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State Bar Court of California
Hearing Department
Los Angeles
REPROVAL

Counsel for the State Bar	Case Number(s):	For Court use only
David Aigboboh **Deputy Trial Counsel** **845 S. Figueora Street** **Los Angeles, CA 90017** **(213) 765-1097** Bar # **312712**	**16-J-15703**	**PUBLIC MATTER** **FILED** OCT 17 2018 STATE BAR COURT CLERK'S OFFICE LOS ANGELES
In Pro Per Respondent **Adam Michael Romney** **P.O. Box 7972** **Chandler, AZ 85246** **(602) 481-0571** Bar # **261974**	Submitted to: **Settlement Judge** STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING **PUBLIC REPROVAL** ☐ PREVIOUS STIPULATION REJECTED	
In the Matter of: **ADAM MICHAEL ROMNEY** Bar # **261974** A Member of the State Bar of California (Respondent)		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

(1) Respondent is a member of the State Bar of California, admitted **January 7, 2009**.

(2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.

(3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **13** pages, not including the order.

(4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."

(5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."

(6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."

(7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.

(8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):

☒ It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

☐ Case ineligible for costs (private reproval).

☐ It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. SELECT ONE of the costs must be paid with Respondent's membership fees for each of the following years:

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.

☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."

☐ Costs are entirely waived.

(9) The parties understand that:

(a) ☐ A private reproval imposed on a Respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the Respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproval was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.

(b) ☐ A private reproval imposed on a Respondent after initiation of a State Bar Court proceeding is part of the Respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

(c) ☒ A public reproval imposed on a Respondent is publicly available as part of the Respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

(1) ☐ **Prior record of discipline:**

(a) ☐ State Bar Court case # of prior case:

(b) ☐ Date prior discipline effective:

(c) ☐ Rules of Professional Conduct/ State Bar Act violations:

(d) ☐ Degree of prior discipline:

(e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.

(2) ☐ **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.

(3) ☐ **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.

(4) ☐ **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.

(5) ☐ **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.

(6) ☐ **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct.

(7) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

(8) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice.

(9) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.

(10) ☐ **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.

(11) ☒ **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing. See Page 10.

(12) ☐ **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.

(13) ☐ **Restitution:** Respondent failed to make restitution.

(14) ☐ **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.

(15) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [Standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.

(1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.

(2) ☐ **No Harm:** Respondent did not harm the client, the public, or the administration of justice.

(3) ☐ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigation and proceedings.

(4) ☐ **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's misconduct.

(5) ☐ **Restitution:** Respondent paid $ on in restitution to without the threat or force of disciplinary, civil or criminal proceedings.

(6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced Respondent.

(7) ☒ **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable. **See Page 10.**

(8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.

(9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond Respondent's control and which were directly responsible for the misconduct.

(10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's personal life which were other than emotional or physical in nature.

(11) ☐ **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of Respondent's misconduct.

(12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.

(13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Record of Discipline, See Page 10.

Good Character, See Page 10.

D. Discipline:

Discipline – Reproval

Respondent is **Publicly** reproved. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar, this reproval will be effective when this stipulation becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the protection of the public and the interests of Respondent will be served by the following conditions being attached to this reproval. Failure to comply with any condition attached to this reproval may constitute cause for a separate disciplinary proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional

Conduct. Respondent is ordered to comply with the following conditions attached to this reproval for **1 (one)** (Reproval Conditions Period) following the effective date of the reproval.

(1) ☒ **Review Rules of Professional Conduct:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.

(2) ☒ **Comply with State Bar Act, Rules of Professional Conduct, and Reproval Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's reproval.

(3) ☒ **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR within ten (10) days after such change, in the manner required by that office.

(4) ☒ **Meet and Cooperate with Office of Probation:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 45 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the Reproval Conditions Period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.

(5) ☒ **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's Reproval Conditions Period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with reproval conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.

(6) ☒ **Quarterly and Final Reports:**

a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the Reproval Conditions Period. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the Reproval Conditions Period and no later than the last day of the Reproval Conditions Period.

b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.

c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).

d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after the Reproval Conditions Period has ended. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.

(7) ☐ **State Bar Ethics School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.

(8) ☐ **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because .

(9) ☐ **State Bar Client Trust Accounting School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.

(10) ☒ **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within **1 (one) year** after the effective date of the order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete **6 (six)** hours of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity.

(11) ☐ **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must provide the name and current contact information for that criminal probation officer. If the criminal probation was successfully completed during the period covered by a quarterly or final report, that fact must be reported by Respondent in such report and satisfactory evidence of such fact must be provided with it. If, at any time before or during the Reproval Conditions Period, Respondent's criminal probation is revoked, Respondent is sanctioned by the criminal court, or Respondent's status is otherwise changed due to any alleged violation of the criminal probation conditions by Respondent, Respondent must submit the criminal court records regarding any such action with Respondent's next quarterly or final report.

(12) ☐ **Minimum Continuing Legal Education (MCLE):** Within after the effective date of the order imposing discipline in this matter, Respondent must complete hour(s) of California Minimum Continuing Legal Education-approved participatory activity in SELECT ONE and must provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity.

(13) ☐ **Other:** Respondent must also comply with the following additional reproval conditions: .

(14) ☒ **Multistate Professional Responsibility Examination Within One Year:** It is further ordered that Respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the order imposing discipline in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation within the same period. Failure to do so may result in suspension. (Cal. Rules of Court, rule 9.10(b).)

(15) ☐ **The following conditions are attached hereto and incorporated:**

☐ Financial Conditions ☐ Medical Conditions

☐ Substance Abuse Conditions

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: ADAM MICHAEL ROMNEY

CASE NUMBER: 16-J-15703

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 16-J-15703 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. On January 13, 2011, respondent was admitted to the practice law in the State of California.

2. On May 12, 2016, respondent entered into an Agreement for Discipline by Consent in the State of Arizona. Respondent admitted that he violated the State Bar of Arizona Rules of Professional Conduct, Ethical Rules 1.7 (Conflicts – Current Clients) and 1.15 (Safekeeping Property). Respondent agreed to accept a public reprimand.

3. On May 19, 2016, Presiding Disciplinary Judge William J. O'Neil publicly reprimanded respondent. The order was final.

4. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

5. In 2007, Ronald Wanchuk, Janice Gamblin and Kwikmed, LLC filed a complaint against PCM Venture I, LLC and Peter L. Ax in *Wanchuk, et al. v. PCM Venture I, LLC et al.*, Arizona Superior Court case number CV 2007-009523 ("the *Wanchuk* litigation"). Robert Johnson, Tightlines, LLC and Groupe Angelil International Holdings, S.A. ("the intervenors") intervened in the *Wanchuk* litigation.

6. In 2009, the plaintiffs transferred to the intervenors all interest in the claims sought to be enforced, and the intervenors substituted in as plaintiffs in the *Wanchuk* Litigation.

7. On January 23, 2012, Reuven Ben-Zvi, also known as Robert Hirsch, and his business partner, a Virginia attorney, Rocco DeLeonardis filed a Motion to Intervene based on an agreement that assigned 100% of all of the intervenors' interests to Hirsch and DeLeonardis. This assignment was later revealed to have been forged. Hirsch had been disbarred in New York and had previously pleaded guilty to numerous federal crimes relating to his participation in a conspiracy to launder millions of dollars of narcotics trafficking proceeds.

8. In November 2012, in response to a Craigslist ad, respondent agreed to represent the intervenors in the *Wanchuk* litigation. Based on the forged assignment, respondent determined that there was no conflict of interest between Hirsch, DeLeonardis, and the intervenors.

9. On or about December 6, 2012, respondent executed an engagement letter to represent Hirsch and DeLeonardis, which Hirsch and/or DeLeonardis prepared. The engagement letter stated that they were the real and sole clients in interest, even though respondent would appear on the intervenors' behalf.

10. At a December 10, 2012 pretrial conference, respondent agreed to represent Hirsch and DeLeonardis, and work with them to find co-counsel for the balance of the case, in exchange for reimbursement of costs and 10% of any proceeds from the *Wanchuk* litigation. That day, respondent filed a notice of appearance on behalf of the intervenors. However, respondent did not speak to the intervenors before agreeing to represent them. Respondent continued to work on the case with DeLeonardis as his primary point of contact.

11. In 2013, the trial court ordered the parties to mediation. Opposing counsel claimed that Hirsch had made threats against him and counsel refused to attend the mediation if Hirsch attended. Respondent agreed to continue the representation and attend the mediation if Hirsch and DeLeonardis appeared telephonically and did not engage with opposing counsel, the mediator, or the court without first consulting respondent. When Hirsch contacted the mediator directly, respondent advised Hirsch that he was withdrawing from the case. After Hirsch expressed concern about the effect of respondent's withdrawal at that stage in the proceedings, respondent agreed to continue the representation through the mediation.

12. The parties settled the intervenors' claim at mediation for $200,000. Respondent received a call from Johnson's business partner, Pantipa Kittikachorn, directing him not to disburse any of the settlement funds to Hirsch because of the forged assignment. Hirsch denied that the assignment was forged, told respondent not to speak to DeLeonardis, and said that he would secure Johnson and Kittikachorn's signatures by the settlement deadline.

13. Respondent emailed Johnson a copy of the assignment that Hirsch and DeLeonardis provided at the start of the representation. Johnson informed respondent that it was a forgery.

14. On October 25, 2013, respondent met with Hirsch and DeLeonardis, and Hirsch provided respondent with what he claimed to be lawfully executed settlement documents. At the meeting, Hirsch told respondent not to have any contact with Johnson or Kittikachorn and threatened respondent to discourage him from interfering.

15. Respondent reviewed the signatures on the settlement documents provided by Hirsch and concluded that they were not authentic. Hirsch later admitted that the signatures were forged. Respondent called Johnson and Kittikachorn and confirmed that they had not signed the settlement documents. Respondent also confirmed with the notary's supervisor that they had not signed the notary's signature book.

16. Respondent learned that there was a conflict between the intervenors and Hirsch/DeLeonardis because the intervenors had not assigned their 100% as interest indicated in the forged assignment.

17. Respondent sought advice from the State Bar of Arizona's Ethics Hotline (which did not advise respondent regarding the disbursement of the settlement funds) and reported the matter to the Phoenix Police Department and the FBI.

18. On November 1, 2013, the settlement funds were wired to the bank account that respondent had created. At the direction of Kittikachorn, respondent immediately transferred the funds to Kittikachorn's attorney in Washington D.C. Respondent retained $20,499 for fees and costs consistent with the terms of the engagement letter with Hirsch and DeLeonardis. Respondent knew or had reason to know that Kittikachorn's attorney would disburse the funds to Kittikachorn and/or Johnson and Tightlines, LLC. Subsequently, the settlement funds were transferred to the intervenors. In light of Hirch's threats, respondent took steps to ensure his safety, including relocating for a period of time.

19. On November 4, 2013, respondent emailed Hirsch and DeLeonardis informing them that he had transferred the settlement funds to a third party.

CONCLUSIONS OF LAW:

20. As a matter of law, respondent's culpability of professional misconduct determined in the proceeding in Arizona warrants the imposition of discipline under the laws and rules binding upon respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Wrongdoing (Std. 1.5(b)): Respondent represented multiple clients with a potential conflict and failed to maintain funds that were in dispute. (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 646-47 [two matters of misconduct may or may not be considered multiple acts].)

MITIGATING CIRCUMSTANCES.

No Prior Record of Discipline: Respondent has no record of discipline in California. Respondent was admitted to the California State Bar on January 7, 2009. Respondent was subsequently admitted to the Arizona State Bar on January 13, 2011. Respondent is entitled to nominal mitigation for four years of discipline-free practice in California before the misconduct. (*In the Matter of Duxbury* (Review Dept. 1999) 4 Cal. State Bar Ct. Rptr. 61, 66 [five years of discipline-free practice given nominal mitigation].)

Good character: Respondent presented letters of good character from one attorney and four members of the general community, including two business owners for whom respondent has performed legal work and two personal acquaintances familiar with respondent's character. The letters attest to respondent's honesty, trustworthiness, and proactive community involvement. Respondent is entitled to mitigation for good character. (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 387; *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591.)

Good Faith (Std. 1.6(b)): Respondent honestly believed that there was no conflict of interest between his two groups of clients: the intervenors and Hirsch/DeLeonardis. Respondent's belief was objectively reasonable because it was based upon a forged assignment. Respondent's good faith mitigates against the misconduct that occurred before respondent had reason to believe the assignment

was forged. Respondent's mitigation for good faith is tempered because respondent did not immediately withdraw after learning of the conflict.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct "set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances." (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to "great weight" and should be followed "whenever possible" in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) "Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure." (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member's willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, respondent's misconduct in the other jurisdiction demonstrates a violation of rules 4-100(A)(2) [Failure to Maintain Disputed Funds in Trust] and 3-310(C)(2) [Actual Conflict] of the Rules of Professional Conduct.

Under Standard 1.7(a), "[i]f a member commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed."

Standard 2.5(a) provides that "[a]ctual suspension is the presumed sanction when a member accepts or continues simultaneous representation of clients with actual adverse interests, where the member: (1) fails to obtain informed written consent of each client, and (2) causes significant harm to any of the clients." Respondent failed to obtain the written consent of each of his clients. However, the record of respondent's culpability as determined in Arizona does not reveal, by clear and convincing evidence, significant client harm. Therefore, application of Standard 2.2(b) is more appropriate because it addresses the gravamen of respondent's misconduct.

Under Standard 2.2(b), "[s]uspension or reproval is the presumed sanction for any violation of rule 4-100(A) other than failure to disburse client funds or commingling.

A reproval is consistent with the Standards and appropriate given that respondent acted in good faith and has presented evidence of good character. Respondent honestly believed, as a result of the forged assignment, that there was no conflict between the intervenors and Hirsch/DeLeonardis. A public reproval with one year of probation serves the purposes of discipline.

Case law supports that level of discipline. A violation of rule 3-310(C)(1) (*potential* conflicts) is "relatively minor" where no conflict materializes and no client is harmed. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 7.) In *Klein*, the attorney represented a husband and wife in a bankruptcy proceeding while concurrently representing the wife in dissolution proceedings. The attorney did not obtain informed written consent. The attorney also failed to obey a court order and failed to disburse entrusted funds. Though the attorney's failure to obey a court order caused "relatively minor" harm, there were no factors in aggravation. In mitigation, the attorney had a nine-year record of discipline-free practice, and there was delay in prosecution. The attorney received a 60-day stayed suspension.

Case law also recognizes that, in certain instances, a failure to maintain disputed funds does not merit actual suspension. (*In the Matter of Respondent E* (Review Dept. 1994) 1 Cal. State Bar Ct. Rptr. 716.) In *Respondent E*, the attorney was privately reproved for a negligent failure to maintain disputed funds in one instance. In mitigation, the attorney presented evidence of good character and pro bono activities, and had a discipline-free record of practice. There were no factors in aggravation.

Here, respondent's misconduct goes beyond the "relatively minor" conflict violation in *Klein*, because an actual conflict materialized. However, as in *Klein*, there was no finding of client harm as a result of a conflict of interest, and respondent did not disobey a court order. Additionally, respondent is entitled to mitigation for acting in good faith and presenting evidence of good character, though respondent's mitigation for good faith is tempered because he did not immediately withdraw after learning of the conflict. Respondent's mitigation outweighs the aggravating factor of multiple acts. Finally, while respondent acted deliberately, rather than negligently, unlike the attorney in *Respondent E*, respondent's good faith (before discovering the conflict) and good character similarly warrant discipline less severe than suspension. On balance, discipline consisting of a public reproval serves the purpose of protecting the public, the courts, and the legal profession.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of August 3, 2018, the discipline costs in this matter are $2,585. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION ("MCLE") CREDIT.

Respondent may not receive MCLE credit for completion of State Bar Ethics School or MCLE courses completed as a condition of reproval or suspension. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of **ADAM MICHAEL ROMNEY**	Case number(s): **16-J-15703**

SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

9/7/18
Date

Respondent's Signature

Adam Michael Romney
Print Name

9/18/18
Date

Deputy Trial Counsel's Signature

David Aigboboh
Print Name

(Do not write above this line.)

In the Matter of:	Case Number(s):
ADAM MICHAEL ROMNEY	16-J-15703

REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproval, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

☐ The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.

☒ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.

☐ All court dates in the Hearing Department are vacated.

On page 5 of the Stipulation, top of the page, line 1, "year" is inserted after "1 (one)".

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See Rules Proc. of State Bar, rule 5.58(E) & (F).) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproval may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

October 17, 2018
Date

Rebecca Meyer Rosenberg
REBECCA MEYER ROSENBERG, JUDGE PRO TEM
~~Judge of the~~ State Bar Court

Stacy L Shuman, Bar No. 018399
Bar Counsel - Litigation
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone
Email: LRO@staff.azbar.org

Adam Romney, Bar No. 028322
PO Box 7972
Chandler, AZ 85246-7972
Telephone 602-481-0571
Email: adam.romney@gmail.com
Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

ADAM ROMNEY,
Bar No. 028322,

Respondent.

PDJ 2016 – 9050

State Bar File Nos. **14-1900**

AGREEMENT FOR DISCIPLINE BY CONSENT

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Adam Romney, who has chosen not to seek the assistance of counsel, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order has not been entered in this case. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant(s) by email on April 25, 2016. 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. Complainant Reuven Ben-Zvi a/k/a Robert Hirsch's objection is being submitted to the Court contemporaneously herewith.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.7 [Conflicts Current Clients] and 1.15 [Safekeeping Property]. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand. The State Bar would have recommended a period of probation and an order directing Respondent to take certain CLE classes. However, Respondent has already taken those classes. The certificates of completion are attached hereto as Exhibit A. 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.[1] The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit B.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on January, 13, 2011.

COUNT ONE (File no. 14-1900/ Ben-Zvi)

2. Complainant Reuven Ben-Zvi a/k/a Robert Hirsch (Hirsch) is a disbarred New York attorney. In 1994, Hirsch plead guilty to numerous federal

[1] Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

crimes relating to his participation in a conspiracy to launder millions of dollars, which were the proceeds from narcotics trafficking by (among others) the Cali cocaine cartel in Columbia. Rocco DeLeonardis (DeLeonardis), is Hirsch's business partner.

3. In 2007, Ronald Wanchuk, Janice Gamblin and Kwikmed LLC filed a complaint against PCM Venture I, LLC and Peter L. AX with the Maricopa County Superior Court, Case No. CV 2007-009523 (*Wanchuk* Litigation).

4. That year, Robert Johnson, Tightlines, LLC and Groupe Angelil International Holdings, S.A. (the Intervenors), intervened in the *Wanchuk* Litigation alleging an ownership interest in Kwikmed LLC and a valid money judgment against the plaintiffs, which was domesticated and recorded in Maricopa County on July 31, 2006.

5. In 2009, the Intervenors substituted in as plaintiffs in the *Wanchuk* Litigation after the plaintiffs transferred to them all interest in the claims sought to be enforced.

6. If this matter went to hearing, Hirsch would testify that on November 20, 2011, Johnson (individually and on behalf of Tightlines) assigned a 65% interest in any proceeds received from the *Wanchuk* Litigation to him and Deleonardis (the Assignment).

7. DeLeonardis maintains that he and Hirsch each hold a 50% interest in their share of the proceeds under the terms of the Assignment. However, as recently as April 2016, Hirsch filed a Verified Complaint with the Superior Court in California in which he refers to DeLeonardis as a "former assignee" and avers that

DeLeonardis orally assigned his interest in the Assignment to Hirsch on November 2, 2013.

8. On January 23, 2012, Hirsch and DeLeonardis filed a Motion to Intervene in the *Wanchuk* Litigation based on a redacted copy of the Assignment which appears to have assigned 100% of the Intervenors' interest in the proceeds from the *Wanchuk* Litigation to them in consideration for payment of $250,000.[2] The trial court denied the motion because, among other things, it would have been required to resolve issues related to the validity of the Assignment. The trial court concluded that to the extent that Hirsch and Deleonardis had a valid interest in the subject of the *Wanchuk* Litigation, it would be adequately represented by the Intervenors and their counsel.

9. In late November 2012, Respondent found a listing on Craigslist seeking an attorney to take over representation for the Intervenors in the *Wanchuk* Litigation and responded to it. DeLeonardis contacted Respondent and advised that he was a Virginia lawyer seeking local counsel because prior counsel had requested to withdraw and there was an upcoming scheduling and status conference. He provided Respondent with a packet of information, which Respondent reviewed. If this matter went to hearing, Respondent would testify that based on that information, which included a copy of the Assignment, he determined that there was no conflict of interest between Hirsch, DeLeonardis and the Intervenors. However, Respondent did not talk to the Intervenors before he took on the representation.

[2] If this matter went to hearing, Respondent would testify that Hirsch later admitted that no such payment had been made in consideration for the Assignment. Rather, that he had provided services as consideration.

10. On or about December 6, 2012, Respondent executed an engagement letter prepared by Hirsch and/or DeLeonardis stating that they "are the real and sole clients in interest," notwithstanding the fact that Respondent was to enter his appearance on behalf of the Intervenors in the *Wanchuk* Litigation (the Engagement Letter). Respondent agreed to represent Hirsch and DeLeonardis at a December 10, 2012 pretrial conference and work with them to find co-counsel for the balance of the case, all in consideration for reimbursement of costs and 10% of any proceeds from the *Wanchuk* Litigation. Respondent filed a notice of appearance on behalf of the Intervenors that day.

11. Over the next few months, Respondent worked on the case with DeLeonardis acting as his primary point of contact through which he could obtain information from Johnson and his business partner, Pantipa Kittikachorn, with whom Hirsch and DeLeonardis were familiar.

12. In 2013, the trial court ordered the parties to mediation. Opposing counsel, Kevin H. Marino, refused to attend the mediation if Hirsch attended because of certain threats that Hirsch had made against him. After consultation with DeLeonardis, Respondent agreed to continue the representation and attend the mediation if Hirsch and DeLeonardis appeared telephonically and did not engage with opposing counsel, the mediator or the Court without first consulting with him. However, Hirsch contacted the mediator directly and Respondent advised Hirsch that he was withdrawing from the case. If this matter went to hearing, Respondent would testify that after Hirsch expressed concern about the effect of his withdrawal at that stage in the proceedings, Respondent agreed to continue the representation through the mediation and then re-evaluate it.

13. Opposing counsel insisted that Johnson attend the mediation as the real party-in-interest. Respondent asked DeLeonardis to ensure that Johnson would attend the mediation.

14. On October 22, 2013, Respondent met with Hirsch and DeLeonardis at which time Hirsch, who by then had decided to attend the mediation, agreed that he would remain silent unless spoken to first. Later that day, Respondent met with Hirsch, DeLeonardis and Johnson, who agreed to attend the mediation. This was the first time that Respondent met or spoke directly with Johnson.

15. On October 23, 2013, the mediation took place with an armed guard in attendance. Despite agreeing to remain silent, Hirsch actively participated in the mediation and demanded that he personally respond to all offers to settle the case. Hirsch would later execute an affidavit in which he stated that he and DeLeonardis attended the mediation to protect their interests and that Johnson appeared on behalf of Intervenors, who were represented by Respondent.

16. The Intervenors' claim was settled at mediation for $200,000. Respondent was to set up an account into which the settlement funds would be wired and then disbursed.

17. If this matter went to hearing, Respondent would testify that he then received a call from Kittikachorn directing him not to disburse any of the settlement funds to Hirsch because the Assignment was a forgery. Respondent asked Kittikachorn to send him documents supporting her claim and then contacted Hirsch to advise him of the allegation, which Hirsch denied. Hirsch told Respondent not to talk to DeLeonardis and assured Respondent that he would secure both Johnson's

and Kittikachorn's signatures on the settlement documents by the deadline of October 25, 2014.

18. Respondent then emailed Johnson a copy of the Assignment that had been provided to him by Hirsch and DeLeonardis at the inception of the representation. Johnson told Respondent that it was a forgery and sent Respondent a copy of the Assignment that he signed, which provided for only a 65% assignment. Johnson told Respondent that he had actually signed a single separate notary page and that he had not, in fact, been authorized to execute the Assignment on behalf of Tightlines.

19. After speaking with Johnson and Kittikachorn, Respondent decided to meet with Hirsch and DeLeonardis as planned on October 25, 2013. If this matter went to hearing, Respondent would testify that he knew that Kittikachorn was in Washington DC at that time, but Hirsch told him that she was in Phoenix and Hirsch would get her notarized signature on the settlement documents. When Respondent asked Hirsch how he would do it, Hirsch told him that he would get the signatures but that he could not tell Respondent how he would do it over the telephone.

20. On October 25, 2013, DeLeonardis called Respondent to arrange a meeting for that evening. If this matter went to hearing, Respondent would testify that he had concerns for his physical safety.

21. That evening, Respondent met with Co-Complainants in a public place. Hirsch handed Respondent what he claimed to be lawfully executed settlement documents. If this matter went to hearing, Respondent would testify that Hirsch told him not to have any contact with Johnson or Kittikachorn and that he "was not a person to be fucked with."

22. Respondent reviewed the documents and concluded that the signatures were not authentic, which Hirsch later admitted. Respondent contacted Johnson and Kittikachorn who confirmed that they had not signed the documents. Respondent also confirmed with the notary's supervisor that the individuals had not signed the notary's signature book. Respondent sought advice from the State Bar Ethics Hotline[3] and reported the matter to the Phoenix police department and the FBI, which have apparently taken no action.

23. On November 1, 2013, the settlement funds were wired to Respondent's bank account, which had been set up for that sole purpose. Respondent then immediately transferred them to Attorney Robert Branand in Washington, D.C., at the direction of Kittikachorn, despite the fact that Respondent did not represent Kittikachorn and Respondent's clients had a claim to the funds. At the time, Respondent knew that Hirsch expected that 100% of the settlement proceeds (less his fee) would be wired to Hirsch's bank account in Gibraltar. Respondent retained $20,499 for fees and costs, which amount was consistent with the terms of the Engagement Letter. Respondent knew or had reason to know that Branand would disburse the funds to Kittikachorn and/or Johnson and Tightlines.

24. Respondent asserts that he wired the settlement funds to Attorney Branand to prevent Hirsch from absconding with the settlement funds and to remove any incentive that Hirsch might have to try to physically compel Respondent to release the funds. Respondent wanted to have no control over the funds, which he made clear to Hirsch and DeLeonardis after the transfer had been executed.

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[3] The State Bar Ethics Hotline did not give Respondent any advice regarding the disbursement of the settlement funds.

Respondent took additional steps to insure his safety, including relocating with his then fiancé for a period of time in the face of Hirsch's perceived threats. Thereafter, the settlement funds were transferred to the Intervenors.

25. The State Bar reviewed affidavits and interviewed individuals who support the conclusion that Respondent had a good faith basis for his belief that he was being threatened with physical harm by Hirsch.

26. By email dated November 4, 2013, Respondent advised Hirsch and DeLeonardis that he had transferred the settlement proceeds to a third-party and that he had "taken great pains to ensure that you both cannot harm me and have no incentive to do so. It is best that you recognize this now before you threaten me further." Respondent advised Hirsch and DeLeonardis that until the authenticity of the Assignment had been called into question, he had not perceived any conflict of interest between them and the Intervenors and that he had believe their interests to be aligned. Respondent explained that he believed that having confirmed that Hirsch forged the signatures on the settlement documents, and the validity of the Assignment being in dispute, his actions were necessary to prevent Hirsch from taking the settlement funds and absconding with them.

27. Hirsch admitted to Johnson, in writing, that he had forged Johnson's and Kittikachorn's signatures on the settlement agreements to induce opposing counsel to release the settlement funds. For a period of time, Hirsch and the Intervenors appear to have unsuccessfully discussed a possible resolution of the dispute regarding the disbursement of the funds.

28. By order filed November 15, 2013, the trial court dismissed with prejudice the Intervenors' claims, as well as the counter-claim filed by the plaintiffs against them, only.

29. On December 25, 2013, Hirsch filed a motion seeking an order disbursing $130,000 of the settlement proceeds to himself and $13,000 to Respondent, whom he referred to as counsel for Intervenors. In response, Kittikachorn filed a motion to intervene and asked the trial court to refer the matter for criminal investigation alleging that Hirsch had committed fraud and forgery. She further alleged that there was a dispute as to who was entitled to the settlement proceeds as evidenced by the fact that while Hirsch initially told Respondent that he owned 100% of the Intervenors' interest in the *Wanchuk* litigation, he had provided the trial court with documentation evidencing only a 65% interest in them. Hirsch filed a reply in which he avowed that DeLeonardis had waived his interest in the Assignment and that he alone was entitled to $130,000 of the settlement proceeds, although in the same pleading, he claimed that he was entitled to only $117,000 of the proceeds. The trial court denied Kittikachorn's motion to intervene and did not consider the remaining requests because neither were parties.

30. Hirsch and DeLeonardis have pursued various legal remedies to enforce the terms of the Assignment. In 2014, Hirsch and DeLeonardis filed a verified complaint against Johnson and Respondent, only, with the United States District Court for the Eastern District of Virginia. They secured a default judgment against Johnson, but the complaint was dismissed as to Respondent for lack of jurisdiction. The complaint alleged that Hirsch and DeLeonardis were co-assignees under the Assignment; acknowledged that Johnson told Respondent that he had been the

victim of fraud; and that Johnson directed Respondent not to disburse the settlement funds to Respondent.

31. In November 2014, Hirsch filed a verified complaint with the Ventura County Superior Court in California, which was dismissed. Hirsch was the only named plaintiff. He named Respondent, Branand, Tightlines, Johnson, Kittikachorn (and another Arizona attorney who seems to have no connection to the case) as defendants. Hirsch alleged that DeLeonardis had "re-assigned his interest" in the Assignment to him.

32. Hirsch advised Bar Counsel that he filed another complaint in California in 2016, this time against Respondent, Johnson, Kittikachorn and Tightlines. DeLeonardis is not a named plaintiff, and the complaint refers to him as a "former assignee." In the complaint, Hirsch asserts a right 100% of the interest under the 2011 Assignment or $130,000 of the settlement proceeds.

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 his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ER 1.7 [Conflicts Current Clients] and ER 1.15 [Safekeeping Property].

CONDITIONAL DISMISSALS

The State Bar has not agreed to dismiss any allegations as part of this consent agreement.

RESTITUTION

Restitution is not an issue in this matter. There is a dispute between Hirsch, DeLeonardis, Kittikachorn and the Intervenors regarding the validity of the Assignment and entitlement to the settlement funds, which presents a legal issue that should be resolved by a civil court. There also appears to be a dispute between Hirsch and DeLeonardis as to whether DeLeonardis has waived any interest he might have under the Assignment. Hirsch and/or DeLeonardis have sought relief against Respondent, the Intervenors, Branand and others from various courts and for various amounts on at least three occasions.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Reprimand. The State Bar would have sought a period of probation the terms of which would have been to take certain Continuing Legal Education classes, but he has already done so, as reflected by Exhibit B hereto.

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 parties agree that *Standard* 4.12 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 4.12 provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent intentionally transferred the settlement proceeds to a third-party who then disbursed the funds to Kittikachorn and/or Intervenors in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential harm to the client and actual harm to the profession and the legal system.

Aggravating and mitigating circumstances

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

In aggravation: None.

In mitigation:

Standard 9.32(a) absence of a prior disciplinary record;

Standard 9.32(b) absence of a dishonest or selfish motive;

Standard 9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

Standard 9.32(f) inexperience in the practice of law. Respondent was admitted to practice law in Arizona on January, 13, 2011. Co-Complainants (both experienced attorneys, although Hirsch has been disbarred) retained Respondent in early December 2012; and

Standard 9.32(l) remorse.

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction should be mitigated to a Reprimand.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: Respondent maintains that his conduct was motivated by fear of Hirsch and his belief that he should take action to prevent commission of a criminal act, i.e., his belief that Hirsch was not legally entitled to

the settlement proceeds and his fear that Hirsch would abscond with the funds. The State Bar has reviewed filings and interviewed witnesses that support the conclusion that Respondent had an objective basis for his fear of Hirsch. Respondent sought advice from the State Bar Ethics Hotline. While Respondent recognizes in hindsight that there were other legal avenues available to him, e.g., interpleader, his inexperience, combined with his fear, resulted in the present misconduct.

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

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit C. The parties recognize that this case presents a unique set of circumstances and stand ready to answer any questions the Court might have about the underlying facts and the proposed sanction set forth herein.

DATED this 12th day of May 2016

STATE BAR OF ARIZONA

Stacy L. Shuman

Stacy L Shuman
Staff Bar Counsel

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

DATED this 12 day of May, 2016.

Adam Romney
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 12th day of May, 2016.

Copy of the foregoing emailed
this 12th day of May, 2016, 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 12th day of May, 2016, to:

Adam Romney
PO Box 7972
Chandler, AZ 85246-7972
Email: adam.romney@gmail.com
Respondent

Copy of the foregoing hand-delivered
this 12th day of May, 2016, to:

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

by: Karen E. Calcagno
SLS: KEC

EXHIBIT A

Stacy L. Shuman

From: Adam Romney <adam.romney@gmail.com>
Sent: Thursday, April 14, 2016 4:34 PM
To: Stacy L. Shuman
Subject: Fwd: State Bar of Arizona Certificate of Completion

Stacy,

Please find below the certificate for the first of the three courses we have discussed.

I will try to do another one this evening.

-Adam

---------- Forwarded message ----------
From: <registrations@staff.azbar.org>
Date: Thu, Apr 14, 2016 at 4:31 PM
Subject: State Bar of Arizona Certificate of Completion
To: adam.romney@gmail.com

Certificate of Completion

State Bar of Arizona

Name: Adam Romney
Member ID:028322
Purchase Date: Thursday, April 14, 2016
Completion Date:4/14/2016 4:31 PM Arizona
Transaction ID:b2fc1dfd-d1b5-4d4e-b9ef-2c8aa11d114a

Course Title: Trust Account Basics For Every Firm!
Course Number:J1256-499
Duration:3 hours 5 minutes
Course Type: OnDemand
Faculty: Shauna Miller, Lawyer Regulation, Lynda Shely, Patricia Sallen

Original Course Provider: State Bar of Arizona

Credit Information:3.00 CLE;
3.00 Ethics

Course Description:
TRUST ACCOUNT BASICS FOR EVERY FIRM!

Please allow 48-72 hours for your completed CLE seminar to show on your State Bar of Arizona CLE tracking page. Self-study courses must be manually entered on your CLE tracking page.

If you attended a State Bar event but it does not appear on your tracking page, **contact the CLE department at 602-340-7323 or email cleinfo@staff.azbar.org to have it corrected before submitting your affidavit.**

REMINDER: To ensure compliance with Rule 45(f), Ariz. R. Sup. Ct., records of continuing legal education are to be maintained by the member for three years after the filling of your annual MCLE affidavit. Records may be maintained in an electronic format. Record retention requirements for other MCLE jurisdictions are the responsibility of the member to determiner.

Stacy L. Shuman

From: Adam Romney <adam.romney@gmail.com>
Sent: Friday, April 15, 2016 1:57 PM
To: Stacy L. Shuman
Subject: Fwd: State Bar of Arizona Certificate of Completion

Ms. Shuman,

Please find below my certificate for the Avoiding Ethical Pitfalls course.

-Adam Romney

---------- Forwarded message ----------
From: <registrations@staff.azbar.org>
Date: Fri, Apr 15, 2016 at 1:56 PM
Subject: State Bar of Arizona Certificate of Completion
To: adam.romney@gmail.com

Certificate of Completion

State Bar of Arizona

Name: Adam Romney
Member ID:028322
Purchase Date: Thursday, April 14, 2016
Completion Date:4/15/2016 1:56 PM Arizona
Transaction ID:057444ec-0f38-4258-a9f2-d49e5fd97e2a

Course Title:2015 Avoiding Ethical Pitfalls
Course Number:J1501-499
Duration:2 hours 53 minutes
Course Type: OnDemand
Faculty: Shauna Miller, Lawyer Regulation, J Scott Rhodes, Patricia Sallen, Lisa Panahi, Michelle Swann

Original Course Provider: State Bar of Arizona

Credit Information:3.00 CLE;
3.00 Ethics

Course Description:
Answer questions and compare your answers with our experienced panel on various ethics issue in this "quiz show" style seminar.

Please allow 48-72 hours for your completed CLE seminar to show on your State Bar of Arizona CLE tracking page. Self-study courses must be manually entered on your CLE tracking page.

If you attended a State Bar event but it does not appear on your tracking page, **contact the CLE department at 602-340-7323 or email cleinfo@staff.azbar.org to have it corrected before submitting your affidavit.**

REMINDER: To ensure compliance with Rule 45(f), Ariz. R. Sup. Ct., records of continuing legal education are to be maintained by the member for three years after the filling of your annual MCLE affidavit. Records may be maintained in an electronic format. Record retention requirements for other MCLE jurisdictions are the responsibility of the member to determiner.

Stacy L. Shuman

From: Adam Romney <adam.romney@gmail.com>
Sent: Sunday, April 17, 2016 6:29 PM
To: Stacy L. Shuman
Subject: Fwd: State Bar of Arizona Certificate of Completion

Ms. Shuman:

Please find below my third and final CLE certificate.

[redacted]

-Adam Romney
---------- Forwarded message ----------
From: <registrations@staff.azbar.org>
Date: Sun, Apr 17, 2016 at 6:28 PM
Subject: State Bar of Arizona Certificate of Completion
To: adam.romney@gmail.com

Certificate of Completion

State Bar of Arizona

Name: Adam Romney
Member ID: 028322
Purchase Date: Sunday, April 17, 2016
Completion Date: 4/17/2016 6:28 PM Arizona
Transaction ID: 84b2b1e0-06ea-4c6f-b907-d7df92c622ee

Course Title: 10 Deadly Sins of Conflicts
Course Number: JX5C7-400
Duration: 2 hours 56 minutes
Course Type: OnDemand
Faculty: Craig Henley, Bar Counsel, Lynda Shely, Edward F. Novak, Russell Yurk, Patricia Sallen

Original Course Provider: State Bar of Arizona

Credit Information: 3.00 CLE;
3.00 Ethics

Course Description:
An exploration of conflict rules using scenarios to illustrate issues.

Please allow 48-72 hours for your completed CLE seminar to show on your State Bar of Arizona CLE tracking page. Self-study courses must be manually entered on your CLE tracking page.

If you attended a State Bar event but it does not appear on your tracking page, **contact the CLE department at 602-340-7323 or email cleinfo@staff.azbar.org to have it corrected before submitting your affidavit.**

REMINDER: To ensure compliance with Rule 45(f), Ariz. R. Sup. Ct., records of continuing legal education are to be maintained by the member for three years after the filling of your annual MCLE affidavit. Records may be maintained in an electronic format. Record retention requirements for other MCLE jurisdictions are the responsibility of the member to determiner.

EXHIBIT B

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Adam Romney, Bar No. 028322, Respondent

File No. 14-1900

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings	**$1,200.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

Total for staff investigator charges	$ 0.00
TOTAL COSTS AND EXPENSES INCURRED	$ 1,200.00

EXHIBIT C

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A CURRENT MEMBER OF THE STATE BAR OF ARIZONA, **ADAM ROMNEY,** **Bar No. 028322,** Respondent.	**PDJ** **FINAL JUDGMENT AND ORDER** [State Bar No. 14-1900]

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, **Adam Romney**, is hereby Reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that Respondent 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 May, 2016

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 May, 2016.

Copies of the foregoing mailed/emailed
this _____ day of May, 2016, to:

Adam Romney
PO Box 7972
Chandler, AZ 85246-7972
Email: adam.romney@gmail.com
Respondent

Copy of the foregoing emailed/hand-delivered
this _____ day of May, 2016, to:

Stacy L Shuman
Bar Counsel - Litigation
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 May, 2016 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,

ADAM ROMNEY
Bar No. 028322

Respondent.

No. PDJ-2016-9050

DECISION AND ORDER ACCEPTING DISCIPLINE BY CONSENT

[State Bar File No. 14-1900]

FILED MAY 19, 2016

An Agreement for Discipline by Consent (Agreement) was filed on May 12, 2016, and submitted under Rule 57(a)(3), of the Rules of the Arizona Supreme Court. The Agreement was reached before the authorization to file a formal complaint. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate".

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.

Under Rule 53(b)(3), notice of the agreement was provided to the complainant(s) by email on April 25, 2016. They were notified of their opportunity to file a written objection to the agreement. On April 25, 2016, one complainant submitted his objection. He objected stating the sanction was without precedent in

law or other sanctions issued by the Disciplinary Commission in like circumstances. In his objection, complainant disputed none of the facts within the consent agreement, but submitted there was a mountain of evidence. He also complained the sanction allowed Mr. Romney to "escape restitution of stolen funds." The complainant called Mr. Romney a "criminal" who stole his money. He threatened to file a mandamus with the Court if his objection was not sustained and a hearing take place.

The agreement states the State Bar reviewed affidavits and interviewed individuals who support the conclusion that Mr. Romney had a good faith basis for his belief he was being threatened with physical harm by this complainant. The agreement states there were forgeries alleged and admitted and questionable "assignments" of interest regarding monies payable through a mediated settlement. Complainant has filed multiple lawsuits in various jurisdictions regarding the monies involved. The agreement submits there is no restitution because the multiple parties are involved in litigation better resolved by a civil court.

The Agreement details a factual basis for the admissions to the charge in the Agreement. Mr. Romney admits his conduct violated Rule 42, ERs 1.7 [Conflicts Current Clients] and 1.15 [Safeguarding Property]. The State Bar recommended Mr. Romney take continuing legal education as a term of probation. However, Mr. Romney has already taken those classes and the certificates of completion of those classes were attached to the agreement. He also agrees to pay the $1,200 in costs as evidenced by the Statement of Costs attached to the agreement.

The parties agree under Rule 57(a)(2)(E), that *Standard* 4.12, Failure to Preserve Client Property, of the American Bar Association's *Standards for Imposing Lawyer Sanctions* (*Standards*) is most applicable given the facts.

The parties agree there are no aggravating factors. The parties further agree that the following mitigating factors are present and justify a reduction in the presumptive sanction of suspension to reprimand: 9.32(a) absence of prior disciplinary record, 9.32(b) absence of a dishonest or selfish motive, 9.32(e) full and free disclosure to disciplinary Board or cooperative attitude towards proceedings, 9.32(f) inexperience in law as he was admitted to practice in 2011, and 9.32(l) remorse. Complainants are both experienced attorneys, although the objecting complainant has been disbarred.

While the Court has considered the objection of complainant, the object of lawyer discipline is not to punish the lawyer. *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004). Nor is its purpose to resolve restitution issues presently being litigated in court. The Presiding Disciplinary Judge finds the proposed sanctions of reprimand and the continuing legal education taken meets the objectives of attorney discipline. The Agreement is therefore accepted.

IT IS ORDERED incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: reprimand and the payment of costs and expenses of the disciplinary proceeding for $1,200.00 to be paid within thirty (30) days from this order.

IT IS FURTHER ORDERED the Agreement is accepted. Costs as submitted are approved for $1,200.00. Now therefore, a final judgment and order is signed this

date. Mr. Romney is reprimanded and costs are imposed.

DATED this 19th day of May, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 19th day of May, 2016 to:

Stacy L. Shuman
Bar Counsel
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Adam Romney
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Email: adam.romney@gmail.com
Respondent

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

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

ADAM ROMNEY
Bar No. 028322

Respondent.

PDJ 2016-9050

FINAL JUDGMENT AND ORDER

[State Bar No. 14-1900]

FILED MAY 19, 2016

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on May 12, 2016, accepted the parties' proposed agreement under Rule 57(a), Ariz. R. Sup. Ct.

Accordingly:

IT IS ORDERED Respondent, **Adam Romney**, is reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately.

IT IS FURTHER ORDERED Mr. Romney shall pay the costs and expenses of the State Bar of Arizona for $1,200.00, 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 19th day of May, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

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this 19th day of May, 2016, to:

Stacy L. Shuman
Bar Counsel
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Adam Romney
PO Box 7972
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Respondent

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

by: AMcQueen

STATE BAR OF ARIZONA

Rules of Professional Conduct

1. Client-Lawyer Relationship

Related Opinions

ER 1.7 Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client gives informed consent, confirmed in writing, and:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Comment

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific Rules regarding certain concurrent conflicts of interest, see ER 1.8. For former client conflicts of interest, see ER 1.9. For conflicts of interest involving prospective clients, see ER 1.18. For definitions of "informed consent" and "confirmed in writing," see ER 1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with

the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and nonlitigation matters the persons and issues involved. See also ER 5.1, Comment [2]. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see ER 1.3, Comment [4] and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See ER 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See ER 1.9. See also Comments [5] and [28].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. In these circumstances, the lawyer may withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See ER 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See ER 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a lawyer acts directly adversely to a client if it will be necessary for the lawyer to cross-examine a client who appears as a witness in a lawsuit involving another client. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

[7] Although directly adverse conflicts arise most frequently in litigation, they also arise in transactional matters. For example, if a lawyer is asked to represent a seller in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under ER 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See ER 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also ER 1.10 (personal interest conflicts under ER 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See ERs 1.8(l) and 1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See ER 1.8(j).

Interest of Person Paying for Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See ER 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See ER 1.1 (competence) and ER 1.3 (diligence). In determining whether a multiple-client conflict is consentable, one factor to be considered is whether the representation will be provided by a single lawyer or by different lawyers in the same firm.

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition, decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under ER 1.0(m)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See ER 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [29] and [30] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. The cost benefits of common representation may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of each client, confirmed in writing. Such a writing may consist of a document executed by the client or oral consent that the lawyer promptly records and transmits to the client. See ER 1.0(b). See also ER 1.0(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing. The writing need not take any particular form it should, however, include disclosure of the relevant circumstances and reasonably foreseeable risks of the conflict of interest, as well as the client's agreement to the representation despite such risks.

Consent to Future Conflict

[21] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that an unforeseeable conflict may arise, such consent is more likely to be effective, particularly if the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[22] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or co-defendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one co-defendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of paragraph (b) are met.

[23] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf

of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[24] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[25] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[26] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present, as when one spouse owns significantly more property than the other or has children by a prior marriage. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary under another view, the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[27] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[28] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or

contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[29] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[30] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client attempts to keep something in confidence between the lawyer and that client, which is not to be disclosed to the other client. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See ER 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[31] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See ER 1.2(c).

[32] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of ER 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in ER 1.16.

Organizational Clients

[33] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See ER 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[34] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with

which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

STATE BAR OF ARIZONA

Rules of Professional Conduct

1. Client-Lawyer Relationship — Related Opinions

ER 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account only for the following purposes and only in an amount reasonably estimated to be necessary to fulfill the stated purposes:

(1) to pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account; or
(2) to pay any merchant fees or credit card transaction fees or to offset debits for credit card chargebacks.
(3) Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the lawyer does not use a credit card processing service that permits the lawyer to direct such funds to the lawyer's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement between the client and the third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer possesses property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer. The lawyer shall promptly distribute any portions of the property as to which there are no competing claims. Any other property shall be kept separate until one of the following occurs:

(1) the parties reach an agreement on the distribution of the property;
(2) a court order resolves the competing claims; or
(3) distribution is allowed under section (f) below.

(f) Where the competing claims are between a client and a third party, the lawyer may provide written notice to the third party of the lawyer's intent to distribute the property to the client, as follows:

(1) The notice shall be served on the third party in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure, and must inform the third party that the lawyer may distribute the property to the client unless the third party initiates legal action and provides the lawyer with written notice of such action within 90 calendar days of the date of service of the lawyer's notice.

(2) If the lawyer does not receive such written notice from the third party within the 90-day period, and provided that the disbursement is not prohibited by law or court order, the lawyer may distribute the funds to the client after consulting with the client regarding the advantages and disadvantages of disbursement of the disputed funds and obtaining the client's informed consent to the distribution, confirmed in writing.

(3) If the lawyer is notified in writing of an action filed within the 90-day period, the lawyer shall continue to hold the property separate unless and until the parties reach an agreement on distribution of the property, or a court resolves the matter.

(4) Nothing in this rule is intended to alter a third party's substantive rights.

COMMENT [2003 AMENDMENT]

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. See Supreme Court Rules 43(i) and 44.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] **[Effective December 1, 2004]** The Rule also recognizes that third parties may have just claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim has become a matured legal or equitable claim, and unless distribution is otherwise allowed under this rule, the lawyer must refuse to surrender

the property to the client until the claims are resolved. In addition to the procedures described in this rule, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute. **[As amended effective January 1, 2014]**

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[6] A lawyer's fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate. Every lawyer has a professional obligation to participate in the collective efforts of the bar to reimburse clients and escrow beneficiaries who have lost money or property as the result of dishonest conduct in the practice of law. A lawyer's financial contribution to a lawyers' fund for client protection is an acceptable method of fulfilling this obligation.

[7] For further obligations regarding client property and trust accounts, see Supreme Court Rule 43 ("Trust Account Verification") and Rule 44 ("Trust Accounts; Interest Thereon").

COMMENT [2009 AMENDMENT]

[1] The 2009 amendments to E.R. 1.15 correspond with the 2009 amendments to Supreme Court Rule 43 on Trust Accounts. Supreme Court Rule 43 and the 2009 comments thereto contain additional requirements and procedures governing credit card transactions.

[2] For purposes of this rule, "merchant fees" and "credit card transaction fees" are fees that are deducted from the amount of the credit card charge to pay the company that issued the client's credit card, the lawyer or law firm's credit card processing service, and the credit card association (e.g., Visa, MasterCard), and related charges. Those fees typically include a percentage of the total amount billed plus a fixed fee, which, unless paid by the lawyer or law firm, reduces the amount that can be credited to the client's account. A "chargeback" (or reversal of charges) occurs when a client or former client writes to the credit card company that issued the credit card used to pay a lawyer to dispute the amount that should be paid to the lawyer or law firm. When a client or former client does so, the lawyer's or law firm's account is debited an amount equal to the disputed amount, plus a chargeback fee.

[3] Lawyers and law firms are permitted, and in some cases may be required, to place their own funds into their trust accounts in very limited circumstances. Lawyers and law firms that accept payment by credit card for advance fees, costs or expenses must at all times maintain in their trust accounts sufficient funds of their own to pay fees and charges related to operation of the trust account, and to pay all merchant and credit card transaction fees, chargeback fees and related charges. Lawyers and law firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay trust account and credit card fees and charges. Lawyers and law firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts to cover those charges, since no client or third-party funds will be at risk due to debits from the trust account. Lawyers should consult Rule 43 on the circumstances when lawyer funds are required to be maintained in a trust account to avoid misappropriation or conversion of client or third-party funds.

COMMENT [2014 AMENDMENT]

[1] New paragraph (f) allows a lawyer to distribute funds or property in the lawyer's possession after providing notice to third persons known to claim an interest. Notice under paragraph (f) must be sufficient to allow the third person to take appropriate action to protect its interests. Although there is no one form of notice that will be acceptable, the notice should generally include at least the following: (a) a description of the funds or property in the lawyer's possession; (b) the name of the client claiming an interest in the funds and other information reasonably available to the lawyer that would allow the third person to identify the claim or interest; (c) a mailing address, telephone number, and email address where the third party can provide notice to the lawyer of the commencement of an action asserting an interest in the funds or property; and (d) the proposed distribution of the funds or property. The notice shall be served in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure.

[2] Apart from their ethical obligations, lawyers may have legal obligations to safeguard third-party funds under applicable case and statutory law. The notice provisions of paragraph (f) do not alter a lawyer's legal obligations and duties to third persons with respect to funds or property in the lawyer's possession. A lawyer who proposes to distribute funds under this paragraph should carefully evaluate the underlying law governing the lawyer's obligations to safeguard funds in which third persons claim an interest, which may expose the lawyer to a risk of civil or other liability even if the notice provisions of paragraph (f) are satisfied.

[3] Before making any distribution of funds or property pursuant to paragraph (f), a lawyer should explain to the client that the client may remain responsible to satisfy valid claims of third persons, and that the third person's failure to commence an action within the 90-day period of paragraph (f) will not by itself operate to waive, reduce or extinguish the third person's claim, if any, against the client or the funds or property received by the client. Before making any distribution under paragraph (f), the lawyer must obtain the client's informed consent, confirmed in writing, to the distribution.

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 17, 2018, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ADAM M. ROMNEY
PO BOX 7972
CHANDLER, AZ 85246

☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

DAVID E. AIGBOBOH, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 17, 2018.

Marc Krause
Court Specialist
State Bar Court