



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**BRENT RANDALL PHILLIPS v. HON. O'NEIL/  
STATE BAR OF ARIZONA  
CV-17-0122-SA**

**PARTIES:**

*Petitioner:* Brent Randall Phillips

*Real Party in Interest:* State Bar of Arizona

*Amicus Curiae:* Arizona Attorney General

**FACTS:**

Brent Phillips and his law firms, Phillips Law Center and Farmers Legal Group, (“Phillips”), advertised their legal services to help Arizona consumers with mortgage assistance relief. The Arizona Attorney General’s Office (AG) filed a civil lawsuit against Phillips alleging deceptive practices that violated the Arizona Consumer Fraud Act. In 2015, Phillips and the AG agreed to resolve the case by consent judgment. In the consent judgment, Phillips stipulated that the court could enter certain findings of fact and conclusions of law. Phillips admitted that he engaged in certain deceptive practices and that this conduct violated the Arizona Consumer Fraud Act. Phillips was fined and ordered to pay restitution, attorney fees, and a civil penalty. The superior court granted the Consent Judgment on September 22, 2015.

Paragraph 16 of the “order” portion of the Consent Judgment provides a “non-use” clause:

16. With the exceptions of paragraphs 12 and 13 above [pertaining to enforcement of payment and bankruptcy issues] and the State’s enforcement of this Consent Judgment, this Consent Judgment is not and shall not in any event be used as an admission or evidence of any alleged wrongdoing or liability by defendant Brent Randall Phillips, defendant Phillips Law Center, and defendant Farmer’s Law Group in any other civil, criminal, or administrative court, administrative agency or other tribunal anywhere in the United States of America.

In December 2016, the State Bar filed a disciplinary complaint against Brent Phillips alleging ethical violations relating to the conduct underlying the consumer fraud action. Anticipating the State Bar would try to use the Consent Judgment at the discipline hearing, Phillips filed a “Motion in Limine to Preclude Use of Consent Judgment.” Phillips argued that the non-use clause precluded the use of the Consent Judgment for any purpose. Under the clear language of the non-use clause and Rules 403, 404, and 408 of the Arizona Rules of Evidence, Phillips argued the Consent Judgment could not be used to establish liability or for impeachment purposes. The State Bar argued that it should be able to use the Consent Judgment to impeach Phillips should

his testimony differ from the facts he admitted in the judgment. The Bar further argued the Consent Judgment is not private, but is a public document and that the public policy in favor of promoting the truth-seeking function of the courts should outweigh any policy favoring settlements.

The Presiding Disciplinary Judge (PDJ) denied the motion. The PDJ's order provided: "The State Bar cannot use the sanctions in the Consent Judgment as substantive evidence but [is] permitted to introduce the stipulated facts within the judgment." The PDJ found that Arizona Rule of Evidence 408 was not applicable because the State Bar proceeding was not the same "claim" from which the Consent Judgment arose. The PDJ also noted that Rule 613(b) provides a prior inconsistent statement is admissible "only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or *if justice so requires.*" (Emphasis in Order). The statement of facts in the Consent Judgment "passes the relevancy tests under Rules 401 and 402, as they are relevant to [Phillips'] credibility and truthfulness." The PDJ also found that the Consent Judgment was not unfairly prejudicial under Rule 403 because Phillips' own statements are being used against him. The PDJ ruled:

**IT IS ORDERED** denying the Motion to exclude the Consent Judgment for impeachment purposes.

Phillips filed an emergency petition for special action in this Court. The underlying disciplinary proceedings were ordered stayed pending this Court's consideration of the petition for special action.

#### **ISSUES:**

1. What is the applicability of Arizona Rules of Evidence 408 and 613 when the State Bar seeks to use a consent decree in a lawyer disciplinary proceeding?
2. Is a provision in a consent decree between a party and a government agency providing that the decree will not be used as an admission or as evidence of any alleged wrongdoing in any other proceeding binding when a third party seeks to use the consent decree in a separate proceeding?

#### **RELEVANT RULES:**

Arizona Rule of Evidence 408 deals with the use of evidence of compromise offers and negotiations and provides:

- (a) Prohibited Uses.** Evidence of the following is not admissible--on behalf of any party--either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:
- (1)** furnishing, promising, or offering--or accepting, promising to accept, or offering to accept--a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim.

**(b) Exceptions.** The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Arizona Rule of Evidence 613(b) provides:

**(b) Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.*