

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**MARIA I. GONZALEZ,  
Bar No. 017244**

Respondent.

**PDJ-2016-9094**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 15-1247 & 16-0306]

**FILED SEPTEMBER 27, 2016**

The Presiding Disciplinary Judge (PDJ) of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on September 19, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS ORDERED** Respondent, **Maria I. Gonzalez**, is suspended for six (6) months and one (1) day for her 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.

**IT IS FURTHER ORDERED** Ms. Gonzalez shall be subject to any additional terms imposed by the PDJ as a result of reinstatement hearings held.

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

**IT IS FURTHER ORDERED** Ms. Gonzalez 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. If costs are not paid within the thirty (30) days, interest will begin to accrue at the legal rate until paid. 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 September, 2016.

*William J. O'Neil*

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

Copies of the foregoing emailed  
this 27<sup>th</sup> day of September, 2016, and  
mailed this September 28, 2016, to:

Karen Clark  
*Adams & Clark PC*  
520 East Portland Street  
Phoenix, AZ 85004-1843  
Email: karen@adamsclark.com  
Respondent's Counsel

David L. Sandweiss  
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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,

**MARIA I. GONZALEZ,  
Bar No. 017244**

Respondent.

**PDJ-2016-9094**

**DECISION AND ORDER  
ACCEPTING DISCIPLINE BY  
CONSENT**

[State Bar Nos. 15-1247 & 16-0306]

**FILED SEPTEMBER 27, 2016**

Probable Cause Orders were issued on December 28, 2015 and July 22, 2016. No formal complaint has been filed. An Agreement for Discipline by Consent (Agreement) was filed on September 19, 2016 and submitted under Rule 57(a)(3) Ariz. R. Sup. Ct.<sup>1</sup> A Supplement to the Agreement was filed on September 26, 2016. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject, or recommend the agreement be modified." Rule 57(a)(3)(b).

Rule 57 requires admissions be tendered solely "...in exchange for the stated form of discipline...." Under that rule, the right to an adjudicatory hearing is waived only if the "...conditional admission and proposed form of discipline is approved...." If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

The State Bar is the complainant in this matter therefore, under Rule 53(b)(3), notice of this Agreement to the complainant is unnecessary.

The Agreement details a factual basis to support the admissions to the charge.

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<sup>1</sup> Unless otherwise stated, all rule references are to the Rules of the Supreme Court of Arizona.

In Count One, Ms. Gonzalez represented her brother in a personal injury matter and ultimately settled the matter. The insurance company sent a check to the medical lien creditor and to Ms. Gonzalez. Thereafter, Ms. Gonzalez improperly dispersed client settlement funds and converted client funds from her trust account. In addition, she misrepresented to the medical lien creditor (ABN) the pending settlement offer and misrepresented that she was taking a reduction in her legal fees to persuade ABN to reduce the lien amount. Despite the conversion it appears the brother has little interest in pursuing the matter as she has helped him in the past. While this does not minimize the misconduct, it does create unique circumstances justifying the agreement.

In Count Two, she failed to maintain her client trust account under trust account guidelines and rules resulting in numerous overdrafts. She further failed to maintain accurate records including client ledgers and failed to conduct three way monthly reconciliations.

Ms. Gonzalez conditionally admits she violated Rule 42, ER 1.5(c) (fees), ER 1.15 (safekeeping property) and Rule 43 (trust account). The parties stipulate to a six (6) month and one (1) day suspension and costs of these proceedings. Ms. Gonzalez knowingly violated her duty to her clients and as a professional causing actual harm to clients, potentially serious harm to clients, and potential harm to the public. The parties agree that *Standards 4.11, Failure to Preserve Client's Property* and 4.64, *Lack of Candor*, apply to Ms. Gonzalez' violations. *Standard 4.11* provides:

Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

*Standard 4.64* provides:

Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

The parties agree disbarment is the presumptive sanction and look to aggravating/mitigating factors to justify any reduction in the presumptive sanction.

*Standard 9.31.*

The parties further agree that the following aggravating factors are present in the record: 9.22(b) (selfish motive), 9.22(c) (pattern of misconduct), 9.22(d) (multiple offenses), and (i) substantial experience in the practice of law). The agreed upon mitigating factors include: 9.32(a) (absence of a prior disciplinary record), 9.32(b) absence of a dishonest motive; 9.32(c) (personal or emotional problems), and 9.32(h) (physical disability). The PDJ notes that the supplement to the Agreement filed September 26, 2016, clarifies Ms. Gonzalez' medical issues and the mitigation submitted justifies a reduction in the presumptive sanction of disbarment.

The PDJ finds that the proposed suspension, which will require formal reinstatement proceedings, and the payment of costs within 30 days, meets the objectives of attorney discipline. The Agreement and any attachments are accepted and incorporated by this reference.

**IT IS ORDERED** Respondent, Maria I. Gonzalez, is suspended for six (6) months and one (1) day for conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this order.

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

**IT IS FURTHER ORDERED** Ms. Gonzalez shall be subject to any additional terms imposed by the PDJ because of reinstatement hearings held.

**IT IS FURTHER ORDERED** Ms. Gonzalez shall pay the costs and expenses of the State Bar of Arizona totaling \$1,200.00 within thirty (30) days of this order. If costs are not paid within thirty (30) days, interest will accrue at the legal rate. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

**DATED** this 27<sup>th</sup> day of September, 2016.

*William J. O'Neil*

---

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

Copies of the foregoing emailed  
this 27<sup>th</sup> day of September, 2016, and  
mailed this September 28, 2016, to:

Karen Clark  
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520 East Portland Street  
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Email: karen@adamsclark.com  
Respondent's Counsel

David L. Sandweiss  
Senior Bar Counsel  
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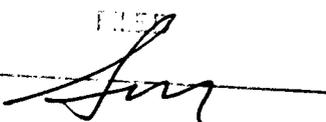
by: AMcQueen

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Respondent's Counsel

FILED  
STATE BAR OF ARIZONA  
SEP 20 2016

SEP 20 2016

FILED  
BY 

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MARIA I. GONZALEZ,  
Bar No. 017244,**

Respondent.

**PDJ 2016 - 9094**

**State Bar File Nos. 15-1247 and  
16-0306**

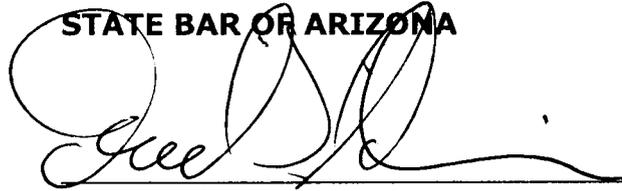
**SUPPLEMENT TO AGREEMENT FOR  
DISCIPLINE BY CONSENT**

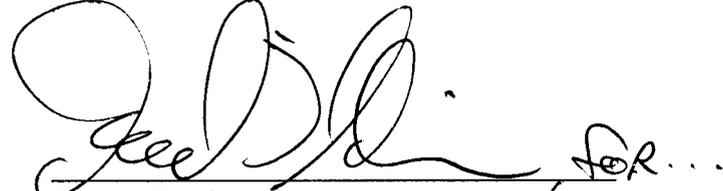
The State Bar of Arizona through undersigned Bar Counsel, and Respondent Maria I. Gonzalez who is represented by counsel Karen Clark, hereby submit their Supplement to Agreement for Discipline by Consent.

The parties filed an Agreement for Discipline by Consent (Consent) with the Presiding Disciplinary Judge (PDJ) on September 19, 2016. The parties agreed in the Consent that *Standard* 9.32(h) "physical disability" applies in this case. Respondent requested a report from her doctor prior to entering into the Consent, but did not receive the report in time to submit it along with the Consent. Respondent recently received the report, and the parties submit it in support of *Standard* 9.32(h).

Bar Counsel has conferred with Ms. Clark, who authorized him to sign and submit this supplement for the PDJ's consideration.

**DATED** this 26<sup>th</sup> day of September 2016.

**STATE BAR OF ARIZONA**  
  
David L. Sandweiss  
Senior Bar Counsel

Adams & Clark PC  
  
Karen Clark  
Counsel for Respondent

Original filed with the Disciplinary Clerk of the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona this 26<sup>th</sup> day of September, 2016.

Copy of the foregoing emailed this 26<sup>th</sup> day of September, 2016, 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/mailed  
this 20<sup>th</sup> day of September, 2016, to:

Karen Clark  
Adams & Clark PC  
520 East Portland Street  
Phoenix, Arizona 85004-1843  
Email: [karen@adamsclark.com](mailto:karen@adamsclark.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 20<sup>th</sup> day of September, 2016, to:

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

by: John Brokan

**EXHIBIT A**

*Sealed*

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Respondent's Counsel

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

SEP 19 2016

FILED  
BY 

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MARIA I. GONZALEZ,  
Bar No. 017244,**

Respondent.

PDJ 2016 - 9094

State Bar File Nos. 15-1247 and  
16-0306

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

The State Bar of Arizona through undersigned Bar Counsel, and Respondent Maria I. Gonzalez who is represented by counsel Karen Clark, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.<sup>1</sup> In case no. 15-1247 (Count One), the Attorney Discipline Probable Cause Committee ("ADPCC") entered a probable cause order on December 28, 2015. In case no. 16-0306 (Count Two) ADPCC entered a probable cause order on July 22, 2016. The State Bar has not yet filed a formal complaint in either case.

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

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 admissions and proposed form of discipline are approved.

The State Bar is the complainant in both cases; hence, notice of this agreement otherwise required by Rule 53(b)(3) is not necessary.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ERs 1.5(c) (written contingent fee agreements, Count Two) and 1.15 (safekeeping client property, Counts One and Two); and Rule 43 (trust account, Counts One and Two). Upon acceptance of this agreement, Respondent agrees to accept imposition of a suspension for six months and one day. 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.

## **FACTS**

### **GENERAL ALLEGATIONS**

1. Respondent was licensed to practice law in Arizona on October 19, 1996.

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<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.

**COUNT ONE (File no. 15-1247/SBA - Trust Account)**

2. Respondent represented her brother, Nector Marmolejos ("Nector") in a bodily injury case for a 20% contingency fee. Respondent settled the case for a gross of \$26,000.

3. The liability insurer sent a check for \$3,766.46 directly to Advanced Back and Neck Care ("ABN", a medical care lien creditor) and another check for \$22,233.54 to Respondent.

4. On May 5, 2015 (all dates are in 2015) Respondent deposited the settlement check into her Interest on Lawyers' Trust Account ("IOLTA"); when added to her administrative funds of \$46.00, this brought her IOLTA balance to \$22,279.54.

5. The distribution of Nector's settlement funds should have been:

- a. Respondent-\$5,200 (fees, no costs); and
- b. Nector-\$17,033.54.

6. On May 7, in Nector's case Respondent made an online transfer from her IOLTA to her business account for \$6,500 that she allocated as \$6,200 in fees and \$300 in costs. However, the fees should have been \$5,200 and there were no costs associated with this case.

7. Respondent also impermissibly withdrew \$1,000 in cash from her IOLTA to give to Nector. This left a trust account balance of \$14,779.54.

8. Then, Respondent wrote an IOLTA check to Nector for \$14,883.54, which overdrew her trust account by \$104.00. The bank returned the check and did not assess any fees, thereby restoring the IOLTA balance to \$14,779.54.

9. On May 11, Respondent made an online transfer of \$100.00 from her business account to her IOLTA as "administrative funds" that brought the trust account

balance to \$14,879.54. Later, however, Respondent gave Nector a partial distribution in his case of \$100.00 in cash that supposedly were IOLTA administrative funds.

10. On May 13, Respondent wrote Nector an IOLTA check for \$14,483.54, leaving a trust account balance of \$396.00. Respondent also made an online transfer of \$350.00 from her IOLTA to her business account in order to complete an impermissible cash advance to Nector in his case.

11. These transactions restored the IOLTA balance to the original \$46.00 in administrative funds.

12. On May 14, Nector resubmitted the May 7 check for \$14,883.54 that, of course, was returned unpaid. Both returns of the May 7 check for \$14,883.54 prompted Respondent's IOLTA bank to notify the State Bar.

13. Respondent did not initially respond to the bar's two requests for information, and she did not timely respond to subsequent requests, but did respond after receiving reminder notices.

14. Respondent did not provide copies of the requested items because other than bank statements and copies of checks and deposit slips she does not maintain trust account records. Specifically, Respondent failed to maintain and provide to the State Bar the mandatory IOLTA general ledger, administrative funds ledger, client ledgers, or three-way monthly reconciliation.

15. At various times Respondent told the bar's trust account examiner that she "did the math wrong;" "Honestly, I went to law school because I can't count." "What do you expect me to say? That my brother who is always asking me for money came in like always?" Respondent said that she did not maintain any trust account records, including ledgers, and asked if it would suffice for her to "put a spreadsheet

together." Respondent did produce some after-the-fact charts but they were incomplete and wrong. Lightheartedly, she concluded, "I know I'm a train wreck."

16. Respondent characterized Nector as her younger brother, who had been living with her for an extended period for free. He had trouble with delays in cashing checks and therefore requested cash advances for his case. He authorized her to take an extra \$1,300 and she did not perceive it to be an issue since her brother (who has not complained) had been living with her for free and wanted her to have the money.

17. The net effect of Respondent's IOLTA transactions in Nector's case, beyond keeping more for herself than the contracted amount and failing to maintain the requisite records, is that she distributed \$100.00 more in the case than what she received. The \$100.00 came from Respondent's business account; no other client funds were implicated.

18. Respondent's settlement distribution letter to Nector shows a \$300 deduction for costs when there were no costs. The settlement distribution letter also shows a \$6,200 deduction for fees when the contracted amount was \$5,200. Respondent did not modify her written fee agreement with Nector to reflect the amended fee arrangement; however, Nector did not complain about either the \$6,200 fee deduction or the total legal cost deduction of \$6,500 that included \$300 in supposed costs.

19. ABN's gross bill was \$7,765.00. First party medical insurance paid \$2,384.33, leaving a lien balance of \$5,380.67. In April Respondent wrote to an ABN officer and asked him to reduce ABN's lien to \$3,766.46.

20. Respondent wrote that the then-pending liability settlement offer was \$25,000; "Total Meds" were \$13,048.93 (in actuality, the other medical balances

totaled \$12,950.70); "Our law firm is taking a reduction and charging only 20% of the total award;" and she proposed a distribution to her firm of \$5,000.00.

21. Respondent wanted to persuade ABN to reduce its balance by showing the hardship that would result to Nector were full deductions taken for fees, costs, and medical balances.

22. The clinic director agreed to Respondent's request to reduce ABN's lien.

23. Respondent later called Dr. McDonald at the clinic to tell him that she was able to get an additional \$1,000 for the case but did not explain how that sum was to be divided. Respondent agreed to get back to him with a proposal but never did, and he forgot about it.

24. Respondent did not tell ABN that she did not take a reduction in fees from the contracted amount since her fee agreement called for a 20% fee (although it does represent a reduction from the customary contingent percentage charged in similar cases).

25. Respondent also did not tell ABN that she did not plan to (and did not actually) pay the other medical balances, and that Nector would receive the sum represented by "Total Meds" that ostensibly were set aside to pay Nector's medical creditors. Respondent claims that Nector did not allow her to pay the other medical providers who, unlike ABN, did not have liens. She takes the position that she was ethically precluded from disclosing such confidential client information to ABN, absent her client's consent to do so. The State Bar takes the position that Respondent, having caused ABN to rely on her earlier representation that settlement funds were set aside for other medical creditors, was obligated to correct that misinformation and inform ABN of the true facts.

26. Dr. McDonald and the clinic director are uncertain if they would have agreed to the requested reduction had Respondent told them about the amount of the settlement, her contractual arrangement with Nector, the actual amount of deductions, the actual amount she was to receive, and the actual amount Nector was to receive. Respondent asserts that she continued to have a good relationship with ABN following the events at issue here, and that ABN continued to refer clients to her.

27. Respondent's conduct in this count violated Rule 42, ER 1.15(a), and Rule 43.

**COUNT TWO (File no. 16-0306/SBA - Trust Account)**

28. On January 19, 2016, Respondent's IOLTA bank returned check no. 1066 for \$150 because the balance in the account was only \$147.25. The bank notified the State Bar thereby prompting a standard trust account investigation. The State Bar's examiner sent Respondent a screening letter on February 2, 2016 and listed eight categories of records and items she was to provide.

29. In response, Respondent explained that she issued the \$150 check thinking she had adequate funds in her IOLTA to cover it, but turned out to be wrong because "I can't do math."

30. Respondent failed to provide all of the information that the investigator specifically requested (she furnished two of four pages of a bank statement and a copy of one cancelled check). Respondent asked the examiner to "let [her] know what other documents [were] needed."

31. On March 3, 2016, the examiner told Respondent that she failed to provide many of the items requested, such as individual client ledgers, an

administrative funds ledger, general ledger, copies of cancelled checks, and monthly reconciliation.

32. Respondent replied that she did not provide the records because she'd had only one client since September 2015 (Mendoza) and, therefore, did not maintain the requested records. Respondent told the examiner that in September 2015, Mendoza paid her \$1,000 in advance.

33. Contrary to Respondent's assertion that since September 2015 she only held \$1,000 on deposit on behalf of a single client, the interest remittance report to the Arizona Bar Foundation for Respondent's IOLTA indicated Respondent held an amount greater than \$1,000 in her account.

34. Over the next several months, the examiner sent Respondent many requests for additional information. During this time Respondent was suffering from personal and medical issues, as set forth in Exhibit B. Respondent was practicing on her own, with no support staff and no one to help her with her accounting. Nonetheless, Respondent did her best to comply with the numerous requests for information, and did comply with exceptions. The records show:

- a. Respondent received settlement checks on behalf of five clients during the period of review, meaning she represented at least six clients and not just one (Mendoza).
- b. Contrary to Respondent's initial statements, she never held Mendoza's funds in her IOLTA.
- c. As of September 1, 2015, her IOLTA balance was \$6, and Respondent failed to identify to whom the funds belonged.
- d. During the period of review, Respondent disbursed \$6,096 through online transfers to her personal and business accounts ending in 6620 and 7950. She identified the transactions as disbursements to her operating account for "atty fees," but none of the amounts corresponded to the breakdown of fees

Respondent provided. Respondent, therefore, failed to withdraw the portion of funds belonging to her when due and legally available.

e. Respondent disbursed check number 1027 for \$1,400 that she identified as "Atty fees Barnes." Her client ledger, however, did not reflect the disbursement or that there were any funds on deposit to cover the disbursement.

f. Respondent disbursed check number 1030 for \$1,000 that she identified as "office rent." When asked to identify the name of the client on whose behalf the above referenced funds were disbursed, Respondent failed to identify a corresponding client. Rather, she stated: "These are just transfers into the checking account and no documents exist."

35. During the period of review Respondent removed \$9,737 from the IOLTA for her benefit. The first removal occurred on September 15, 2015, when the balance was \$1,465.68 consisting of \$6 belonging to an unknown client or entity, and \$1,459.68 for client Barnes.

36. Respondent transferred \$650 to her personal account (6620) causing a deficit in the IOLTA in that amount and constituting a conversion of client funds.

37. In subsequent months Respondent made additional transfers from her IOLTA to her personal or business accounts for undisclosed clients or reasons, or for "office rent," thereby increasing the deficit to \$3,626.34.

38. Despite acknowledging a discrepancy in the IOLTA during the examination, Respondent failed to take any steps to make the account whole again. Instead, Respondent tried to remedy the discrepancy by disbursing funds to the corresponding third parties from her account ending in 7950; however, Respondent failed to hold sufficient funds in her personal account to cover the remedial disbursements (the details are discussed below).

39. Respondent's accounts 6620 and 7950 incurred numerous non-sufficient fund fees, returned check fees, and negative daily balances. Therefore, none of the

funds transferred from the IOLTA into these accounts was held on deposit for long; rather the funds were converted by the recurring negative balances.

40. Based on the contingency fee breakdown provided<sup>3</sup> by the Respondent and the settlement checks deposited into the IOLTA, the total attorney's fees due to Respondent was \$7,564.16, calculated as follows:

Client	Recovery Amount	Fee Agreement %		Fee Amount
Almeida	\$5,500.00	20%	=	\$1,100.00
Barnes	\$4,250.00	33%	=	\$1,402.50
Love	\$5,202.00	33%	=	\$1,716.66
Quintero	\$6,500.00	33%	=	\$2,145.00
Rodriguez	\$6,000.00	20%	=	\$1,200.00
<b>Total</b>				<b>\$7,564.16</b>

41. Respondent said that the attorney's fees should have been \$7,807, for a difference of \$242.84. The difference resulted from the following discrepancies contained in Respondent's breakdown:

- a. Respondent attributed to client Love a settlement of \$6,000 when the actual amount was \$5,202. During discussions with Respondent's counsel relating to this consent, counsel presented new evidence and an explanation that Respondent had not previously provided. The Love gross settlement was \$6,000; the liability insurer paid a medical provider \$798.00 directly; Respondent handled the \$5,202 remaining balance of the settlement; and appropriately charged a 33% fee on the \$6,000 gross amount;
- b. Respondent attributed to client Rodriguez a settlement of \$5,900 when the actual amount was \$6,000;
- c. Respondent calculated 33% (.33) of the Barnes settlement as \$1,402, when the mathematically correct amount is \$1,402.50.

<sup>3</sup> Respondent failed to provide a copy of the fee agreement for client Quintero; Respondent alleges the contingency fee was 33%.

Respondent said that she reduced fees on some of the cases, and the actual fees should have been \$6,507:

Client	Recovery Amount	Fee Agreement %		Fee Amount	Reduced Amount
Almeida	\$5,500.00	20%	=	\$1,100.00	\$1,100.00
Barnes	\$4,250.00	33%	=	\$1,402.00	\$1,241.00
Love	\$6,000.00	33%	=	\$1,980.00	\$1,970.00
Quintero	\$6,500.00	33%	=	\$2,145.00	\$1,096.00
Rodriguez	\$5,900.00	20%	=	\$1,180.00	\$1,100.00
<b>Total</b>				<b>\$7,807.00</b>	<b>\$6,507.00</b>

42. The client ledgers reflect the reduced amounts Respondent identified as her attorney's fees.

43. The Quintero ledger reflects the attorney's fee as \$1,096.25, while Respondent identified it as \$1,096.00, for a difference of \$0.25.

44. Based on the information Respondent provided during the SBA's screening investigation, the "reduced" attorney's fee for client Love in the amount of \$1,970 was "reduced" from a number that was too high to begin with. The starting amount should have been \$1,716.66; thus Respondent increased (by \$253.34) the contingency fee rather than decreased it. However, based on new information that Respondent's counsel provided during discussions related to this consent, the fee that Respondent charged in client Love's case was appropriate.

45. After accounting for these discrepancies, total attorney's fees came to \$6,253.91<sup>4</sup>. Therefore, as of February 29, 2016, Respondent should have had \$3,626.34 on deposit in her IOLTA. The corresponding bank account statement,

<sup>4</sup> \$0.25 added; and \$253.34 deducted.

however, reflects the actual balance on deposit that day was \$47.25. Respondent misappropriated \$3,579.09 of client and third party funds, as follows:

a. **Almeida:** On 11/06/2015, Respondent deposited a \$5,500 settlement check. The client ledger allocated the funds Client - \$3,133; Third Party Funds (x2) - \$1,267; and Attorney's Fee - \$1,100. Respondent disbursed the client funds with IOLTA check number 1029, allegedly written on 11/22/2015. Respondent did not write checks to the third party medical providers until February 2016, and when she did she wrote them from her operating account ending in 7950. Specifically, on 02/23/2016, she wrote check number 1232 for \$970 to Ignite Physical Therapy. On 02/24/2016, she wrote check number 1230 for \$297 to Southwest Diagnostic. When asked to explain, Respondent simply stated that "[she] paid from the checking account because [she] had money in the account." The checks remained outstanding during the period of review, yet by the end of the period of review the balance in the account ending 7950 was \$730.33. Respondent failed to safekeep funds earmarked for third parties, and misappropriated said funds.

b. **Barnes:** On 09/03/2015, Respondent deposited a \$4,250 settlement check. On 11/16/2015, check number 1027 for \$1,400 posted; Respondent identified the disbursement as attorney's fees. However, the client ledger reflects the funds were allocated Client - \$1,549.32; Third Party Funds (x4) - \$1,459.68; and Attorney's Fee - \$1,241. Respondent appears to have disbursed all of the funds to the right people with IOLTA checks, including attorney's fees (check number 1018 for \$1,241). The bank statements reflect that all checks on client Barnes' behalf posted by 10/14/2015, bringing the client balance to zero approximately one month prior to the \$1,400 disbursement. Respondent failed to safekeep client/third party funds and converted other client/third party funds.

c. **Love:** As discussed above, Respondent said she took a reduced fee of \$1,970, but the contracted fee was \$1,716.66, for an **increase** of \$253.34 that, based on information Respondent provided, Respondent owes to the client. Respondent's counsel's presentation of new evidence during consent discussions, although demonstrating that Respondent does not owe money to client Love, does not resolve the discrepancy in Respondent's IOLTA. Respondent failed to safekeep client/third party funds and converted other client/third party funds.

d. **Mendoza:** Contrary to Respondent's explanation of the overdraft, client Mendoza held no funds on deposit during the period of review. Yet, Respondent wrote two checks from her IOLTA on the client's behalf -- check number 1064 for \$96 payable to the Encanto Justice Court, and check number 1066 for \$150 payable to Valley Wide Process Services. Check number 1066 was returned unpaid but check number 1064 cleared the account. Respondent misappropriated other client/third party funds.

e. **Rodriguez:** On 11/16/2015, Respondent deposited a \$6,000 settlement check but recorded the deposit as \$5,900 on the client ledger, for a difference of \$100. The client ledger allocated the funds Client - \$2,800; Third Party Funds - \$2,000; and Attorney's Fee - \$1,100. Respondent disbursed the client funds with check number 1063, allegedly written on 12/01/2015. Respondent did not write a check to the third party until after the period of review; when she did, due to the funds she had improperly paid to herself from the IOLTA, she used her operating account ending in 7950 (check number 1235 for \$2,000 allegedly written on 03/10/2016). Therefore, Respondent owes the client \$100 and may owe the third party \$2,000 (the period of review ended on February 29, 2016). Respondent failed to safekeep third party funds, and misappropriated said funds.

46. Other issues relating to client Mendoza have to do with Respondent's fee agreement, deposit of funds into the wrong account, and confusing bills. The fee agreement states that a \$1,000 retainer is "to be deposited in the Counsel's trust account and held for further withdrawals," although a hand-written note at the bottom corner of the contract states "Chase [7950] [Respondent's business account]."

47. Mendoza met with Respondent on September 2, 2015, and signed her fee agreement that day. Respondent told Mendoza to deposit \$1,000 into her business account, despite language to the contrary in her fee agreement to deposit the money into her trust account; despite that the fee was not "earned on receipt" or "nonrefundable;" and further despite that this was an advance fee in that Respondent had not yet done the work for Mendoza.

48. Respondent did the work later in the day she was retained, but told Mendoza to deposit the funds into her operating account because she believed that a client could not make a deposit directly into her IOLTA.

49. Respondent's invoice and billing statements for Mendoza were inconsistent. For example, the billing detail reflects that on 09/02/2015, Respondent mailed a pleading to the defendant, while the invoice reflects the entry on 09/03/2015.

Similarly, the billing detail reflects that on 02/28/2016, Respondent drafted a response to a Motion to Dismiss, while the invoice reflects the entry on 03/01/2016. In addition, the bill totals 10.55 hours, while the invoice charges for 10.75 hours, for a difference of .2 hours (\$40). The invoice is dated 09/03/2015, for billable hours charged from 09/02/2015 through 03/01/2016, and had a payment due date of 03/15/2016.

50. Respondent did not produce contingency fee agreements signed by clients Love and Quintero. Respondent believes that she did obtain contingency fee agreements bearing clients Love and Quintero's signatures but conditionally admits that she violated ER 1.5(c).

51. Respondent's conduct in Count Two violated Rule 42, ERs 1.5(c) and 1.15; and Rule 43.

#### **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 her conduct violated Rule 42, ERs 1.5(c) (written contingent fee agreements, Count Two) and 1.15 (safekeeping client property, Counts One and Two); and Rule 43 (trust account, Counts One and Two).

#### **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 sanction is appropriate:

suspension for six months and one day. 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 cases involving multiple charges of misconduct, the sanction should be consistent with the one applicable to the most serious misconduct. *Standards*, "II. Theoretical Framework."

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 violated her duties to her clients and as a professional.

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

For purposes of this agreement the parties agree that Respondent knowingly misappropriated client funds from her trust account, knowingly failed to maintain

accurate IOLTA records, and negligently failed to adhere to fee agreement requirements, all 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 actual harm to clients, potential serious harm to clients, and potential harm to the public.

The parties agree that the following *Standards* are appropriate:

*Standard 4.11* - Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

*Standard 4.64* - Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

**Aggravating and mitigating circumstances**

The presumptive sanction in this matter is disbarment. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

**In aggravation:** *Standard 9.22--*

- (b) selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (i) substantial experience in the practice of law;

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

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest motive;
- (c) personal or emotional problems;
- (g) character or reputation;
- (h) physical disability;

**Discussion**

The parties conditionally agree that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction should be mitigated to a suspension of six months and one day. A greater or lesser sanction

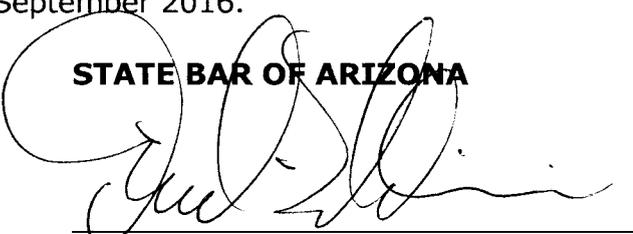
would not be appropriate. No client lost money; no restitution is required. Respondent's lack of disciplinary history in 20 years of practice is entitled to considerable weight ("We give great weight, in particular, to respondent's previous unblemished disciplinary record..." *Matter of Levine*, 174 Ariz. 146, 172, 847 P.2d 1093, 1119 (1993)). The necessity that Respondent undergo formal reinstatement proceedings before practicing law again will adequately protect the public and serve the other purposes of lawyer regulation. The sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

### CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of a suspension for six months and one day and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit C.

**DATED** this 19<sup>th</sup> day of September 2016.

**STATE BAR OF ARIZONA**



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David L. Sandweiss  
Senior Bar Counsel

**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.**

**DATED** this 16 day of September, 2016.

  
Maria I. Gonzalez  
Respondent

**DATED** this \_\_\_\_\_ day of September, 2016.

Adams & Clark PC

---

Karen Clark  
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 \_\_\_ day of September, 2016.

Copy of the foregoing emailed  
this \_\_\_ day of September, 2016, 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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**DATED** this \_\_\_\_\_ day of September, 2016.

\_\_\_\_\_  
Maria I. Gonzalez  
Respondent

**DATED** this 17<sup>th</sup> day of September, 2016.

Adams & Clark PC

  
\_\_\_\_\_  
Karen Clark  
Counsel for Respondent

Approved as to form and content:

\_\_\_\_\_  
Maret Vessella  
Chief Bar Counsel

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**DATED** this 16 day of September, 2016.

  
Maria I. Gonzalez  
Respondent

**DATED** this \_\_\_\_\_ day of September, 2016.

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Karen Clark  
Counsel for Respondent

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DATED this \_\_\_\_\_ day of September, 2016.

\_\_\_\_\_  
Maria I. Gonzalez  
Respondent

DATED this 17<sup>th</sup> day of September, 2016.

Adams & Clark PC

  
\_\_\_\_\_  
Karen Clark  
Counsel for Respondent

Approved as to form and content:

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Maret Vessella  
Chief Bar Counsel

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Copy of the foregoing mailed/mailed  
this 19<sup>th</sup> day of September, 2016, to:

Karen Clark  
Adams & Clark PC  
520 East Portland Street  
Phoenix, Arizona 85004-1843  
Email: [karen@adamsclark.com](mailto:karen@adamsclark.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 19<sup>th</sup> day of September, 2016, to:

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

by: John Bohan

**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
MARIA I. GONZALEZ, Bar No. 017244, Respondent

File Nos. 15-1247 and 16-0306

### **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**

*Sealed*

**EXHIBIT C**

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MARIA I. GONZALEZ,**  
**Bar No. 017244,**

Respondent.

**PDJ**

**FINAL JUDGMENT AND ORDER**

State Bar Nos. 15-1247 and 16-0306

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, **Maria I. Gonzalez**, is hereby suspended for six months and one day for her 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 be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

**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 30 days from the

date of service of this Order. If costs are not paid within the 30 days, interest will begin to accrue at the legal rate.

**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 September, 2016.

---

**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 September, 2016.

Copies of the foregoing mailed/emailed this \_\_\_\_\_ day of September, 2016, to:

Karen Clark  
Adams & Clark PC  
520 East Portland Street  
Phoenix, AZ 85004-1843  
Email: karen@adamsclark.com  
Respondent's Counsel

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David L. Sandweiss  
Senior Bar Counsel  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
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by: \_\_\_\_\_