

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,**

**PHILIPPE MARTINET,  
Bar No. 025613**

Respondent.

**PDJ -2014-9080**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 13-2340, 13-3417]

**FILED SEPTEMBER 19, 2014**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on September 5, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** that Respondent, **Mr. Philippe Martinet**, is hereby reprimanded 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** 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 the one (1) year from that date.

**IT IS FURTHER ORDERED** that as a term of probation, Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's

procedures, including, but not limited to, compliance with ERs 1.1, 1.2(a), 1.7, 3.1, and 8.4(d). The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of entry of the final judgment and order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** that as a term of probation, Respondent shall obtain a practice monitor approved by LOMAP and Bar Counsel who will advise Respondent in the area of immigration law and supervise him regarding law practice management and ethics.

**IT IS FURTHER ORDERED** that as a term of probation, Respondent shall complete the following six hours of continuing legal education courses (CLE) in the area of immigration law: Fundamentals of Immigration Practice (4 hours) and Foundations of Immigration Law (2012) (2 hours). Respondent shall contact State Bar of Arizona publications at 602-340-7318 to either obtain and listen to the CDs or obtain and view the DVDs entitled "Fundamentals of Immigration Practice" and "Foundations of Immigration Law (2012)". Respondent may alternatively go to the State Bar website ([www.myazbar.org](http://www.myazbar.org)) and complete the self-study online version. Respondent shall provide Bar Counsel with evidence of completion by providing copies of handwritten notes. Respondent shall be responsible for the cost of the CDs, DVDs, or online self-studies.

**IT IS FURTHER ORDERED** that as a term of probation, Respondent shall pay restitution to Complainant Mariela Muro Molina in the amount of \$7,590.00 within sixty (60) days of entry of the final judgment and order.

**IT IS FURTHER ORDERED** that as a term of probation, Respondent shall participate in mandatory fee arbitration with Complainant Gina Echeverri. Respondent agrees to initiate fee arbitration within sixty (60) days of entry of the final judgment and order. Respondent shall provide proof that he timely initiated the fee arbitration process to the State Bar. If Complainant Gina Echeverri fails to participate in the fee arbitration, Respondent shall have no further responsibility. Respondent shall pay any fee arbitration award within thirty (30) days from the date the fee arbitrator issues the award.

#### **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. 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 19<sup>th</sup> day of September, 2014.

*William J. O'Neil*

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

Copies of the foregoing mailed/emailed  
this 19<sup>th</sup> day of September, 2014.

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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

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

**PHILIPPE MARTINET,**  
**Bar No. 025613**

Respondent.

**No. PDJ-2014-9080**

**REPORT ACCEPTING CONSENT  
FOR DISCIPLINE**

[Nos. 13-2340, 13-3417]

**FILED SEPTEMBER 19, 2014**

An Agreement for Discipline by Consent was filed on September 5, 2014, and submitted pursuant to Rule 57(a)(3), of the Rules of the Arizona Supreme Court. Probable Cause Orders were filed on July 21, 2014, though no formal complaint has been filed. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate".

Bar Counsel provided notice of this agreement to the complainant(s) by letter on August 1, 2014. Included within that letter was a notification of the opportunity for the complainant to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. No objection was filed.

**IT IS ORDERED** incorporating by this reference the Agreement for Discipline by Consent and any supporting documents by this reference. The agreed upon sanctions are: Reprimand and one (1) year of probation (continuing legal education).

Respondent also agrees to pay costs associated with the disciplinary proceedings of \$1,200.00.

**IT IS ORDERED** the Agreement for Discipline by Consent discipline is accepted. A Final Judgment and Order was submitted simultaneously with the Agreement. Costs as submitted are approved in the amount of \$1,200.00. The proposed final judgment and order having been reviewed are approved as to form. Now therefore, the final judgment and order is signed this date.

DATED this 19<sup>th</sup> day of September, 2014.

*William J. O'Neil*

---

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

Copies of the foregoing mailed/emailed  
this 19<sup>th</sup> day of September, 2014.

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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,**

**PHILIPPE MARTINET,  
Bar No. 025613,**

Respondent.

**PDJ-2014-**

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

State Bar Nos. 13-2340, 13-3417

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Philippe Martinet, who is represented in this matter by counsel, Robert Brewster Van Wyck, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Probable Cause Orders were entered on July 21, 2014, but no formal complaint has been filed in this matter. 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 complainants by letters sent on August 1, 2014. Complainants have 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.1, 1.2(a), 1.7, 3.1, and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand and one (1) year of probation. The probation shall include the following:

- A. Respondent shall participate in the Law Office Management Assistance Program (LOMAP);
- B. Respondent shall obtain a practice monitor approved by LOMAP and Bar Counsel who will advise Respondent in the area of immigration law and supervise him regarding law practice management and ethics;
- C. Respondent shall complete the following six (6) hours of continuing legal education courses (CLE): Fundamentals of Immigration Practice (4 hours) and Foundations of Immigration Law (2012) (2 hours);
- D. Respondent shall pay restitution to Complainant Mariela Muro Molina in the amount of \$7,590.00 within sixty (60) days of entry of the final judgment and order; and
- E. Respondent shall participate in mandatory fee arbitration with Complainant Gina Echeverri. Respondent agrees to initiate fee arbitration within sixty (60) days of entry of the final judgment and order. Respondent shall provide proof that he timely initiated the fee arbitration process to the State Bar. If Complainant Gina Echeverri fails to participate in the fee



arbitration, Respondent shall have no further responsibility. Respondent shall pay any fee arbitration award within thirty (30) days from the date the fee arbitrator issues the award.

Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.<sup>1</sup> 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 April 16, 2010.

#### **COUNT ONE (File No. 13-2340/ Molina)**

2. On April 9, 2012, Mariela Muro Molina (Molina) and her mother retained Respondent to assist Molina, her sister, and her daughter in adjusting their status so that they could legally reside in the United States (U.S.). Respondent provided Molina an "agreement for legal services", charging a flat fee of \$7,590 plus costs for "professional services related to: Change of status."

3. Molina's mother was a permanent resident of the U.S. and then became a U.S. citizen on August 12, 2011. Molina, her sister, and her daughter are Mexican citizens.

4. When they retained Respondent, Molina explained to Respondent that her mother filed petitions for alien relative (I-130 petitions) in 1997 for her and her

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<sup>1</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.

sister when their mother was a permanent resident, and that the United States Citizenship and Immigration Services (USCIS) approved these petitions in 1997 by issuing notices of action. The notices provide that the I-130 petitions were filed on April 28, 1997, and reference a visa priority category of an unmarried child of a permanent resident under the age of 21.

5. Molina provided Respondent these notices and her expired visa.

6. Respondent informed Molina that he would assist her, her sister, and her daughter in adjusting their status. Respondent did not inform Molina that the fact that she and her sister were now over 21 years of age or the fact that her mother was now a U.S. citizen impacted their ability to adjust their status even though these facts did impact their ability to adjust their status.

7. Respondent informed Molina that he would obtain a work permit for Molina, her sister, and her daughter, that they would then be able to obtain an Arizona identification card and that he would seek to adjust their status.

8. Although Molina was concerned that she, her sister, and her daughter did not have Arizona identification cards, this was not her primary reason for hiring Respondent. Molina's primary reason for hiring Respondent was to obtain legal residency in the U.S.

9. Respondent checked the visa priority dates for his client and noted that a visa would be immediately available for Molina, her sister, and her daughter if they fell under the F2A category of unmarried daughters of a permanent resident. Respondent also knew, however, Molina and her sister were no longer under the age of 21 and their mother became a U.S. citizen and that "[s]aid changes now placed

the clients under the "F1" category which . . . did not allow for a current priority date for the clients."

10. Even though Molina, her sister, and her daughter did not qualify to adjust their status because they did not have a current visa priority date, Respondent proceeded with attempting to adjust their status based on the possibility of immigration reform, the hope that the USCIS would process the applications to adjust status under the F2A category, and because the USCIS would likely issue work permits to Molina, her sister, and her daughter while the petitions to adjust status were pending which would enable them to obtain Arizona identification cards.

11. Respondent subsequently sent Molina's mother's certificate of naturalization to the National Visa Center (NVC) and, on June 6, 2012, the NVC sent Respondent a letter stating: "We received the petitioner's proof of citizenship and upgraded the visa classification of your petition. Please see the new visa classification below. Due to the numerical limitations on immigrant visa issuance prescribed by law, this petition is not eligible for further processing at this time. The petition will be retained at the NVC until an immigrant visa becomes available." The NVC letter explains that the Department of State issues a monthly publication called the Visa Bulletin that establishes which petitions are eligible for visas and that: "The Visa Bulletin provides a list of cut-off dates that are used to ensure the number of immigrant visas issued each year does not exceed the legal limit established in the INA. . . . Only a petition with a priority date that is earlier than the cut-off date is eligible for a visa and consular processing."

12. Even though the NVC informed Respondent that visas were not immediately available for his clients, in August of 2012, Respondent submitted

applications to adjust status (I-485 applications) to the USCIS on behalf of Molina, her daughter, and her sister.

13. In August of 2012, Respondent also submitted applications for employment authorization (I-765 applications) to the USCIS on behalf of Molina, her sister, and her daughter. Respondent lists the eligibility category as the category relating to when the applicant has filed an I-485 application.

14. On October 11, 2012, the USCIS approved Molina's employment authorization application.

15. In October of 2012, Molina and her sister attended interviews at the USCIS. The USCIS informed Molina's sister that her priority date was not yet reached. Molina's sister then withdrew her I-485 application.

16. On November 16, 2012, Respondent filed an appeal with the USCIS on behalf of Molina's sister, addressing the USCIS' position that the sister's priority date had not yet been reached. Respondent alleged that the USCIS should reconsider this position. Respondent alleged that: (a) Molina's sister received an I-130 approval in 1997 under the category of unmarried and under 21 and, as such, she qualifies for an adjustment of status; and (b) Molina's sister qualifies under the visa category of F2A, children of permanent residents. Respondent made these arguments even though Molina's sister was no longer under the age of 21 and Molina's mother was no longer a permanent resident.

17. The USCIS returned Respondent's motion because "we do not accept fees at this address."

18. On November 27, 2012, the USCIS sent a "notice of decision" to Molina denying her application to adjust status, cancelling her employment authorization

and stating: “. . . you are now present in the United States in violation of the law. You are required to depart the United States within . . . thirty days from the date of this decision, or be subject to removal proceedings.”

19. The notice provides the following explanation: “Visa availability is determined by a priority date. The priority date in a family-based category is the date on which the visa petition is filed. Your priority date is April 24, 1997, in the first preference category. Each month, the United States Department of State publishes a Visa Bulletin that provides current priority dates in the various preference categories. The Visa Bulletin corresponding to the date that you filed your application to adjust status . . . indicates that the visa availability date for the first preference category was for visa petitions filed on or before June 08, 1993. . . . [A]n immigrant visa must be immediately available at the time the application for adjustment of status is filed. You did not have an immigrant visa immediately available to you at the time that you filed the Form I-485, since your priority date has not been reached. Accordingly, you are ineligible to adjust your status. . . .”

20. The USCIS sent a similar notice to Molina’s daughter on the same date.

21. Respondent informed Molina that they should appeal the USCIS’ decision but Molina refused to agree to an appeal.

22. Despite this refusal, in December of 2012, Respondent submitted a letter to the U.S. Department of Homeland Security stating that Molina “was approved as an unmarried child under the age of [sic] a Permanent Resident. Pursuant to the visa bulletin, applications under this category are classified as an F2A applicant, who would have a visa availability date of 08/01/2010. Therefore, it

is our understanding that her I-485 petition should have been approved because he has a visa available to her.”

23. Respondent did not receive a response to this letter.

24. Molina subsequently requested a refund from Respondent. Respondent initially offered Molina a \$200 refund and informed Molina that he would continue to represent her free of any additional charge if she did not file a bar charge. Respondent subsequently offered a \$500 refund and then a \$1,000 refund after Molina threatened to file a bar charge.

25. On August 1, 2013, Molina sent Respondent a letter requesting a refund in the amount of \$7,590 and stating: “I have spoken with three other immigration attorneys who have reviewed the work you did. They have confirmed that the adjustment applications you submitted were filed incorrectly, prematurely, and had no possibility of being granted given the date that my mother’s immigration petitions for us in 1997. . . . Unfortunately, given your office’s error my sister, my daughter, and I have been placed in greater risk of removal from this country.”

26. Respondent did not provide Molina a refund.

#### **COUNT TWO (File No. 13-3417/Echeverri)**

27. Gina Echeverri’s (Echeverri) father is from Columbia. He left Columbia in the 1980s, entered the U.S. illegally, and returned to Columbia in 1990 after being ordered to do so. He then returned to the U.S. in 2001.

28. In 2002, Echeverri’s father applied for asylum while residing in Florida, alleging that he feared being killed by FARC guerrillas if he returned to Columbia.

29. In 2002, after an interview, immigration officials found that Echeverri’s father established a reasonable fear of persecution if he returned to Columbia and

referred the father's asylum application to the immigration court for withholding only proceedings.

30. Echeverri's father was not in removal proceedings at this time.

31. On January 8, 2003, the immigration court entered an order denying Echeverri's father's application for asylum writing that he was "statutorily ineligible."

32. After the denial of his asylum application, Echeverri's father left the U.S. for one month and then returned again.

33. In July of 2013, Echeverri's father was arrested for being in the U.S. illegally.

34. On July 30, 2013, Echeverri retained Respondent and Respondent provided her a fee agreement agreeing to represent her father in "United States Immigration Court-Florence . . . Deportation Case" for a flat fee of \$7,500. Echeverri only paid Respondent \$4,500, however.

35. Respondent agreed to assist Echeverri's father in obtaining his release on bond and with this immigration case.

36. On August 2, 2013, Respondent entered his appearance on behalf of Echeverri's father and requested the father's complete immigration file.

37. On the same date, Respondent's law clerk visited Echeverri's father while he was in custody and explained to him the process of obtaining a bond.

38. On August 14 and 19, 2013, Respondent's law clerk again met with Echeverri's father while he was in custody and they discussed the possibility of filing a second asylum application and the process for doing so.

39. On August 22, 2013, Respondent requested a bond hearing for Echeverri's father, alleging "[i]n 2002, Respondent [Echeverri's father] 'established a

reasonable fear of persecution if he returned to Columbia” but, “for reasons unknown”, was deported in January of 2003. Respondent submitted the bond request to the U.S. Immigration and Customs (ICE) Florence Detention Center.

40. On the same date, the USCIS interviewed Echeverri’s father relating to whether he had a credible fear of returning to Columbia. Respondent did not attend this interview because he was not informed about the interview before it occurred.

41. On the same date, Respondent’s law clerk called the “immigration hotline and Department of Homeland Security” who informed him that “[c]lient is not in the court system.”

42. On October 25, 2013, not having received a response to his first request for a bond hearing, Respondent submitted a second request for a bond hearing to ICE’s Florence Detention Center.

43. On November 12, 2013, not having received a response to his second request for a bond hearing, Respondent submitted a third request for a bond hearing. Respondent submitted this request to both ICE’s Florence Detention Center and the Phoenix Field Office.

44. On the same date, even though there were no removal proceedings to reopen, Respondent filed a motion to reopen removal proceedings allegedly commenced in 2002 against Echeverri’s father based on the father’s prior asylum application. In this motion, Respondent wrote that Echeverri’s father “could have shown prima facie eligibility for either asylum or withholding of removal when he was ordered removed on December 27, 2002” and that he could “currently show . . . eligibility for either asylum or withholding of removal.”



45. Respondent states that he intended to try and reopen the father's prior proceedings because there was a finding in those proceedings that the father had a reasonable fear of returning to Columbia.

46. On November 13, 2013, the immigration court informed Respondent that it was rejecting his motion to reopen removal proceedings because "[a]ccording to our records[,] the respondent [Echeverri's father] concluded deportation proceedings (at El Paso) . . . in 1990 and withholding-only proceedings in 2003 (at Krome); no removal proceedings ever took place before the court."

47. On November 19, 2013, Respondent's law clerk sent an email to the assistant chief counsel of ICE stating: "We have now sent out three . . . different requests [for a bond hearing] to ICE, both in Florence where our client is detained and in Phoenix, and we have not gotten a response back. We are trying to get this gentleman out on bond since he has had two (2) asylum interviews and was found to have a credible and reasonable fear. It is our understanding that he would thus qualify for conditional parole." The ICE attorney responded that he did not handle these issues but that he forwarded the email on to "our attorneys in Florence."

48. On December 2, 2013, Echeverri's father terminated Respondent and Respondent subsequently provided him an accounting showing the work that Respondent and his firm allegedly performed for Echeverri's father.

#### **CONDITIONAL ADMISSIONS**

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.1, 1.2(a), 1.7, 3.1, and 8.4(d).

### **CONDITIONAL DISMISSALS**

The State Bar has conditionally agreed to dismiss the ER 1.4, 1.5(b), and 8.4(c) allegations because of evidentiary issues.

### **RESTITUTION**

Respondent agrees to pay restitution to Mariela Muro Molina in the amount of \$7,590.00 within sixty (60) days of entry of the final judgment and order in this matter.

Additionally, as set forth above, Respondent agrees to participate in fee arbitration with Complainant Gina Echeverri, and will be required to repay any unearned fees as determined by the fee arbitrator assigned to 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: Respondent shall be reprimanded and placed on probation for one (1) year. The probation shall include the following:

- A. Respondent shall participate in LOMAP;
- B. Respondent shall have a practice monitor approved by LOMAP and Bar Counsel who will advise Respondent in the area of immigration law and supervise him regarding law practice management and ethics;
- C. Respondent shall complete six hours of CLE in the area of immigration law as set forth above;
- D. Respondent agrees to pay restitution as set forth above; and

E. Respondent agrees to participate in mandatory fee arbitration as set forth above.

#### **LOMAP**

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.1, 1.2(a), 1.7, 3.1, and 8.4(d). The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of entry of the final judgment and order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

#### **CLE**

Respondent shall contact State Bar of Arizona publications at 602-340-7318 to either obtain and listen to the CDs or obtain or view the DVDs entitled "Fundamentals of Immigration Practice" and "Foundations of Immigration Law (2012)." Respondent may alternatively go to the State Bar website ([www.myazbar.org](http://www.myazbar.org)) and complete the self-study online version. Respondent shall provide Bar Counsel with evidence of completion by providing copies of handwritten notes. Respondent shall be responsible for the cost of the CDs, DVDs or online self-studies.

#### **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 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.

### **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* 4.53 is the appropriate *Standard* given the facts and circumstances of this case. *Standard* 4.53 provides: "Reprimand is generally appropriate when a lawyer: (a) demonstrates failure to understand

relevant legal doctrines or procedures and causes injury or potential injury to a client; or (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.” Regarding Complainant Mariela Muro Molina, Respondent failed to understand that the possibility of immigration reform and the hope that the USCIS would process the applications to adjust status under the F2A category were not sufficient for him to apply for an adjustment of status for his clients when his clients did not then qualify for such relief. Regarding Complainant Gina Echeverri, Respondent failed to understand that her father was not previously in removal proceedings when he applied for asylum; rather, he was in withholding only proceedings.

The parties further agree that *Standard* 6.23 is the appropriate *Standard* given the facts and circumstances of this case. *Standard* 6.23 provides: “Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential inference with a legal proceeding.” Regarding Complainant Mariela Muro Molina and as set forth above, Respondent was negligent in applying for adjustment of status for Mariela Muro Molina, her sister, and her daughter when the applicable visa bulletin did not provide for an immediately available visa for Mariela Muro Molina, her sister, and her daughter. Regarding Complainant Gina Echeverri, Respondent was negligent in filing the motion to reopen removal proceedings. Respondent incorrectly assumed that Complainant Gina Echeverri’s father was previously in removal proceedings when he was previously in withholding only proceedings.

**The duty violated**

As described above, Respondent's conduct violated his duty to his clients and the legal system.

**The lawyer's mental state**

For purposes of this agreement, the parties agree that Respondent negligently filed the applications to adjust status and the motion to reopen removal proceedings and that his conduct was 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 Complainant Mariela Muro Molina in that she was ordered to leave the United States and potential harm to Complainant Gina Echeverri's father.

**Aggravating and mitigating circumstances**

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

**In aggravation:**

*Standard 9.22(h):* Vulnerability of the victim. Respondent's clients were or are in the country illegally and some of them do not speak English.

**In mitigation:**

*Standard 9.32(a):* Absence of a prior disciplinary record.<sup>2</sup>

*Standard 9.32(b):* Absence of a dishonest or selfish motive. Regarding Complainant Mariela Muro Molina, Respondent states that she desperately wanted to

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<sup>2</sup> However, Respondent was previously diverted in State Bar File No. 11-4102 to LOMAP and Fee Arbitration for violating ER 1.5(b). Respondent's participation in LOMAP only involved revising his fee agreement, however.

remain in the U.S. and that he was simply trying to assist her even though the law did not necessarily provide a basis for her to seek an adjustment of status.

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

*Standard 9.32(f):* Inexperience in the practice of law. Respondent has only been licensed to practice law in Arizona since April 16, 2010. When he commenced representation of Complainant Mariela Muro Molina, he was only licensed to practice for approximately two years. When he commenced representation of Complainant Gina Echeverri's father, he had only been licensed for approximately three years.

### **Discussion**

The parties have conditionally agreed that the presumptive sanction of a reprimand is appropriate under the facts and circumstances of this matter. This agreement was based on the following: Respondent is a relatively new attorney. He contends that what gave rise to the instant misconduct is his desire to try and assist his clients even though the law did not necessarily provide grounds for immigration relief for his clients. The sanction of a reprimand, combined with the probation of LOMAP, CLE, and a practice monitor should assist Respondent so that he does not commit similar ethical violations in the future.

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.

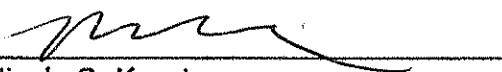
### **CONCLUSION**

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 a reprimand followed by one (1) year of probation to include LOMAP, a practice monitor, CLE, restitution, and fee arbitration, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

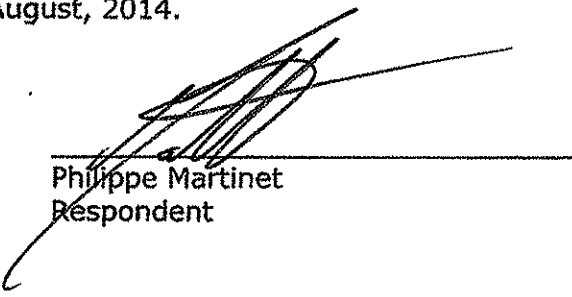
DATED this 5<sup>th</sup> day of ~~August~~<sup>September</sup>, 2014.

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 18 day of August, 2014.

  
\_\_\_\_\_  
Philippe Martinet  
Respondent

DATED this 26 day of August, 2014.

Goldman & Zwilling PLLC

  
\_\_\_\_\_  
Robert Brewster Van Wyck  
Counsel for Respondent



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 reprimand followed by one (1) year of probation to include LOMAP, a practice monitor, CLE, restitution, and fee arbitration, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

**DATED** this \_\_\_\_\_ day of August, 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 \_\_\_\_\_ day of August, 2014.

  
\_\_\_\_\_  
Philippe Martinet  
Respondent

**DATED** this \_\_\_\_\_ day of August, 2014.

Goldman & Zwilling PLLC

\_\_\_\_\_  
Robert Brewster Van Wyck  
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 5<sup>th</sup> day of ~~August~~, 2014.  
September

Copies of the foregoing mailed/emailed  
this 5<sup>th</sup> day of ~~August~~, 2014 to:  
September

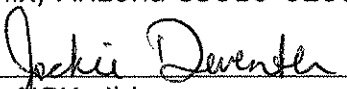
Robert Brewster Van Wyck  
Goldman & Zwillinger PLLC  
7047 East Greenway Parkway, Suite 150  
Scottsdale, AZ 85254-8109  
[rvanwyck@gzlawoffice.com](mailto:rvanwyck@gzlawoffice.com)  
Respondent's Counsel

Copy of the foregoing emailed  
this 5<sup>th</sup> day of ~~August~~, 2014, to:  
September

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

Copy of the foregoing hand-delivered  
this 5<sup>th</sup> day of September, 2014, to:

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

by:   
/s/ SK: jld

# **EXHIBIT "A"**

## Statement of Costs and Expenses

In the Matter of a Current Member of the State Bar of Arizona,  
Philippe Martinet, Bar No. 025613, Respondent

File No(s). 13-2340 and 13-3417

### 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***

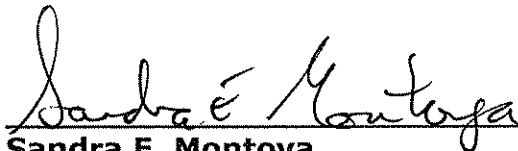
**\$1,200.00**

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**

8-14-14  
Date

**EXHIBIT "B"**

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,**

**PHILIPPE MARTINET,  
Bar No. 025613,**

Respondent.

**PDJ -2014-**

**FINAL JUDGMENT AND ORDER**

State Bar Nos. 13-2340, 13-3417

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, **Mr. Philippe Martinet**, is hereby reprimanded for his 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 the one (1) year from that date.

**IT IS FURTHER ORDERED** that, as a term of probation, Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within thirty (30) days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.1, 1.2(a), 1.7, 3.1,

and 8.4(d). The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of entry of the final judgment and order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** that, as a term of probation, Respondent shall obtain a practice monitor approved by LOMAP and Bar Counsel who will advise Respondent in the area of immigration law and supervise him regarding law practice management and ethics.

**IT IS FURTHER ORDERED** that, as a term of probation, Respondent shall complete the following six hours of continuing legal education courses (CLE) in the area of immigration law: Fundamentals of Immigration Practice (4 hours) and Foundations of Immigration Law (2012) (2 hours). Respondent shall contact State Bar of Arizona publications at 602-340-7318 to either obtain and listen to the CDs or obtain and view the DVDs entitled "Fundamentals of Immigration Practice" and "Foundations of Immigration Law (2012)". Respondent may alternatively go to the State Bar website ([www.myazbar.org](http://www.myazbar.org)) and complete the self-study online version. Respondent shall provide Bar Counsel with evidence of completion by providing copies of handwritten notes. Respondent shall be responsible for the cost of the CDs, DVDs, or online self-studies.

**IT IS FURTHER ORDERED** that, as a term of probation, Respondent shall pay restitution to Complainant Mariela Muro Molina in the amount of \$7,590.00 within sixty (60) days of entry of the final judgment and order.

**IT IS FURTHER ORDERED** that, as a term of probation, Respondent shall participate in mandatory fee arbitration with Complainant Gina Echeverri. Respondent agrees to initiate fee arbitration within sixty (60) days of entry of the final judgment and order. Respondent shall provide proof that he timely initiated the fee arbitration process to the State Bar. If Complainant Gina Echeverri fails to participate in the fee arbitration, Respondent shall have no further responsibility. Respondent shall pay any fee arbitration award within thirty (30) days from the date the fee arbitrator issues the award.

#### **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.

**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 August, 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 August, 2014.

Copies of the foregoing mailed/emailed  
this \_\_\_\_\_ day of August, 2014.

Robert Brewster Van Wyck  
Goldman & Zwillinger PLLC  
7047 East Greenway Parkway, Suite 150  
Scottsdale, AZ 85254-8109  
Email: [rvanwyck@gzlawoffice.com](mailto:rvanwyck@gzlawoffice.com)  
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_ day of August, 2014 to:

Nicole S. Kaseta  
Staff Bar Counsel  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

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