

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

RICHARD M. MARTINEZ,
Bar No. 007763

Respondent.

PDJ-2015-9085

FINAL JUDGMENT AND ORDER

[State Bar No. 14-3236]

FILED SEPTEMBER 15, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on August 31, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED Respondent, **Richard M. Martinez**, is hereby 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 Mr. Martinez shall be placed on probation for a period of two (2) years. The probation period is effective the date of this order and shall conclude two (2) years from that date. Mr. Martinez shall enter into terms and conditions of participation with the State Bar's Law Office Management Assistance Program ("LOMAP"), including reporting requirements, if deemed appropriate by the State Bar's LOMAP officer which shall be incorporated herein. Mr. Martinez shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this order, to initiate his probation. Mr. Martinez shall be responsible for any costs associated with LOMAP.

IT IS FURTHER ORDERED Mr. Martinez 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 15th day of September, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 15th day of September, 2015, to:

David L. Sandweiss
Senior Bar Counsel
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Richard M. Martinez
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Respondent

Lawyer Regulation Records Manager
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by: [JAlbright](#)

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JUDGE**

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

RICHARD M. MARTINEZ,
Bar No. 007763

Respondent.

PDJ-2015-9085

**DECISION ACCEPTING CONSENT
FOR DISCIPLINE**

[State Bar No. 14-3236]

FILED SEPTEMBER 15, 2015

An Agreement for Discipline by Consent ("Agreement") was filed on August 31, 2015, and submitted under Rule 57(a)(3), Ariz. R. Sup. Ct¹. A Probable Cause Order was filed July 27, 2015. No formal complaint has been filed. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate."

Rule 57(a)(2) 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.

Under Rule 53(b)(3), notice of this Agreement was provided to the complainant(s) by letter and email on August 10, 2015. Complainant(s) were notified

¹ Unless stated otherwise, all rules referenced are the Arizona Rules of the Supreme Court.

of the opportunity to file a written objection to the agreement with the State Bar within five (5) days of bar counsel's notice. No objection was received.

Mr. Martinez was hired to represent a client in an employment discrimination matter. Mr. Martinez failed to adequately communicate and diligently represent his client. In addition, the written fee agreement did not contain the requisite language set forth in ER 1.5(d)(3). Mr. Martinez also failed to communicate the \$101,000 settlement offer to the client and failed to notify the client of the oral argument on a motion for summary judgment. Mr. Martinez further failed to notify witnesses of their scheduled depositions. Once the client obtained new counsel, Mr. Martinez failed to cooperate with substitute counsel, who was forced to file a motion to compel in order to obtain video of depositions and motion for Mr. Martinez to withdraw.

Mr. Martinez conditionally admits to violating Rule 42, ERs 1.2 (scope of representation), 1.3 (diligence), 1.4(a) and (b) (communication), 1.5(d)(3) (fees), 1.16(d) (declining/terminating representation), and 8.4(d) (conduct prejudicial to the administration of justice). The parties stipulate to a sanction of reprimand and two (2) years of probation with the State Bar's Law Office Management Assistance Program (LOMAP), effective the date of this order. Mr. Martinez further agrees to pay \$1,200.00 in costs and expenses related to this disciplinary proceeding within thirty (30) days from this order.

Presumptive Sanctions

Standards 4.44, 4.43, 4.64, 7.3, and 6.23 of the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("ABA Standards") apply to these circumstances. *Standard* 4.43 is applicable to violations of ERs 1.3 and 1.4 and provides:

Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

Standard 7.3 is applicable to Mr. Martinez's violation of 1.16(d) and provides:

Reprimand is generally appropriate when a lawyer negligently 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.

Standard 6.23 is applicable to Mr. Martinez's violation of ER 8.4(d) and provides:

Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

The parties agree *Standards* 4.44 and 4.64, admonition is applicable to Mr. Martinez's violation of ER 1.2 and 4.64 however, the presumptive sanction remains reprimand. The PDJ agrees. The conditional admissions support Mr. Martinez negligently violated his duty to his client and the legal system by failing to reasonably communicate and diligently represent his client. His misconduct caused actual and potential harm to the client and the legal system.

Aggravation and Mitigation

The parties agree that aggravating factors include: 9.22(a) (prior disciplinary offenses), 9.22(b) (selfish motive), 9.22(c) (pattern of misconduct), and 9.22(i) (substantial experience in the practice of law). Mitigating factors include: 9.32(b) (absence of a dishonest motive), 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude toward proceedings), and (g) (character or reputation). The PDJ notes that no evidence of mitigating factor 9.32(g) is present in the record and

therefore, declines to apply this factor. The absence of this factor does not affect the overall outcome.

Upon consideration of the conditional admissions and application of the *Standards*, the PDJ agrees the presumptive sanction is reprimand. The object of lawyer discipline is to protect the public, the legal profession, the administration of justice, and to deter other attorneys from engaging in unprofessional conduct. *Peasley*, 208 Ariz. 27, 38, 90 P.3d 764, 775 (2004). Attorney discipline is not intended to punish the offending attorney, although the sanctions imposed may have that incidental effect. *Id.* In that context, the PDJ finds the proposed sanction meets the objectives of discipline. Accordingly,

IT IS ORDERED incorporating by this reference the Agreement and any supporting documents by this reference. The agreed upon sanctions are: reprimand, two (2) probation (LOMAP), and the payment of costs and expenses of the disciplinary proceeding totaling \$1,200.00 within thirty (30) days of the final order. These financial obligations shall bear interest at the statutory rate of ten per cent per annum.

IT IS FURTHER ORDERED the Agreement is accepted. Costs as submitted are approved for \$1,200.00 to be paid within thirty (30) days of the final order. Now therefore, a final judgment and order is signed this date. Mr. Martinez is reprimanded.

DATED 15th day of September, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 15th day of September, 2015.

David L. Sandweiss
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