 1995.

*Standard 9.22(k)*, illegal conduct. Respondent was convicted of aggravated assault, a class 4 felony domestic violence, and assault, a class 1 misdemeanor domestic violence.

**In mitigation:**

*Standard 9.32(a)*: Absence of a prior disciplinary record.

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

*Standard 9.32(k)*: Imposition of other penalties and sanctions. The court placed Respondent on unsupervised probation for six months.

**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. This agreement was based on the following: A suspension of one year retroactive to Respondent's interim suspension with two years of probation (LRO MAP) upon reinstatement will protect the public and ensure that Respondent is rehabilitated before practicing law again.

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 one-year suspension retroactive to the date of Respondent's interim suspension, two years of probation (LRO MAP) upon reinstatement, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 14<sup>th</sup> day of December, 2017

STATE BAR OF ARIZONA



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Nicole S. Kaseta  
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, 2017.

\_\_\_\_\_  
Thomas A. Germuska Jr  
Respondent

**DATED** this \_\_\_\_\_ day of December, 2017.

Cohen Law Firm

\_\_\_\_\_  
Larry J. Cohen  
Counsel for Respondent

Approved as to form and content

*Maret Vessella*  
Maret Vessella  
Chief 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 13<sup>th</sup> day of December, 2017.



Thomas A. Germuska Jr  
Respondent

DATED this 13 day of December, 2017.

Cohen Law Firm



Larry J. Cohen  
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 14<sup>th</sup> day of December, 2017.

Copy of the foregoing emailed  
this 14<sup>th</sup> day of December, 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](mailto:officepdj@courts.az.gov)

Copy of the foregoing mailed/emailed  
this 14<sup>th</sup> day of December, 2017, to:

Larry J Cohen  
Cohen Law Firm  
PO Box 10056  
Phoenix, AZ 85064-0056  
Email: [ljc@ljcohen.com](mailto:ljc@ljcohen.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 14<sup>th</sup> day of December, 2017, to:

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

by: *Karen E. Calcey*  
NSK: KEC

## **EXHIBIT A**

**Statement of Costs and Expenses**

In the Matter of a suspended Member of the State Bar of Arizona,  
Thomas A. Germuska, Bar No. 016508, Respondent

File No. 17-1134

**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**

**EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**THOMAS A GERMUSKA JR,**  
**Bar No. 016508,**

Respondent.

**PDJ 2017-9103**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 17-1134]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on December \_\_, 2017, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** that Respondent, **Thomas A. Germuska Jr.**, is hereby suspended for a period of one year, retroactive to June 13, 2017, 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, upon reinstatement, Respondent shall be placed on probation for a period of two years and such probation shall include participation in LRO MAP.

**IT IS FURTHER ORDERED** that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

**NON-COMPLIANCE LANGUAGE**

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

**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 \$1,200.00, 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 December, 2017

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**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 December, 2017.

Copies of the foregoing mailed/mailed  
this \_\_\_\_\_ day of December, 2017, to:

Larry J. Cohen  
Cohen Law Firm  
PO Box 10056  
Phoenix, AZ 85064-0056  
Email: [ljc@ljcohen.com](mailto:ljc@ljcohen.com)  
Respondent's Counsel

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Nicole S. Kaseta  
Bar Counsel - Litigation  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
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Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

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by: \_\_\_\_\_