

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

---

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

**ANTONIO R. ZUNIGA,**  
**Bar No. 005526**

Respondent.

**PDJ-2017-9007**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 16-1692]

**FILED FEBRUARY 7, 2017**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on January 23, 2017, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS ORDERED** Respondent, **Antonio R. Zuniga**, is reprimanded, and placed on probation for up to two (2) years, for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this order.

**IT IS FURTHER ORDERED** Mr. Zuniga shall contact the State Bar's LRO MAP Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this order, to schedule an assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the

terms, including reporting requirements, shall be incorporated herein. Mr. Zuniga shall be responsible for any costs associated with participation and compliance.

**IT IS FURTHER ORDERED** Mr. Zuniga shall complete the continuing legal education seminar entitled “Candor, Courtesy, and Confidences: Common Courtroom Conundrums” within thirty (30) days from the date of this order.

**IT IS FURTHER ORDERED** that Mr. Zuniga 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 7<sup>th</sup> day of February, 2017.

*William J. O’Neil*

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

Copies of the foregoing mailed/e-mailed  
this 7th day of February, 2017, to:

David L. Sandweiss  
Senior Bar Counsel  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Stephen G. Montoya  
Montoya Lucero & Pastor PA  
3200 N. Central Avenue, Suite 2550  
Phoenix, AZ 85012-2490  
Email: [stephen@montoyalawgroup.com](mailto:stephen@montoyalawgroup.com)  
Respondent’s Counsel

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

---

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

**ANTONIO R. ZUNIGA,**  
**Bar No. 005526**

Respondent.

**PDJ-2017-9007**

**DECISION AND ORDER  
ACCEPTING DISCIPLINE  
BY CONSENT**

[State Bar File No. 16-1692]

**FILED FEBRUARY 7, 2017**

The Probable Cause Order was filed on December 28, 2016. No formal complaint has been filed. The parties filed their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. on December 30, 2016.

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. Mr. Zuniga voluntarily waives the right to an adjudicatory hearing, and waives 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 sent to by letter and email to the complainant on January 23, 2017. No objection has been filed.

The Agreement details a factual basis to support the conditional admissions. Mr. Zuniga conditionally admits he violated Supreme Court Rule 41(c) (maintain respect of courts of justice and judicial officers), and (g) (unprofessional conduct), and Rule 42, ERs 3.1 (meritorious claims and contentions), ER 4.4(a) (respect for rights of others), ER 8.2 (judicial and legal officials), and 8.4(d) (conduct prejudicial to the administration of justice). The agreed upon sanctions are reprimand, up to two (2) years of probation with the Member Assistance Program, (“MAP”), including a MAP assessment by Dr. Lett and completion of continuing legal education, and the payment of costs totaling \$1,200.00 within thirty (30) days. Restitution is not an issue.

Mr. Zuniga has been licensed to practice law in Arizona since October 7, 1978 and has been certified as a criminal law specialist for over 20 years. He entered his appearance for his client, who was a criminal defendant booked into jail on drug offenses. When a judicial officer did not release his client, Mr. Zuniga filed multiple changes of judge for cause and other pleadings. Mr. Zuniga stated the judicial officer had “intellectual arrogance” and accused the judicial officer of wanting “to undermine a defendant’s rights under the rules,” and that the judicial officer “attempted to intimidate counsel into silence.” He asserted the judicial officer had

“a disturbingly despotic display of judicial authority” and that he had acted “viciously,” and was “craven.”

After his client was indicted these allegations were followed by additional pleadings alleging the judicial officer had “deliberate ignorance and disregard of the law” and intentionally ignored relevant law. He expanded his vitriolic attack stating the judge likely “repeatedly violated the right [of] hundreds of others defendants [sic] who have been in defendant’s place.” He stated the judge had a “smug arrogance” and a despotic demeanor” and repeated his claim the judge had violated the due process “to many other defendants who have come before it.” He claimed the judicial officer intended to “warehouse defendants.” Mr. Zuniga then filed a 19 page demand that the judge recuse himself from any future case in which Mr. Zuniga appeared.

In the agreement, Mr. Zuniga concedes that he was overly “aggressive” in representing his client and that his motions were “not well-advised.”

Rule 58(k) provides sanctions shall be determined in accordance with the *American Bar Association Standards for Imposing Lawyer Sanctions*, (“*Standards*”). The parties agree Mr. Zuniga knowingly violated his duties to the legal system and as a professional resulting in actual and potential harm to the client, the legal profession and the legal system. The presumptive sanction is suspension.

The parties agree *Standard* 6.22, Abuse of the Legal Process applies Mr. Zuniga's violations of ERs 3.1, 4.4(a), 8.2(a) and 8.4(d). It provides:

Suspension is 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.

The parties also agree *Standard* 7.2 applies to Mr. Zuniga's violation of Rule 41(c) and (g). It provides:

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.

Mr. Zuniga was overly aggressive in representing his client and demonstrated unprofessional conduct in his interactions with Commissioner Wein and Judge Meyer.

The parties agree factors 9.32(a) prior disciplinary offenses, 9.22(b) selfish motive, and 9.22(i) substantial experience in the practice of law are present in aggravation. Factors 9.32(c) personal or emotional problems, 9.32 (e) the full and free disclosure to the State Bar and cooperative attitude towards the proceedings, 9.32(g) character or reputation, 9.32(l) remorse, and 9.32(m) remoteness of prior offenses are present in mitigation. The parties stipulate that a reduction in the presumptive sanction of suspension is justified based on the mitigation.

The agreement for a reduction includes statements of fellow lawyers arguing for leniency. One argues this series of lengthy pleadings were merely “heat of the moment” another that the language was “potentially inappropriate.” The conduct is far more than that. The solidary issue in the criminal case was whether his client should have been released pre-indictment. The vitriol was non-stop, lengthy and of no service to his client. If there were but one pleadings, perhaps it might be reasonable to surmise there was a “heat of the moment” event. The allegations were more than potentially inappropriate, they were with a reckless disregard of the truth. Multiple pleadings were sent to the judge over the course of more than a month.

The United States Supreme Court has stated, “[t]he license granted by the court requires members of the bar to conduct themselves in a manner compatible with the role of courts in the administration of justice.” *In re Snyder*, 472 U.S. 634 (1985). There was no rational basis for the scornful conclusions of Mr. Zuniga. The two sentences he sent to the judicial officer he impugned comprise the entire letter of apology he sent to the presiding judge that oversaw the motions for removal of the judicial officer. They do not equate with the extreme remorse referred to in the agreement. The health records offered offer greater mitigation, but little causal insight for such an apparently untypical course of conduct for a practitioner of 39 years. His full and free disclosure in this proceeding and his otherwise excellent character over the years warrants mitigation.

The PDJ finds the proposed sanctions of reprimand and probation meets the objectives of attorney discipline. The Agreement is therefore accepted.

**IT IS ORDERED** incorporating the Agreement and any supporting documents by this reference. The agreed upon sanction are: reprimand, up to two (2) years of probation (MAP assessment and CLE), and the payment of costs and expenses of the disciplinary proceeding totaling \$1,200.00, to be paid within thirty (30) days from this date. There are no costs incurred by the office of the presiding disciplinary judge.

**IT IS FURTHER ORDERED** the Agreement is accepted. Costs as submitted are approved for \$1,200.00. A final judgment and order is signed this date.

**IT IS FURTHER ORDERED** sealing Exhibit B comprising the medical records of Mr. Zuniga attached to the Agreement.

**DATED** this February 7, 2017.

*William J. O'Neil*  

---

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

///

COPY of the foregoing e-mailed/mailed  
on February 7, 2017, to:

David L. Sandweiss  
Senior Bar Counsel  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Stephen G. Montoya  
Montoya Lucero & Pastor PA  
3200 N. Central Avenue, Suite 2550  
Phoenix, AZ 85012-2490  
Email: [stephen@montoyalawgroup.com](mailto:stephen@montoyalawgroup.com)  
Respondent's Counsel

by: AMcQueen

David L. Sandweiss, Bar No. 005501  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> 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

JAN 23 2017

FILED

BY



Stephen G. Montoya, Bar No. 011791  
Montoya Lucero & Pastor PA  
3200 N. Central Ave., Ste. 2550  
Phoenix, AZ 85012-2490  
Telephone 602-256-6718  
Email: stephen@montoyalawgroup.com  
Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**ANTONIO R. ZUNIGA,  
Bar No. 005526,**

Respondent.

**PDJ ~~2016~~**

*2017-9007*

State Bar File No. **16-1692**

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

The State Bar of Arizona through undersigned Bar Counsel, and Respondent Antonio R. Zuniga who is represented in this matter by counsel Stephen G. Montoya, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.<sup>1</sup> A probable cause order was entered on December 28, 2016, but no formal complaint has been filed in this matter. 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

<sup>1</sup> All references herein to rules are to the Arizona Rules of the Supreme Court unless otherwise expressly stated.

asserted thereafter, if the conditional admissions and proposed form of discipline are approved.

Pursuant to Rule 53(b)(3), notice of this agreement was provided to the complainant by letter and email on January 23, 2017. 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. Copies of Complainant's objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 3.1 (Meritorious Claims and Contentions), 4.4(a) (Respect for Rights of Others), 8.2(a) (Judicial and Legal Officials), and 8.4(d) (Conduct that is prejudicial to the administration of justice); and Rules 41(c) (maintain the respect due to courts of justice and judicial officers) and (g) (avoid engaging in unprofessional conduct). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand and Probation for up to two years. 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>2</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

Respondent's probation will be to undergo a MAP assessment (evaluation by Dr. Lett) and follow up for up to two years based on MAP recommendations; and to

---

<sup>2</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.

view the CLE program entitled "Candor, Courtesy, and Confidences: Common Courtroom Conundrums" within 30 days following the order accepting the consent.

**WARNING RE: 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 Respondent breached a term of probation and, if so, to impose an appropriate sanction. If the State Bar of Arizona alleges that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove noncompliance by a preponderance of the evidence.

**FACTS**

**GENERAL ALLEGATIONS**

1. Respondent was licensed to practice law in Arizona on October 7, 1978. He has been a Certified Criminal Law Specialist for more than 20 years.

**COUNT ONE (File no. 16-1692/ Judicial Referral)**

2. Defendant Zavala was booked into jail on drug offenses. The State filed a three-count direct criminal complaint against him; all were bondable offenses. His initial appearance was April 13, 2016. Respondent entered his appearance for Zavala. The ten-day deadline for the court to conduct a preliminary hearing expired Saturday, April 23; by operation of Rule 1.3(a), Ariz. R. Crim. P.<sup>3</sup> (hereafter, "Crim. Rule"), the deadline extended to Monday, April 25.

---

<sup>3</sup> If a deadline falls on a weekend or holiday, the deadline extends to the next day that is not a weekend or holiday.

3. On April 22, the State filed a motion to continue the preliminary hearing. Respondent did not object to a continuance under Crim. Rule 5.1(a), but told the court that it must release Zavala from custody under Crim. Rule 5.1(c). The latter rule states: "If a preliminary hearing has not been commenced within 10 days as required in Section (a), the defendant *shall be released from custody automatically*, unless he or she is charged with a non-bailable offense [emphasis added]. . . ." Respondent contended that the emphasized language means that Crim. Rule 1.3(a) does not apply, and the court was obligated to release Zavala on Friday, April 22 because the court would be closed on Saturday, April 23. Commissioner Kevin Wein continued the preliminary hearing but declined to release Zavala from custody on April 22 ("IT IS FURTHER ORDERED affirming prior custody orders.").

4. Respondent's argument regarding the applicability of Rule 1.3(a) to the "automatic" ten-day release period of Rule 5.1(c) was made in good faith, was not frivolous, and has not been rejected or accepted by any appellate court in Arizona.

5. In a series of subsequent court filings attempting to obtain his client's release, Respondent criticized Commissioner Wein for failing to release Zavala. He wrote:

Defense counsel hereby submits this notice of change of Commissioner for cause. . . . Counsel undersigned asserts his belief the defendant in this case will not receive a fair and impartial preliminary hearing or other judicial process before this Commissioner, due to Commissioner Wein's apparent bias in favor of the state in his unreasoned application of the law. That bias is evidenced by his failure to apply the law correctly. . . . Commissioner Wein was fully informed of the facts and chose to violate defendant [Zavala's] due process rights. . . .

[Commissioner Wein denied] the "Motion to Reconsider"<sup>4</sup> without hearing further argument. Such an approach demonstrated utter disregard to defendant's due process rights, and intellectual arrogance against Rule 5.1(c) . . . . The courts are not supposed to present such an attitude to the greater public because it undermines the public's confidence in our courts and perception of their independence. It appears that the Commissioner in this case wants to undermine a defendant's rights under the rules. Such a bias against this defendant, and towards the Arizona Rules of Criminal Procedure, meant to protect defendant's due process rights, should not be permitted to continue to hold sway over this case. Defense counsel believes the trial court's selective, jaundiced reading of Rule 5.1(c) demonstrates a proclivity to favor legal interpretations that favor the State in this case.<sup>5</sup>

Counsel undersigned asserts his belief the defendant in this case will not receive, has not received, and has been denied a fair and impartial preliminary hearing or other judicial process before this Commissioner, due to Commissioner Wein's demonstrated bias against undersigned counsel and a bias in favor of the State in his unreasoned application of the law. . . . That bias is evidenced in this case by Commissioner Wein's failure to apply the law correctly – Rule 5.1(c) – to determine whether a defendant held in custody more than ten days without a preliminary hearing should be automatically released, coupled with his deliberate refusal to listen to counsel's advocacy on his client's behalf based on the newly filed motion to release his client because of the 10 day violation. . . . The evidence supports the conclusion a fair and impartial hearing or trial cannot be had by reason of the interest or prejudice of Commissioner Wein, he did not allow undersigned counsel to advocate on behalf of this client, and attempted to intimidate counsel into silence.<sup>6</sup>

---

<sup>4</sup> Respondent's Motion to Reconsider the court's ruling on the State's Motion to Continue the Prelim. was filed and denied earlier in the day on April 22.

<sup>5</sup> "Motion for Change of Commissioner for Cause," April 22, 2016. Presiding Criminal Judge Myers (Complainant) denied the motion on the ground that it was missing a required affidavit, and because "an adverse ruling without evidence of an extrajudicial source of bias . . . or any deep-seated favoritism does not provide a sufficient basis to change a judge for cause." Judge Myers later realized that Respondent did file an affidavit in support of his motion in which Respondent affirmed that all statements were true and correct.

<sup>6</sup> "Second Motion for Change of Commissioner for Cause," April 25, 2016.

6. Respondent accused Comm. Wein of shouting him down in open court, thereby preventing Respondent from making a record regarding Mr. Zavala's request for a timely preliminary hearing; "Commissioner Wein seemed quite intent to deny [Zavala] due process. . . ." According to Respondent, Comm. Wein "attempted to peremptorily muzzle an officer of the court" and told Respondent "in so many words to shut up . . . ." He characterized Comm. Wein's actions as:

a disturbingly despotic display of judicial authority. . . . Judicial assignments are provided to individuals demonstrating reasoned judgment and tempered behavior. Commissioner Wein has viciously and repeatedly violated both aspects of his duties. The raw demonstration of power and intimidation he chose to employ in public, before other members of the bar and members of the public is not acceptable behavior and demonstrates a clear bias against undersigned counsel . . . .

As importantly, Commissioner Wein has demonstrated a clear disregard and contempt for defendant's Sixth Amendment right to have counsel effectively represent him without a craven effort by the judiciary to have counsel cower when the judge invectively speaks to counsel to force him to give up his obligation to speak on behalf of his client when the court works to stymie that effort. Commissioner has demonstrated a clear bias against undersigned counsel, and continued to demonstrate a proclivity to favor legal interpretations that favor the State in this case.<sup>7</sup>

In a separate motion, Respondent contended that Comm. Wein "ignored and violated defendant's due process rights."<sup>8</sup> Comm. Wein considered the motion on an expedited basis and denied it. Respondent raised arguments already advanced and rejected twice in writing and at oral argument. As Comm. Wein already explained on the record, based on a plain reading of the rules the state could hold Zavala in

---

<sup>7</sup> *Id.* Respondent's motion was supported by his affidavit affirming that all statements were true and correct.

<sup>8</sup> "Motion to Release Based on the Violation of Rule 5.1(c), 10-Day-Limit-Without-A-Preliminary-Hearing Provision," April 25, 2016.

custody until Monday, April 25, 2016, the next business day following expiration of the 10-day limit on Saturday, April 23.

7. On April 25, a grand jury indicted Zavala so the court vacated the preliminary hearing set for that date. This removed any impediment to the state continuing to hold Zavala in custody. Complainant denied Respondent's "Second Motion," etc., as moot.

8. On April 26, 2016, Respondent filed a "Motion for Future Recusal by Commissioner Wein Based on His Disregard for the Law Pertaining to the Violation of Rule 5.1(c), 10-Day-Limit-Without-a-Preliminary-Hearing Provision." Examples of Respondent's characterization of Judge Wein's actions include: "apparent deliberate ignorance and disregard of the law;" "Even when presented with the relevant law, this Court chose to ignore it;" "[T]his Court so resolutely" demonstrated lack of knowledge of a fundamental due process right; "[T]his Court likely repeatedly violated that right hundreds of other defendants [*sic*] who have been in defendant's place. . . . If this Court can so flagrantly disregard its constitutional responsibility to this defendant and attempt to cow defense counsel, we must be concerned it violated defendants' other procedural and substantive rights;" the court's violation of its responsibility "is so profoundly disturbing because it demonstrates an abdication of the court's responsibility to demonstrate impartiality and fairness . . . .;" given the court's "smug arrogance" and a "despotic demeanor" this court "has likely violated this due process right to many other defendants who have come before it;" The court is aware of the correct substance of the rule but "chooses to flout defendants' rights" because the Court wants to warehouse defendants with the Sheriff's detention centers until the state has time to indict. "Such action

demonstrates a bias in favor of the state." He concluded: "It is requested that this Court recuse itself in the future from any matter which may come before it and undersigned counsel is on the case."

9. There is no rule of procedure that authorizes Respondent's motion. In his May 17, 2016 minute entry, citing ER 3.1, Judge Myers found that "an experienced practitioner as Mr. Zuniga knows that a 'request for future recusal' is not a cognizable motion." Although he did not cite any other specific ER, including ER 4.4, Judge Myers also found that "the accusations and characterizations of the Court are contemptuous and inappropriate, and served no purpose other than to try to intimidate or embarrass the assigned judicial officer." Judge Myers denied Respondent's "Motion for Future Recusal . . . ."

10. Were this matter to proceed to a contested hearing, Respondent would contend that while there is no specific rule of procedure authorizing a "motion for future recusal," such motions are not prohibited if they are supported factually and by the rules governing the recusal of judges. See, e.g., Arizona Code of Judicial Conduct, 2.11.

11. On May 25, 2016, Respondent filed a 19-page "Motion to Strike Court's Ruling Regarding Defense Counsel's 'Motion for Future Recusal, Etc.'" In it, Respondent incorporated by reference his prior filings, and reiterated and defended his criticisms of Comm. Wein. He argued that the "Motion for Future Recusal" was an adjunct to his "Second Motion for Change of Commissioner for Cause" that was supported by Crim. Rule 10.1 (Change of Judge for Cause) and, therefore, is authorized by a rule of procedure and is cognizable. The state did not respond. Although Respondent asked for oral argument Judge Myers declined to hear

argument and, "No good cause appearing," denied Respondent's "Motion to Strike," etc.

12. In retrospect, Respondent concedes that he was overly aggressive in representing his client and that his motions were not well-advised. He claims to have suffered humiliation, he learned his lesson, and he will never repeat this conduct.

### **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, ERs 3.1 (Meritorious Claims and Contentions), 4.4(a) (Respect for Rights of Others), 8.2(a) (Judicial and Legal Officials), and 8.4(d) (Conduct that is Prejudicial to the Administration of Justice); and Rules 41(c) (maintain the respect due to courts of justice and judicial officers) and (g) (avoid engaging in unprofessional conduct).

### **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: Reprimand and probation for up to two years, and costs, as stated above. 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**

Respondent's violated his duty to the legal system and as a professional.

### **The lawyer's mental state**

Respondent acted with a "knowing" mental state.

### **The extent of the actual or potential injury**

There was actual and potential harm to Respondent's client, and to the legal profession and legal system.

The following *Standards* are applicable:

**ER 3.1 - Meritorious Claims and Contentions**

**ER 4.4(a) - Respect for Rights of Others**

**ER 8.2(a) - Judicial and Legal Officials**

**ER 8.4(d) - Conduct that is prejudicial to the administration of justice.**

**Standard 6.22** - Suspension is 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.

---

**Rules 41(c)** (maintain the respect due to courts of justice and judicial officers) and **41(g)** (avoid engaging in unprofessional conduct).

**Standard 6.22**, above.

**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—**

(a) prior disciplinary offenses—

- 1992, 90-1880, Informal Reprimand, after refusing and then agreeing to abide by a fee arbitration award requiring a \$7,000 refund, ER 1.5.
- 1987, 85-1742, Informal Reprimand, ER 3.3.
- 1981, Informal Reprimand, DR 1-102(A) (currently, ER 8.4(d)) and DR 7-106(C) (discourtesy to the court).
- (Respondent believes that these alleged offenses are too chronologically remote to be considered in aggravation.)

**Note:** Under then-existing rules, all of the informal reprimands were considered "private discipline," to be maintained only in the State Bar's files, "and may be considered in any subsequent disciplinary proceedings." Former Rules 33(b)1, 46(g)12, and 52(a)5. The State Bar's website information for Respondent, for "Discipline," says "None."

(b) selfish motive - Respondent denies that he acted out of any selfish motive; to the contrary, Respondent was acting for the benefit of his client at

all times material to this dispute. At a hearing the State Bar would contend that Respondent acted in his own self interest. He did not benefit his client by insulting Comm. Wein. After the client was indicted and the state unquestionably could keep him in custody, Respondent's persistent motions were only for his own benefit.

(i) substantial experience in the practice of law;

**In mitigation:** *Standard 9.32--*

(c) personal or emotional problems—Respondent, who is now 64 years-old, is presently suffering from a very serious respiratory disease that has adversely impacted him and his entire family. Respondent was struggling with this illness when he submitted the filings to the court quoted above. Corroborating medical records are attached under seal as Ex. B.

(e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings;

(g) character or reputation—Respondent has been practicing law for approximately 39 years and has no record of serious discipline. He has an excellent reputation as a criminal defense lawyer as evidenced by the statements of his peers in the criminal defense bar. Attached as Ex. C are letters from Michael Altman, Cameron Morgan, and Joel Brown.

(l) remorse—Respondent is extremely remorseful for his misconduct and has already apologized in writing to both Commissioner Wein and Judge Myer (copies of the letters are attached as Ex. D).

(m) remoteness of prior offenses.

### **Discussion**

The parties conditionally agree that upon application of the aggravating and mitigating factors the presumptive sanction should be mitigated to reprimand and probation. A greater sanction is not necessary and a lesser sanction is not appropriate under these facts. Respondent's admittedly serious misconduct was uncharacteristic and is an isolated occurrence. His mitigation is significant, and the probationary terms added to a public reprimand adequately protect the public, legal system, and legal profession against further, similar violations. Based on the

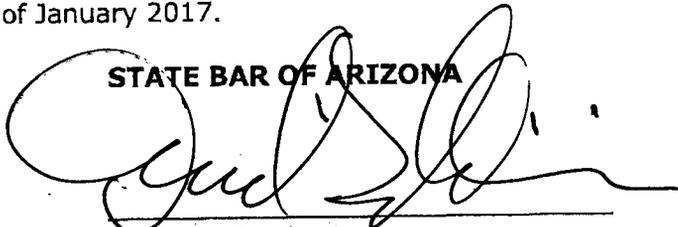
*Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

**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 Reprimand, Probation, and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit E.

DATED this 23<sup>rd</sup> day of January 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.**

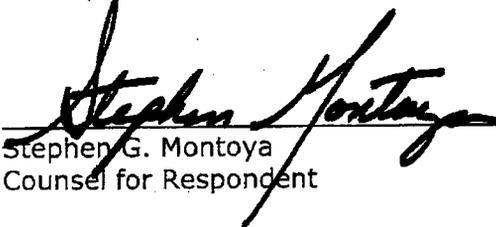
DATED this 20<sup>th</sup> day of January, 2017.



Antonio R. Zuniga  
Respondent

DATED this 20th day of January, 2017.

Montoya, Lucero & Pastor PA

  
Stephen G. Montoya  
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 23rd day of January, 2017.

Copy of the foregoing emailed  
this 23rd day of January, 2017, to:

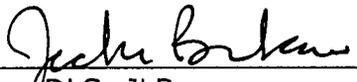
The Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

Copy of the foregoing mailed/emailed  
this 23rd day of January, 2017, to:

Stephen G. Montoya  
Montoya Lucero & Pastor PA  
3200 N. Central Ave., Ste. 2550  
Phoenix, AZ 85012-2490  
Email: [stephen@montoyalawgroup.com](mailto:stephen@montoyalawgroup.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 22<sup>nd</sup> day of January, 2017, to:

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

by:   
DLS: JLB

**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Antonio R. Zuniga, Bar No. 005526, Respondent

File No. 16-1692

### **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**

**FILED SEPARATELY UNDER SEAL**

**EXHIBIT C**

**MICHAEL L. ALTMAN, ESQ.**  
540 HURON AVENUE  
CAMBRIDGE, MA 02138

Telephone: (617) 966 0500

altman1@comcast.net

January 18, 2017

David Sandweiss, Esq.  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24th Street, Suite 100  
Phoenix, Arizona 85016-6266

Re: Antonio Zuniga

Dear Bar Counsel:

I am a retired member of the Bar of the states of MA, AZ and NY. Earlier in my career (1972-86) I was a tenured member of the Arizona State University law faculty. The courses I taught included criminal law, criminal procedure and trial advocacy. I am writing this letter on behalf of Antonio Zuniga whom I have known for more than forty years.

I first met Mr. Zuniga when he was a first year law student in the mid-1970s. I was instantly impressed by his intelligence, his compassion and his tenacity. We became friends after his law school graduation and continued to be friends after I moved from Arizona to Massachusetts to continue my career as a litigator and equity partner in several Boston law firms. In 2007 I was selected as one of the top ten attorneys in Massachusetts.

During the past 30 years, while I have lived in Greater Boston, I have stayed in regular contact with Mr. Zuniga. We often talk on the telephone, text, email and visit one another. I have stayed at his house and he has stayed at mine. In December, we spent some time together in Seattle when he was being evaluated because of a difficult medical situation. I have had the pleasure of getting to know Mr. Zuniga's wife and his three children.

Because of our thousands of interactions over many years, I have gotten to know Antonio Zuniga, the attorney, the father, the husband and the human being. My knowledge is not superficial as we have talked repeatedly about hopes, fears, achievements, disappointments and accomplishments in great detail. Because we periodically talk about trial strategy, difficult clients, 4<sup>th</sup> Amendment issues, etc. I have gained deep insight into Antonio Zuniga, the professional. I have learned that he is they type of attorney who has served as a role model for what we would want attorneys, particularly in criminal cases, to be. He is a champion of the constitution always vigilant to ensure that overzealous prosecutors and law enforcement officers do not trample on the rights of his clients. This at times can be a demanding, tiring and unpopular endeavor because criminal defendants, especially Latinos charged with drug offenses, are too often mistreated. In this context, I have always been impressed by Mr. Zuniga's intelligence, his persistence, his skills, his patience and his understanding of how to persuade sometimes hostile

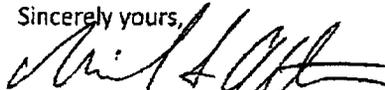
decision-makers to rule in favor of his clients or to be more compassionate when making decisions about sentencing or pre-trial release.

I have also had many occasions to talk with Mr. Zuniga about family issues. He is a devoted husband and the type of father that every child needs: sometimes stern and always loving and supportive.

I have read Bar Counsel's allegations against Mr. Zuniga. His language is strong and I know that Mr. Zuniga regrets what he said. I would hope however that Bar Counsel would consider the following. Defense attorneys often operate under difficult circumstances. The line between zealous advocacy and the boundary of propriety is not always evident. While it is not appropriate to call a judge a despot, it is appropriate to tell a judge that his reading of the police report is difficult to fathom; he is not understanding the purpose of the constitutional amendment, ignoring the applicable case law and that he will be instantly reversed on appeal. In other words, it is acceptable to be very critical of "bad things" a judge may be doing but an attorney should not call a judge "bad names" for doing those "bad things."

My final comment is that heat of the moment struggles sometimes produce heat. If there is only one instance of stepping over the line, my view is that a private admonition should be sufficient unless there is reason to believe that one failure suggests that more will follow unless a stronger message is communicated by the Bar. In my opinion, Mr. Zuniga understands that his language was inappropriate and there is no reason for concern that this fine professional will not fully respect judges in the future and that he will always criticize "bad things" and never again engage in inappropriate name-calling.

Sincerely yours,



Michael L. Altman

# CAMERON A. MORGAN, ESQ.

Attorney at Law

4356 N. Civic Center Plaza  
Scottsdale, Arizona 85251  
Arizona State Bar No. 006709

(480) 990-9507  
Fax (480) 947-5977

January 9, 2017

David Sandweiss  
Senior Bar Counsel  
4201 N. 24<sup>th</sup> St.  
Ste 100  
Phoenix, AZ. 85016-6266

RE: Antonio Zuniga

Dear Mr. Sandweiss:

The purpose of this letter is to attest to the legal abilities and ethical practices of my friend and colleague Antonio Zuniga. I have known and worked with Tony for approximately twenty years. We have represented co-defendants in numerous cases and referred clients to each other in several others over the years. We are currently co-counsel in a multi-defendant criminal/civil forfeiture case being investigated and prosecuted by the U.S. District Attorney for Eastern District of Missouri and the Arizona Attorney General.

An adequate knowledge of Fourth Amendment law and procedure is essential to the representation of criminal defendants in state and federal felony matters. Tony's abilities in this area are superior to many, if not most, of his colleagues. He has an advanced knowledge of the issues and case law in this area and meticulously prepares for the interviews and hearings necessary to successfully litigate Fourth Amendment issues. He has used these abilities to fervently litigate Fourth Amendment issues for the benefit of his clients both in the courtroom and to present them for consideration at the negotiating table.

I understand that the complaint in this matter involves potentially inappropriate language about a judicial officer in a pleading concerning a hotly disputed procedural issue that could have led to the release of his client from jail. In all of the cases in which I have worked with Tony in the past he has always shown the appropriate respect and deference to all judicial officers. I have never heard him say anything inappropriate to the bench. Knowing Tony as I do, I suspect that any inappropriate language here was due to frustration over the perceived inability to ardently represent his client in the manner he believed necessary. I submit that this is an isolated instance borne out of frustration and should be

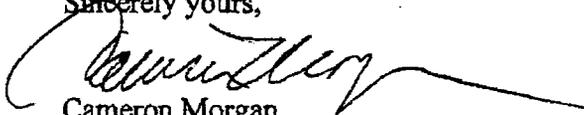
01/09/17 Zuniga.Sandweiss

viewed accordingly. I believe there is little or no likelihood of any future inappropriate conduct of this nature.

I hope that this letter is of some assistance in this matter to you and to Mr. Zuniga. He has represented his clients admirably for over thirty years and has earned a measure of success, respect and recognition that should be taken into account in determining the appropriate outcome.

Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Cameron Morgan", with a long horizontal flourish extending to the right.

Cameron Morgan

January 11, 2017

David L. Sandweiss

Senior Bar Counsel

4201 N. 24<sup>th</sup> Street, Suite 100

Phoenix, AZ 85016-6266

Dear Mr. Sandweiss:

I have known Antonio Zuniga professionally and personally in excess of twenty (20) years. I am very familiar with his reputation as an expert in the area of 4<sup>th</sup> Amendment defense for the entirety of my association with him. A number of the colleagues at the Public Defenders' Office have worked as co-counsel with Tony over the years and they have consistently noted that he was a bright, thorough and resourceful advocate for his clients.

Those same colleagues have never relayed an iota of concern about Mr. Zuniga's honesty or ethics. A number of private practitioners have developed reputations --- some good, some less so --- reference their assuming or associating on Public Defender cases. Given his passion for the practice, Antonio's name comes up frequently in a positive light in discussions with other members of the criminal justice community. I have never heard anyone question his probity or his motives for handling a case in a particular manner.

If you have any questions or if I can be of further assistance, please contact me at 480-204-0867. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Joel Brown", with a stylized flourish at the end.

Joel Brown

**EXHIBIT D**

# ZÚÑIGA & ASSOCIATES

---

ANTONIO R. ZÚÑIGA, ESQ.

ARIZONA STATE BAR CERTIFIED  
CRIMINAL LAW SPECIALIST

January 9, 2017

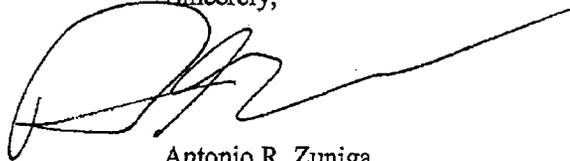
The Honorable Kevin B. Wein  
Commissioner of the Maricopa County Superior Court  
175 West Madison, 3<sup>rd</sup> Floor  
Phoenix, Arizona 85003

Re: Apology

Dear Commissioner Wein:

I sincerely apologize to you for the intemperate, inappropriate language that I used last year in State of Arizona v. Peinado-Zavala, CR2016-117230-001. I wish to extend my deeply felt remorse for any annoyance or distress that I may have caused you. I can assure you that it will not happen again.

Sincerely,



Antonio R. Zuniga

# ZÚÑIGA & ASSOCIATES

---

ANTONIO R. ZÚÑIGA, ESQ.

ARIZONA STATE BAR CERTIFIED  
CRIMINAL LAW SPECIALIST

January 9, 2017

The Honorable Sam Myers  
Judge of the Maricopa County Superior Court  
175 West Madison  
Phoenix, Arizona 85003

Re: Apology

Dear Judge Myers:

I sincerely apologize to you for the intemperate, inappropriate language that I used last year in State of Arizona v. Peinado-Zavala, CR2016-117230-001. I wish to extend my deeply felt remorse for any annoyance or distress that I may have caused you. I can assure you that it will not happen again.

Sincerely,



Antonio R. Zuniga

**EXHIBIT E**

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

---

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

**ANTONIO R. ZUNIGA,**  
**Bar No. 005526,**

Respondent.

**PDJ**

**FINAL JUDGMENT AND ORDER**

State Bar No. 16-1692

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, **Antonio R. Zuniga**, is hereby reprimanded, and placed on probation for up to two years, for his 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 Respondent shall contact the State Bar's LRO MAP Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to schedule an assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Respondent will be responsible for any costs associated with participation and compliance.

**WARNING RE: 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 Respondent breached a term of probation and, if so, to impose an appropriate sanction. If the State Bar of Arizona alleges that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove noncompliance by a preponderance of the evidence.

**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 January, 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 January, 2017.

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

Stephen G. Montoya  
Montoya Lucero & Pastor PA  
3200 N. Central Ave., Ste. 2550  
Phoenix, AZ 85012-2490  
Email: [stephen@montoyalawgroup.com](mailto:stephen@montoyalawgroup.com)  
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_\_ day of January, 2017, to:

David L. Sandweiss  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Copy of the foregoing hand-delivered  
this \_\_\_\_\_ day of January, 2017 to:

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

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