

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**JOANNA M. KIEFFER,
Bar No. 022085,**

Respondent.

PDJ-2014-9089

FINAL JUDGMENT AND ORDER

[State Bar No. 14-0954]

FILED OCTOBER 9, 2014

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on October 2, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Joanna M. Kieffer**, is hereby reprimanded effective the date of this order for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that 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 that as a 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.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent 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 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 9th day of October, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/mailed
this 9th day of October, 2014.

Joanna M. Kieffer
USAF Jag
217 Springtree Lane
Cibolo, Texas 78108-3444
Email: ohiojag77@yahoo.com
Respondent

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Respondent

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

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

**JOANNA M. KIEFFER,
Bar No. 022085,**

Respondent.

PDJ-2014

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar No. 14-0954

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Joanna M. Kieffer, who has chosen not to seek the assistance of counsel, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. The parties reached an agreement for discipline by consent before the matter was submitted to the Attorney Discipline Probable Cause Committee; therefore, there is no order of probable cause. 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 admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant by letter on September 18, 2014. Complainant has been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. Complainant is a Lieutenant Colonel with the Air Force Office of Professional Responsibility.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ERs 1.2(a), 1.4, 1.7(a)(2), and 8.4(c), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand and one (1) year of probation to include the Continuing Legal Education (CLE) course "Ten Deadly Sins of Conflict." Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

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 October 22, 2002.

COUNT ONE (File No. 14-0954/Haynes)

2. Respondent is an Air Force officer who served as an Air Force Judge Advocate General (JAG) attorney.

¹ 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.

3. In 2011, Respondent lived in an Air Force housing area. Respondent's neighbors included M and his then wife.²

4. In the Spring of 2011, Respondent commenced a sexual relationship with M which terminated in June of 2012.

5. After Respondent commenced this relationship and prior to the relationship's termination, Respondent agreed to update M's and his wife's wills, and to draft powers of attorney for both of them.

6. M communicated to Respondent regarding the revisions to the wills, and regarding the powers of attorney. M informed Respondent that he wanted the wills updated to add their new son but that he and his wife should remain the primary beneficiaries of each other's wills.

7. Respondent did not directly communicate with M's wife regarding her will or power of attorney.

8. Respondent drafted the documents M requested to reflect the instructions that M provided Respondent, including that the wills added their son as a beneficiary but left M and his wife as the primary beneficiaries under each other's wills.

9. Respondent notarized the wills and powers of attorney and provided them to M.

² Pursuant to a protective order entered by the Presiding Disciplinary Judge ("PDJ") on June 9, 2014, M's and his wife's full names have been redacted from the public record. Moreover, pursuant to the same protective order, the attachments to the bar charge and many attachments to Respondent's response to the bar charge have been sealed. Accordingly, the parties have drafted the above statement of facts to comply with this protective order. If the PDJ seeks further factual information regarding the instant matter, the parties are willing to provide such information under seal.

10. Despite notarizing the wills and powers of attorney, Respondent did not actually observe M or his wife execute the wills or powers of attorney and further did not observe any witnesses' signatures on these documents. Respondent does not know when the documents were actually executed by M or his wife or when these documents were actually signed by any witnesses.

11. Respondent states that she notarized the above documents without witnessing the above signatures as an accommodation to M and not to engage in any fraud. There is no allegation that any of the signatures on the documents are not authentic.

12. The Air Force subsequently conducted an investigation to determine if Respondent violated the Air Force Rules of Professional Conduct. As a result of this investigation, the Air Force withdrew Respondent's designation as a judge advocate and Respondent's commander imposed an administrative punishment on Respondent in the form of a letter of reprimand.

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, Ariz. R. Sup. Ct., specifically ERs 1.2(a), 1.4, 1.7(a)(2), and 8.4(c).

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: Reprimand and one (1) year of probation to include the CLE "Ten Deadly Sins of Conflict."

CLE

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.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the above probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within thirty (30) days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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 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 parties agree that *Standard* 7.2 is the appropriate standard given the facts and circumstances of this matter. *Standard* 7.2 provides: "Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system." Respondent knowingly notarized wills and powers of attorney for M and his wife attesting that she witnessed the signatures on these documents when she did not witness the signatures on these documents.

The duty violated

As described above, Respondent's conduct violated her duty to her clients and the profession.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent knowingly notarized the wills and powers of attorney without witnessing the signatures thereto.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential harm to Respondent's clients and to the profession.

Aggravating and mitigating circumstances

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

In aggravation:

There are no applicable aggravating factors.

In mitigation:

Standard 9.32(a): Absence of a prior disciplinary record.

Standard 9.32(b): Absence of a dishonest or selfish motive. Respondent asserts that she did not notarize the above referenced documents with any fraudulent intent. Instead, she contends that she did so merely as a convenience to M.

Standard 9.32(c): Personal or emotional problems. See Exhibit "B" attached hereto.

Standard 9.32(e): Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

Standard 9.32(k): Imposition of other penalties or sanctions. Respondent was decertified as a JAG attorney and received a letter of reprimand from her commander.

Discussion

The parties have conditionally agreed that a lesser sanction would be appropriate under the facts and circumstances of this matter. This agreement was based on the following: Although the presumptive sanction is suspension, the parties agree that a reprimand is the appropriate sanction given the absence of any aggravating factors and the applicability of five mitigating factors. The State Bar gives great weight to Respondent's lack of a disciplinary record, her lack of fraudulent intent, and the fact that she has already been sanctioned by the Air Force.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that 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 reprimand and one (1) year of probation to include the CLE "Ten Deadly Sins of Conflict", and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "C."

DATED this _____ day of September, 2014.

State Bar of Arizona

Nicole S. Kaseta
Staff Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 29th day of September, 2014.



Joanna M. Kieffer
Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

DATED this 18 day of October, 2014.

State Bar of Arizona

Nicole S. Kaset
Staff Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this _____ day of October, 2014.

Joanna M. Kieffer
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 2nd day of October, 2014.

Copies of the foregoing mailed/emailed
this 2nd day of October, 2014, to:

Joanna M. Kieffer
USAF Jag
217 Springtree Lane
Cibolo, Texas 78108-3444
ohiojag77@yahoo.com
Respondent

Copy of the foregoing emailed
this 2nd day of October, 2014, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov

Copy of the foregoing hand-delivered
this 2nd day of October, 2014, to:

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

by: Jackie Dauster
NSK: jld

EXHIBIT "A"

Statement of Costs and Expenses

In the Matter of a Current Member of the State Bar of Arizona,
Joanna M. Kieffer, Bar No. 022085, Respondent

File No. 14-0954

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 |



Sandra E. Montoya
Lawyer Regulation Records Manager

9-22-14

Date

EXHIBIT "B"

**SEALED BY PROTECTIVE
ORDER**

EXHIBIT "C"

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**Joanna M. Kieffer,
Bar No. 022085,**

Respondent.

PDJ-2014-

FINAL JUDGMENT AND ORDER

State Bar No. 14-0954

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on September____, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Joanna M. Kieffer**, is hereby reprimanded for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that 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 that, as a 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.

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IT IS FURTHER ORDERED that Respondent 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 service of this Order.

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 thirty (30) days from the date of service of this Order.

DATED this _____ day of October, 2014.

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, 2014.

Copies of the foregoing mailed/emailed
this _____ day of September, 2014.

Joanna M. Kieffer
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217 Springtree Lane
Cibolo, Texas 78108-3444
Email: ohiojag77@yahoo.com
Respondent

Copy of the foregoing emailed/hand-delivered
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Copy of the foregoing hand-delivered
this ____ day of September, 2014 to:

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

by: _____