

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

D. MATTHEW CONTI,
Bar No. 021719

Respondent.

PDJ-2015-9056

FINAL JUDGMENT AND ORDER

[State Bar Nos. 14-1593 and 14-3553]

FILED NOVEMBER 27, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent (Agreement) filed on October 30, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed Agreement. Accordingly:

IT IS ORDERED Respondent, **D. Matthew Conti**, is admonished 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. Conti shall, within twelve (12) months of acceptance of this Agreement by the Presiding Disciplinary Judge, complete ten (10) hours of continuing legal education (CLE) that addresses a prosecutor's ethical duties. The ten (10) hours are in addition to Mr. Conti's annual mandatory continuing legal education requirements. Mr. Conti shall provide bar counsel with a copy of the certificates of attendance of the CLE courses he completes relative to the ten (10) hours on prosecutorial ethics. Mr. Conti shall be responsible for the cost of the CLE.

IT IS FURTHER ORDERED Mr. Conti shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00, within 60 days from the date of service 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 27th day of November, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 27th day of November, 2015.

James A. Eaves
Nicholas A. Bender
Sanders & Parks PC
3030 N 3rd St, Ste 1300
Phoenix, AZ 85012-3099
Email: Artie.Eaves@SandersParks.com
Nicholas.Bender@SandersParks.com
Respondent's Counsel

Hunter F. Perlmeter
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

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

by: MSmith

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

D. MATTHEW CONTI,
Bar No. 021719

Respondent.

No. PDJ-2015-9056

**DECISION ACCEPTING
CONSENT FOR DISCIPLINE**

[State Bar Nos. 14-1593, 14-
3553]

FILED NOVEMBER 27, 2015

Probable Cause Orders issued on May 15, 2015 in this matter and the formal Complaint was filed June 17, 2015. An Agreement for Discipline by Consent (Agreement) was filed by the parties on October 30, 2015, dismissing Count One and agreeing to an admonition in Count Two. The Agreement lacked adequate evidentiary support for a full consideration of the agreement. To aid in the supplementation request, Rule 57 authorizes the holding of a hearing to establish a factual basis for an agreement.

By Order of the PDJ filed November 10, 2015, a scheduling conference was set and an evidentiary hearing scheduled. For clarity, that Order and subsequent scheduling conference on November 16, 2015, outlined the sufficient explanatory evidence required for the Agreement to be fully analyzed. It was also pointed out the evidentiary concerns might be resolved by filing a clarifying memorandum with exhibits to be submitted prior to the hearing. On November 25, 2015, a clarifying memorandum with exhibits was timely filed and analyzed.

Prosecutorial discretion is granted to bar counsel under Supreme Court Rule 49. Notwithstanding, once a complaint is filed, the PDJ must determine whether the agreement should be accepted, rejected or a modification recommended. An allegation of prosecutorial misconduct is serious and warrants close scrutiny. One issue in these proceedings are the findings of the trial judge. However, the findings of the judge are not dispositive of whether an ethical rule has been violated. Those findings have been carefully reviewed in these proceedings to determine if the discretion to dismiss Count One is based on the record and if the agreed upon sanction for Count Two is appropriate.

Having reviewed the seventy-six (76) page memorandum including exhibits, the PDJ finds the record for the Agreement is supported. Accordingly:

IT IS ORDERED vacating the evidentiary hearing.

IT IS FURTHER ORDERED incorporating the Agreement filed October 30, 2015, the November 25, 2015 memorandum, and any supporting documents and associated pleadings by this reference. Count One under the Agreement is dismissed. The agreed upon sanctions for Count Two are: admonition and continuing legal education as outlined in the agreement. Costs are stipulated to be \$1,200 and shall be paid within sixty (60) days of the final judgment and order. These financial obligations shall bear interest at the statutory rate.

IT IS FURTHER ORDERED the Agreement is accepted. Costs as submitted are approved for \$1,200.00 and are to be paid within sixty (60) days.

Now therefore,

IT IS ORDERED admonishing D. Matthew Conti, Bar No. 021719, effective

the date of this Order.

DATED this November 27, 2015

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
on November 27, 2015, to:

Counsel for State Bar

Hunter Perlmeter
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Counsel for Respondent

J. Arthur Eaves
Nicholas A. Bender
Sanders and Parks, P.C.
1300 SCF Tower
3030 North Third Street
Phoenix, AZ 85012-3099
Email: Artie.Eaves@SandersParks.com
Nicholas.Bender@SandersParks.com

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

by: MSmith

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
JUN 17 2015
BY *[Signature]* FILED

Hunter F. Perlmeter, Bar No. 024755
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7278
Email: LRO@staff.azbar.org

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**D. MATTHEW CONTI,
Bar No. 021719,**

Respondent.

PDJ 2015-9056

COMPLAINT

[State Bar Nos. 14-1593, 14-3553]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on December 16, 2002.

COUNT ONE (File no. 14-1593/Arizona)

2. The State Bar's investigation was initiated upon review of an October 1, 2013, minute entry in Maricopa County Superior Court case no. CR2012-009395 (State v. Keller). In the minute entry, Judge Garcia dismissed the State's case with prejudice upon finding that Respondent had engaged in misconduct.

3. The underlying criminal case concerned Defendant's possible involvement in a Chicago based drug trafficking operation. Defendant was allegedly working as a courier at the direction of a man named Gary Soucy.

4. On December 31, 2012, Defendant's counsel made an extensive discovery request including "all information regarding any and all witnesses/informants, their handlers, all records and notes pertaining thereto."

5. On January 2, 2013, Respondent conducted a free talk with one of Defendant's business associates, Randy Bronner. A DEA agent who was present for the free talk, drafted a report concerning the talk.

6. During the free talk, Bronner denied knowing of any criminal conduct carried out by Defendant. The DEA agent's report from the free talk provides:

Bronner was asked [if] he knew who [Defendant] was and Bronner stated [Defendant] was a gofer for Soucy. Bronner stated [Defendant] was not associated with K&M Seafood¹ and did nothing more than errands for Soucy. Bronner stated he did not know if [Defendant] ever went to Chicago and he never collected any money from [Defendant].

7. Respondent did not inform defense counsel of the information obtained during the Bronner free talk.

8. The Court would later determine that Bronner's testimony was exculpatory and should have been turned over, characterizing the testimony as follows: "Mr. Bronner told law enforcement that Defendant was a gofer for Mr. Soucy, was not involved in his business other than to simply run errands for him, and that he never collected any money from Defendant."

¹ Soucy's business involved in the alleged drug operation.

9. On January 23, 2013, Respondent filed his Ariz. R. Crim. P. Rule 15.1 initial disclosure statement. Respondent's position is that by that date he had produced all of the discovery provided to him by the US Attorney's Office (USAO) in Chicago that was performing a related investigation.

10. On March 19, 2013, after learning that Bronner had participated in a free talk, defense counsel filed a motion to compel the Bronner free talk report.

11. On March 21, 2013, Defendant's counsel filed a motion for discovery sanctions.

12. On April 4, 2013, Respondent disclosed the free talk report.

13. On May 15, 2013, the Court asked Defendant's counsel to produce a list of materials he believed to be outstanding; the list was provided the next day.

14. On June 14, 2013 and June 18, 2013, at hearings on the Motion to Compel, Respondent indicated that he was unable to produce items not in his control, but would assist Defendant's counsel in attempting to obtain information from investigators in Chicago. Rather than ruling on the motion for sanctions, the court gave both parties additional time to submit exhibits to be considered.

15. On July 10, 2013, Respondent filed a pleading entitled Status of the State's Efforts Related to Defendant's Request for Additional Materials. In the pleading he advised the Court that he would consider dismissing the case if the USAO had difficulty providing the materials that had been requested.

16. On July 18, 2013, Respondent received only some of the information requested from the USAO. As a result, he moved to dismiss the case without prejudice on July 19, 2013, approximately four weeks before trial.

17. A few days later, Defendant moved for dismissal with prejudice as a sanction for Respondent's failure to comply with discovery obligations. In addition to the issue concerning the failure to timely disclose the Bronner free talk, and the failure to obtain materials from the USAO, defense counsel argued that Respondent had failed to disclose a June 28, 2012 free talk letter drafted to a witness named Montes, and claimed ignorance of two additional witnesses in open court, one of whom had been included in the State's grand jury presentation.

18. On August 16, 2013, the court held a hearing on the motions that resulted in the October 1, 2013, minute entry dismissing the matter. The minute entry noted that "the State has an obligation to disclose information not in its possession or control if the State has better access to it, such as another law enforcement agency who is more likely to cooperate with prosecutor rather than with defense counsel (Citation omitted)."

19. In the minute entry, the court made 3 findings:

- a. That Bronner had disclosed exculpatory information during the free talk and that the State failed to produce documents relating to his interview until Defendant learned of it through other sources and filed a Motion to Compel.²
- b. That the State failed to turn-over a free talk letter authored by Respondent on June 28, 2012 to a potential witness named Mario Montes.
- c. That Respondent "claimed ignorance in open court of two witnesses yet one of them was included in the grand jury presentation made by the State's counsel."

² Discussed above.

20. The Court then dismissed the case with prejudice stating: "The court has concerns about the State's compliance with its disclosure obligations. The interests of justice requires dismissal with prejudice."

21. The Court's finding that Respondent made a misrepresentation in court concerning his knowledge of two witnesses relates to the following statements made on March 7, 2013:

Defense counsel:

Several of the witnesses are in Chicago. There is another case pending in Chicago Federal District Court, Illinois District, involving four or five defendants which have tangentially some connection, the government claims, to [Defendant] I've spoken to counsel for one of them, Mr. Santiago, and we're trying to work out an agreement where I can go back and interview Mr. Santiago; and I'm also going to be interviewing a gentleman, Mr. Amir Khan
....

Respondent:

I note defense counsel's raised a bunch of different names. Some of them are completely unfamiliar to me, and it may be because I haven't gotten discov—or disclosure state and the notice of defenses, identifying these individuals.

22. The following is the relevant language from the court's October 1, 2013, minute entry dismissing the case with prejudice:

Despite interviewing Bronner on January 2, 2013, whose disclosed exculpatory information to the State's counsel and Detective Lebel, the State failed to produce documents relating to his interview until the Defendant learned of it through other sources and filed a Motion to Compel. Naturally, Defendant developed a distrust of the State once it learned of the information withheld by the State.

Similarly, despite a free talk letter authored by State's counsel on June 28, 2012 to Mario Montes, another

potential witness having information concerning Gary Soucy, the State failed to disclose this information to the Defendant. Again, defense counsel learned of it by other means.

THE COURT FINDS that the state failed to comply with its disclosure obligations for at least two witnesses that have come to light. In addition, State's counsel claimed ignorance in open court of two witnesses yet one of them was included in the grand jury presentation made by the State's counsel. The court has concerns about the State's compliance with its disclosure obligations. The interests of justice requires dismissal with prejudice.

23. In a footnote regarding Respondent's purported ignorance of two witnesses, the Court stated, "First, only two names were mentioned. Second, and quite shocking, is the fact that the grand jury transcript reveals that Mr. Conti asked Detective Rich Lebel whether DEA agents in Chicago intercepted calls from Mr. Santiago which led to an investigation of the Defendant."

Rule Violations

24. Respondent's conduct as stated herein violates ER 3.8(d) [requires a prosecutor to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense].

25. Respondent's conduct as stated herein violates ER 8.4(d) [prohibits a lawyer from engaging in conduct prejudicial to the administration of justice].

COUNT TWO (File no. 14-3553/MORRISON)

26. Respondent prosecuted the case of State v. Sir Jeffrey Scott Carroll, CR2013-104967. Complainant represented the defendant.

27. On September 1, 2014, the defense disclosed Leslie Harris as a witness. Harris was to testify on Defendant's behalf and to rebut statements made about her by a State's witness concerning her involvement in a drug transaction. Complainant had first emailed Respondent about Harris as a witness in April of 2014, but indicated that he was unsure as to whether he would call her.

28. During her defense interview, Harris denied having a role in the drug business, but admitted to knowing and receiving money from the defendant.

29. Harris was the owner of the residence at which the defendant was arrested.

30. After he disclosed Harris, Respondent made repeated attempts to intimidate her in order to keep her from testifying. Complainant detailed the attempts in a September 14, 2014, Motion to Dismiss Based on Prosecutorial Misconduct.

31. Respondent first engaged in inappropriate conduct when, in open court, he stated for the first time that Harris was an unindicted "co-conspirator" in the case. He then indicated to the court that he could not imagine why she would ever testify. After Respondent made the statement, the parties agreed that Harris should be appointed her own counsel. Attorney Natalee Segal was then assigned to represent her.

32. The full statement at issue, made in court on September 3, 2014, follows:

The practical reality is at one point – I don't know if it's still to this point, but at one point she was the defendant's girlfriend. It was her house that was being used as a stash house where the money was recovered, where the

State alleges the heroin was headed for. There was a stolen vehicle in the garage. That's her house. There was packaging materials. There were scales in the house. There was evidence that would strongly support she was involved.

Now, she wasn't indicted. But taking it further if what the State's witness, Roland Russell, says is true, she is a co-conspirator.

33. Complainant noted in his Motion to Dismiss that, until that point, the State had not disclosed anything indicating that Harris had been directly involved in a crime.

34. The second effort to intimidate Harris took place on September 8, 2014, just before her recorded interview. Respondent indicated to Harris in the presence of Ms. Segal, that he could not imagine that she would agree to be interviewed and that if he were her lawyer, he would not allow the interview to take place. After turning the tape recorder on, Respondent had Harris mirandized and reminded Harris that her right to remain silent "trumps the subpoena that is outstanding." Harris chose to continue with the interview.

35. A third instance of intimidation involved Respondent sending a letter to Harris' attorney, in which he indicated that he suspected Harris of money laundering and that he was preparing a subpoena demanding the production of documents related to her ownership of a company named MEDACC 3000 LLC and a related bank account in which a large deposit and withdrawal had been made. According to Complainant there was no direct connection between MEDACC 3000, its bank account, and the defendant and Respondent's investigation into Harris had

nothing to do with his case against the defendant. The state ultimately served a subpoena upon Harris.

36. After receiving the subpoena, Segal informed Respondent that Harris “now feels as though she is a target of a criminal prosecution” and that she would invoke her 5th amendment right if called to testify against the defendant.

37. After an evidentiary hearing on September 16, 2014 (day 6 of trial) at which Harris testified, the court dismissed the case with prejudice.

38. On the record during the September 16, 2014 evidentiary hearing, Judge Miles said the following:

The witness found she was an unindicted co-conspirator, that was in her mind. The Court did appoint the witness a lawyer. Then the number of—you went to an interview, at the interview, then the prosecutor said if I were your lawyer, which he wasn't, I wouldn't let you testify.

That was unnecessary to get himself in the attorney/client relationship that was established between the witness and Ms. Seigel. He proceeds after the interview gets started to kind of reiterate that or of warning that we are going to use any statements against you and then has a detective follow that up with a Miranda warning.

Then he talks about the subpoena and says if, you know, the subpoena doesn't mean you have to testify and you can—your right to remain silent trumps the subpoena. Then halfway through the interview raises the issue again.

Saying, frankly, I wouldn't have allowed him (sic) to answer any of these questions. That is what we see right in front of the witness, who is giving the interview.

Now, State argues all he was doing was warning the witness and not threatening. But warnings can't be emphasized to the point where they actually then do intimidate a witness to refuse to testify.

I don't look at each one of these things in the abstract. I have to look at the totality of the circumstance in determining this matter. And, frankly, as one of the cases said, it does not require much interpretative glass, as the words that were used in one of the cases, to conclude that the witness could have easily considered the prosecutor's statements meant, unless you decided not to testify here, you are going to be subject of prosecution.

All of that was—those statements perhaps would—with the exception of the Miranda warning by the detective—were all unnecessary and inappropriate, given the fact that ... the witness, had been given counsel in this case, and had a lawyer sitting right there at the interview with her client before the interview started.

I can understand how Ms. Harris felt that the State was basically telling you, if you testify here, we are going to look to you. We are going to look to you for something. Something she hadn't been involved in at all in this case. No one ever came to see her except the defense investigator. I have to conclude that the conduct by the State in this case was unnecessary and overstepped, way overstepped, and that that caused Ms. Harris to decide not to testify in this case, but instead to invoke her 5th Amendment rights.

39. After the above statement was made by the court, Respondent offered

Harris immunity and the court responded:

I think it is a little late, Mr. Conti. I don't think you can do what was done here and say I am going to fix it. I am going to fix it, when you hear that the Court is about to rule against you in this matter.

I am reluctant to dismiss any prosecution, particularly one that was spent this much time on. You way overstepped your bounds here. I am going to grant the motion to dismiss this prosecution against the defendant, okay.

Rule Violations

40. Respondent's conduct as stated herein violated ER 3.4(a) [prohibits a lawyer from obstructing another party's access to evidence].

41. Respondent's conduct as stated herein violated ER 8.4(d) [prohibits a lawyer from engaging in conduct prejudicial to the administration of justice].

DATED this 17th day of June, 2015

STATE BAR OF ARIZONA



Hunter F. Perlmeter
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 17th day of June, 2015

by:



HFP:sml

FILED

MAY 15 2015

STATE BAR OF ARIZONA

BY

Boold

**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

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

**D. MATTHEW CONTI
Bar No. 021719**

Respondent.

No. 14-1593

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on May 8, 2015, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 7-0-2¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 14-1593.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 15th day of May, 2015.

Jeffrey B. Messing
Jeffrey B. Messing, Committee Member
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee members Judge Lawrence F. Winthrop and Daisy Flores did not participate in this matter.

Original filed this 20th day
of May, 2015, with:

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

Copy mailed this 20th day
of May, 2015, to:

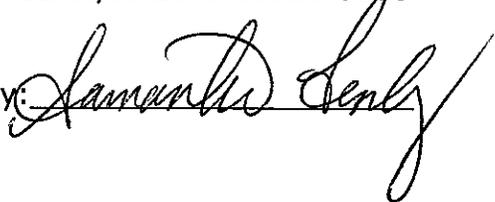
James A. Eaves
Sanders & Parks, PC
3030 North 3rd Street, Suite 1300
Phoenix, Arizona 85012-3099
Respondent's Counsel

Copy emailed this 20th day
of May, 2015, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

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

by:



FILED

MAY 15 2015

STATE BAR OF ARIZONA

BY

**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

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DATED this 15th day of May, 2015.

Jeffrey B. Messing/kmm

Jeffrey B. Messing, Committee Member
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee members Judge Lawrence F. Winthrop and Daisy Flores did not participate in this matter.

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James A. Eaves
Sanders & Parks, PC
3030 North 3rd Street, Suite 1300
Phoenix, Arizona 85012-3099
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Copy emailed this 20th day
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Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

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

by 