

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**JARED O. SMITH,
Bar No. 010465**

Respondent.

PDJ 2015-9005

FINAL JUDGMENT AND ORDER

[State Bar No. 14-2162]

FILED MAY 4, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on April 23, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED Respondent, **JARED O. SMITH**, is hereby admonished effective the date of this order for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED Respondent shall be placed on probation for a period of one (1) year. The period of probation shall commence upon entry of this final judgment and order and will conclude one (1) year from that date or upon Respondent's completion of the below Continuing Legal Education course (CLE), whichever is earlier.

IT IS FURTHER ORDERED as the only term of probation, Respondent shall complete the CLE "Ten Deadly Sins of Conflicts." Respondent shall contact State Bar of Arizona publications at 602-340-7318 to either obtain and listen to the CD or obtain

and view the DVD entitled "The Ten Deadly Sins of Conflict". Respondent may alternatively go to the State Bar website (www.myazbar.org) and complete the self-study online version. Respondent shall provide Bar Counsel with evidence of completion of the program by providing copies of handwritten notes. Respondent shall be responsible for the cost of the CD, DVD or online self-study.

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 30 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 4th day of May, 2015.

William J. O'Neil

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

Copies of the foregoing mailed/emailed
this 4th day of May, 2015.

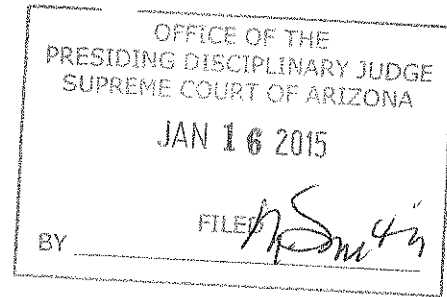
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by: JAlbright

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**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

**JARED O. SMITH,
Bar No. 010465,**

Respondent.

PDJ 2015- 9005

COMPLAINT

State Bar No. 14-2162

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 November 09, 1985.

COUNT ONE (File no. 14-2162/Wright)

2. Michael Jordan ("Michael") was charged with domestic violence offenses after he allegedly assaulted his wife, Andrea Jordan ("Andrea"), on June 7, 2014.

3. Andrea informed the police in a taped interview that Michael choked her. However, Andrea later denied to the prosecutor that Michael choked her.

4. Michael contacted Respondent to discuss the charges and informed Respondent that Andrea did not want him to be prosecuted.

5. Respondent advised Michael that Andrea should retain him as "her private crime advocate" and then waive any conflict of interest in Respondent also representing Michael.

6. A few days later, Andrea called Respondent and they discussed the charges that the State filed against Michael.

7. Respondent then agreed to represent both Andrea and Michael.

8. On June 30, 2014, Respondent emailed Andrea and Michael, attaching fee agreements and conflict waivers. Respondent asked them to execute these documents and they did so.

9. On the same day, Respondent contacted the prosecutor about expediting the case.

10. The prosecutor informed Respondent of the State's duty to discuss the matter with Andrea who had invoked her victim's rights, and further informed Respondent that it would take approximately a week for the case file to be transferred from justice court to superior court

11. Respondent sent an email to the prosecutor on the same date and wrote: "I have spoken to the court and his [Michael's] arraignment will be at 10:00 tomorrow."

12. Respondent arrived at the court on July 1, 2014 for the arraignment.

13. The arraignment did not occur because the superior court did not have the file yet.

14. While they were both at court, Respondent asked the prosecutor if she would like to interview Andrea, and Andrea and the prosecutor went to the prosecutor's office for "an extended period of time."

15. Andrea informed Respondent what transpired during the interview and Respondent attempted plea negotiations with the prosecutor.

16. Respondent disclosed to the prosecutor that Andrea was paying his fees. The prosecutor responded by alleging that Respondent was violating the laws relating to victims' rights.

17. At this point, Respondent disclosed to the prosecutor that Andrea was also his client.

18. The prosecutor responded by informing Respondent that his representation of both the defendant the victim constituted a conflict of interest.

19. On July 9, 2014, the prosecutor filed a Notice of Conflict/Notice of Ethical Violations ("Notice") with the court. In this Notice, the prosecutor argued that Respondent engaged in a conflict of interest that could not be waived because the representation involved the assertion of a claim by one client against another client in the same litigation.

20. In this Notice, the prosecutor further argued that Respondent violated ARS § 13-4433(B) because he "refused to disclose to undersigned how the interview of Ms. Jordan came about . . . [and] if Mr. Smith [Respondent] initiated contact with the victim. . . ."

21. On the same day, Respondent filed a response to this Notice denying the existence of a conflict of interest.

22. On the same day, the court held a status conference and addressed the Notice. Respondent verbally moved to withdraw.

23. On July 10, 2014, the court entered a minute entry finding that Respondent's representation of both the defendant and the victim constituted a conflict of interest that could not be waived.

24. The court wrote the following in its minute entry: "Even where the Defendant may waive any conflict, this Court was prepared to rule and enter an order refusing the attorney to represent both parties and that accepting dual representation in this case is a violation of Ethical Rule 1.7, which can't be waived. . . . The Court grants . . . [Respondent's] verbal Motion to Withdraw from this case."

25. Respondent's conduct in this count violated Rule 42, ERs 1.7, 4.4, and 8.4(d), Ariz. R. Sup. Ct.

DATED this 16th day of January, 2015.

STATE BAR OF ARIZONA



Nicole S. Kasetta
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 16th day of January, 2015.

by: Johi Deander
NSK:jld

FILED

DEC 22 2014

STATE BAR OF ARIZONA

BY 

**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,**

**JARED O. SMITH
Bar No. 010465**

Respondent.

No. 14-2162

PROBABLE CAUSE ORDER

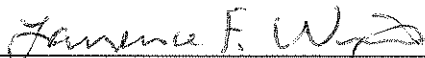
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 12, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 14-2162.

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 22 day of December, 2014.



Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

¹ Committee member Daisy Flores did not participate in this matter.

Original filed this 23rd day
of December, 2014, with:

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

Copy mailed this 23rd day
of December, 2014, to:

Jared O. Smith
Law Office of Jared O. Smith
605 West Main Street
Safford, Arizona 85546-2823
Respondent

Copy emailed this 23rd day
of December, 2014, 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: Jackie Derr

**BEFORE THE PRESIDING DISCIPLINE
JUDGE**

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

**JARED O. SMITH,
Bar No. 010465**

Respondent.

No. PDJ-2015-9005

**DECISION ACCEPTING
CONSENT FOR DISCIPLINE**

[State Bar No. 14-2162]

FILED MAY 4, 2015

An Agreement for Discipline by Consent (Agreement) was filed by the parties pursuant to Rule 57, Ariz. R. Sup.Ct., on April 23, 2015. A Probable Cause Order was issued on December 22, 2014, and the formal complaint was filed on January 16, 2015

Supreme Court Rule 57(a) authorizes filing consent agreements with the presiding disciplinary judge ("PDJ") after the authorization by the Attorney Discipline Probable Cause Committee to file a complaint. Rule 57(a)(3)(B), specifically provides:

If the agreement is reached before the authorization to file a formal complaint and the agreed upon sanction includes a reprimand or suspension, or if the agreement is reached after the authorization to file a formal complaint, the agreement shall be filed with the disciplinary clerk to be presented to the presiding disciplinary judge for review. The presiding disciplinary judge, in his or her discretion or upon request, may hold a hearing to establish a factual basis for the agreement and may accept, reject, or recommend the agreement be modified.

Supreme Court Rule 57 requires conditional admissions be tendered solely "...in exchange for the stated form of discipline..." The right to an adjudicatory hearing is waived only if the "...conditional admissions and proposed form of discipline is approved..." If the agreement is not accepted, the conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Rule 57(a)(4)(C), Ariz. R. Sup. Ct.

Notice of this agreement was provided to the complainant by letter on March 27, 2015, pursuant Supreme Court Rule 53(b)(3). Complainant was also notified of the opportunity to file any written objection to the Agreement with Bar Counsel within five business days of bar counsel's notice. That time has now passed and no objection has been filed.

Mr. Smith conditionally admits to violating ER 1.7 (conflict of interest) and 8.4(d) (engage in conduct prejudicial to the administration of justice). The parties agree to an admonition, one year of probation (CLE) subject to early termination, and costs of the disciplinary proceedings

Mr. Smith represented a husband (defendant) and wife (victim) in a domestic relations matter. Despite obtaining a waiver from the defendant and victim, the court determined that Mr. Smith's representation of both the defendant and victim constituted a conflict of interest that could not be waived.

In considering an appropriate sanction, the PDJ is guided by the American Bar Association *Standards for Imposing Lawyer Sanctions (Standards)*. The parties agree that *Standard 4.33* is applicable given the facts and circumstances in this matter and the presumptive sanction is reprimand. The parties agree Mr. Smith was negligent and his misconduct caused potential harm to the clients and actual harm to the legal

system. In aggravation are factors 9.22(a) prior offenses and 9.22(i) (substantial experience in the practice of law). In mitigation are factors 9.32(b) absence of selfish or dishonest motive, 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings, 9.32(g) character or reputation, and 9.32(m) (remoteness of prior disciplinary offense). The parties further agree that based on the mitigating factors present, a reduction in the presumptive sanction is justified.

The Presiding Disciplinary Judge (PDJ) determined the agreed upon sanctions of admonition, one year of probation (CLE)¹ subject to early termination, and the imposition of costs and expenses will fulfill the purposes of discipline and protect the public.

The PDJ having found the parties have appropriately applied the *Standards* in arriving at the agreed upon sanction, accordingly:

IT IS ORDERED incorporating by this reference the Agreement and any supporting documents by this reference. Respondent agrees to pay costs associated with the disciplinary proceedings in the amount of \$1,200.00.

IT IS FURTHER ORDERED the Agreement is accepted. Costs as submitted are approved for \$1,200.00. Now therefore, the final judgment and order is signed this date.

DATED this 4th day of May, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

¹ Mr. Smith shall complete the CLE course entitled "Ten Deadly Sins of Conflict."

Copies of the foregoing mailed/emailed
this 4th day of May, 2015:

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by: JAlbright