

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**JASON B. CASTLE,**  
**Bar No. 022383**

Respondent.

**PDJ-2018-9075**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 17-0610]

**FILED SEPTEMBER 7, 2018**

The Presiding Disciplinary Judge, having reviewed the Agreement for Discipline by Consent filed on August 27, 2018, pursuant to Rule 57(a), Ariz. R. Sup. Ct., and accepts the parties' proposed agreement. Accordingly:

**IT IS ORDERED** Respondent, **Jason B. Castle, Bar No. 022383**, is reprimanded 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** Respondent 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 the Presiding Disciplinary Judge's Office in these disciplinary proceedings.

**DATED** this 7<sup>th</sup> day of September, 2018.

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

Copies of the foregoing mailed/mailed  
this 7th day of September, 2018, to:

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

Stacy L Shuman  
Bar Counsel, ACAP  
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)

by: [AMcQueen](#)

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**JASON B. CASTLE,**  
**Bar No. 022383**

Respondent.

**PDJ 2018-9075**

**DECISION ACCEPTING  
DISCIPLINE BY CONSENT**

[State Bar No. 17-0610]

**FILED SEPTEMBER 7, 2018**

Under Rule 57(a), Ariz. R. Sup. Ct.,<sup>1</sup> an Agreement for Discipline by Consent (“Agreement”), was filed August 27, 2018. A Probable Cause Order issued on August 2, 2018 but no formal complaint has been filed. Mr. Castle is represented by J. Scott Rhodes, Jennings Strauss and Salmon, and the State Bar of Arizona is represented by Staff Bar Counsel, Stacy L. Shuman.

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. Castle 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

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<sup>1</sup> Unless otherwise stated all Rule references are to the Ariz. R. Sup. Ct.

proposed form of discipline. Pursuant to Rule 53(b)(3) notice of the agreement and an opportunity to object was sent to Complainant by email on August 20, 2018. No objections have been received.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by reference. Mr. Castles conditionally admits he violated Rule 42, ER 1.7(a)(2) and (b)(1), *Conflict of Interest: Current Clients*. The misconduct is briefly summarized.

Mr. Castle represented a client in a dissolution matter commencing in December 2014. By March 5, 2015, Mr. Castle and the client developed a personal friendship besides the attorney-client relationship. Mr. Castle communicated with the client at various hours of the day/night via his personal cellphone and via Facebook. He also socialized with the client in public on at least four occasions. Thereafter, the client expressed an interest in dating Mr. Castle. Mr. Castle however, told the client that he could not date her and continue to represent her in her dissolution matter. When approached by the Firm about her failure to make payments on her account with the Firm, the client alleged she had a sexual relationship with Mr. Castle. Mr. Castle has consistently denied those allegations.

Rule 58(k) provides sanction shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, (“Standards”). The parties stipulate that *Standard 4.33, Failure to Avoid Conflicts of Interests* applies. It provides

that reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury.

The parties stipulate that the agreed upon and presumptive sanction is reprimand. A term of probation is unnecessary as Mr. Castle has completed continuing education regarding conflicts of interests in addition to his yearly MCLE requirements. Mr. Castle's negligent misconduct violated his duties to the client and caused potential injury to the client. Under the *Standards*, the parties stipulate to aggravating factor 9.22(i) substantial experience in the practice of law. In mitigation are factors 9.32 (a) absence of a prior disciplinary record, 9.32(b) absence of dishonest or selfish motive, 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings, and 9.32(l) remorse.

Accordingly:

**IT IS ORDERED** accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanction is reprimand. A final judgment and order is signed this date.

**DATED** this 7<sup>th</sup> day of September, 2018.

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

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by: AMcQueen

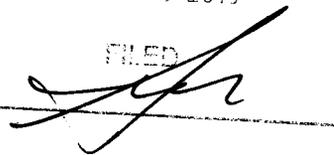
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OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

AUG 27 2018

BY

FILED



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Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**JASON B. CASTLE  
Bar No. 022383**

Respondent.

**PDJ 2018-9075**

State Bar File No. 17-0610

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Jason B Castle (Respondent), who is represented in this matter by counsel, J. Scott Rhodes, hereby submit their Agreement for Discipline by

Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on August 2, 2018, 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 asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the Complainant by email on August 20, 2018. 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 objection, if any, has been or will be provided to the Presiding Disciplinary Judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER 1.7(a)(2) and (b)(1) [Conflict of Interest: Current Clients] Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, 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. Respondent was licensed to practice law in Arizona on October, 24, 2003.

#### COUNT ONE (File no. 17-0610/ Murray)

2. In December 2014, Lauren Murray (Complainant) hired Respondent's Firm, Jaburg & Wilk PC (the Firm), to represent her in divorce proceedings pending in the Maricopa County Superior Court, Case No. FC2014-055151.

3. Shortly after the Firm took on the representation, Complainant's case was transitioned to Respondent, who assumed primary responsibility for the case.

4. By March 2015, Respondent and Complainant had developed a personal friendship in addition to the attorney-client relationship. Respondent gave Complainant his cell phone number and the two communicated both on the phone

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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.

and by text messages. At some point, they also became Facebook friends and communicated through Facebook Messenger. They communicated at various hours of the day/night about a variety of personal topics, as well as issues relating to the representation and the divorce action.

5. During the course of the representation, Complainant and Respondent socialized in public on at least four (4) occasions in April 2015.

6. On one of those occasions, Respondent and Complainant went to a bar with Respondent's friend where they drank and danced. Complainant brought at least one (1) dress to Respondent's house to change into before going out. When she did not do so, Respondent hung the dress up at his house before they went out, where it remained for some time until Respondent returned the dress to Complainant.

7. On another occasion, Complainant called Respondent for a "sober" ride after a night out drinking with friends. Respondent arranged for an Uber driver to bring Complainant to his house. After she arrived, Complainant smoked marijuana that she found in the house before she went to sleep in Respondent's bedroom. Respondent's son was living with him at the time and had a medical marijuana card. Complainant has alleged that Respondent smoked marijuana with

her; that they slept in Respondent's bed together; and that they had some form of sexual contact. Respondent has consistently denied those allegations.

8. After that night, Complainant expressed an interest in dating Respondent. Respondent told Complainant that he could not date her and continue to represent her in the divorce case. The parties agreed that Respondent would continue to represent Complainant, and they did not enter into a dating relationship.

9. In June 2016, an issue arose regarding Complainant's failure to make payments on her account with the Firm. Under instruction from the Firm, Respondent sent Complainant a letter advising her that the Firm would withdraw from her case unless she agreed to make payments. Respondent asked another attorney in the firm to speak with Complainant about her overdue account, which she did. During that conversation, Complainant claimed for the first time to anyone from the Firm that she and Respondent had become personally involved with each other, which included some form of sexual contact.

10. A few days later, the attorney conveyed to Respondent the substance of her conversation with Complainant. Respondent denied the allegations and expressed his intention to withdraw from the case because Complainant had

created a conflict of interest because 1) she had made the allegations of sexual contact between the two of them, and 2) he did not believe that Complainant would honor an agreement regarding payment of the monies owed to the Firm.

11. When Complainant's allegations were made known to the Firm, Attorney Gary Jaburg conducted a conference call with Complainant during which it was agreed that 1) the Firm would not bill Complainant until the case had been concluded and 2) Respondent would continue to represent her in the divorce case. Attorney Jaburg discussed the issue of informed consent with Complainant, but the Firm did not obtain Complainant's written consent to the continued representation.

12. Respondent continued to work on Complainant's case along with another Firm lawyer and attended a hearing with the Special Master on July 8, 2016. The issues outstanding after that hearing related to the finalization of the divorce decree and supporting documents, which attorneys with the Firm continued to work on over the next five (5) months.

13. On February 7, 2017, the Firm filed a motion to withdraw after Complainant failed to make payments on the outstanding balance due on her account.

14. Through the State Bar's Fee Arbitration Program, the Firm was awarded \$65,347.91 in fees and costs on January 11, 2018.

### **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 1.7(a)(2) and (b)(1) [Conflict of Interest: Current Clients].

### **CONDITIONAL DISMISSALS**

The State Bar has conditionally agreed to dismiss allegations of violations of ERs 1.8(j), 8.4(b) and Rule 41(g).

### **RESTITUTION**

Restitution is not an issue in this matter. Through the State Bar's Fee Arbitration Program, the Firm was awarded \$65,347.91 in fees and costs on January 11, 2018.

## 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.

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 parties agree that *Standard* 4.33 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.33 provides that reprimand is generally appropriate "when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or where the representation will adversely affect another client, and causes injury or potential injury to a client." In the present case, Respondent identified the conflict created by virtue of the personal relationship that developed between Respondent and Complainant after the inception of the representation, but he did not assure that the Firm obtained Complainant's informed consent to the continuation of the representation.

**The duty violated**

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

**The lawyer's mental state**

For purposes of this agreement the parties agree that Respondent negligently entered into a personal relationship with a client after the inception of the representation, which resulted in a conflict of interest. Thereafter, he negligently

failed to assure that the Firm secured the client's informed consent to his continued representation of her. Respondent's 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 client.

**Aggravating and mitigating circumstances**

The presumptive sanction in this matter is reprimand. 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 was first admitted to practice law in Arizona in 2003.

**In mitigation:**

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

*Standard 9.32(b)* Absence of a dishonest or selfish motive. Respondent did his best to represent Complainant competently and entered into a friendship with her because he genuinely liked her.

*Standard 9.32(e)* Full and free disclosure or cooperative attitude towards the disciplinary proceedings.

*Standard 9.32(l)* Remorse. Respondent has stated in writing and in an in-person meeting with the State Bar that he regrets his judgment in regard to this matter.

### **Discussion**

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction of Reprimand should be imposed. The agreed upon sanction does not include a period of probation because Respondent has completed a three (3) hour CLE course entitled "Client Management 101: Controlling Expectations and Minimizing Conflict), in addition to Respondent's yearly CLE requirements.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: The parties have weighed the aggravating/mitigating factors and believe that they do not require departure from the presumptive sanction of Reprimand.

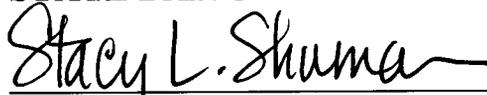
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

### 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 and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this 20<sup>th</sup> day of August 2018

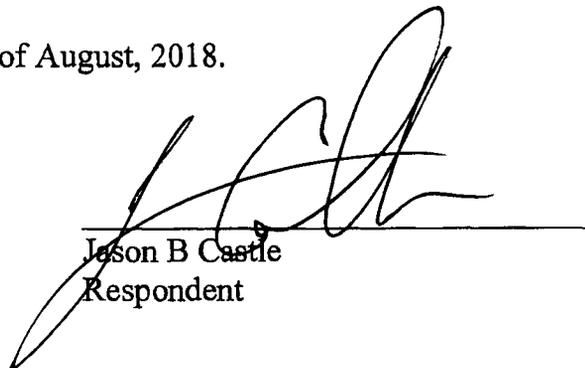
STATE BAR OF ARIZONA



Stacy L Shuman  
Bar Counsel ACAP

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

DATED this 20<sup>th</sup> day of August, 2018.



Jason B Castle  
Respondent

DATED this 20<sup>th</sup> day of August, 2018.

Jennings Strouss & Salmon PLC



J. Scott Rhodes  
Counsel for Respondent

Approved as to form and content



Maret Vessella  
Chief Bar Counsel

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

**DATED** this \_\_\_\_\_ day of August, 2018.

\_\_\_\_\_  
Jason B Castle  
Respondent

**DATED** this \_\_\_\_\_ day of August, 2018.

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 27<sup>th</sup> day of August, 2018.

Copy of the foregoing emailed  
this 27<sup>th</sup> day of August, 2018, to:

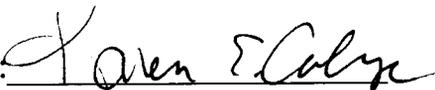
The Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

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Respondent's Counsel

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

by:   
SLS/kec

**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Jason B. Castle, Bar No. 022383, Respondent

File No. 17-0610

### 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 MEMBER  
OF  
THE STATE BAR OF ARIZONA,**

**JASON B. CASTLE  
Bar No. 022383**

Respondent.

**PDJ**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 17-0610]

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

**IT IS ORDERED** Respondent, **Jason B Castle**, is hereby Reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

**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 thirty (30) days from the date 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 August, 2018

\_\_\_\_\_  
**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 August, 2018.

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