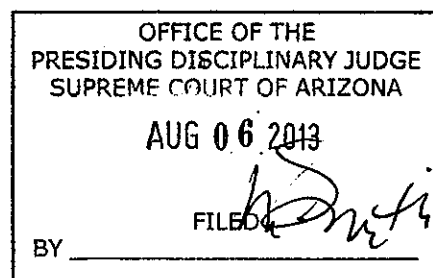


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Respondent's Counsel

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

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

**Jeffry Stanton Becker,
Bar No. 006063,**

Respondent.

PDJ-2013- 9066

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

[State Bar No. 12-2037]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Jeffry Stanton Becker, who is represented in this matter by counsel, James A. Eaves, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent admits, conditioned on acceptance of this agreement, that his conduct, as set forth below, violated Rule 42, ER(s) 1.2, 1.5 and 8.4(c). Upon

acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: suspension for two (2) years, retroactive to November 1, 2012. Should Respondent be reinstated, he will be placed on probation for two (2) years under terms to be determined upon reinstatement. The terms shall include participation in the Member Assistance Program (MAP) and the Law Office Management Assistance Program (LOMAP) for the period of probation. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona having been first admitted to practice in Arizona on December 20, 1979.

COUNT ONE (State Bar File No. 12-2037)

2. At all times relevant, Respondent provided legal services to participants, or their dependents, of a legal services insurance program offered by ARAG Insurance Company (ARAG). Respondent was a Network Attorney, subject to terms and conditions regarding payment for legal fees and services as set forth by ARAG.

3. As a Network Attorney, Respondent was required to submit claim forms for payment for services provided to plan members. The claim forms submitted by Respondent contained the following language: "(b)y submitting this

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.

claim form, I attest that I performed the services as indicated for the plan member or dependent indicated and attest to the accuracy of the information submitted.” As a Network Attorney, Respondent also agreed to comply with the terms of the ARAG Network Attorney Agreement and the ARAG Attorney Reimbursement Fee Schedule, Plan Description and Exclusions.

4. Upon information and belief, ARAG routinely surveys its members to receive feedback on the plan and the attorney used. Four plan members surveyed reported to ARAG that Respondent had submitted descriptions of his work that appeared incompatible with the work that they understood him to have performed.

Urlin Wade

5. Stephanie Wade (Ms. Wade), the wife of ARAG plan member Urlin Wade, contacted Respondent in November 2010, about a loan assumption on property she acquired in a divorce from a previous spouse.

6. Respondent informed Ms. Wade that as the loan assumption she desired was on a secondary residence, it was not covered under Mr. Wade’s ARAG plan benefits.

7. Ms. Wade paid Respondent \$850 for legal fees and \$300 for Title Management Agency for the loan assumption and to update the deed to the property. Ms. Wade thereafter did not receive the updated deed. In May 2011, she contacted Respondent to inquire about the deed and was told by Respondent that he would investigate the matter.

8. Respondent did obtain an updated deed on this secondary residence for Ms. Wade as agreed.

9. After receiving the ARAG survey, Ms. Wade reported to ARAG that she disagreed with certain billing categories under which Respondent billed ARAG. These categories were "primary residence purchase" in June 2011 and "promissory note preparation, deed, mortgage" in February 2012. ARAG paid Respondent pursuant to the selected billing categories. Respondent acknowledges that he did not, in fact, perform a "primary residence purchase," although he did review the promissory note, deed, and mortgage for Ms. Wade. Were this matter to proceed to hearing, Respondent would testify that he believed at the time, given the billing categories available for selection, that the category was appropriate but acknowledges that the State Bar would contest this assertion, and for purposes of this agreement agrees that the State Bar would prevail on this issue.

Jocelyn McCurnin

10. In about November 2010, Jocelyn McCurnin (Ms. McCurnin), an ARAG plan member, contacted Respondent about a problem she was having with a neighbor who Ms. McCurnin stated was harassing her. In this and subsequent conversations by telephone and/or email Ms. McCurnin and Respondent discussed, among other issues and options, a possible Injunction Against Harassment.

11. Ms. McCurnin thereafter located online the forms necessary to request an Injunction Against Harassment and filed her petition *pro se* in the Arcadia Justice Court. Although Respondent conferenced with and advised Ms. McCurnin relative to this matter, he did not represent Ms. McCurnin in any forum in this action.

12. Ms. McCurnin stated that she received an email from Respondent in about December 2010 asking how her case was going. Respondent also offered his

further assistance if Ms. McCurnin so desired. Ms. McCurnin told Respondent she would let him know if she needed further assistance.

13. After receiving the ARAG survey, Ms. McCurnin reported to ARAG that she disagreed with a billing category under which Respondent billed ARAG. This category was "primary residence sale, small claims court assistance" in November 2010. ARAG paid Respondent pursuant to the selected billing category. Were this matter to proceed to hearing, Respondent would testify that he believed at the time, given the billing categories for selection, that this billing category was appropriate although Respondent acknowledges that he did not, in fact, perform a "primary residence purchase" for Ms. McCurnin. Respondent would testify that he did provide counsel to her relative to her various legal issues. Were this matter to proceed to hearing the State Bar would contest Respondent's assertion that he believed the billing category was appropriate under the circumstances; for purposes of this agreement Respondent agrees that the State Bar would prevail on this issue. Respondent thus billed beyond the permissible fee associated with his work for Ms. McCurnin.

Neil Malamuth

14. Sometime in 2008, Neil Malamuth (Mr. Malamuth), an ARAG plan member, contacted Respondent with regard to a breach of contract matter. Mr. Malamuth had entered into a contract with a business called Red Door in 2006, and Mr. Malamuth alleged that they had stopped performing.

15. Mr. Malamuth and Respondent discussed the matter, and Respondent informed Mr. Malamuth that he would be happy to represent him with regard to this dispute. Mr. Malamuth reported to the Bar Investigator that he decided not to

pursue the matter and informed Respondent in writing of his decision not to proceed. Mr. Malamuth reported to the Bar Investigator that he did not request representation by Respondent on that or any other legal matter. If this matter proceeded to hearing, Mr. Becker would dispute the accuracy of Mr. Malamuth's statements to the Bar Investigator, but for purposes of this agreement agrees that these statements would be credible.

16. After receiving the ARAG survey, Mr. Malamuth reported to ARAG that he disagreed with the billing categories under which Respondent billed ARAG. These categories involved in-office work and advice regarding a personal loan and breach of contract in January 2011, August 2011, and January 2012.

17. ARAG paid Respondent pursuant to the selected billing categories. Mr. Malamuth reported that Respondent did not have authorization to conduct legal work for him in 2011 and 2012. Although Respondent researched the matter and sent several letters to Mr. Malamuth between 2009 and 2012, Mr. Malamuth reported that these letters were unsolicited and that any research done or communication conducted during this time was done without his authorization. If this matter proceeded to hearing, Respondent would testify that he believed at the time that the billed work was expected and that the billing categories were appropriate, given the billing categories available for selection. The State Bar would contest this assertion, and for purposes of this agreement Respondent agrees the State Bar would prevail on this issue. Respondent acknowledges that there were no in-office meetings and that Mr. Malamuth neither solicited nor received in-office advice from Respondent as claimed in the claim forms submitted by

Respondent to ARAG. Respondent thus billed beyond the permissible fee associated with his work for Mr. Malamuth.

Vicki Fenstemacher

18. Vicki Fenstemacher (Ms. Fenstemacher), an ARAG plan member, contacted Respondent in February 2011, for an initial consultation on one or two debt collection defense matters. Ms. Fenstemacher and Respondent exchanged several subsequent emails and/or faxes relating to these matters.

19. Respondent asked Ms. Fenstemacher to sign an agreement to pay any amount not covered by ARAG, including out-of-pocket expenses and costs, and to provide what Respondent termed as an "advance fee/good faith deposit" for payment of costs.

20. Respondent's representation agreement included language advising that Respondent would not begin working on her legal matter "unless and until" he received the signed agreement and the advance deposit.

21. Ms. Fenstemacher did not sign the agreement and did not provide an advance deposit to Respondent. Instead, Ms. Fenstemacher contacted ARAG and was provided a list of other attorneys she could contact and had no further dealings with Respondent.

22. After receiving the ARAG survey, Ms. Fenstemacher reported to ARAG that she disagreed with Respondent's billing ARAG for legal services for her relating to the two debt collection matters, for a total of 4 hours of work. ARAG paid Respondent for this work. If this matter proceeded to hearing, Respondent would testify that he believed at the time that the billed work was expected and that the billing categories were appropriate, given the billing categories available for

selection. The State Bar would contest this assertion, and for purposes of this agreement Respondent agrees the State Bar would prevail on this issue. Thus, Respondent billed beyond the permissible fee associated with his work for Ms. Fenstemacher.

23. In total, for the matters referenced above, ARAG estimates that they paid Respondent \$3,069, a portion of which he was not entitled to collect.

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, as described above, violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.5 and 8.4(c).

RESTITUTION

ARAG has estimated their loss at \$2,799. For purposes of this agreement, the parties agree that Respondent shall make restitution of \$2,799 to ARAG within ninety (90) days of the acceptance by the Presiding Disciplinary Judge of this agreement.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: suspension from the practice of law for two (2) years, retroactive to November 1, 2012, the date on which Respondent voluntarily withdrew from the practice of law. Should Respondent be reinstated, he will be placed on probation

for two (2) years under terms to be determined upon reinstatement. The terms shall include participation in the Member Assistance Program (MAP) and the Law Office Management Assistance Program (LOMAP) for the period of probation. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.

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 in this matter Respondent's dishonest conduct, which Respondent acknowledges involved incorrectly characterizing work performed, is the most serious and that therefore *Standard* 5.1 is applicable. The parties agree that *Standards* 5.11 and 5.12 are appropriate given the facts and circumstances of this matter. *Standards* 5.11(b) and 5.12 provide for disbarment or suspension

where intentional or knowing conduct involving dishonesty seriously adversely reflects on the lawyer's fitness to practice. The parties conditionally agree that at the outset the range of appropriate sanction is between disbarment and suspension.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent knowingly submitted claims for payment to ARAG for legal work either not performed or performed without authorization and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

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

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(c) Pattern of misconduct. This matter involves four separate cases over several years, between 2009 and 2012.

Standard 9.22(d) Multiple offenses. Respondent submitted bills to ARAG relating to four unrelated plan participants.

Standard 9.22(i) Substantial experience in the practice of law. Respondent was admitted to practice in Arizona in 1979.

In mitigation:

Standard 9.32(a) Absence of prior disciplinary record. Respondent has no record of prior discipline.

Standard 9.32(c) Personal and emotional problems. Because of the personal and confidential nature of the information supporting this mitigating factor it is hereby attached under seal as Exhibit "B." The parties jointly request that Exhibit "B" be sealed from the Complainant and the public by protective order pursuant to Rule 70, Ariz. R. S. Ct., and provide a proposed form of order as Exhibit "D" to the consent agreement.

Standard 9.32(e) Cooperative attitude toward proceedings. Respondent, through counsel, has provided all requested information in a timely manner and acknowledged the conduct described above early in these proceedings.

Standard 9.32(g) Character or reputation. Respondent has demonstrated his good character over the course of his career through his charitable service to the ALS Association and to the Maricopa County Bar Association as a Volunteer Lawyer. Respondent also regularly provided *pro bono* advice to those in need and made annual donations to support *pro bono* legal services. Respondent has also demonstrated his good character through his daily commitment to live with and care for his mother as she battles cancer. Respondent has a very good reputation in the community and is well respected.

Standard 9.32(l) Remorse. Respondent very much regrets the manner in which he characterized his work to ARAG and acknowledges the role that his

personal and emotional problems played in his conduct and has taken steps to address those problems. See, e.g., Respondent's letter attached with Exhibit "B," to be sealed as requested above. He is also embarrassed that the Bar and the Court were forced to expend resources in addressing this matter. He is committed to never putting himself in this situation again. These facts are included at Respondent's request; the State Bar believes that this factor should not be given great weight.

Discussion

The parties have conditionally agreed that the agreed-upon sanction is appropriate given the facts and circumstances of this matter, and taking into account the aggravating and mitigating factors.


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 suspension for two years retroactive to November 1, 2012, probation upon reinstatement to include participation in MAP and LOMAP, and payment of restitution to ARAG, and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit "C."

DATED this 6 day of August, 2013.

STATE BAR OF ARIZONA


Roberta L. Tepper
Senior Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. [I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.]

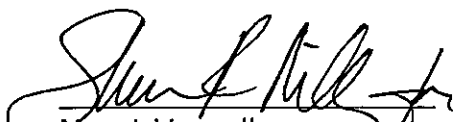
DATED this _____ day of _____, 2013.

Jeffry Stanton Becker
Respondent

DATED this _____ day of _____, 2013.

James A. Eaves
Counsel for Respondent

Approved as to form and content


Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 6th day of August, 2013.


DATED this _____ day of _____, 2013.

STATE BAR OF ARIZONA

Roberta L. Tepper
Senior Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. [I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.]

DATED this 5th day of August, 2013.



Jeffrey Stanton Becker
Respondent

DATED this 5TH day of August, 2013.



James A. Eaves
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this ____ day of _____, 2013.

Copies of the foregoing mailed/emailed

Copies of the foregoing mailed/emailed
this 6th day of August, 2013, to:

James A. Eaves
Sanders & Parks, PC
3030 N. 3rd Street, Suite 1300
Phoenix, Arizona 85012-3099
Email: Artie.Eaves@SandersParks.com
Respondent's Counsel

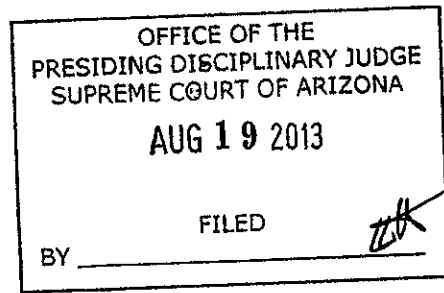
Copy of the foregoing emailed
this 6th day of August, 2013, to:

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

Copy of the foregoing hand-delivered
this 6th day of August, 2013, to:

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

By: Kevin M. Casabianca
RLT/lmc



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

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

**Jeffry Stanton Becker
Bar No. 006063**

Respondent.

PDJ-2013-9066

FINAL JUDGMENT AND ORDER
[State Bar No. 12-2037]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on 8/6/13, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Jeffry Stanton Becker**, is hereby suspended for two (2) years, retroactive to November 1, 2012 for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from this Order.

IT IS FURTHER ORDERED that Respondent shall pay restitution to ARAG in the amount of \$2,799.00 within 90 days of the filing of this order.


IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation for a period of two (2) years with terms and conditions to be determined upon reinstatement. The terms shall include participation in the State Bar's Member Assistance Program (MAP) and Law Office Member Assistance Program (LOMAP).

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.


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

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,217.40.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of



DATED this 19th day of Aug, 2013.



The Honorable William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 19th day of August, 2013.

Copies of the foregoing mailed/emailed
this 19th day of August, 2013, to:

James A. Eaves
Sanders & Parks, PC
3030 N. 3rd Street, Suite 1300
Des Moines, Arizona 85012-3099
Email: Artie.Eaves@SandersParks.com
Respondent's Counsel

Copy of the foregoing hand-delivered/emailed
this 19th day of August, 2013, to:

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

Lawyer Regulation Records Manager
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By: 