


OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
SEP 18 2012
BY _____ FILED 

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Respondent's Counsel

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

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

**CYNTHIA Y. PATANE,
Bar No. 018439,**

Respondent.

PDJ-2012- 9095

**AGREEMENT FOR DISCIPLINE
BY CONSENT (PRE-FILING)**

State Bar No. 11-2868

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Cynthia Y. Patane, who is represented in this matter by counsel, Angelo J. Patane, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.¹ 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 admissions and proposed form of discipline are approved.

¹ All references herein to rules are to the Arizona Rules of the Supreme Court unless otherwise specifically designated.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ERs 1.3, 1.15, 3.2, 3.4(c), and 8.4(d); and Rule 54(c). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand, and probation for one year. The only probationary term is that Respondent must obtain a minimum of three hours of continuing legal education ("CLE") on handling minors' bodily injury cases and subsequent conservatorship proceedings. The class[es] must be pre-approved by bar counsel (approval will not be unreasonably withheld); it/they can be live, viewed remotely by webcast, or viewed by replay of a prior live presentation; Respondent must furnish proof of attendance by providing bar counsel with copies of her class notes and certificate[s] of attendance; the three hours must be in addition to the annual 15-hour CLE requirement; and probation may terminate early if Respondent completes this requirement before the end of one year. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.² The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

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 January 21, 1998.

2. In 2008, Respondent represented Nellie Pena (mom) and her minor daughter, Kathleen Pena (daughter) in a personal injury suit, *pro bono*.

² 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. Respondent later petitioned to have mom appointed as conservator to approve a \$9,000 settlement for daughter in Maricopa County Superior Court, case no. PB2008-050806.

4. By Minute Entry dated October 2, 2008, mom was appointed as conservator for daughter and the settlement offer was approved as being reasonable. The Court then ordered mom to "provide the Court with proof of establishment of restricted account within 30 days hereof."

5. Respondent, acting as mom's lawyer and on her behalf, did not provide the court with proof of establishment of restricted account within 30 days of October 2, 2008.

6. After deducting filing fees, the Court ordered that \$8,794 be placed in the restricted account.

7. On October 16, 2008, Respondent filed with the Court an Acknowledgement of Conservator and Lawyer's Undertaking and Obligation (Acknowledgment).

8. Mom signed the Acknowledgment which stated, in part, that she "agree[d] to deposit all of the net conservatorship assets . . . in a federally insured restricted account in my name as Conservator for [daughter's estate]."

9. Respondent also signed the Acknowledgment which required, in part, that she "assume and undertake personal responsibility to [daughter] and to the Court to ensure that the conservatorship assets are deposited into a restricted account"

10. Respondent did not ensure that the conservatorship assets were deposited into a restricted account.

11. On October 30, 2008, the responsible insurance company issued the settlement check. Respondent deposited the check into her Interest on Lawyer's Trust Account ("IOLTA") bank account.

12. On December 3, 2008, Respondent issued a check for \$8,794 from her IOLTA directly to mom, and not to a restricted bank account in conservatorship for daughter's benefit.

13. On December 5, 2008, mom deposited the check into a Bank of America account. The account was not a restricted account.

14. Were this matter to proceed to a contested hearing, Respondent would contend that it was reasonable for her to trust mom to establish the restricted account; that mom told Respondent she understood she had to open a restricted account and promised to do so; and that Respondent tried to verify that mom opened the restricted account but mom did not return Respondent's calls.

15. Realizing that no proof of a restricted account had been filed, by minute entry dated October 26, 2010, the court filed a Notice of Non Compliance. The court further ordered that *proof of the restricted account must be provided by November 11, 2010*. The minute entry was addressed to both mom and Respondent.

16. Respondent did not provide proof of the restricted account by November 11, 2010.

17. My minute entry dated January 4, 2011, the court scheduled an Order to Show Cause (OSC) directing Respondent to personally appear and show cause why she should not be held in contempt or have sanctions assessed against her.

18. On February 9, 2011, the OSC hearing began and was continued to March 9, 2011.

19. On March 9, 2011, mom testified that no restricted account was established and that she "withdrew the funds for the needs of the minor and intends to repay said funds." The court ordered mom to provide an accounting and continued the OSC to April 6, 2011.

20. On April 6, 2011, the court ordered "that no later than May 11, 2011, [mom] and/or counsel for [mom] shall deposit funds ... into a restricted account ... for the benefit of [daughter], with interest from the date the funds were received by the estate." Respondent was further ordered to "file an affidavit certifying the interest rate conforms to this order." The court then continued the OSC to May 11, 2011.

21. Neither mom nor Respondent opened the restricted account by May 11, 2011, and Respondent did not file an affidavit by that date certifying that the interest rate conformed to the court's order.

22. On May 11, 2011, Respondent filed an appeal from the court's April 6, 2011 order.

23. Also on May 11, 2011, the court issued Fiduciary Arrest Warrants for mom and Respondent in the amount of the settlement funds, which it then held "in abeyance for seven days to allow [mom] and counsel time in which to file a bond in the amount of \$8,794 staying execution . . . pending an appeal."

24. Were this matter to proceed to a contested hearing, Respondent would contend that her May 11, 2011, appeal excused her from complying with the court's April 6, 2011, order.

25. On May 18, 2011, Respondent and mom went to Chase bank and opened a restricted account for daughter's conservatorship. Respondent added \$200 for interest that should have accrued in the account, depositing a total of \$8,994.

26. Respondent paid \$8,494 of the \$8,994 deposited, from her firm's general operating account. She did so rather than post the bond, and to forego her appeal.

27. On May 25, 2011, Respondent filed an Emergency Motion to Quash the fiduciary arrest warrants and provided proof of the restricted account to the court.

28. On May 26, 2011, the court quashed the fiduciary arrest warrants.

29. Since mom admitted spending daughter's money, Respondent asked the court to order only mom to replace it. The court, however, declined to limit responsibility to replace the funds only to mom, and there is no agreement that mom is to reimburse Respondent for the funds Respondent deposited into the restricted account.

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 her conduct violated Rule 42, ERs 1.3, 1.15, 3.2, 3.4(c), and 8.4(d); and Rule 54(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 probation for one year. The only probationary term is that Respondent must obtain a minimum of three hours of continuing legal education ("CLE") on handling minors' bodily injury cases and subsequent conservatorship proceedings. The class[es] must be pre-approved by bar counsel (approval will not be unreasonably withheld); it/they can be live, viewed remotely by webcast, or viewed by replay of a prior live presentation; Respondent must furnish proof of attendance by providing bar counsel with copies of her class notes and certificate[s] of attendance; the three hours must be in addition to the annual 15-hour CLE requirement; and probation may terminate early if Respondent completes this requirement before the end of one year.

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.

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

As described above, Respondent's conduct violated her duties to her clients (ERs 1.3 and 1.15) and the legal system (ERs 3.2, 3.4(c), and 8.4(d), and Rule 54(c)).

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent knowingly conducted herself as described above 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 potential harm to daughter and actual harm to the legal system. Were this matter to proceed to a contested hearing, the State Bar would contend that there was actual harm to daughter during the approximately two years in which mom misspent daughter's money. Since daughter's funds ultimately were replaced in an appropriate restricted account, the State Bar recognizes that the actual harm was temporary.

ABA Standards

In view of the foregoing, the following *ABA Standards* are applicable:

ER 1.3

Standard 4.42

Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

ER 1.15

Standard 4.12

Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

ERs 3.2, 3.4(c), 8.4(d), and Rule 54(c)

Standard 6.22

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

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: The following factors from *Standard 9.22* should be considered:

- (d) multiple offenses (six different ERs and rules);
- (h) vulnerability of victim (daughter was a minor);
- (i) substantial experience in the practice of law (10-12 years at the time of the events); and
- (j) indifference to making restitution (Respondent used her own money to fund the restricted account but only after her request to the court that mom be exclusively responsible for the deposit was denied, and after being threatened with an OSC and arrest warrant).

In mitigation: The following factors from *Standard 9.32* should be considered:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings;
- (k) imposition of other penalties or sanctions; and
- (l) remorse;

Discussion

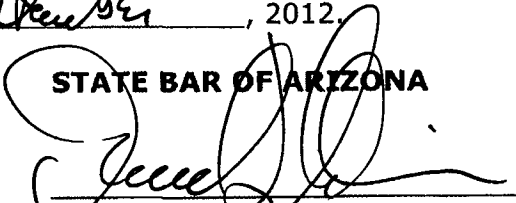
The parties conditionally agree that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. While suspension is the presumptive sanction, the mitigating factors preponderate over the aggravating factors in weight if not in number. Also, the adage "No good deed goes unpunished" is applicable. While Respondent's violations of court orders are serious and warrant discipline, she committed those violations in a *pro bono* case. 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 appropriate 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 probation on the above-described terms, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

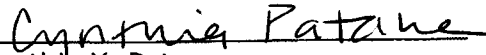
DATED this 17th day of September, 2012.

STATE BAR OF ARIZONA

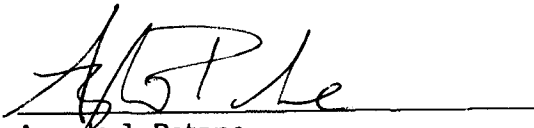

David L. Sandweiss
Senior Bar Counsel

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

DATED this 17th day of September, 2012.


Cynthia Y. Patane
Respondent

DATED this 17 day of September, 2012.


Angelo J. Patane
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 18th day of September, 2012.

Copies of the foregoing mailed/emailed
this 18th day of September, 2012, to:

Angelo J. Patane
The Patane Law Firm PLLC
13951 North Scottsdale Rd., Ste 220
Scottsdale, Arizona 85254-3488
Email: angelopatane@patanelawfirm.com
Respondent's Counsel

Copy of the foregoing emailed
this 18th day of September, 2012, 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 18th day of September, 2012, to:

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

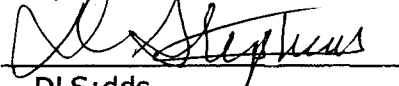
By: 
DLS:dds

EXHIBIT "A"

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Cynthia Y. Patane, Bar No. 018439, Respondent

File No. 11-2868

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 and/or 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

8-21-12

Date

EXHIBIT "B"

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

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

**Cynthia Y. Patane,
Bar No. 018439,**

Respondent.

PDJ-2012-

FINAL JUDGMENT AND ORDER

State Bar No. 11-2868

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, **Cynthia Y. Patane**, is hereby reprimanded for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective _____.

IT IS FURTHER ORDERED placing Respondent on probation for one year, effective _____. Respondent must obtain a minimum of three hours of continuing legal education ("CLE") on handling minors' bodily injury cases and subsequent conservatorship proceedings. The class[es] must be pre-approved by bar counsel (approval will not be unreasonably withheld); it/they can be live, viewed remotely by webcast, or viewed by replay of a prior live presentation; Respondent must furnish proof of attendance by providing bar counsel with copies of her class notes and certificate[s] of attendance; the three hours must be in addition to the annual 15-hour CLE requirement; and probation may terminate early if Respondent completes this requirement before the end of one year.

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 \$_____.

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 \$_____.

DATED this _____ day of _____, 2012.

The Honorable 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 _____, 2012.

Copies of the foregoing mailed/emailed
this _____ day of _____, 2012, to:

Angelo J. Patane
The Patane Law Firm PLLC
13951 N. Scottsdale Rd., Ste 220
Phoenix, AZ 85254-3488
Email: angelopatane@patanelawfirm.com
Respondent's Counsel

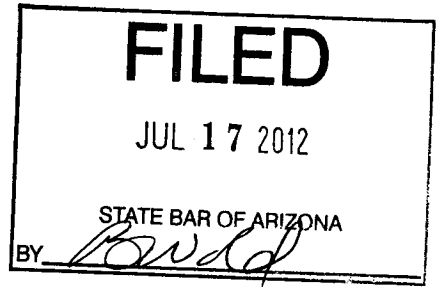
Copy of the foregoing hand-delivered/emailed
this _____ day of _____, 2012, to:

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

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

By: _____

BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA



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

No. 11-2868

CYNTHIA Y. PATANE
Bar No. 018439

PROBABLE CAUSE ORDER

Respondent

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona (“Committee”) reviewed this matter on July 13, 2012, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar’s Report of Investigation and Recommendation, and Respondent’s Response.

By a vote of 7-0-2,¹ the Committee finds probable cause exists to file a complaint against Respondent in File Number 11-2868.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 13 day of July, 2012.

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

¹ Committee members Richard A. Segal and Jeffrey B. Messing did not participate in this matter.

Original of the foregoing filed this
17th day of July, 2012, with:

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

Copy mailed this 17th day
of July, 2012, to:

Angelo J. Patane
The Patane Law Firm, PLLC
13951 North Scottsdale Road, Suite 220
Scottsdale, Arizona 85254-3488
Respondent's Counsel

Copy of the foregoing emailed
this 17th day of July, 2012, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

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

by: *Aime C. Heller*