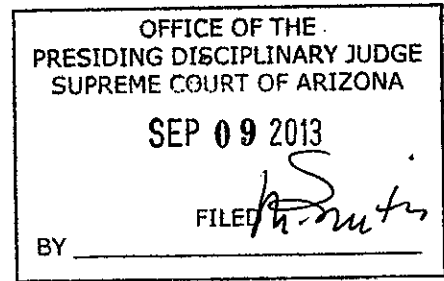


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Respondent

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

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

**George A. Tacker,
Bar No. 019325,**

Respondent.

PDJ-2013-9047

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar Nos. 11-1995, 12-1624,
and 13-0075

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent George A. Tacker, who has chosen not to seek the assistance of counsel, 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 a complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admissions and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rules 42, ERs 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 1.16(d), 3.1, 3.2, 3.4(c), 8.1, and 8.4(d);

54(c); and 54(d), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline:

1. Suspension for ninety (90) days;
2. Probation for two (2) years following reinstatement with LOMAP ("Law Office Management Assistance Program"); the requirement that Respondent view the State Bar CLE programs entitled "Ten Deadly Sins of Conflict" and "Common Courtroom Conundrums: Candor, Confidences, and Courtesy"; and the requirement that Respondent obtain at least three CLE hours on the subject of lower court appeals and/or appeals from limited jurisdiction courts;
3. As an additional probationary term, Respondent shall satisfy or otherwise resolve the \$22,000 bankruptcy court judgment in favor of Walter Kabat in File No. 11-1995 within ninety (90) days following reinstatement. The LOMAP caseworker will monitor Respondent's compliance with this term of probation.

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ERs 1.3, 1.4, 1.16, and 3.2. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude two years from that date. Respondent shall be responsible for any costs associated with LOMAP. The "Terms and Conditions of Probation" shall include a term that obligates Respondent to satisfy or otherwise resolve the

\$22,000 bankruptcy court judgment in favor of Walter Kabat in File No. 11-1995 within ninety (90) days following reinstatement.

TEN DEADLY SINS OF CONFLICT

and

**COMMON COURTROOM CONUNDRUMS:
CANDOR, CONFIDENCES, AND COURTESY**

Respondent shall contact State Bar of Arizona publications at 602-340-7318 to either obtain and listen to the CDs or obtain and view the DVDs entitled "The Ten Deadly Sins of Conflict" and "Common Courtroom Conundrums: Candor, Confidences, and Courtesy" within ninety (90) days of the judgment and order. Respondent may alternatively go to the State Bar website (www.myazbar.org) and complete the self-study online version. Respondent shall provide Bar Counsel with evidence of completion by providing copies of handwritten notes within thirty (30) days thereafter. Respondent shall be responsible for the cost of the CD, DVD or online self-study.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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 January 12, 1999.

COUNT ONE of THREE (State Bar File No. 11-1995, Walter Kabat, Complainant)

2. Respondent represented Complainant during two distinct time periods; from March 2009, until October 2009, and then from January 2011, until June 2011.

3. Respondent filed a Chapter 11 bankruptcy on behalf of Complainant's business, 6030 N. Camelback Manor, LLC ("6030") in May 2009. Respondent filed an application to employ counsel on behalf of 6030 in July 2009. Under the order, Respondent was to be paid an hourly rate of \$200 to \$275 per hour; there was no mention of a flat fee.

4. In a later bankruptcy court order dated December 19, 2011, the bankruptcy judge reviewed the history of the case and determined that it signed an order approving Respondent's application on September 2, 2009 and that the order did not include *nunc pro tunc* language. In its December 19, 2011 order, the

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.

bankruptcy judge also determined that Respondent did not upload the order corresponding to his application to the court's e-order system until August 2011.

5. Respondent withdrew from the representation on September 25, 2009, citing a potential conflict of interest between him and a member of 6030. Attorney Michael Tafoya entered a notice of appearance on September 30, 2009, and the Court approved Respondent's withdrawal on October 2, 2009.

6. In September 2010, Mr. Tafoya filed a personal bankruptcy on Complainant's behalf. After Mr. Tafoya became seriously ill, Respondent on April 6, 2011, filed a Notice of Substitution of Counsel, stated he would file an Application to Employ (counsel) and the appropriate affidavits within seven days. On the same day, Respondent appeared at a status hearing on how to proceed. Respondent did not file the necessary application in either case. The Court nonetheless signed an order substituting Respondent for Mr. Tafoya in Complainant's personal bankruptcy and shortly thereafter approved Respondent's employment (in the 6030 case) on an interim basis. Respondent did not, however, file a notice of appearance or an application to employ counsel in the 6030 case.

7. Complainant alleged that Respondent had failed to appear at an April 2011 status conference in Bankruptcy Court. Respondent stated that he and Complainant missed the conference because it was actually scheduled for 10 a.m. and Respondent had miscalendared it for 1:30. The status conference was rescheduled; Complainant suffered potential but no actual harm as a result of Respondent's calendaring error.

8. Complainant alleged that in June 2011 Respondent appeared at Complainant's office intoxicated and loud. Respondent admitted appearing at

Complainant's office after consuming one beer but denied being intoxicated or loud. Complainant also alleged that Respondent hired another attorney, Michael DeFine, to collect unpaid fees and that Mr. DeFine threatened Complainant. Although Complainant stated that he felt threatened he supplied no objective evidence to support this. Complainant also accused Respondent of incompetence. All of these factors spawned an exchange of unpleasant emails between Respondent and Complainant.

9. Complainant requested an itemized billing in June 2011. Respondent declined to provide an accounting on the rationale that he had charged a flat fee. Respondent provided an accounting to the State Bar during the screening investigation; this was the first accounting Complainant received. Respondent did charge a flat monthly fee of \$10,000 for 40 hours per month representing Complainant and/or his business in multiple matters in 2010 and 2011, but not specifically in connection with the representations implicated by this charge.

10. In June 2011, Respondent filed a motion to withdraw from his representation of Complainant. Prior to being granted leave to withdraw, by email dated June 15, 2011, Respondent informed Complainant that "(e)ffective immediately I am no longer your attorney." The email recounted a number of conversations between Complainant and Respondent, Respondent's opinions about Complainant and his supposed motivation in dealing with various legal issues and other confidential/privileged issues. Respondent sent his email in response to an email from Complainant. Complainant had copied a prospective business partner (V. Goett) and another person (Andrew) who was not a party to either of

Complainant's bankruptcy matters. Respondent copied his responsive email to those individuals as well.

11. Complainant objected to Respondent's withdrawal but the Court permitted Respondent to withdraw in August 2011 and ordered Respondent to turn over all files to Complainant immediately.

12. In November 2011, during motions to dismiss both his personal and the 6030 bankruptcy, Complainant claimed that Respondent had not turned over the files. Respondent claimed that he had already turned over all of the files.

13. During a subsequent order to show cause hearing, the Court realized that the dispute between Respondent and Complainant did not center on files; it was actually a fee dispute. The Court determined that it had the duty to resolve that dispute. The Court ultimately ordered Respondent to file by January 13, 2012, all fee agreements relating to Complainant and 6030; an accounting of all fees paid by Complainant and 6030; appropriate applications for employment; fee applications; and other required filings in both cases.

14. Respondent requested and was granted an extension until February 3, 2012, to file the information. Respondent failed to file the information with the Court as ordered. On March 15, 2012, the Court ordered that Respondent "IMMEDIATELY" turn over to Complainant the sum of \$22,000.

15. On June 19, 2012, Complainant's new attorney, Allan NewDelman, filed a Notice of Non-Compliance and Request for Entry of Order and Judgment in the two bankruptcy cases. NewDelman moved the Court to enter an order and judgment against Respondent for \$22,000, the amount paid by Complainant to Respondent. NewDelman explained to the State Bar that although the Court had

issued an order for Respondent to surrender \$22,000 in fees, he has had difficulty enforcing Bankruptcy Court orders in state court when not styled "Judgment and Order"; he therefore moved for a new judgment and order even though the earlier judgment was still valid and binding.

16. Respondent has not, to date, paid the \$22,000, contending that as the two bankruptcy cases have been dismissed he no longer has to do so. Although the case was dismissed the Court retains administrative jurisdiction over it and the order is still binding.

17. After Mr. NewDelman was hired he concluded that it would be more efficient and in Complainant's best interests to dismiss the two previously filed cases and file a new, better, case. That has been done and the bankruptcy is still in effect.

COUNT TWO of THREE
(State Bar File No. 12-1624, Charles Piccuta, Complainant)

18. In the Hassayampa Justice Court, Respondent represented defendants Ms. Snyder and her husband, Mr. Define, in a suit brought by their Homeowner's Association ("HOA"). The trial date was August 1, 2011.

19. Due to a court conflict, the case was transferred to the Manistee Justice Court. That court re-set the trial to July 21, 2011. Respondent checked the online docket and it showed both the August and July trial dates. Respondent had his assistant, who also is his wife, contact the court's judicial assistant for clarification.

20. In the justice courts, there were no judicial assistants. Rather, there were several clerks who responded to questions. Respondent claimed that a clerk

told his wife that in the event conflicting trial dates are posted on the online docket, the later date is correct.

21. As the later trial date approached, Respondent contacted his opposing counsel to discuss settlement. She told him that the case already proceeded to trial, Respondent and his clients did not appear, and the JP decided the case in favor of the HOA.

22. Post-trial, the HOA filed an application for attorneys' fees and sanctions against Respondent and his clients. The HOA alleged that Respondent failed to send a copy of his Answer to the HOA's counsel, falsified a certificate of mailing on the Answer, failed to provide timely disclosures, failed to participate meaningfully in the settlement conference and follow-through, and failed to appear for trial. Regarding the Answer, HOA's counsel alleged that after she filed for entry of default, she learned that Respondent filed an Answer but did not serve a copy on her, even though his mailing certificate shows that he did send her a copy.

23. Respondent filed a "Response to Application for Attorney Fees, Response to Motion for Sanctions, Motion to Set Aside Default Judgment, Motion for Summary Judgment and Cross Motion for Sanctions Against Plaintiff and Plaintiff's Counsel." He raised a substantive issue that Mr. Define should not be a defendant since Ms. Snyder owned the property in question as her sole and separate property. He asked the court to set aside its ruling based on his excusable neglect, and challenged the amount of attorney's fees that the HOA claimed.

24. Respondent was informed of the changed trial date at least four times. When the Hassayampa Justice Court transferred the case in May 2011 to the Manistee Justice Court, this had the effect of vacating the August trial date in

Hassayampa. Manistee issued an order in May 2011 establishing the July trial date. The HOA's counsel sent Respondent two letters in May 2011 seeking to discuss the upcoming trial and expressly referred to the July 21 trial date in both letters.

25. Respondent's post-trial Motion for Summary Judgment ("MSJ") violated numerous rules. Such motions must be filed no later than 90 days *prior* to trial; there is no such thing as a post-trial MSJ. Also, Respondent's MSJ failed to meet procedural requirements (*e.g.*, separate statement of facts).

26. Respondent submitted a "First Supplemental" Disclosure Statement on July 19, two days before the actual trial date. The opening line of the document, however, states that the defendants "hereby submit their Initial Disclosure Statement" In it, Respondent claimed damages of \$5,000 for Mr. Define plus attorney fees and costs when he did not assert a counterclaim in the Answer. Were this matter to proceed to a hearing, Respondent would contend that he disclosed a claim for \$5,000 in "damages" that actually represented an award of attorney fees to which his client was entitled. Because Respondent did not serve a timely disclosure, the HOA filed Motions *in Limine* to preclude Respondent and his clients from offering any evidence at the trial.

27. The Manistee Justice of the Peace ("JP") entered a judgment and order for sanctions against Respondent and his clients. He based his decisions on the pleadings of record, the HOA's affidavits, and Respondent and his clients' failure to appear for trial on July 21, 2011. He awarded \$3,302.50 against Ms. Snyder and Mr. Define in delinquent assessments, late charges, monetary penalties, collection costs, attorneys' fees, taxable costs, and interest, and a continuing lien against the property.

28. The JP also entered judgment against Ms. Snyder, Mr. Define, and Respondent, jointly and severally, for \$7,004.50 as sanctions for violating Rule 11 and A.R.S. §12-349 (unnecessary, false, and frivolous pleadings). Were this matter to proceed to a contested hearing, Respondent would contend that the JP's decision to assess sanctions pursuant to A.R.S. §12-349 was erroneous since that statute applies only in courts of record and a Justice Court is not such a court. The JP also struck Respondent's MSJ, and denied his motion for sanctions against the HOA and motion to set aside the judgment entered in the HOA's favor.

29. Respondent filed a Notice of Appeal on October 4, 2011, and deposited an appeal bond. On December 19, 2011, Respondent filed a Motion to Extend the deadline for an opening appeal memorandum. The JP denied that motion on January 4, 2012, and dismissed the appeal on January 5. The JP ordered return of the \$250 bond to Respondent.

30. Were this matter to proceed to a contested hearing, the State Bar would offer evidence that on January 9, 2012, the Justice Court sent to Respondent check no. 2471723216 for \$250 payable to "Tacker & Associates PLLC". Respondent would contend that he did not receive the check.

31. Per the State Bar investigator's report of interviews with Ms. Snyder and Mr. Define, as of October 1, 2012, they were "still waiting" for news regarding their appeal.

32. As of October 8, 2012, Respondent claimed that he still was waiting for "the designated record" and then would file his already-drafted appeal brief. When informed of the correct status of the case (*i.e.*, that there is no status because the

appeal was dismissed), Respondent claimed that he did not receive a copy of the JP's denial of his motion to extend deadlines that he filed ten months earlier.

33. Respondent assured the State Bar that he had briefed his clients in the matter, admitted negligence in his representation of Ms. Snyder and Mr. Define, and assumed responsibility for the current state of affairs.

34. Initially, the State Bar screened Respondent for violations of ERs 3.4(c) and 8.4(d). With the information obtained in screening, on October 8, 2012, the State Bar asked Respondent to address additional ERs. Respondent did not respond by either the initial or extended deadline, the latter of which was October 22, 2012.

35. After the Attorney Discipline Probable Cause Committee issued a probable cause order on December 21, 2012, Respondent contacted the State Bar in February 2013 to report that he had paid the judgment in the HOA case. Respondent furnished a copy of a Satisfaction of Judgment dated February 19, 2013.

COUNT THREE of THREE
(State Bar File No. 13-0075, Jerry Ellenberger, Complainant)

36. In November 2009, Jerry Ellenberger was convicted of DUI in the Goodyear Municipal Court.

37. Mr. Ellenberger hired Respondent to appeal the DUI conviction. Respondent entered his appearance in late February 2010, about 10 days prior to Mr. Ellenberger's sentencing on March 2, 2010.

38. Respondent filed a notice of appeal on the sentencing date. The appeal memorandum was due by May 3, 2010.

39. On April 22, 2010, Respondent filed a motion to continue to extend the deadline for filing the memorandum on appeal.

40. On May 3, 2010, the motion was granted extending Respondent's deadline to June 16, 2010.

41. On June 8, 2010, the court received from Respondent a second motion to continue the deadline for filing the appeal memorandum.

42. Respondent received the trial transcript on or about June 10, 2010.

43. The docket notes that "Per Judge: Extend last time until 6/22/10." There is also a note in the docket indicating that the clerk "(c)alled and left message for Def Counsel advising him of new extension date."

44. There is a note in the docket advising that on June 21, 2010, a clerk called Respondent's office to remind him that the appeal memorandum was due by 4:30 p.m. the next day, June 22, 2010.

45. Respondent filed the appeal memorandum on June 23, 2010, at 4:30 p.m., a day after the deadline, along with a motion to extend the deadline for filing the appeal memorandum.

46. On June 24, 2010, Respondent filed a non-certified transcript, which did not comply with applicable rules.

47. The court granted Respondent's motion to extend the deadline for filing the appeal memorandum. The docket notes reflect that the required transcript was not filed with the appeal memorandum and that a clerk contacted Respondent's office on July 20, 2010, leaving a message informing Respondent that he had two days to provide a certified copy.

48. In his appeal memorandum, Respondent raised a claim of ineffective assistance of trial counsel, something that must be raised in a petition for post-conviction relief. In its November 8, 2010, minute entry the court ruled that the claim of ineffective assistance of counsel had to be raised first to the trial court via a petition for post-conviction relief.

49. Respondent, or someone from his office, contacted the Court on July 21, 2010, and informed the clerk that a copy of the certified transcript was being overnighted to him and that it would be filed the next day, July 22, 2010.

50. Respondent did not file the transcript with the Court on July 22nd; on July 26, 2010, Respondent or someone on his behalf appeared at the Court and filed the transcript.

51. The file was transmitted to Superior Court and oral argument was scheduled for September 29, 2010; the oral argument was later continued to November 8, 2010, on Respondent's motion with a comment in the Municipal Court docket that "no further continuances will be granted."

52. The Superior Court affirmed Mr. Ellenberger's judgment of guilt and sentence, and remanded the case to the Municipal Court on November 8, 2010. The minute entry to that effect was filed on November 9, 2010, and was received by the Municipal Court on November 12, 2010.

53. On December 28, 2010, an order scheduling a January 25, 2011, sentencing review to "set up jail and alcohol program" was mailed to Respondent and to Mr. Ellenberger. Mr. Ellenberger was resentenced on January 25, 2011.

54. On February 25, 2011, Respondent filed a motion for stay of execution of sentence and a Criminal Rule 32 motion for post-conviction relief, and requested

an evidentiary hearing. Respondent stated that he was unable to file before this date because Mr. Ellenberger was trying to get a recanting statement from the independent witness in his DUI case and did not provide it until February 23, 2011.

55. In March 2011 Mr. Ellenberger failed to report to the jail and fulfill other obligations of his sentence. On March 30, 2011, the Court granted the stay of execution of sentence and set oral argument and an evidentiary hearing for April 11, 2011. A copy of the order was mailed to Respondent.

56. On April 11, 2011, Respondent appeared and made an oral motion to continue the evidentiary hearing and oral argument; the court granted the motion and later set the hearing/argument to April 28, 2011.

57. On April 28, 2011, the hearing commenced but was not concluded and was continued to June 6, 2011, at 9:00 a.m. Respondent was present in the courtroom when the hearing was continued.

58. Mr. Ellenberger appeared for the June 6, 2011 continuation date at 9:00 a.m. but Respondent did not. The Court waited until 10:30 a.m. while Mr. Ellenberger tried several times, unsuccessfully, to contact Respondent.

59. The Court then granted the State's motion to vacate the hearing, Mr. Ellenberger's petition for post-conviction relief was denied and the Court ordered the sentence executed. Mr. Ellenberger was taken into custody.

60. Four days later Respondent's staff requested a video of the June 6th hearing; on July 11, 2011, Respondent filed a motion to reinstate the Rule 32 hearing or in the alternative to reset it, and requested oral argument.

61. After the State responded to Respondent's motion to reinstate or reset, the Court scheduled oral argument for August 1, 2011. That information was

communicated to Respondent by mail, fax and by phone message. On July 22, 2011, Respondent's office confirmed receipt of the messages and confirmed the date and time of the oral argument.

62. The Court denied the motion to reinstate the Rule 32 hearing on August 2, 2011.

63. Respondent filed a notice of appeal on August 12, 2011. The Superior Court later found that Respondent instead should have filed a petition for review pursuant to Rule 32.9(c), Ariz. R. Crim. P.

64. On October 11, 2011, Respondent filed a motion for more time to file the appeal memorandum; because this should have been filed as a petition for review, an appeal memorandum was not an appropriate filing.

65. Respondent's motion was granted and the deadline was extended until November 8, 2011.

66. Respondent filed an opening appeal memorandum on November 2, 2011. In the meantime, Mr. Ellenberger had completed jail time and his home detention (165 days) and Respondent had filed or responded to a number of procedural motions on Mr. Ellenberger's behalf and had received extensions for a number of his responses as well.

67. Mr. Ellenberger continually asked Respondent and his wife/paralegal for an update on the appeal.

68. Respondent assured him that they were waiting for a court date for oral argument on the Petition for Review.

69. Respondent's wife/paralegal regularly responded to Mr. Ellenberger's requests for a status on his appeal by telling him that she would look into it, but did not thereafter provide responsive information to him.

70. Some time prior to January 5, 2012, the State filed a motion to strike Mr. Ellenberger's appeal memorandum based on the fact that the court lacked jurisdiction to hear an appeal as opposed to a petition for review, and that Respondent did not comply with Rule 8, Superior Court Rules of Appellate Procedure-Criminal because his appeal memorandum did not contain a statement of facts or a transcript.

71. Respondent filed a response on January 5, 2012; at that time he also filed another request for an extension to respond to a procedural motion filed by the State. The Court granted a "final extension" until January 6, 2012.

72. Respondent filed his response to the State's motion in the Goodyear Municipal Court when it should have been filed with the Superior Court. The Municipal Court attempted to transfer the filing but the Superior Court would not accept it. A clerk informed Respondent, by leaving a message at his office, that he had to personally file his motion with the Superior Court and that the Municipal Court could not forward his motion.

73. The Superior Court issued its ruling on March 30, 2012. The Court treated the incorrectly-filed appeal as if it had been appropriately styled a petition for review, but denied the petition for review. The Court's findings included the following:

- a. Mr. Ellenberger's petition for post-conviction relief was not timely filed. It should have been filed either 90 days from the date on which

the lower court imposed judgment, or 30 days from the issuance of the order and mandate. The lower court imposed judgment on March 2, 2010, so the petition should have been filed on May 31, 2010. In the alternative, the Superior Court affirmed the judgment and sentence and remanded on November 8, 2010. As the Court's action was the equivalent of an order and mandate, the petition could have been appropriately filed within 30 days of that date, on December 8, 2010. Under either scenario, filing the petition for post-conviction relief on February 25, 2011 was untimely.

b. Even assuming the petition was timely filed, the trial court denied the petition on June 6, 2011. Under Rule 32.9, Ariz. R. Crim. P., Mr. Ellenberger had 15 days to file a motion for rehearing, which would have been June 21, 2011, and 30 days to file a petition for review, which would have been July 6, 2011. Respondent, on Mr. Ellenberger's behalf, filed the motion for rehearing on July 11, 2011, and his appeal (treated by the Court as a petition for review) on August 12, 2011. Both were untimely.

74. Because Respondent's filings were untimely, the Court held that it lacked jurisdiction and had to dismiss the appeal/petition for review. The Court also held that having reviewed the trial record, the trial court was correct in dismissing the petition for post-conviction relief. The wording of the minute entry leaves no doubt, however, that the Court dismissed the appeal/petition for review due to untimeliness.

75. Respondent contends that he submitted the Petition for Post-Conviction Relief timely pursuant to Ariz.R.Crim.Proc. Rule 32.4 which does not

impose a time limit for filing a Petition for Post-Conviction Relief under Ariz.R.Crim.Proc. Rule 32.1(e).

76. On April 3, 2012, Complainant's case was remanded from Superior Court. The Municipal Court thereafter set the matter for a sentencing review regarding Mr. Ellenberger's failure to comply with alcohol counseling. Respondent and Mr. Ellenberger appeared in court on April 17, 2012.

77. In November 2012, Mr. Ellenberger checked the status of his appeal on-line, still believing that they were waiting for a court date and learned that his case had been remanded in April 2012. Although Respondent and Mr. Ellenberger appeared in court in April 2012 regarding Mr. Ellenberger's failure to complete alcohol counseling, Mr. Ellenberger did not fully understand the procedural status of his appeal due to Respondent's failure to adequately communicate with him.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits that his conduct violated the following rules:

Count One – Ariz. R. Sup. Ct., Rule 42, ERs 1.3, 1.5(a), 1.6, 1.16(d), 3.4(c); and Rule 54(c).

Count Two - Ariz. R. Sup. Ct., Rule 42, ERs 1.1, 1.3, 1.4, 1.7(a), 3.1, 3.2, 3.4(c), 8.1, 8.4(d); Rule 54(c); and Rule 54(d).

Count Three - Ariz. R. Sup. Ct., Rule 42, ERs 1.1, 1.3, 1.4, 3.2, and 8.4(d).

The State Bar conditionally admits that there is not clear and convincing evidence that Respondent intentionally or knowingly misled his clients and agrees,

in exchange for this agreement, to dismiss the charge that Respondent violated ER 8.4(c).

RESTITUTION

Count One—Respondent will address the \$22,000 bankruptcy court judgment against him by obtaining a Satisfaction of Judgment or otherwise resolving it with Complainant Kabat as a term of Respondent’s probation, within 90 days following his reinstatement. Therefore, express restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate:

1. Suspension for ninety (90) days;
2. Probation for two (2) years following reinstatement with LOMAP (“Law Office Management Assistance Program”); the requirement that Respondent view the State Bar CLE programs entitled “Ten Deadly Sins of Conflict” and “Common Courtroom Conundrums: Candor, Confidences, and Courtesy”; and the requirement that Respondent obtain at least three CLE hours on the subject of lower court appeals and/or appeals from limited jurisdiction courts; and
3. As an additional probationary term, Respondent shall satisfy or otherwise resolve the \$22,000 bankruptcy court judgment in favor of Walter Kabat in File No. 11-1995 within ninety (90) days following reinstatement. The LOMAP caseworker will monitor Respondent’s compliance with this term of probation.

Respondent also agrees to pay the costs and expenses of the disciplinary proceeding. The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

LEGAL GROUNDS IN SUPPORT OF SANCTION

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

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

The duty violated

As described above, Respondent's conduct violated his duties to his clients (ERs 1.1, 1.3, 1.6, 1.7, and 1.15,), the legal system (ERs 3.1, 3.2, 3.4(c), and 8.4(d)), and the legal profession (ERs 1.5 and 8.1).

The lawyer's mental state

Respondent variously acted with two of the three mental states that the *Standards* recognize - knowingly and negligently - in connection with the foregoing violations.

The extent of the actual or potential injury

Respondent caused actual and potential serious harm to his clients, opposing parties and counsel.

The parties agree that the following *Standards* are appropriate and applicable to the facts and circumstances of this matter:

4.2 Failure to Preserve the Client's Confidences

Standard 4.22 - Suspension is generally appropriate when a lawyer knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.

6.2 Abuse of the Legal Process

Standard 6.22 - Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

7.0 Violations of Other Duties Owed as a Professional

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

The *Standards* do not account for multiple charges of misconduct. The ultimate sanction should at least be consistent with that for the most serious instance of misconduct among a number of violations. *Standards*, "II. Theoretical Framework". Thus, the presumptive sanction is suspension.

Aggravating and mitigating circumstances

The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22 - Aggravating factors include:

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

In mitigation:

Standard 9.32 - Mitigating factors include:

- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (g) character or reputation;
- (l) remorse; and
- (m) remoteness of prior offenses.

The State Bar has not received evidence that Respondent's personal or emotional problems caused the misconduct to which he conditionally admitted, or evidence of Respondent's good character or reputation. However, the State Bar conditionally admits that were this matter to proceed to a contested hearing such evidence would be presented.

Discussion

The parties conditionally agree that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. The presumptive principal sanction is suspension and, after factoring in the aggravating and mitigating factors, the proposed probationary terms, and that Respondent may have to pay a significant sum in Count One and already has paid the judgment in Count Two, a departure from the presumptive sanction is not warranted. In addition to being suspended from practicing law, Respondent will be on probation for two

years following his reinstatement and will also obtain instruction on matters that led to his being suspended. Given that the primary object of lawyer discipline is not to punish the lawyer but, rather, to protect the public, the profession, and the administration of justice, *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004), the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

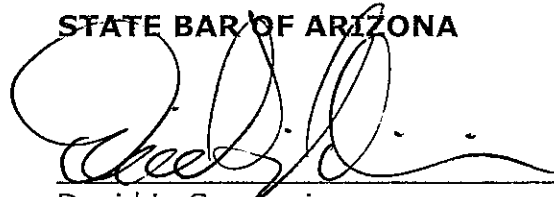
CONCLUSION

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:

1. Suspension for ninety (90) days;
2. Probation for two (2) years following reinstatement with LOMAP ("Law Office Management Assistance Program"); the requirement that Respondent view the State Bar CLE programs entitled "Ten Deadly Sins of Conflict" and "Common Courtroom Conundrums: Candor, Confidences, and Courtesy"; and the requirement that Respondent obtain at least three CLE hours on the subject of lower court appeals and/or appeals from limited jurisdiction courts;
3. As an additional probationary term, Respondent shall satisfy or otherwise resolve the \$22,000 bankruptcy court judgment in favor of Walter Kabat in File No. 11-1995 within ninety (90) days following reinstatement. The LOMAP caseworker will monitor Respondent's compliance with this term of probation; and
4. The imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit "B."

DATED this 9th day of September, 2013.

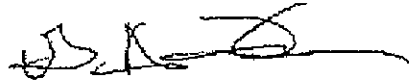
STATE BAR OF ARIZONA



David L. Sandweiss
Senior Bar Counsel

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

DATED this 9th day of September, 2013.



George A. Tacker
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 9th day of September, 2013.

Copies of the foregoing mailed/emailed
this 9th day of September, 2013, to:

Mr. George A. Tacker
14175 W. Indian School Rd., Ste. B4-522
Goodyear, AZ 85395-8369
Email: gtacker@tackerlaw.com
Respondent

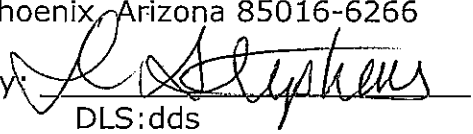
Copy of the foregoing emailed
this 9th day of September, 2013, to:

Hon. 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 9th day of September, 2013, to:

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

By:


DLS:dds

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

GEORGE A. TACKER,
Bar No. 019325

Respondent.

No. PDJ-2013-9047

**REPORT AND ORDER ACCEPTING
AGREEMENT FOR DISCIPLINE BY
CONSENT AS AMENDED**

[State Bar Nos. 11-1995 and 12-
1624]

FILED NOVEMBER 4, 2013

An Agreement for Discipline by Consent ("Agreement") was filed on September 9, 2013, in accord with Rule 57, Ariz.R.Sup.Ct. Pursuant to that rule the parties may tender an agreement regarding a Respondent to the presiding disciplinary judge ("PDJ") after the filing of a formal complaint. Such tender is a conditional admission of unethical conduct in exchange for a stated form of discipline, other than disbarment. When such an agreement is filed, the PDJ, "shall accept, reject or recommend modification of the proposed agreement" by way of report.

Two of the three complainants filed objections to the proposed Agreement. One on September 17, 2013 and the other on September 18, 2013. The PDJ reviewed those objections and found Complainant's objections to be well founded. The PDJ independently expressed his concerns as well.

The parties set forth aggravating factors that are evident. However, the mitigating factors were not supported by any evidence. While the State Bar expressed a willingness to conditionally admit that such evidence would be presented if this matter were to proceed to hearing, the PDJ required more than

confidence in the promise of future evidence. No evidence was submitted for the purported mitigation. The Agreement failed to sufficiently describe and document any mitigation to enable the PDJ to determine its reasonableness. The Agreement lacked the detail necessary to determine whether the proposed sanction was sensible.

One complainant alleged that Court orders were not complied with. The allegation is that the Court ordered Respondent to file all fee agreements, an accounting of all fees paid and appropriate applications for employment, and other required filings in both the bankruptcy cases of 6030 and of Complainant. This was never done. Such conduct appeared to be intentional rather than knowing or negligent. Similarly, if the Court Ordered Respondent to pay \$22,000 by a date certain and Respondent ignored that order or did not respond to it, that conduct also appeared intentional. If such allegations are true there would be an appearance of selfish motive or dishonesty to retain funds that Respondent was not entitled to.

The suggestion of payment of these monies after the reinstatement under these circumstances was objected to by the complainant and that objection had merit. The language used was vague and virtually unenforceable. Remorse is not built upon inaction but rather the active correcting of wrongs committed. There is no explanation of even what Respondent is remorseful for. Also troublesome, the ignoring of Court deadlines and the lack of communication with these clients had an appearance of being an ongoing pattern.

While the parties stipulated that the prior disciplinary history was remote in time, that history reflected a similar pattern of neglect with both serious and potentially serious consequences. The PDJ notes in File No. 05-1069 that personal or emotional problems were attributed to his conduct that resulted in a Censure with one year probation beginning in April, 2007. Thereafter, allegations were leveled that Respondent failed to comply with the rules of procedure and did not comply with the orders of an arbitrator. His probation concluded on March 20, 2009. The actions underscoring his disciplinary history had many similarities to the counts in the complaint.

The additional unfiled charge sought to be resolved had both an appearance of neglect and a course of conduct that appears to demonstrate that respondent either did not understand fundamental criminal law doctrines and procedures or declined to follow them with at a minimum, potential for serious injury to his client. Further that unfiled charge included what appeared to be a knowing deception of a client with at least a potential for serious injury to his client. That complainant objected to the agreement as well.

The PDJ pointed out that lawyer discipline serves two main purposes: (1) to protect the public and the courts and (2) to deter the attorney and others from engaging in the same or similar misconduct. *In re Kleindienst*, 132 Ariz. 95, 102, 644 P.2d 249, 256 (1982) (citing *In re Stout*, 122 Ariz. 503, 596 P.2d 29 (1974)). Accomplishing these objectives promotes and maintains confidence in the bar's integrity. *In re Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994). Necessarily *not* accomplishing these objectives does the opposite.

With the present record, it appears the conduct is serious and the aggravating factors are significant. As stated above the conclusory statements regarding mitigation have no detail to them. Notwithstanding, the PDJ recommended modifications that included a one year suspension, provided detailed mitigation was submitted that differentiated these current matters from his prior history. The PDJ also recommended any agreement include, as a requirement for reinstatement, that compliance with the bankruptcy court's orders regarding the filing of the various listed documents and the payment of the \$22,000 or mutually agreeable arrangements made with that complainant for a payment plan and full payment prior to any petition for reinstatement being filed.

Those modifications were rejected by Mr. Tacker and the Agreement was rejected by the PDJ as a result. Thereafter, the parties continued in settlement negotiations. The PDJ was advised by the parties that an Agreement was imminently possible and might be submitted on Friday, November 1, 2013. Witness issues arose and the PDJ conducted a telephonic status conference on November 1, 2013, to determine how this matter was going to proceed.

The parties reported they had dropped from the Agreement the unfiled charge regarding one objecting complainant (Ellenberger) and agreed that the

other objecting complainant would be paid the approximate \$22,000 as a condition of reinstatement which was the basis of that objection. Further, the parties agreed that Mr. Tacker would file the documents required by the bankruptcy court and submit what mitigation documentation he presently has and testify regarding his mitigation. The parties agree that six (6) months and one (1) day suspension was an appropriate sanction.

On November 4, 2013 at 9:00 A.M., a hearing regarding the Agreement was conducted on the record. Mr. Tacker appeared *pro per* and Mr. Sandweiss appeared on behalf of the State Bar of Arizona. The parties filed a formal Notice of Acceptance of Order Recommending Modification of Agreement for Discipline by Consent with Further Modifications that outlined their modified Agreement. Mr. Tacker submitted as exhibits additional medical information and testimony supporting his mitigation.

Having reviewed the exhibits, the testimony and the original Agreement as well as the modified Agreement, the PDJ finds Respondent's misconduct constitutes grounds for the imposition of discipline. The PDJ has considered the objections of complainants as well.

Now therefore,

IT IS ORDERED incorporating by this reference the original Agreement for Discipline by Consent and any supporting documents as well as the various exhibits submitted at the hearing and the Notice of Acceptance of Order Recommending Modification of Agreement for Discipline by Consent with Further Modifications by this reference. The agreed upon sanctions are: Six (6) Months and One (1) Day Suspension commencing in thirty (30) days from the date of this Report and Order, payment of restitution of \$22,000.00 before Mr. Tacker applies for reinstatement and that he file the various items that the bankruptcy court ordered him to file, plus stipulated costs.

IT IS FURTHER ORDERED that if Mr. Tacker reinstated, he shall serve two (2) years probation with the State Bar's Law Office Management Assistance Program ("LOMAP") and Member Assistance Program ("MAP"), and shall comply with any and all conditions established by MAP and LOMAP directors and comply

with such other terms of probation as are determined at the formal reinstatement hearing.

IT IS FURTHER ORDERED that the Agreement for Discipline by Consent as modified is accepted. The proposed final judgment and order has been reviewed and is approved as to form. The Final Judgment and Order is signed this date. The State Bar's costs are approved. The suspension shall commence thirty (30) days from this date.

IT IS FURTHER ORDERED Mr. Tacker shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED, that the disciplinary clerk furnish Ms. Quinterri as counsel for a Complainant with a copy of this Report and Order.

DATED this 4th day of November, 2013.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

ORIGINAL filed with the Disciplinary Clerk
this 4th day of November, 2013.

COPY of the foregoing e-mailed/mailed
this 4th day of November, 2013, to:

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

George A. Tacker
14175 W. Indian School Road
Goodyear, AZ 85395-8369
Email: gtacker@tackerlaw.com
Respondent

by: MSmith

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**GEORGE A. TACKER,
Bar No. 019325**

Respondent.

PDJ-2013-9047

State Bar Nos. 11-1995 and 12-1624

FINAL JUDGMENT AND ORDER

FILED NOVEMBER 4, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Notice of Acceptance of Order Recommending Modification of Agreement for Discipline by Consent, With Further Modifications, filed on November 4, 2013, pursuant to Rule 57(a), Ariz., R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **George A. Tacker**, is hereby suspended for six (6) months and one (1) day for his conduct in violation of the Arizona Rules of Professional Conduct, effective thirty (30) days from the date of this order.

IT IS FURTHER ORDERED that, prior to applying for reinstatement, Respondent shall pay to Complainant Walter Kabat the sum of \$22,000 as ordered by the United States Bankruptcy Court District of Arizona on March 14, 2012, in *In re 6030 N. Camelback Manor LLC, Debtor, and Walter Kabat, Debtor*, case nos. 09-09299 CGC and 10-29632 CGC.

IT IS FURTHER ORDERED that, prior to applying for reinstatement, Respondent shall, in connection with the above-entitled bankruptcy cases, file with the bankruptcy court all fee agreements relating to Mr. Kabat and 6030 N. Camelback Manor LLC; an accounting of all fees paid by Mr. Kabat and 6030 N. Camelback Manor LLC; and appropriate applications for employment, fee applications and other required filings in both cases, as required by the bankruptcy court's order dated December 19, 2011.

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 \$1,296.88. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 4th day of November, 2013.

William J. O'Neil

**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 4th day of November, 2013.

Copies of the foregoing mailed/emailed
this 4th day of November, 2013, to:

George A. Tacker
14175 W. Indian School Rd., Ste. B4-522
Goodyear, AZ 85395-8369
Email: gtacker@tackerlaw.com
Respondent

Copy of the foregoing hand-delivered/emailed
this 4th day of November, 2013, to:

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

Sandra Montoya
Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288

by: MSmith