

BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS



FILED

AUG 25 2017

Board of Disciplinary
Appeals

IN THE MATTER OF
CYNTHIA L. BEST
STATE BAR CARD NO. 24014755

§
§
§

CAUSE NO.

59479

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Cynthia L. Best, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed but not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Cynthia L. Best, 5450 E. High Street, #260, Phoenix, Arizona 85054.

3. On or about April 21, 2017, an Agreement for Discipline by Consent was filed before the Presiding Disciplinary Judge in a matter styled, *In the Matter of a Member of the State Bar of Arizona, Cynthia L. Best, Bar No. 014731, Respondent*, PDJ 2016-9122, State Bar File Nos. 16-0318 and 16-0820. (Exhibit 1).

4. On or about May 9, 2017, a Decision and Order Accepting Discipline by Consent was filed before the Presiding Disciplinary Judge in a matter styled, *In the Matter of a Member of the State Bar of Arizona, Cynthia L. Best, Bar No. 014731, Respondent*, PDJ 2016-9122, [State Bar File Nos. 16-0318 and 16-0820]. (Exhibit 2).

5. On or about May 9, 2017, a Final Judgment and Order was entered before the Presiding Disciplinary Judge in a matter styled, *In the Matter of a Member of the State Bar of Arizona, Cynthia L. Best, Bar No. 014731, Respondent*, PDJ 2016-9122, [State Bar File Nos. 16-0318 and 16-0820], that states in pertinent part as follows:

...IT IS ORDERED Respondent, CYNTHIA L. BEST, Bar No. 014731, is suspended from the practice of law for sixty (60) days for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents effective thirty (30) days from the date of this order ...

(Exhibit 3).

6. In the Decision and Order Accepting Discipline Respondent conditionally admitted that her conduct violated Rule 42, ERs 3.1 (Meritorious Claims and Contentions), 3.4(c) (Fairness to Opposing Party and Counsel), 4.4(a) (Respect for Rights of Others), and 8.4(d) (Conduct Prejudicial to the Administration of Justice). The Decision and Order Accepting Discipline established Respondent represented a mother in a family law case in the Maricopa County Superior Court. At issue were legal decision-making and parenting time regarding the parties' two minor children, spousal maintenance and child support. On March 5, 2014, opposing counsel moved for temporary orders regarding parenting time and legal-decision making. The issue was set for a hearing to take place on April 11, 2014. Subsequently, Respondent sought employment records of father through a notice of deposition attached with a subpoena duces tecum. Errors followed, including setting the

deadline for production of documents beyond the date set for the temporary-orders hearing. However, even after an agreement to produce the requested records in an expedited time frame, Respondent proceeded to use misleading tactics in an attempt to rectify her error.

Prior to the temporary-orders hearing, Respondent filed a motion to compel the documents and failed to serve the party of whom the records were requested. Upon knowledge of the motion, the company in possession of the records requested that the motion be withdrawn and Respondent refused. Subsequently, a response to the motion was filed and sanctions requested to be imposed on Respondent. The court ultimately denied Respondent's motion and ordered her to pay attorney's fees of \$3,000.

Respondent appealed the order and filed opening and reply briefs totaling 85 pages. The Court of Appeals affirmed the award and found that "no motion should ever have been filed." Given the frivolous nature of the appeal, the Court of Appeals assessed attorney fees personally against Respondent for \$13,286.50 and costs of \$140.00. Judgment against her client was paid by Respondent.

7. Copies of the Agreement for Discipline by Consent, Decision and Order Accepting Discipline by Consent and Final Judgment and Order are attached hereto as Petitioner's Exhibits 1 through 3, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 through 3 at the time of hearing of this cause.

8. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of

the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the Supreme Court of the State of Arizona and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

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Amanda M. Kates
Bar Card No. 24075987

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Cynthia L. Best by personal service.

Cynthia L. Best
5450 E. High Street, #260
Phoenix, Arizona 85054


Amanda M. Kates

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Effective February 19, 2015 and amended September 20, 2016

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SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

Rule 1.02 General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining

disciplinary proceedings. But TRDP 15.01 applies to the enforcement of a judgment of BODA.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04 Appointment of Panels

- (a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.
- (b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05 Filing of Pleadings, Motions, and Other Papers

- (a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.
 - (1) **Email Address.** The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.
 - (2) **Timely Filing.** Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day

that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

- (3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.
- (4) **Exceptions.**
 - (i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.
 - (ii) The following documents must not be filed electronically:
 - a) documents that are filed under seal or subject to a pending motion to seal; and
 - b) documents to which access is otherwise restricted by court order.
 - (iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.
- (5) **Format.** An electronically filed document must:
 - (i) be in text-searchable portable document format (PDF);
 - (ii) be directly converted to PDF

rather than scanned, if possible;
and

(iii) not be locked.

- (b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).
- (c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:
 - (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
 - (2) an electronic image or scanned image of the signature.
- (d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.
- (e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06 Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish

service by certified mail, the return receipt must contain the Respondent's signature.

Rule 1.07 Hearing Setting and Notice

- (a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23, the hearing date must be at least 30 days from the date that the petition is served on the Respondent.
- (b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23, the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.
- (c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.
- (d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08 Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09 Pretrial Procedure

- (a) **Motions.**
 - (1) **Generally.** To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.
 - (2) **For Extension of Time.** All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:
 - (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
 - (ii) if an appeal has been perfected, the date when the appeal was perfected;
 - (iii) the original deadline for filing the item in question;
 - (iv) the length of time requested for the extension;
 - (v) the number of extensions of time that have been granted

- previously regarding the item in question; and
- (vi) the facts relied on to reasonably explain the need for an extension.
- (b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.
- (c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.
- (d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:
 - (1) marked;
 - (2) indexed with the title or description of the item offered as an exhibit; and
 - (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10 Decisions

- (a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.
- (b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:
 - (1) as required by the TRDP; and

- (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.
- (c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11 Board of Disciplinary Appeals Opinions

- (a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.
- (b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.
- (c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12 BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA’s adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13 Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14 Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15 Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

- (a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

- (b) A current BODA member must not serve as an expert witness on the TDRPC.
- (c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02 Confidentiality

- (a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.
- (b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.
- (c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction.

Rule 2.03 Disqualification and Recusal of BODA Members

- (a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.
- (b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.
- (c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on

a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him- or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Right to Appeal

- (a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.
- (b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02 Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Perfecting Appeal

- (a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 consistent with this

requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21.

- (b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21.

- (1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

- (2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

- (c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

- (d) **Time to File.** In accordance with TRDP 2.24, the notice of appeal must be filed within 30 days after the date the judgment

is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

- (e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02 Record on Appeal

- (a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.
- (b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.
- (c) **Responsibility for Filing Record.**
 - (1) Clerk's Record.
 - (i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.
 - (ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each

party, any post submission pleadings and briefs, and the notice of appeal.

- (iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

- (i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:
 - a) a notice of appeal has been filed;
 - b) a party has requested that all or part of the reporter's record be prepared; and
 - c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.
- (ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) Preparation of Clerk's Record.

- (1) To prepare the clerk's record, the evidentiary panel clerk must:
 - (i) gather the documents

- designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);
 - (ii) start each document on a new page;
 - (iii) include the date of filing on each document;
 - (iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;
 - (v) number the pages of the clerk's record in the manner required by (d)(2);
 - (vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and
 - (vii) certify the clerk's record.
- (2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.
- (3) The table of contents must:
- (i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;
 - (ii) be double-spaced;
 - (iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;
 - (iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and
 - (v) if the record consists of multiple volumes, indicate the page on which each volume begins.
- (e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:
- (1) file each computer file in text-searchable Portable Document Format (PDF);
 - (2) create electronic bookmarks to mark the first page of each document in the clerk's record;
 - (3) limit the size of each computer file to 100 MB or less, if possible; and
 - (4) directly convert, rather than scan, the record to PDF, if possible.
- (f) **Preparation of the Reporter's Record.**
- (1) The appellant, at or before the time prescribed for perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.
 - (2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual

for Texas Reporters' Records.

- (3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.
- (4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise appear.
- (5) A court reporter or recorder must not lock any document that is part of the record.
- (6) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.
- (g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.
- (h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.
- (i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the

attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

Rule 4.03 Time to File Record

- (a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.
- (b) **If No Record Filed.**
 - (1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.
 - (2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:
 - (i) the appellant failed to request a

- reporter's record; or
- (ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.
- (c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.
- (d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

Rule 4.04 Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05 Requisites of Briefs

- (a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.
- (b) **Appellee's Filing Date.** Appellee's brief must be filed within 30 days after the appellant's brief is filed.
- (c) **Contents.** Briefs must contain:
 - (1) a complete list of the names and addresses of all parties to the final decision and their counsel;

- (2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
- (3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;
- (4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;
- (5) a statement, without argument, of the basis of BODA's jurisdiction;
- (6) a statement of the issues presented for review or points of error on which the appeal is predicated;
- (7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;
- (8) the argument and authorities;
- (9) conclusion and prayer for relief;
- (10) a certificate of service; and
- (11) an appendix of record excerpts pertinent to the issues presented for review.
- (d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on

leave of BODA. A computer-generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

- (e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.
- (f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:
 - (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;
 - (2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or
 - (3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06 Oral Argument

- (a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.
- (b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral

argument is unnecessary for any of the following reasons:

- (1) the appeal is frivolous;
 - (2) the dispositive issue or issues have been authoritatively decided;
 - (3) the facts and legal arguments are adequately presented in the briefs and record; or
 - (4) the decisional process would not be significantly aided by oral argument.
- (c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07 Decision and Judgment

- (a) **Decision.** BODA may do any of the following:
 - (1) affirm in whole or in part the decision of the evidentiary panel;
 - (2) modify the panel's findings and affirm the findings as modified;
 - (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
 - (4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:
 - (i) the panel that entered the findings; or
 - (ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.
- (b) **Mandate.** In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08 Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09 Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

- (a) for want of jurisdiction;
- (b) for want of prosecution; or
- (c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

- (a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23.

- (b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23, the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02 Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE

Rule 6.01 Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02 Interlocutory Suspension

- (a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA must suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.
- (b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must

file a motion for final judgment that complies with TRDP 8.05.

- (1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.
- (2) If the criminal sentence is not fully probated:
 - (i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or
 - (ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.
- (c) Criminal Conviction Reversed. If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

SECTION 7: RECIPROCAL DISCIPLINE

Rule 7.01 Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02 Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03 Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

- (a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.
- (b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for

reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

- (c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.
- (d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.
- (e) Should any member of the District Disability Committee become unable to serve, the BODA Chair must appoint a substitute member.

Rule 8.02 Petition and Answer

- (a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06
- (b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.
- (c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the

chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03 Discovery

- (a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.
- (b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.
 - (1) **Motion.** The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.
 - (2) **Report.** The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.
- (c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04 Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05 Respondent's Right to Counsel

- (a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.
- (b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06 Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07 Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08 Confidentiality

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District

Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

- (a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.
- (b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.
- (c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02 Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03 Physical or Mental Examinations

- (a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.
- (b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.
- (c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.
- (d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.
- (e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04 Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01 Appeals to the Supreme Court

- (a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.
- (b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.
- (c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Certified this 14th day of August, 2017

By [Signature]
Disciplinary Clerk
Supreme Court of Arizona

David L. Sandweiss, Bar No. 005501
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

APR 21 2017

FILED
BY [Signature]

J. Scott Rhodes, Bar No. 016721
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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**CYNTHIA L. BEST
Bar No. 014731**

Respondent.

PDJ 2016-9122

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

State Bar File Nos. 16-0318 and
16-0820

The State Bar of Arizona and Respondent Cynthia L. Best, who is represented by counsel J. Scott Rhodes, hereby submit their Agreement for Discipline by

Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.¹ 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 admissions and proposed form of discipline are approved.

Pursuant to Rule 53(b)(3), bar counsel provided notice of this agreement to the complainants by letter and email on April 21, 2017. 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. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ERs 3.1 (Meritorious Claims and Contentions), 3.4(c) (Fairness to Opposing Party and Counsel), 4.4(a) (Respect for Rights of Others), and 8.4(d) (Conduct Prejudicial to the Administration of Justice). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Suspension for 60 days. Under other circumstances, the State Bar would insist that

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

Respondent satisfy probationary terms consisting of paying the trial court judgment for attorney's fees assessed against Respondent's client (Ms. Davis) in the underlying family law case in the sum of \$3,000 plus interest, and to attend six hours of continuing legal education, in addition to the annual CLE requirement, on family court rules of procedure. Respondent, however, agreed to pay and has paid the judgment, and has attended or, by the time this consent agreement is presented to this court will have attended, six hours of relevant CLE on that subject. The parties, therefore, agree that the purposes of lawyer discipline do not require adding probation to Respondent's suspension. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding within 30 days from the date of this order, and if costs are not paid within the 30 days interest will begin to accrue at the legal rate.² The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

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.

CONDITIONALLY ADMITTED FACTS

COUNT ONE of ONE

A. State Bar File no. 16-0318

**Judicial Referral – The Hon. Peter Swann, Arizona Court of Appeals, Div.
One**

B. State Bar File no. 16-0820

Jessica Post

1. Respondent was licensed to practice law in Arizona on May 15, 1993.
2. Respondent represented Elizabeth Davis against Ms. Davis's ex-husband Ryan Davis in a family law case in Maricopa County Superior Court, Case No. FC2014-051436. At issue in the case were legal decision-making and parenting time regarding the Davis' two minor children, along with spousal maintenance and child support from Mr. Davis to Ms. Davis. Ms. Davis was unemployed and alleged that Mr. Davis became violent when he abused alcohol.
3. On March 5, 2014, Mr. Davis filed a Motion for Temporary Orders RE: Legal Decision Making and Parenting Time. By minute entry dated March 10, 2014, the trial court set a hearing on temporary orders for April 11, 2014.
4. To prepare for the temporary orders hearing, Respondent decided to obtain Mr. Davis's employment records from The Desert Highlands Association ("DHA"), to determine his income regarding the issues of spousal maintenance and

child support and gather evidence on Mr. Davis's fitness as a parent specifically relate to abuse of alcohol or drugs. On March 24, 2014, Respondent's law firm served a Notice of Deposition and a subpoena on DHA, directing it to produce several categories of personnel items since Mr. Davis's hiring date.

5. The Notice of Deposition was issued pursuant to Rules 26 and 30, Ariz. R. Civ. P., and 51 and 57, Ariz. R. Fam. L. P. The subpoena was issued pursuant to Rules 45, Ariz. R. Civ. P., and 52, Ariz. R. Fam. L. P. The production date specified in both the Notice of Deposition and the subpoena was April 21, 2014, ten days beyond the date the trial court set for the temporary orders hearing. The production date was an error.

6. On March 25, 2014, the day after serving DHA with the Notice of Deposition and subpoena, Respondent recognized the error because the temporary orders hearing already had been set for April 11 and, therefore, the April 21 records production date would be too late for the trial. March 25 was the first date Respondent reviewed the subpoena, which had been drafted and signed by an associate. Respondent had her associate contact DHA's general counsel to inform him of the mistake and request the documents in time for the April 11, 2014 trial. DHA hired the law firm Fennemore Craig to address subpoena-related issues with

Respondent. Fennemore Craig assigned the case to attorney Jessica Post, Complainant in matter no. 16-0820. On April 1, 2014, Respondent's firm received a letter from Ms. Post.

7. Respondent told Ms. Post that she needed the records for the April 11, 2014, hearing. Ms. Post asked Respondent why she needed the records for an April 11 hearing when the Notice of Deposition and subpoena called for a production date of April 21. Although there had been prior communications with DHA's general counsel on the reason for the need for accelerated production, Respondent explained it in an email to Ms. Post on April 4, 2014, stating:

It happened because we originally thought 30 days was reasonable to respond but then the judge set a temporary orders hearing for April 11 and that sped up the timetable.

8. The trial court had set the April 11 hearing on March 10, 2014, two weeks before Respondent served the Notice of Deposition and subpoena. In her appellate reply brief on Respondent and Ms. Davis's subsequent appeal, Respondent argued: "Mother's attorney did not mislead the Association; the Association misread the e-mail." The Arizona Court of Appeals later concluded that the rationale Respondent expressed for accelerating the deadline for DHA to respond to the subpoena was false.

9. Respondent's subpoena called for production of:

All non-privileged Documents or electronically stored communications pertaining to RYAN DAVIS, including but not limited to:

1. Human Resources Records;
2. Corrective actions;
3. Financial records;
4. Performance reviews;
5. Security reports and videos;
6. Memoranda; and
7. Correspondence since his date of hiring.

10. In a letter dated April 1, 2014, Ms. Post told Respondent that DHA agreed to produce Mr. Davis's Human Resource Records save for confidential medical information; Corrective Actions; W-2 Forms, and other "financial records" if Respondent described them more particularly; and Performance Reviews. Ms. Post also agreed to Respondent's accelerated timetable but objected to some of the requests. She informed Respondent that the subpoena as written would have required DHA to review more than 700 hours of security video footage and search every email sent during Mr. Davis's employment. Upon learning that information, Respondent immediately agreed not to require DHA to respond to the video and email requests.

11. Ms. Post asked Respondent and Mr. Davis (Respondent's opposing party) to agree to a protective order in view of the sensitive nature of its personnel

files and, later, for a HIPPA release. Ms. Post asked Respondent to prepare the protective order. In Respondent's experience, protective orders are rarely used in Family Law cases, and she explained to Ms. Post that she was not familiar with them and did not understand the concept of producing documents pursuant to a protective order with the opposing party's signature. Ms. Post then prepared a stipulation in lieu of a protective order, to which Respondent agreed and signed.

12. Although Respondent and Ms. Post had an ongoing dialogue over the disclosure of Mr. Davis's DHA records, Respondent grew concerned about the approaching date of the temporary orders hearing. Respondent told Ms. Post in an April 3, 2014, email that she would file an expedited motion to enforce the subpoena "so we do not run out of time." DHA already had agreed to produce most of the records before the April 11, 2014, hearing date.

13. On April 3, 2014, Respondent filed the motion ("Expedited Motion for the Court to Order Disclosure of Petitioner's File"), in which she asked the trial court for an order directing DHA to produce all requested materials by April 8, 2014. In her motion, Respondent asked the court for an order to produce the requested documents and that no protective order was required. The motion also requested an

award of attorney's fees against DHA. Respondent did not serve the motion on Ms. Post.

14. Were this matter to proceed to a contested hearing, Respondent would contend that she believed that she was not required to serve Ms. Post with the motion because the motion was aimed at the opposing party, not at DHA. She would further claim that she intended to serve Ms. Post (or at least provide her with a courtesy copy), but inadvertently neglected to do so. The State Bar would contend: (a) that Respondent's motion as drafted and served was frivolous; (b) that the motion was in actuality aimed at DHA because, first, in her April 3, 2014 email, Respondent had told Ms. Post, but not the opposing party, that she intended to file the motion; second, the Notice of Deposition and Subpoena that were the objects of the motion were served on and directed to DHA, not the opposing party; third, in her motion, Respondent asked for a court order to produce the requested materials, which, given that the subpoena was directed to DHA, could only reasonably have been interpreted as a request for an order directed at DHA; fourth, in the context of the subpoena, Respondent's request for attorney fees could reasonably have been interpreted as attorney's fees against DHA, not the opposing party; sixth, although in her later appeal, Respondent claimed, "The Expedited Motion was not against the

Association specifically. It was not against any party specifically,” she also continued to assign blame to DHA, stating: “The Association was placing conditions and roadblocks on Mother receiving the information,” and, on page 50 of her Opening Brief, she argued: “The Association should be ordered to pay Mother’s attorney fees and costs for defending this matter in the court below and for being forced to bring this appeal [emphasis added].” If this case went to a hearing, Respondent would accept that the trial court and Court of Appeals ruled against her, but would argue she did not intend to harm DHA but only intended to protect her client’s interests as the hearing quickly was approaching.

15. While Respondent did attach emails with Ms. Post demonstrating the two lawyers’ communications about the production, Respondent did not certify in writing that she had made a good faith effort to resolve the dispute. Respondent claims that she believed at the time that, due to the way she had stated the basis of the motion, such a certification was not required. Both the trial court and Court of Appeals later disagreed.

16. Ms. Post learned of Respondent’s motion on April 7, 2014, through Mr. Davis’s lawyer. Upon learning about the motion, Ms. Post demanded that Respondent immediately withdraw it. Respondent refused to immediately withdraw

her motion and told Ms. Post that, when she received DHA's personnel file on Mr. Davis, she would withdraw the motion. Ms. Post imposed a deadline on Respondent to withdraw the motion or else she would have to file a response to the motion and request attorney's fees.

17. Respondent did not withdraw the motion. Ms. Post filed a response the morning of April 8, 2014, in which she requested sanctions, including attorney's fees. On April 9, 2014, Ms. Post produced 148 pages of personnel documents to Respondent.

18. On April 10, 2014, the trial court denied Respondent's motion and assessed \$3,000 in attorney's fees against Ms. Davis. The trial court denied Respondent's motion in part because: (a) Respondent did not serve it on DHA, stating that was a violation of applicable rules of procedure; (b) Respondent did not certify in writing that she made a good faith effort to resolve the dispute, stating that was a violation of Rule 65(A) (2) (c), Ariz. R. Fam. L. P.; (c) the motion was premature given the April 21, 2014, deadline contained in the Notice of Deposition and subpoena.³

³ When the judge denied Respondent's discovery motion on April 10 as premature, the evidence before him was that the compliance date still was April 21.

19. Ms. Post, on DHA's behalf, filed a request for an award of attorney's fees with the trial court. Respondent filed a response, and Ms. Post filed a reply. Thereafter, Respondent filed a sur-reply, which the trial court struck as unauthorized under the applicable rules of procedure. The trial court awarded DHA \$3,000 in attorney's fees against Respondent's client, Ms. Davis.

20. Respondent continued to represent Ms. Davis on appeal *pro bono* to The Arizona Court of Appeals, Division One, in "*In re the Award of Attorney Fees: Elizabeth A. Davis, Respondent/Appellant v. Desert Highlands Association, Appellee*," No. CV14-0668 FC.

21. Respondent filed Opening and Reply Briefs totaling 85 pages.

22. The Court of Appeals upheld the trial court's ruling that Respondent failed to take reasonable steps to avoid imposing an undue burden or expense on DHA, in violation of Rule 52.C.1. Ariz. R. Fam. L. P., and affirmed the award of attorney's fees against Ms. Davis. In so holding, the appellate court stated:

These facts support the conclusion by the trial court that Best did not take reasonable actions to avoid imposing undue burden or expense. Indeed, given the high level of cooperation that Best received from the Association, it is difficult to discern how the discovery dispute was anything other than imaginary. Put simply, no motion should ever have been filed.

23. The Court of Appeals emphasized a lawyer's obligation to tread lightly on non-parties to litigation from whom discovery is sought.

24. "Given the frivolous nature of the appeal," the Court of Appeals assessed attorney's fees of \$13,286.50 and costs of \$140.00 against Respondent only. After settlement negotiations with Ms. Post, Respondent paid the assessment against her five weeks after the Court of Appeals issued its mandate. As part of the resolution of this Complaint, on March 28, 2017, Respondent delivered a check to DHA for \$3,400 in full satisfaction of the judgment against Ms. Davis.

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, ERs 3.1 (Meritorious Claims and Contentions), 3.4(c) (Fairness to Opposing Party and Counsel), 4.4(a) (Respect for Rights of Others), and 8.4(d) (Conduct Prejudicial to the Administration of Justice).

CONDITIONAL DISMISSALS

The State Bar conditionally agrees to dismiss the charges that Respondent violated Rule 42, ERs 1.1, 3.3, 4.1(a), and 8.4(c). ER 1.1 is reserved for cases of chronic incompetence and does not apply to isolated conduct. Also, Respondent has addressed concerns related to ER 1.1 by voluntarily attending six hours of CLE (in addition to the annual CLE requirement) on family law rules of procedure. Were the case to proceed to a hearing, the State Bar would offer evidence that Respondent's email to Ms. Post explaining her rationale for accelerating the compliance date for the Notice of Deposition and Subpoena Duces Tecum was false and that Respondent thereby violated ERs 3.3, 4.1(a), and 8.4(c). The State Bar also would offer evidence that the email was a factor in the Court of Appeals' decision to assess sanctions against Respondent and uphold the trial court's order against Ms. Davis. Were this matter to be tried, Respondent would offer evidence that her email as literally composed did not accurately express what she wanted to communicate to Ms. Post but that she did not intentionally try to mislead her. Respondent's associate attorney had previously contacted house counsel for DHA and told him of the subpoena's mistaken compliance date, Respondent thought Ms. Post already knew about the error, and Respondent hurriedly but in good faith wrote the email explaining in

overly abbreviated fashion the reason that she needed expeditious compliance with the subpoena. In view of the challenge posed by the State Bar's burden of proof to establish violations by clear and convincing evidence, it conditionally dismisses the ER 3.3, 4.1(a), and 8.4(c) charges in exchange for Respondent's agreement to enter into this consent.

RESTITUTION

Restitution is not an issue in this matter. Respondent has paid the judgment for attorney's fees that the trial court assessed against Ms. Davis, and also paid the judgment the Court of Appeals entered against her personally.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, a sanction calling for a suspension of 60 days and payment of costs, as detailed above, is appropriate. If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

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 client, to the legal system, and as a professional.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent knowingly engaged in the above-described conduct, and that such conduct constitutes the ethical violations cited herein. Were this matter to proceed to a contested hearing,

Respondent would contend that she did not know at the time 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 actual harm to Respondent's client and to the legal system.

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

Standard 6.22 - Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

Standard 7.2 - Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22--

- (a) prior disciplinary offenses;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (i) substantial experience in the practice of law;

In mitigation:

Standard 9.32--

- (k) imposition of other penalties or sanctions – Respondent paid the \$13,000 sanction that the Court of Appeals assessed against her;
- (l) remorse – Respondent paid the judgment of \$3,000 plus interest that the trial court assessed against her client even though it was not Respondent's legal responsibility. Also, if and to the extent that Respondent's associate attorneys played a role in the underlying case and instigated court-imposed sanctions against Respondent and her client, Respondent takes responsibility for all of the conduct covered in and underlying this Consent as the attorney responsible for oversight of other lawyers employed by her firm.

Discussion

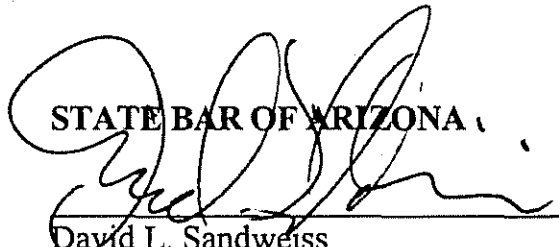
The parties conditionally agree that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate. In substance if not numerically, the aggravating and mitigating factors offset. Concerns about Respondent's competence were addressed by her voluntary attendance at a relevant CLE program, and she has demonstrated remorse by paying a sanctions award for which she was not otherwise liable (in addition to paying the substantial sanctions awarded against her). 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

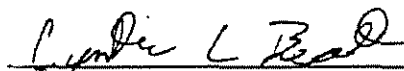
The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of a 60-day suspension and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 21st day of April, 2017.

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. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.

DATED this 21 day of April, 2017



Cynthia L. Best
Respondent

DATED this 21st day of April, 2017.

Jennings Strouss & Salmon PLC



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
of the Supreme Court of Arizona
this 21st day of April, 2017.

Copy of the foregoing emailed
this 21st day of April, 2017, to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 21st day of April, 2017, to:

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

Copy of the foregoing hand-delivered
this 21st day of April, 2017, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

by: Jack Baker

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Cynthia L. Best, Bar No. 014731, Respondent

File Nos. 16-0318 & 16-0820

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

03/14/17	Investigator Mileage to Serve Subpoena	\$ 24.01
02/27/17	Bar Counsel Parking for Meeting with Judge Steiner	\$ 8.00
Total for staff investigator charges		\$ 32.01

<u>TOTAL COSTS AND EXPENSES INCURRED</u>	<u>\$1,232.01</u>
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EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

CYNTHIA L BEST,
Bar No. 014731,

Respondent.

PDJ 2016-9122

**FINAL JUDGMENT AND
ORDER**

State Bar Nos. 16-0318 and 16-0820

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 L. Best**, is hereby suspended for 60 days for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order or _____.

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ _____, within 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 30 days from the date of service of this Order.

DATED this _____ day of April, 2017.

**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 April, 2017.

Copies of the foregoing mailed/emailed
this _____ day of April, 2017, to:

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

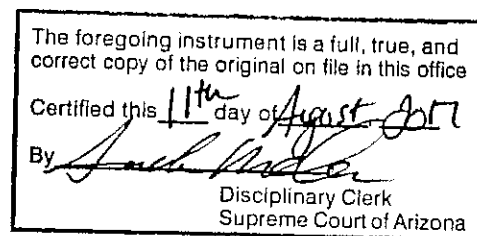
Copy of the foregoing emailed/hand-delivered
this ____ day of April, 2017, to:

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

Copy of the foregoing hand-delivered
this ____ day of April, 2017 to:

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

by: _____



BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

CYNTHIA L. BEST,
Bar No. 014731

Respondent.

PDJ-2016-9122

**DECISION AND ORDER
ACCEPTING DISCIPLINE BY
CONSENT**

[State Bar Nos. 16-0318 & 16-0820]

FILED MAY 9, 2017

An Agreement for Discipline by Consent was filed on April 21, 2017 pursuant to Rule 57(a), Ariz. R. Sup. Ct. The complaint was filed on December 2, 2016. The answer was filed on January 11, 2017.

Rule 57 requires admissions be tendered solely "...in exchange for the stated form of discipline...." Under that rule, the right to an adjudicatory hearing is waived only if the "...conditional admission and proposed form of discipline is approved...." If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Ms. Best has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. Notice of this Agreement and an

opportunity to object as required by Rule 53(b)(3), Ariz. R. Sup. Ct., was provided by letter and email to the complainants on April 21, 2017. No objections have been filed.

Ms. Best conditionally admits her conduct violated Rule 42, ERs 3.1 (Meritorious Claims and Contentions, 3.4(c) (Fairness to Opposing Party and Counsel), 4.4(a) (Respect for Rights of Others), and 8.4(d) (Conduct Prejudicial to the Administration of Justice). Upon acceptance of the Agreement, Ms. Best agrees to accept a suspension for sixty (60) days.

Because of the responsible steps taken by Ms. Best there are no other terms. Remorse is best demonstrated by action. Ms. Best has paid the attorney fees assessed against her client by the Court and completed six hours of continuing legal education on family court rules of procedure. She also paid the judgment entered personally against her for attorney fees by the Court of Appeals. She also agrees to pay the costs and expenses of the disciplinary proceeding for \$1,232.01 within thirty (30) days. These would all have typically been terms of probation which are made unnecessary by her steps of remedial action. There are no costs of the Office of the Presiding Disciplinary Judge.

The twenty page Agreement details a factual basis to support the conditional admissions. Ms. Best conditionally admits to the single count complaint. Those facts are summarized.

Ms. Best was licensed to practice law in Arizona on May 15, 1993. She represented a mother in a family law case in Maricopa County Superior Court. At issue were legal decision-making and parenting time regarding the parties' two minor children, spousal maintenance and child support.

Father moved for temporary orders regarding parenting time and legal decision making. Ms. Best sought the employment records of father by subpoena and set a deposition. Errors followed, including setting the production date for the employment records for April 24, well after the April 11 setting for the temporary orders hearing. This was compounded when Ms. Best moved for attorney fees against the employer who had agreed to supply the records before the hearing despite the stated production date. Ms. Best did not serve the employer with her motion seeking attorney fees against the employer. The motion contained no certification of a good faith effort to resolve the dispute.

When the attorney for the employer was informed by the Father's attorney of the motion, that attorney demanded Ms. Best withdraw the motion. She refused. A response to the motion was filed. The employer produced the 148 pages of personnel documents on April 9. Ms. Best filed a reply to the response and then a sur-reply which was stricken. The motion of Ms. Best was denied and the Court assessed her client with attorney fees of \$3,000.

Ms. Best appealed the order and filed opening and reply briefs totaling 85 pages. The Court of Appeals affirmed the award and found “no motion should ever have been filed.” Given the frivolous nature of the appeal, the Court of Appeals assessed attorney fees personally against Ms. Best for \$13, 286.50 and costs of \$140.00. Both that order and the judgment against her client were paid within weeks by Ms. Best.

STANDARDS AND SANCTIONS ANALYSIS

Rule 58(k) provides sanctions shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, (“Standards”). The parties agree under that each of the violations by Ms. Best warrant a suspension under *Standards* 6.22 and 7.2. Ms. Best acted knowingly and her conducted violated her duties to her client, to the legal system and as a professional. The parties acknowledge there was actual harm to the client of Ms. Best and to the legal system.

In aggravation under *Standard* 9.22(a), Ms. Best has prior disciplinary offenses, 9.22(c) a pattern of misconduct, 9.22(d) multiple offenses, and 9.22(i) substantial experience in the practice of the law. In mitigation under *Standard* 9.32(k), substantial penalties or sanctions were imposed against Ms. Best.

IT IS ORDERED accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: sixty (60) days suspension and costs and expenses of the disciplinary proceeding totaling

\$1,232.01, to be paid within thirty (30) days from this date. There are no costs incurred by the office of the presiding disciplinary judge. A final judgment and order is signed this date.

DATED this May 9, 2017.

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

COPY of the foregoing e-mailed/mailed
on May 9, 2017, to:

David L. Sandweiss, Esq.
Senior Bar Counsel
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: LRO@staff.azbar.org

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

by: AMcQueen

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Certified this 14th day of August, 2017

By [Signature]
Disciplinary Clerk
Supreme Court of Arizona

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

CYNTHIA L. BEST,
Bar No. 014731

Respondent.

PDJ-2016-9122

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 16-0318 & 16-0820]

FILED MAY 9, 2017

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on April 21, 2017, under Rule 57(a), Ariz. R. Sup. Ct., accepted the parties' proposed agreement.

Accordingly:

IT IS ORDERED Respondent, **CYNTHIA L. BEST, Bar No. 014731**, is suspended from the practice of law for sixty (60) days for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents effective thirty (30) days from the date of this order.

IT IS FURTHER ORDERED pursuant to Rule 72 Ariz. R. Sup. Ct., Ms. Best shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED Ms. Best shall pay the costs and expenses of the State Bar of Arizona for \$1,232.01, within thirty (30) days from this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

DATED this 9th day of May, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 9th day of May, 2017, to:

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

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

by: [AMcQueen](#)