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Respondent's Counsel

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
JUN 21 2013
FILED
BY

BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **Ingrid-Joy Warrick,** **Bar No. 019624,** Respondent.	**PDJ-2013-9017** **AGREEMENT FOR DISCIPLINE BY CONSENT** State Bar No. 11-3236

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Ingrid-Joy Warrick, who is represented in this matter by counsel, J. Scott Rhodes, 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, ER 5.5. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand and Restitution. 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."

COUNT ONE (State Bar File No. 11-3236)

FACTS

1. Respondent was admitted to practice law in Arizona on February 10, 2004.

2. By Arizona Supreme Court judgment and order dated April 6, 2010, Respondent was suspended from the practice of law for ninety (90) days for ethical rule violations established in State Bar (SBA) File Numbers 06-0943; 07-0703; 07-1545; and 07-1837.

3. By Arizona Supreme Court order dated January 11, 2012, in SB-11-0093-R, Respondent's application for reinstatement was dismissed for failure to establish that she is qualified for reinstatement to the active practice of law.

4. On April 16, 2011, Complainant Susan Dianetti met Respondent at the Green Relief Expo.

5. At that time, Ms. Dianetti obtained Respondent's business card, which identified her as "Ingrid W. Joiya, Esq., Member/Manager" of ETD (Elements Therapeutic Dispensary) Systems, LLC. Respondent's name of record with the State Bar is "Ingrid-Joy Warrick." Respondent alleges that Ms. Dianetti did not obtain the business card from her.

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[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.

6. Ms. Dianetti alleges that she believed that Respondent was one of ETD's attorneys, and has alternatively alleged that she believed Respondent was also her attorney. Respondent contends that Ms. Dianetti knew, or reasonably should have known, that Respondent was not one of ETD's attorneys, not Ms. Dianetti's personal attorney, and that at some point, Ms. Dianetti believed that Respondent was a disbarred attorney based on statements made by and published on the Internet by one of ETD's competitors.

7. On April 20, 2011, Ms. Dianetti met with Respondent to sign a licensing agreement with ETD. At the meeting, Ms. Dianetti provided Respondent with a check for $12,500 made payable to ETD, which was one-half (1/2) of the total licensing fee to be paid.

8. The licensing fee covered, among other things, preparation of a business plan, retaining a real estate agent to identify a suitable location, and retaining a legal document preparer to prepare legal documents, including the formation of the non-profit to be operated by Ms. Dianetti, "Caring Hands Biocare Clinic." Respondent alleges, and for purposes of this Agreement the State Bar does not dispute, that Respondent arranged for Ms. Dianetti to meet personally with Marlene Leatherwood, a certified legal document preparer regularly retained by ETD to draft legal documents for its clients. At that meeting, Ms. Dianetti selected the company name, legal structure, principals and registered agent, and directed Ms. Leatherwood to prepare the documents.

9. Between April 2011 and July 2011, most of Ms. Dianetti's discussions with Respondent focused on the creation of a business plan to submit to the Arizona Department of Health Services (DHS), dispensary sites, and discussing zoning

issues identified by the City of Peoria. The State Bar alleges, but Respondent denies, that Respondent provided Ms. Dianetti with legal advice regarding the zoning laws for different, prospective dispensary locations.

10. On June 2, 2011, Respondent emailed Ms. Dianetti stating, "I have a deal for you. Papago Cultivation is going out of business and we have an opportunity to buy all of the inventory in his store—app. $25,000 retail for only $11,000." ETD proposed to either repay Ms. Dianetti or treat the monies as the final payment due under the licensing agreement.

11. On June 3, 2011, Ms. Dianetti met with the seller of the equipment, Daniel Halbert of Papago Cultivation, who gave Ms. Dianetti a full inventory of the equipment. Respondent alleges that, when Mr. Halbert requested a cash payment, Ms. Dianetti explained that her credit union was in Glendale, and she could not drive there and then return to Scottsdale that day with the cash. As an accommodation, Ms. Warrick proposed to facilitate the transaction by having Ms. Dianetti write a check made payable to Respondent, personally, for $11,000.00 and for the purchase of the equipment. Respondent then took Ms. Dianetti's personal check to her credit union in Glendale, cashed it, and returned to Mr. Halbert's office in Scottsdale to give him the cash that day, and then arranged for the equipment to be stored. Ms. Dianetti and Mr. Halbert agreed to those terms and the transaction was handled accordingly. Ms. Dianetti denies Respondent's account of the transaction. Respondent told Ms. Dianetti not to discuss the sale with Mr. Halbert because it would hurt his feelings as he was facing the imminent loss of his store. Ms. Dianetti never took possession of the equipment and does not know where it was stored, its current location or condition.

12. On June 6, 2011, Respondent signed a promissory note stating that in consideration for payment of $11,000.00 by Ms. Dianetti for the purchase of hydroponic cultivation equipment, ETD would pay Ms. Dianetti $12,000.00. Alternatively, if Ms. Dianetti was granted a medical marijuana dispensary license, Ms. Dianetti's ETD Dispensary licensee fee would be deemed paid in full with no additional licensee fee to be paid to ETD. Respondent signed the promissory note. The State Bar alleges that she signed the Note in her personal capacity. Respondent alleges that she signed the Note on behalf of ETD. Respondent further alleges that Ms. Dianetti's husband requested the Note as evidence of the transaction. Ms. Dianetti agrees that her husband requested the Note because Respondent did not provide Ms. Dianetti with a receipt or written acknowledgement of the terms of the repayment of the loan at the time of the sale.

13. Ms. Dianetti and Respondent scheduled a meeting with Jack Ross on June 27, 2011, to discuss the proposed dispensary and to negotiate the terms of a Letter of Intent (LOI) to lease space for a MMJ dispensary.

14. Ms. Dianetti alleges that she believed that Respondent would represent her as a lawyer during the meeting because Ms. Dianetti had no prior personal experience in negotiating lease agreements. Respondent alleges that Ms. Dianetti knew, or reasonably should have known, that Respondent was not representing her as a lawyer at this meeting or at any other time.

15. By email dated June 21, 2011, and in anticipation of the meeting, Respondent emailed Mr. Ross a copy of the dispensary's business plan and a draft LOI. By that time, Respondent had met with Mr. Ross twice to discuss the plans for the building, which was not yet under construction.

16. On June 27, 2011, Respondent failed to attend the meeting with Mr. Ross and his attorney. Ms. Dianetti attended the meeting by herself and ultimately signed the LOI, after it was revised by Mr. Ross' counsel.

17. By email dated June 28, 2011, Respondent stated to Ms. Dianetti: "I'm surprised that you would have negotiated that lease without my being present . . . Why on earth would you agree to releasing any money until we are absolutely certain the property could be used for the purpose intended? I have negotiated more than 18 leases and we have never agreed to allow any deposit to go hard until we know for certain the property is approved by the city." Respondent alleges that her concern was that Ms. Dianetti had signed a lease, instead of a letter of intent, for space in a building that was not yet under construction and for which the zoning was not yet determined to be suitable for Ms. Dianetti's intended purpose.

18. Ultimately, the MMJ Dispensary process stalled as the result of, among other things, legal action taken by the State of Arizona to resolve certain legal issues related to the implementation of MMJ in light of a conflict between State and Federal laws.

19. Thereafter, the relationship between Respondent and Ms. Dianetti soured and by email dated August 25, 2011, Ms. Dianetti demanded repayment of the $11,000.00 from Respondent. Respondent replied that she had, "put equipment on consignment and hasn't sold but will get it to you. Getting ready to open collective so will have some cashflow. Will get it to you."

20. The next morning, Ms. Dianetti responded, "Need money now not waiting for dispensary. I can't believe as a lawyer you left that out of the note."

Respondent then reassured Ms. Dianetti that she would be repaid the monies or "the money will be applied towards [your] licensing fee."

21. By email dated September 21, 2011, Ms. Dianetti again demanded payment due under the promissory note. Respondent replied that Respondent "should be getting paid on the equipment and [she]'ll be the first to get repayment as agreed."

22. The State Bar alleges that, despite repeated demands made to Respondent for either the equipment or repayment of the monies due under the promissory note, Ms. Dianetti did not receive either. Respondent alleges that no such demands were made and, moreover, that Respondent offered Ms. Dianetti the equipment, but Ms. Dianetti refused to take it.

23. Ms. Dianetti alleges that she believed that Respondent was acting as her attorney during their business relationship and that Respondent was the lead attorney, a business consultant, and a managing member of ETD. Respondent alleges that Ms. Dianetti knew, or reasonably should have known, that Respondent was not representing her or ETD as a lawyer at any other time.

24. Respondent alleges that, despite the equipment transaction and this Bar investigation, Ms. Dianetti contacted Respondent about continuing to do business with ETD. Ms. Dianetti acknowledges that she contacted Respondent about continuing to do business. Ms. Dianetti claims that she was hoping that continuing to do business with ETD would create opportunities for ETD to pay the Note.

25. Ms. Dianetti has not sued ETD or Respondent based on the Note.

26. During the course of their relationship, Respondent sent numerous email blasts that were received by Ms. Dianetti (and other prospective MMJ Dispensary applicants) regarding legal strategy, e.g., the filing of an amicus brief, seeking a "Federal Declaratory Judgment on MMJ" and the filing of a Writ of Mandamus. Respondent alleges that, attorney David Dow represented ETD and the Protect Arizona Patients Coalition, Inc., among others, in a lawsuit against the Arizona Department of Health Services, and that, when Respondent sent out emails to ETD customers regarding "legal strategy" and the filing of an amicus brief, she was not providing legal advice but keeping customers informed of Mr. Dow's legal strategy and the status of the lawsuit. Ms. Dianetti was not a party to the action.

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, Ariz. R. Sup. Ct., specifically ER 5.5(b)(2) [Unauthorized Practice of Law], which states that a lawyer who is not admitted to practice in this jurisdiction shall not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Pursuant to Rule 31(a)(2)(B)(2), unauthorized practice of law includes using the designations "J.D.," "Esq.," or other equivalent words by any person who is not authorized to practice law in this state, the use of which is reasonably likely to induce others to believe that the person is authorized to engage in the practice of law in this state. Respondent violated this ethical rule by using a business card identifying her as "Ingrid W. Joiya, Esq., Member/Manager" of ETD (Elements Therapeutic Dispensary) Systems, LLC.

CONDITIONAL DISMISSAL

The State Bar has conditionally agreed to dismiss its allegation that Respondent violated ER 1.8. Had this matter gone to a contested hearing, the State Bar would have argued that Respondent violated E.R. 1.8(a) [Conflict of Interest: Current Clients], which prohibits lawyers from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security or other pecuniary interest adverse to a client unless (1) the transaction and terms are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking, and is given a reasonable opportunity to seek, the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction.

Had this case proceeded to a hearing, the State Bar would have argued that Respondent violated this rule as follows: The State Bar believes that Ms. Dianetti would have testified that she believed that Respondent was acting as her attorney in addition to representing ETD at the time that she entered into the licensing agreement. Respondent violated ER 1.8(a) by accepting a loan on behalf of ETD, a limited liability corporation in which she is one of two members, for $12,000.00 from Ms. Dianetti for the purchase of certain hydroponic equipment, and by preparing and executing a promissory note reflecting that loan, all without complying with any of the requirements set forth in ER 1.8(a).

Had this case proceeded to a hearing, Respondent would have argued that she did not violate ER 1.8(a) for two reasons. First, there was no business transaction between Ms. Dianetti and Respondent. Respondent would have argued that, consistent with the language in the Promissory Note, the business transaction was between Ms. Dianetti and ETD. Respondent would have also argued that she signed the promissory note on behalf of ETD, not in a personal capacity. Second, Respondent would have argued that ER 1.8(a) does not regulate a lawyer's business dealings with non-clients, and because Respondent and Ms. Dianetti did not know each other when Respondent was a practicing attorney, the two never had an attorney-client relationship.

RESTITUTION

Respondent shall pay restitution to Ms. Dianetti in the amount of $12,000.00 within forty-five (45) days of the date that the Presiding Disciplinary Judge approves this Agreement in satisfaction of the monies owed to Ms. Dianetti under the terms of the Promissory Note.

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 Restitution.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley,* 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The parties agree that *Standard* 7.3 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 7.3 provides that reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

According to the Commentary to *Standard* 7.3, reprimand is the appropriate sanction in most cases of a violation of a duty owed as a professional. "Usually there is little or no injury to a client, the public, or the legal system, and the purposes of lawyer discipline will be best served by imposing a public sanction that helps educate the respondent lawyer and deter future violations. A public sanction also informs both the public and other members of the profession that this behavior is improper." *Id.*

In this case, Respondent negligently failed to ensure that Ms. Dianetti understood that she was not acting as her personal attorney. Respondent was also negligent in possessing business cards that included the designation "Esq."

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent negligently by having a business card available for distribution that utilizes "Esq." despite the fact that she is currently suspended from the practice of law; by failing to make clear to Ms. Dianetti that she was not acting as Ms. Dianetti's attorney; and that her 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 potential harm to the profession, the legal system, and the public.

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(a): prior disciplinary offenses. *See supra,* Facts at ¶ 2.

In mitigation: Mitigating factors from ABA *Standard* 9.32 include:

(b) absence of dishonest or selfish motive;

(d) full and free disclosure to disciplinary board and cooperative attitude toward proceedings;

(f) Inexperience in the practice of law.

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: The parties agree that in light of the fact that Respondent's actions were negligent, this sanction will serve the purposes of lawyer discipline.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand, and order of Restitution and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 21st day of June, 2013.

STATE BAR OF ARIZONA

Stacy L. Shuman

Stacy L. Shuman
Staff Bar Counsel

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

DATED this 21st day of June, 2013.

Ingrid-Joy Warrick
Respondent

DATED this _______ day of ______________________, 2013.

J. Scott Rhodes
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 _____ day of __________, 2013.

Copies of the foregoing mailed/emailed
this _______ day of _______________, 2013, to:

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One East Washington St., Suite 1900
Phoenix, AZ 85004-2554
Email: srhodes@jsslaw.com
Respondent's Counsel

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

DATED this 21st day of June, 2013.

Ingrid-Joy Warrick
Respondent

DATED this 21st day of June, 2013.

for
J. Scott Rhodes
Counsel for Respondent

Approved as to form and content

____
Maret Vessella
Chief Bar Counsel

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DATED this _______ day of June, 2013.

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Ingrid-Joy Warrick
Respondent

DATED this _______ day of June, 2013.

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J. Scott Rhodes
Counsel for Respondent

Approved as to form and content

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Maret Vessella
Chief Bar Counsel

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One East Washington Street,
Suite 1900
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Email: srhodes@jsslaw.com
Respondent's Counsel

Copy of the foregoing emailed
this 21st day of June, 2013, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 21st day of June, 2013, to:

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

By: Rodney T. Brew
SLS/ rtb

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

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **INGRID-JOY WARRICK,** **Bar No. 019624** Respondent.	**PDJ-2013-9017** **FINAL JUDGMENT AND ORDER** [State Bar No. 11-3236] **FILED JULY 5, 2013**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on June 21, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Ingrid-Joy Warrick**, is hereby Reprimanded for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents. The sanction is effective the date of this Order.

IT IS FURTHER ORDERED that, Respondent shall pay Restitution in the amount of $12,000.00, to Susan Dianetti within forty-five (45) days of the date of this Order.

IT IS FURTHER ORDERED that, in the event that Respondent fails to comply with any of the foregoing, 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 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 $ 1,215.80. 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 5th day of July, 2013.

/s/ *William J. O'Neil*

Hon. 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 5th day of July, 2013.

Copies of the foregoing mailed/emailed
This 5th day of July, 2013, to:

J. Scott Rhodes
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One East Washington Street,
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Peoria, Arizona 85004-2554
Email: srhodes@jsslaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered/emailed
this 5th day of July, 2013, to:

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by: MSmith