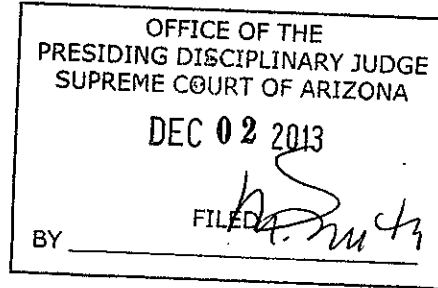


David L. Sandweiss, Bar No. 005501
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7272
Email: LRO@staff.azbar.org



Nancy A. Greenlee, Bar No. 010892
821 E. Fern Dr. North
Phoenix, AZ 85014-3248
Telephone: 602-264-8110
Email: nancy@nancygreenlee.com
Respondent's Co-Counsel

James J. Belanger, Bar No. 011393
Coppersmith, Schermer & Brockelman
2800 N. Central Ave., Suite 1200
Phoenix, AZ 85005-1009
Telephone: (602) 381-5485
Email: jbelanger@csblaw.com
Respondent's Co-Counsel

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

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

**Carmen L. Fischer,
Bar No. 009975,**

Respondent.

PDJ-2013-9043

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar No. 10-2084

The State Bar of Arizona ("SBA"), through undersigned Bar Counsel, and Respondent Carmen L. Fischer, who is represented in this matter by counsel Nancy A. Greenlee and James J. Belanger, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, 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.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ERs 1.7, 1.8(a), and 1.16(a). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand and probation (CLE-"Ten Deadly Sins of Conflict" and "Avoiding Ethical Pitfalls"). 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 "The Ten Deadly Sins of Conflict" and "Avoiding Ethical Pitfalls" within ninety (90) days of the judgment and order. 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 by providing copies of her handwritten notes. Respondent shall be responsible for the cost of the CDs, DVDs or online self-study.

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.

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 May 18, 1985.

COUNT ONE of ONE (State Bar File No. 10-2084)

2. On or about November 23, 2007, Complainant Leon retained Respondent to represent him in connection with \$48,000 that had been seized by the Navajo County Sheriff's Office, who alleged that Leon had obtained the money in an illegal drug enterprise. Leon was referred to Respondent by alleged Arizona Mexican Mafia member Angel Garcia ("Garcia"), who Respondent represented on unrelated charges pending in Pinal County.

3. The SBA acquired evidence that in 2007 Leon and Garcia became acquainted and that Garcia, through intimidation, extorted Leon into paying "taxes" to Garcia or others within Garcia's syndicate. If this matter were to proceed to a hearing, Respondent would assert that she was unaware of the alleged extortion of Leon by Garcia.

4. Complainant Leon alleged that Respondent knew or should have known from her representation of Garcia how he operated. Were this matter to

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.

proceed to a contested hearing, the SBA would offer evidence that when Leon's money was seized in a \$48,000 forfeiture action in late 2007, he believed he had little choice but to hire Respondent to represent him. The SBA would offer further evidence that because of Garcia's intimidation, of which Respondent was or should have been aware, Leon believed he had to hire Respondent to represent him and believed he had to pay her legal fees for representing Garcia. The SBA would offer further evidence that if Leon did not hire Respondent, Garcia would suspect that Leon was disloyal and order him killed. Finally, the SBA would offer evidence that Respondent was or should have been aware of this conflict of interest between Garcia and Leon, but proceeded to represent them both anyway.

5. Respondent would offer evidence at a contested hearing denying the foregoing charges. She would assert that merely by representing Garcia she did not acquire information that gave her actual knowledge of a conflict of interest in representing both Garcia and Leon.

6. In March 2008, Leon was arrested on various conspiracy and drug charges. The indictment alleged crimes against nine different people including Leon and Garcia. Other than Leon, the names of the other defendants on the copy of the indictment with which Leon was served had been redacted.

7. Law enforcement officers tried to recruit Leon to inform against Garcia in exchange for leniency or immunity. Leon retained Respondent to represent him. He told Respondent that he did not want to inform against Garcia or serve as an informant in Arizona.

8. Were this matter to proceed to a hearing, the SBA would offer evidence that Leon believed that he had little choice but to tell Respondent that he

did not want to inform on Garcia. Leon further believed that to do otherwise would have meant that Respondent would tell Garcia that Leon was an informant resulting in Garcia's order that Leon be killed. Were this matter to proceed to a contested hearing, Respondent disputes the SBA's allegations and believes these allegations cannot be proven.

9. Were this matter to proceed to a contested hearing, the SBA would offer evidence and contend that when Leon told Respondent that he had been recruited to inform against Garcia, she had a non-consentable conflict representing Leon notwithstanding Leon's seeming reluctance to cooperate. Respondent would contend that based upon Leon's direct statement that he had no information to provide against Garcia and that he did not want to be an informant in Arizona, she did not believe there was a non-consentable conflict at that time, but she recognized that a conflict could later develop. After consulting with ethics counsel, she had both Leon and Garcia sign conflict waivers.

10. The Maricopa County Attorney's Office filed a motion to determine counsel in which, augmented at oral argument, it disclosed reasons that Leon and Garcia's interests were so adverse as to require Respondent's disqualification as Leon's counsel. By that point Garcia had been identified as a defendant in the case. Respondent objected to the motion. At oral argument, the trial judge cautioned Leon and Respondent regarding their decision to have Respondent represent Leon, but did not remove Respondent from the case because he did not believe he had authority to do so. Following the hearing, Respondent told Leon that he needed to retain new counsel and a short time later, Respondent withdrew as Leon's counsel in that criminal matter.

11. Were this case to proceed to a contested hearing, the SBA would offer evidence and contend that Respondent should have recognized that an independent attorney viewing the situation would have concluded that asking Leon to waive any potential conflict under those circumstances was not in his best interest, and thus, she had a non-consentable conflict of interest. Respondent would contend that while she relied upon Leon's direct statement that he had no information against Garcia and would not serve as an informant in Arizona and that she did not know of facts that placed her in a conflict position representing Leon in that criminal case while she also represented Garcia in an unrelated Pinal County case, it was negligent for her not to realize that there was a significant risk that the representation of Leon would be materially limited by her responsibilities to Garcia. She would further contend that she did not knowingly or intentionally proceed as counsel for Leon despite the possibility of having a conflict of interest, but admits that she did so negligently.

12. In conjunction with Leon's indictment on the conspiracy and drugs charges, the Maricopa County Attorney's Office also instituted forfeiture proceedings regarding Leon's Cadillac Escalade, weapons, and other things. Respondent represented him in the forfeiture matter. On April 19, 2010, Leon signed a fee agreement whereby he agreed to pay Respondent at her hourly rate of \$250.00. Leon failed to make any payments to Respondent and as a result of her reminders that Leon owed her for the representation, Leon offered to transfer his Escalade (once it was recovered) in payment of her fees *in lieu* of money. Respondent accepted this offer, however, she did not obtain from Leon an ER 1.8-

compliant writing regarding the transaction and acquisition of property as payment of her attorney fees.

13. On July 15, 2010, Leon notified Respondent by e-mail that he no longer required her services. He also told this to the deputy county attorney and tried to negotiate with her. The latter declined, and spoke with Respondent about whether Respondent would file a motion to withdraw as Leon's counsel.

14. On July 19, 2010, Respondent wrote to Leon and requested confirmation that he wanted her to withdraw from the case. She told Leon that if he did not provide the Escalade as promised, she would take legal steps to secure the Escalade and credit the value of the Escalade to the amount that Leon owed her. On August 3, Leon left a phone message for Respondent to stop communicating with the court on his behalf.

15. On August 12, 2010, the deputy county attorney filed a request for telephonic status conference. She reported that she and Respondent "appeared to have reached a settlement on the case property" on July 1, 2010, but that Leon independently called her and left messages on July 9 and 12 that Respondent no longer represented him. She reported further that she called Respondent who told her that she would contact Leon for clarification; however, Respondent did not report back to the deputy county attorney, nor did she file a motion to withdraw.

16. Were this matter to proceed to a contested hearing, the SBA would offer evidence that Respondent declined to withdraw from representing Leon to preserve her claim to the Escalade. Furthermore, Mr. Leon would testify that Respondent wished to maintain contact with Leon in order to report back to Garcia with whom Respondent had a personal relationship. Were this matter to proceed to

a contested hearing, Respondent would deny that claim, and further, she would testify that she did not immediately withdraw from Leon's representation because she believed it was out of character for him to dismiss her and she wanted to allow time to pass to be certain that he truly wanted to terminate the attorney/client relationship. In addition, Respondent had been diagnosed with a serious medical problem on July 13, 2010, and she was thereafter preoccupied with testing and medical care.

17. Respondent electronically filed a motion to withdraw on November 23, 2010. She would have filed the motion earlier but was away from her office from October 26 - December 6, 2010, for medical care and recovery. Respondent never received any payment from Leon for her representation of him in the forfeiture action. Were this matter to proceed to a contested hearing, the SBA would contend that Mr. Leon's non-payment of fees to Respondent is irrelevant as to whether she did or did not meet her ethical duties.

18. Except as expressly admitted or acknowledged herein, Respondent contends that the SBA's allegations cannot be proved by clear and convincing evidence. The SBA denies Respondent's contention.

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 1.7, 1.8(a), and 1.16(a).

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 probation that requires completion of the SBA's Continuing Legal Education programs "The Ten Deadly Sins of Conflict" and "Avoiding Ethical Pitfalls".

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 duty violated

Respondent's conduct violated her duties to her client.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent conducted herself negligently as described above.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential harm to the client.

The parties agree that the following *Standards* are the appropriate ones given the facts and circumstances of this matter.

ER 1.7 (Conflict of Interest)

Standard 4.33

Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

ER 1.8 (Prohibited Transactions)

Standard 4.34

Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

ER 1.16 (Improper Withdrawal From Representation)

Standard 7.4

Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

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 - Aggravating factors include:

- (b) dishonest or selfish motive. Respondent asserts that her only motive with regard to the Escalade was to be paid and thus, agrees that she had a selfish motive;
- (d) multiple offenses;
- (h) vulnerability of victim. Were this matter to proceed to a contested hearing, Respondent asserts that this aggravating factor could not be proven. The SBA disagrees with Respondent's contention;
- (i) substantial experience in the practice of law;

In mitigation:

Standard 9.32 - Mitigating factors include:

- (a) absence of a prior disciplinary record;
- (c) personal or emotional problems (see documents filed under seal by order dated December 27, 2010);
- (e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings; and
- (g) character or reputation (see attached letters).

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. The evidence and inferences therefrom in this matter conflict. The hearing has been stayed

pending resolution of a discovery dispute that is before the Supreme Court on the SBA's special action. The outcome of that special action could determine whether a greater or lesser sanction ultimately would be warranted. The parties agree that their interests, and the interests of the public, would be best served by resolving this matter now on the terms described to avoid further uncertainty. 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.

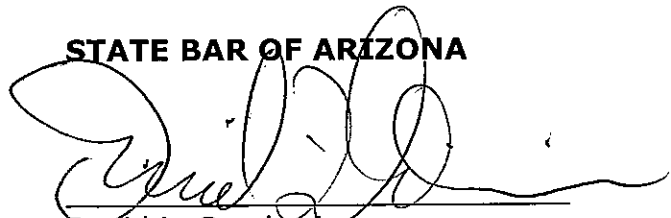
Bar Counsel spoke with Complainant Martin Leon and explained to him in detail the terms of the proposed consent. Bar Counsel avows that Mr. Leon agrees with the proposed consent and does not object thereto.

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 probation with CLE, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 2nd day of December, 2013.

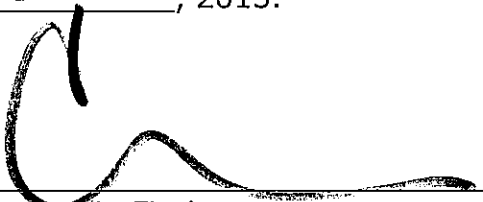
STATE BAR OF ARIZONA



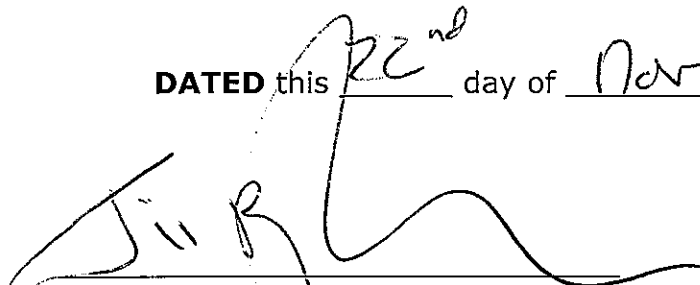
David L. Sandweiss
Senior Bar Counsel

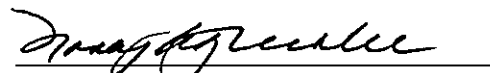
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 22 day of November, 2013.



Carmen L. Fischer
Respondent

DATED this 22nd day of November, 2013.


James J. Belanger
Co-Counsel for Respondent


Nancy A. Greenlee
Co-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
this 2nd day of December 2013.
Copies of the foregoing mailed/emailed
this 2nd day of December, 2013, to:

Nancy A. Greenlee
821 E. Fern Dr. North
Phoenix, AZ 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Co-Counsel

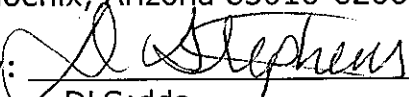
James J. Belanger
Coppersmith, Schermer & Brockelman
2800 N. Central Ave., Suite 1200
Phoenix, AZ 85005-1009
Email: jbelanger@csblaw.com
Respondent's Co-Counsel

Copy of the foregoing emailed
this 2nd day of December, 2013, to:

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

Copy of the foregoing hand-delivered
this 2nd day of December, 2013, to:

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

By: 
DLS:dds

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,**

**CARMEN L. FISCHER,
Bar No. 009975**

Respondent.

PDJ-2013-9043

FINAL JUDGMENT AND ORDER

State Bar No. 10-2084

FILED DECEMBER 20, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on December 2, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Carmen L. Fischer**, is hereby reprimanded with probation (CLE) for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately.

IT IS FURTHER ORDERED that 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 "The Ten Deadly Sins of Conflict" and "Avoiding Ethical Pitfalls." 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 by providing copies of her handwritten notes. Respondent shall be responsible for the cost of the CDs, DVDs or

online self-study. Respondent must comply with these probation terms within ninety (90) days of the judgment and order.

If 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 \$ 1,840.06. 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 20th day of December, 2013.

William J. O'Neil

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 20th day of December, 2013.

Copies of the foregoing mailed/emailed
this 20th day of December, 2013, to:

Nancy A. Greenlee
821 E. Fern Dr. North
Phoenix, AZ 85014-3248
Email: nancy@nancygreenlee.com
Respondent's Co-Counsel

James J. Belanger
Coppersmith, Schermer & Brockelman
2800 N. Central Ave., Suite 1200
Phoenix, AZ 85005-1009
Email: jbelanger@csblaw.com
Respondent's Co-Counsel

Copy of the foregoing hand-delivered/emailed
this 20th day of December, 2013, to:

David L. Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

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

by: MSmith