

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**BRIAN R. WARNOCK,  
Bar No. 012400 (Retired)**

Respondent.

**PDJ 2016-9023**

**FINAL JUDGMENT AND ORDER**

[State Bar File No. 14-3333]

**FILED JULY 15, 2016**

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Amended Agreement for Discipline by Consent dated July 13, 2016, accepted the parties' proposed agreement under Rule 57(a), Ariz. R. Sup. Ct.

Accordingly:

**IT IS ORDERED** Respondent, **Brian R. Warnock, Bar No. 012400**, is suspended for six (6) months and one (1) day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective retroactive to June 2, 2016.

**IT IS FURTHER ORDERED** upon reinstatement, Mr. Warnock shall be subject to any additional terms imposed because of the reinstatement hearing held.

**IT IS FURTHER ORDERED** under Rule 72 Ariz. R. Sup. Ct., Mr. Warnock shall immediately comply with the requirements relating to notification of clients and others.

**IT IS FURTHER ORDERED** Mr. Warnock 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 15<sup>th</sup> day of July, 2016.

*William J. O'Neil*

---

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

Copies of the foregoing mailed/emailed  
this 15th day of July, 2016, to:

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

Stephen M. Dichter  
Christian Dichter & Slugs, PC  
2700 N. Central Avenue, Suite 1200  
Phoenix, AZ 85004  
Email: sdichter@cDSLAWFIRM.COM  
Counsel for Mr. Warnock

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6266  
Email: lro@staff.azbar.org

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**BRIAN R. WARNOCK,**  
**Bar No. 012400 (Retired)**

Respondent.

**PDJ 2016-9023**

**DECISION AND ORDER ACCEPTING  
MODIFIED AGREEMENT**

[State Bar File No. 14-3333]

**FILED JULY 15, 2016**

An Agreement for Discipline by Consent (Agreement) regarding Brian R. Warnock, was filed on June 7, 2016, and submitted under Rule 57(a), Ariz. R. Sup. Ct. An Order of Probable Cause issued on January 28, 2016 and the formal complaint was filed on March 11, 2016. Upon filing such Agreement, the Presiding Disciplinary Judge (PDJ), "shall accept, reject or recommend modification of the agreement as appropriate". Under Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant by letter and email on June 2, 2016. Complainant was notified of the opportunity to file a written objection within five days. No objection was received. For reasons stated in a June 27, 2016 order, the PDJ requested a modification of the agreement.

A Modified Agreement dated July 13, 2016 was filed accepting the modification recommended. Rule 57 requires admissions be tendered solely "...in exchange for the stated form of discipline...." The Modified Agreement details a factual basis for the admissions to the charge in the Modified Agreement. Mr. Warnock conditionally admits he violated Supreme Court Rule 42, ER 1.4 (communication), 1.7 (concurrent conflicts of interest), 1.10 (imputation of conflict), 1.16 (declining/terminating

representation), 3.2 (expediting litigation), 3.3 (candor to the tribunal), 3.7 (lawyer as a witness), 8.4(c) (misrepresentation) and 8.4(d) (conduct prejudicial to the administration of justice). Restitution is not an issue.

The parties agree to a suspension of six (6) months and one (1) day retroactive to June 2, 2016, the effective date of Mr. Warnock's retirement from the active practice of law, and the payment of costs and expenses of this disciplinary proceeding totaling \$1,200.00 within thirty (30) days from an order imposing discipline.

The Presiding Disciplinary Judge finds the proposed sanction of a suspension requiring formal reinstatement proceedings and the payment of costs meets the objectives of attorney discipline. The Modified Agreement is therefore accepted.

**IT IS ORDERED** incorporating by this reference the Modified Agreement and any supporting documents by this reference. The agreed upon sanctions are: six (6) month and one (1) day suspension 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 Modified Agreement is accepted. Costs as submitted are approved for \$1,200.00. Now therefore, a Final Judgment and Order is signed this date. Mr. Warnock is suspended effective retroactive to June 2, 2016 and costs are approved.

**DATED** this 15<sup>th</sup> day of July, 2016.

*William J. O'Neil*

---

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

///

Copies of the foregoing e-mailed/mailed  
this 15<sup>th</sup> day of July, 2016, to:

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

Stephen M. Dichter  
Christian Dichter & Slugs, PC  
2700 N. Central Avenue, Suite 1200  
Phoenix, AZ 85004  
Email: sdichter@cdslawfirm.com  
Counsel for Mr. Warnock

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6266  
Email: lro@staff.azbar.org

by: AMcQueen

David L. Sandweiss, Bar No. 005501  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602)340-7250  
Email: LRO@staff.azbar.org

Stephen M. Dichter, Bar No. 004043  
Christian Dichter & Sluga PC  
2700 N. Central Ave., Ste. 1200  
Phoenix, AZ 85004-1139  
Telephone 602-253-5808  
Email: [sdichter@cdslawfirm.com](mailto:sdichter@cdslawfirm.com)  
Respondent Warnock's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

**IN THE MATTER OF MEMBERS OF  
THE STATE BAR OF ARIZONA,**

**BRIAN R. WARNOCK,  
Bar No. 012400 (retired),**

and

**ANDRE E. CARMAN,  
Bar No. 021448,**

Respondents.

**PDJ 2016-9023**

State Bar Nos. 14-3333 (Brian Warnock)  
and 14-3334 (Andre Carman)

**AGREEMENT FOR DISCIPLINE BY  
CONSENT (RESPONDENT BRIAN  
WARNOCK, ONLY)**

The State Bar of Arizona through undersigned Bar Counsel, and Respondent Brian R. Warnock who is represented by counsel Stephen M. Dichter, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.<sup>1</sup> A probable cause order was entered on January 28, 2016, a formal complaint was filed on March 11, 2016, and Respondent filed his answer on April 6, 2016. Respondent

---

<sup>1</sup> All references herein to rules are to the Arizona Rules of the Supreme Court unless otherwise expressly stated.

voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admissions and proposed form of discipline are approved.

Pursuant to Rule 53(b)(3), bar counsel gave notice of this agreement to the complainants by letter and email on June 2, 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.4 (Communication), 1.7 (Concurrent Conflicts of Interest), 1.10 (Imputation of Conflict), 1.16 (Declining or Terminating Representation), 3.2 (Expediting Litigation), 3.3 (Candor Toward the Tribunal), 3.7 (Lawyer as Witness), 8.4(c) (Misrepresentation), and 8.4(d) (Prejudice to the Administration of Justice). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Suspension for six (6) months. Respondent's suspension will be effective retroactively to June 2, 2016. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days following the effective date of his suspension, and if costs are not paid within those 30 days, interest will begin to accrue at the legal rate.<sup>2</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

---

<sup>2</sup> 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.

**COUNT ONE (File No. 14-3333/Jensen and Hargrove)**

**FACTS**

1. Respondent Brian Warnock was licensed to practice law in Arizona on April 4, 1989. He went on retirement status with the State Bar of Arizona effective June 1, 2016.

2. Co-Respondent Andre E. Carman was licensed to practice law in Arizona on January 10, 2003.

***Hargrove v. Orlando***

3. Respondent Carman, while employed by Gallagher & Kennedy at its Prescott office, represented Natalie Orlando as her business lawyer.

4. Starting in 2007 Mr. Carman assisted Ms. Orlando and her husband Daniel to convert their medical billing business (Tri-City Medical Billing) into an LLC.

5. Carman continued to represent the Orlandos when he went to work for the Prescott office of Warnock, MacKinlay & Carman, PLC (the "Warnock firm") in April 2009.

6. On January 10, 2008, while driving her car Ms. Orlando hit Sally Hargrove who was crossing the street in a crosswalk.

7. Ms. Hargrove, who is elderly, was severely injured.

8. Hargrove retained attorney Chris Jensen who soon learned that Orlando was significantly under-insured for the case with only a \$15,000 liability limit under an American Family Ins. Co. policy.

9. Jensen pursued a personal injury claim on Hargrove's behalf against Orlando and filed suit for her in Yavapai County Superior Court (*Hargrove v. Orlando*, hereafter "Yavapai County action").

10. Orlando's carrier, American Family, appointed attorney Rob Lewis to defend Orlando but, because there was the possibility of a judgment in excess of the available policy limits, Respondents represented the Orlandos as personal counsel, though not by making a formal appearance in the Yavapai County action.

***Orlando v. American Family Ins. Co.***

11. While *Hargrove v. Orlando* was pending in Yavapai County Superior Court, on the Orlandos' behalf the Warnock firm sued American Family and the agent who had advised the Orlandos regarding their insurance policies, in Maricopa County Superior Court (the "American Family Litigation").

12. Generally, the suit alleged that the agent negligently failed to advise the Orlandos to buy a higher insurance liability limit.

13. Warnock was counsel of record for the Orlandos.

14. In defending the case, American Family alleged that Carman's legal services may have contributed to the Orlandos' insufficient insurance coverage.

15. In June, 2010, while defending the American Family Litigation, American Family's lawyer served on Warnock, Orlando's counsel of record in that action, an initial disclosure statement informing Orlando and counsel that "lawyers, accountants, and other business consultants who worked with Ms. Orlando and Mr. Orlando in the alleged establishment of a small business in the fall of 2007" would be designated as non-parties at fault in the American Family Litigation.

16. By December, 2010, the Yavapai County action had ended with Hargrove taking a judgment and covenant not to execute against Orlando and an assignment of Orlando's position in the American Family Litigation. Jensen filed a motion to

substitute Hargrove for Orlando as the plaintiff, which the court denied, and a Motion to Substitute as Counsel for Orlando that it granted.

17. In American Family's Third Supplemental Disclosure Statement, served later in December 2010, it elaborated on its June disclosure that "lawyer(s), paralegal(s), CPAs, accountant(s), and other professionals that Mr. and Mrs. Orlando consulted with and/or engaged to help her create and/or start her new small business . . . are solely or partially at fault for not advising Ms. Orlando to get larger motor vehicle or business liability policies and/or failing to create corporate entities sufficient to shield Ms. Orlando from personal exposure."

18. Although American Family did not identify Carman by name as a lawyer non-party at fault, and was unable with then known information to otherwise strictly comply with the applicable disclosure rule (Rule 26, Ariz. R. Civ. P.), Respondents knew that Carman was the only person who could potentially have fit the lawyer non-party at fault description, a fact confirmed in an interrogatory answer provided in November 2010.

19. The effect of an appropriately disclosed notice of non-party at fault would mean that American Family and its insurance agent co-defendant might seek to blame Carman in whole or in part for giving the Orlandos bad legal advice in the formation of their LLC by failing to acquire sufficient liability insurance.

20. If American Family were successful in that claim, the Orlandos' recovery against American Family would be reduced or eliminated unless the Orlandos amended their suit to add Carman as a defendant.

21. This created a "significant risk" that Carman, Warnock, and the Warnock firm would have a concurrent, personal interest, conflict of interest (ER 1.7(a)(2)).

22. Warnock did not obtain a written, informed consent conflict waiver from the Orlandos.

23. The conflict was not waivable (ER 1.7(b)(1)); Warnock could not provide the Orlandos competent and diligent representation when to do so required advising the Orlandos to assert claims against his firm's employee, Carman.

24. The conflict of interest was imputed to all lawyers in the Warnock firm by virtue of ER 1.10.

25. Warnock failed to disclose the notice of non-party at fault to the Orlandos, in violation of ER 1.4.

26. Although Jensen later was substituted in as counsel of record for the Orlandos in the American Family Litigation, Jensen told Orlando that he regarded himself as more Hargrove's attorney than Orlando's attorney and because of that advisement, Orlando wanted Warnock to continue to represent the Orlandos as their personal counsel.

### ***Hargrove v. Orlando Settlement***

27. Meanwhile, *Hargrove v. Orlando* went to trial.

28. In September 2010, mid-trial, the parties reached a settlement by which the Orlandos assigned all of their interests in the American Family Litigation to Hargrove in exchange for Hargrove's promise not to collect her damages from the Orlandos personally.

29. The agreement was documented in an Assignment and a Covenant Not to Execute Upon Judgment ("Assignment" and "Covenant").

30. The agreement contemplated that the trial would continue, the jury would return a verdict against the Orlandos, Hargrove would not seek to collect the

resulting judgment from the Orlandos, and the Orlandos were to furnish "full and complete communication, cooperation, documentation, and, as necessary, sworn testimony to support the assigned claims . . . ."

31. The agreement also granted to Hargrove the right to pursue the assigned claims with counsel of her choice (Jensen).

32. The parties recited the *Hargrove v. Orlando* settlement on the record.

33. After Mr. Lewis recited some terms, he asked Jensen if there were any additional terms. Jensen stated: "Yeah. In addition, we would expect Mr. and Mrs. Orlando to cooperate as part of the covenant to supply us with all documents in their possession or control relating to the claims being assigned."

34. During the settlement negotiations, Warnock failed to tell Jensen or Hargrove that American Family had designated Orlando's business lawyer (Carman) as a non-party at fault in the American Family Litigation, or of the resulting "significant risk" conflict of interest.

35. This omission of a fact material to Jensen and Hargrove's evaluation of the merits of the American Family Litigation involved misrepresentation by omission, in violation of ER 8.4(c).

36. Because the settlement occurred during trial, the parties presented its terms to the Court for approval.

37. Although Warnock was in Canada on holiday during the Court hearing, he had failed to instruct the lawyer who appeared as personal counsel to Orlando in the hearing to inform the Court of the June 2010 non-party at fault advisory, in violation of ER 3.3(a)(1). Comment 3 explains: "There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation."

38. The jury returned a verdict of \$655,000 in *Hargrove v. Orlando*.

### **Warnock's Post-Settlement Conduct**

39. After the *Hargrove v. Orlando* Court approved the settlement, Jensen moved to substitute Hargrove for the Orlandos as the real-party-in-interest and, thus, as the named plaintiffs, in the American Family Litigation, with him as counsel for Hargrove.

40. American Family objected and the court denied Jensen's motion.

41. The court ruled that the Orlandos should remain the named plaintiffs to avoid confusion, but Jensen would be counsel of record.

42. A judge in later litigation referred to the Orlandos as "nominal parties" and Jensen as their "nominal counsel."

43. After aggressively litigating against the Orlandos in *Hargrove v. Orlando*, Jensen was now counsel for the Orlandos in an unconventional manner.

44. Jensen continued to represent the Orlandos' former adversary, Hargrove.

45. The Orlandos told Warnock that Jensen was untrustworthy and would act against their interests. Warnock whole-heartedly agreed but failed to obtain instructions from Orlandos in writing to withhold privileged materials from the file disclosure Warnock made to Jensen.

46. To assure that he diligently explored the factual basis for the non-party at fault defense in hopes of defeating it and, alternatively, to explore the possibility that Carman may have had some liability to the Orlandos, Jensen sought the Orlandos' client files from the Warnock firm.

47. Warnock, however, refused to give Jensen unconditional access to the entire file, meaning privileged materials. This was consistent with Orlando's instructions after being advised by Warnock.

48. Jensen contended that this refusal undermined one of the bases for the Assignment and Covenant ("full and complete communication, cooperation, documentation, and, as necessary, sworn testimony to support the assigned claims...."; see also, recitation of the settlement on the court record, para. 32-33 above) and put the Orlandos at risk of breaching the Assignment and Covenant contracts, placing their personal assets at risk.

49. Warnock counseled the Orlandos against signing an authorization that would have allowed Jensen to obtain attorney-client privileged materials from the Orlandos' client files. This did include materials bearing on and relevant to Carman's conversion of Tri-City Medical Billing from a sole-proprietorship into an LLC.

50. This position drove a wedge between Jensen and the Orlandos, fatally damaging Jensen's relationship with them and impaired his ability to prosecute their claims against American Family.

51. Jensen tried to persuade the Orlandos to cooperate with him and abide by their obligations under the Covenant, but on Warnock's advice they refused to provide a blanket waiver of the attorney-client privilege and this denied Jensen access

to the portions of the file that revealed the advice that had been provided to the Orlandos when they were converting their business structure.

52. In December 2010 the Orlandos filed a bar charge against Jensen.

53. This placed Jensen in a conflict of interest position with his own clients (even if they were regarded as nominal clients) and he moved to withdraw as counsel in the American Family Litigation.

54. Jensen also withdrew as counsel for Hargrove.

55. Once Jensen withdrew as counsel for Orlando, Warnock violated ER 1.16(d) by failing to help his clients satisfy their contractual duty to enable Ms. Hargrove to proceed with counsel of her choice, and to protect his clients from a ruinous breach of contract claim.

56. Judge Gama granted Jensen's motion to withdraw and, in a February 1, 2013 ruling, ordered the American Family Litigation stayed until May 2, 2013, to give Jensen 90 days to find new counsel for the Orlandos or advise the court that they would proceed *pro per*.

57. The court placed the matter on the inactive calendar for dismissal on July 1, 2013. Jensen immediately notified the Orlandos.

58. Warnock's role thereafter was not sufficiently well-defined by him to permit anyone to have a good grasp of what he was doing and for whom. Warnock intermittently contended that Jensen was the Orlandos' attorney, then that Jensen was not their attorney, that Warnock was the Orlandos' attorney, then that he was not actually their counsel, but merely facilitating their self-representation. Eventually, Warnock acquiesced in the concept that Jensen was the Orlandos' nominal counsel.

59. At times, Warnock contended that Jensen, as counsel of record for the Orlandos, owed the Orlandos a lawyer/client duty to select replacement counsel for them when Jensen withdrew.

60. At other times, when Jensen communicated directly with the Orlandos in his effort to obtain an authorization to release company files from Warnock's firm, Warnock scolded Jensen for communicating with a represented party without Warnock's consent.

61. Ultimately, Warnock regarded Jensen as nominal counsel for the Orlandos since the Orlandos were nominal parties to the American Family Litigation and Jensen was their counsel only to that limited extent.

62. Warnock's variously stated positions concerning the representation of Orlandos delayed the litigation (ER 3.2) and prejudiced the administration of justice (ER 8.4(d)).

63. Next, sensing the dislocations within the Hargrove-Orlando/Jensen-Warnock camp or competing camps, American Family threatened that, if the litigation was not dismissed via a walk-away agreement, American Family would seek attorney's fees and costs from Orlandos (who had been left in the case as party-plaintiffs).

64. On April 22, 2013, Warnock told Ms. Hargrove's new lawyer, Timothy Ducar (see "**Orlando v. Hargrove, and Related Counterclaim and Third-Party Complaint**", below) that Ms. Hargrove had one day to respond to a walkaway settlement proposal by which the Orlandos could avoid paying costs and attorney's fees to American Family in the American Family Litigation.

65. Mr. Ducar and Ms. Hargrove did not respond because although Ms. Hargrove was the 100% owner of the assigned claims, she was not a named party in the American Family Litigation. She neither consented to nor authorized a dismissal.

66. Shortly thereafter, the Orlandos as nominal plaintiffs "settled" the American Family Litigation by dismissing it in exchange for American Family's agreement not to seek costs and attorney's fees against them.

67. This effectively ended Hargrove's pursuit of her Assignment and Covenant rights, American Family's need to pursue a non-party at fault defense and, ultimately, any exposure Carman had to the Orlandos for malpractice.

68. If the "settlement" were later to unwind, however, the Orlandos were in jeopardy of having breached the Assignment and Covenant agreements, thereby putting their personal assets at risk to pay the *Hargrove v. Orlando* judgment (\$655,000 plus costs and interest).

69. To the extent that Warnock participated in negotiating the "settlement," he violated concurrent conflict of interest rules under ER 1.7.

70. Warnock contended that he was not representing the Orlandos in connection with the settlement but was acting as a conduit from them to American Family's lawyer, Johnny Sorenson.

71. This representation notwithstanding, there were numerous communications between Respondent and Mr. Sorenson, with copies to the Orlandos, from October 2012-May 2013, that show Warnock clearly acting as a lawyer in negotiating the dismissal for the Orlandos.

72. In one email, Warnock asked Mr. Sorenson: "Are you serving a MSJ to Jensen for Christmas?"

73. During an August 1, 2014 hearing on cross-motions to disqualify counsel (see below) Carman admitted to the court that Warnock negotiated the settlement for the Orlandos with American Family.

74. Carman also admitted that he and the Warnock firm received a "significant benefit" when the American Family Litigation was dismissed and he and the Warnock firm were no longer exposed to potential liability.

75. In a later disclosure statement, the Orlandos stated that everything they did in the American Family Litigation was predicated on advice from the Warnock firm.

***Orlando v. Hargrove, and Related Counterclaim  
and Third-Party Complaint***

76. On February 8, 2013, Warnock filed a new suit in Yavapai County Superior Court entitled *Orlando v. Hargrove*.

77. Warnock alleged that Jensen withdrew from representing the Orlandos in the American Family Litigation; Jensen and Hargrove failed to designate new counsel to represent the Orlandos who still were the named plaintiffs in that case; Hargrove abandoned her rights under the Assignment and Covenant by failing to designate new counsel; and Hargrove was thereby precluded from collecting anything from American Family.

78. That result would have eliminated any further inquiry into the non-party at fault defense American Family leveled against Carman.

79. Warnock also alleged that the Orlandos were exposed to an assessment of costs and attorney's fees were American Family successfully to move to dismiss the American Family Litigation. Therefore, Warnock alleged, the Orlandos were allowed to proceed in a manner to best protect their interests.

80. Warnock also sought a declaratory judgment that the Orlandos fully satisfied their obligations under the Assignment.

81. Warnock did not disclose in the new suit that in a different suit (American Family Litigation) in a different court system, Judge Gama one week earlier gave Jensen and the Orlandos 90 days to obtain new counsel.

82. Hargrove obtained new counsel, Timothy Ducar (Ducar), who filed a counterclaim on her behalf.

83. Ducar alleged that the Orlandos breached the Covenant by failing to cooperate as agreed, and denied that Hargrove "abandoned" her claim.

84. The lawsuit exposed the Orlandos to collection of the judgment of more than \$934,000 including interest in *Hargrove v. Orlando*.

85. Warnock, on April 15, 2013, filed a third-party complaint against Jensen claiming that he committed malpractice against the Orlandos.

86. Warnock asserted that the Orlandos were entitled to indemnity from Jensen if they were found to have breached the Covenant.

87. In April 2014, the court dismissed Orlando's third-party complaint against Jensen.

88. Warnock and Ducar accused each other of having conflicts of interest due to the need for their testimony on substantive issues in the case.

89. They filed cross-motions to disqualify, and Ducar voluntarily withdrew as counsel for Hargrove before the court heard the motion to disqualify him.

90. Warnock, however, refused to withdraw.

91. In August 2014 the court disqualified Warnock from representing the Orlandos.

92. In September 2014, on Warnock's special action, the Arizona Court of Appeals upheld Warnock's and the Warnock firm's disqualification in *Orlando v. Hargrove*, under ER 3.7.

93. The circumstances surrounding how and why the stipulation to dismiss the American Family Litigation was entered into were central to the issues, and Warnock was a key witness to those circumstances.

***Hargrove v. Warnock, Carman, and Warnock Firm***

94. On May 22, 2014, through new counsel, Hargrove sued Warnock, Carman, and the Warnock firm in Yavapai County Superior Court, No. P1300CV2014-00567.

95. In several counts she alleged that Warnock and members of the Warnock firm personally, or by the Orlando's actions that Warnock and members of the Warnock firm instigated, unlawfully defeated Hargrove's rights under the Assignment and Covenant.

96. Evidence in the case included these excerpts from Natalie Orlando's April 9, 2015, affidavit, some of which are factually belied by other statements made by Orlando at other times. The evidence is uncontradicted, however, that Warnock never disclosed or explained to her the potential meaning of a non-party at fault designation.

- On August 9, 2012, Warnock told her not to sign anything that Jensen gave her to sign. Warnock told her that Jensen "was trying to violate my legal rights." However, "there was never any particular document or thing in my legal or other files of which I was aware to protect from disclosure to Sally Hargrove, Chris Jensen or anyone else."
- Warnock "did not explain to me the potential risks that Daniel and I might face by following his advice so Daniel and I followed that advice without any awareness that not waiving the privilege to information and documents that we had no problem handing over to Mr. Jensen could jeopardize the American Family case."

- "I never had any idea of what privileged facts or evidence that my claims of privilege in the American Family case . . . involved. This was never discussed with me by any lawyer from the Warnock firm."
- "I never knew about the 'non-party at fault' designation . . . until sometime in August 2012 when Chris Jensen discussed it with me. . . . I never understood that there was any conflict of interest created between Daniel and me and any of our lawyers" at the Warnock firm. No one at the Warnock firm "explained to me the non-party at fault designation or informed me of any potential conflict of interest."
- Warnock "coordinated the settlement in the American Family case by handling all the communications and negotiations with Johnny Sorenson, drafting correspondence, emails and negotiating the terms of the settlement. My husband Daniel and I had nothing to do with anything other than approving the settlement as negotiated by Mr. Warnock."
- Everyone at the Warnock firm "consistently told me that Chris Jensen's actions were unethical, illegal, unfair and were an ongoing attempt to violate Daniel's and my legal rights."
- "I have no idea why the Warnock firm was trying to prove that Sally Hargrove has 'abandoned' the American Family case."
- "I fully relied on and trusted the advice of" the Warnock firm. "I have not understood until recently that the advice given to me by the Warnock firm lawyers apparently have caused our legal fees to be much greater than they would otherwise have been. . . . [W]e were unaware until recently that we could have obtained free legal representation through our insurance with American Family Insurance to defend against Sally Hargrove's counterclaim in Orlando v. Hargrove and Jensen as well as the separate lawsuit against us by Jensen Law Firm, P.C. and Chris Jensen . . . ."
- "[O]ur claims of privilege rights . . . now seem to have been made more for the benefit of Warnock firm lawyers protecting information they wished to conceal (and causing us significantly increased legal fees and costs charged by the Warnock firm since 2010) rather than protecting any particular evidence because that was never important to us. . . ." The Warnock firm "may have taken advantage of our trust . . . and put our protection under the Covenant Not to Enforce Judgment at risk, rendering us potentially liable for damages over \$900,000 . . . . [W]e would not have asserted the privilege if it meant doing so could jeopardize the Covenant with Sally Hargrove. . . . [W]e would not be in the position we are today but for our reliance on the Warnock firm's advice to assert the attorney-client privilege, which may ultimately prove

to have exposed us to financial ruin if we are ordered to pay Ms. Hargrove the amount of any Judgment.”

***Jensen v. Orlando, Carman, Warnock, and Warnock Firm***

97. In April 2014, Jensen sued Warnock, Carman, the Warnock firm, and the Orlandos, in a multi-count case seeking declaratory relief and damages.

98. On June 18, 2015, all parties settled all open claims at a mediation. The settlement is subject to a confidentiality clause but the parties included a specific provision in the settlement agreement allowing disclosure to the State Bar. The State Bar will seek a protective order against public disclosure of the terms of the settlement.

**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, specifically ERs 1.4 (Communication), 1.7 (Concurrent Conflicts of Interest), 1.10 (Imputation of Conflict), 1.16 (Declining or Terminating Representation), 3.2 (Expediting Litigation), 3.3 (misrepresentation by omission), 3.7 (Lawyer as Witness), 8.4(c) (misrepresentation by omission), and 8.4(d) (conduct prejudicial to the administration of justice).

**RESTITUTION**

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 the following sanction is appropriate: Suspension for six (6) months, effective retroactively to June 2, 2016. If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

### **LEGAL GROUNDS IN SUPPORT OF SANCTION**

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

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

#### **The duty violated**

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

### **The lawyer's mental state**

For purposes of this agreement only, the parties agree that Respondent acted knowingly in violating the Rules of Professional Conduct.

### **The extent of the actual or potential injury**

For purposes of this agreement only, the parties agree that there was actual injury and actual serious injury to Respondent's client, the legal profession, the legal system, and the public.

The parties agree that at a contested hearing there would be evidence supporting the alternative *Standards* listed below. The State Bar would contend that the *Standards* calling for disbarment as the presumptive sanction are relevant. Respondent would dispute the State Bar's position and assert that the *Standards* calling for suspension (or, in connection with one violation, reprimand) as the presumptive sanction are relevant. In either event, for the reasons hereafter stated, the parties agree that a suspension for six months is the appropriate sanction.

#### ER 1.4

*Standard 4.41(b)* - Disbarment is generally appropriate when: . . . (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client . . . .

*Standard 4.42* - Suspension is generally appropriate when:

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client . . . .

#### ERs 1.7 and 1.10

*Standard 4.31(a)* - Disbarment is generally appropriate when a lawyer, without the informed consent of client(s): (a) engages in representation of a client knowing that the lawyer's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client . . . .

*Standard 4.32* - Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

ER 1.16(d)

*Standard 7.1* - Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

*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.

ER 3.2

*Standard 6.21* - Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party, or causes serious or potentially serious interference with a legal proceeding.

*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.

ER 3.3

*Standard 6.11* - Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes serious or potentially serious adverse effect on the legal proceeding.

*Standard 6.12* - Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

ER 3.7

*Standard 4.31(a)* - See ERs 1.7 and 1.10, Conflict of Interest, above.

ER 8.4(c)

*Standard 5.11(b)* - Disbarment is generally appropriate when: . . . (b) a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

*Standard 5.13* - Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

ER 8.4(d)

*Standard 6.21* - See ER 3.2, Expediting Litigation, above.

### **Aggravating and mitigating circumstances**

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

#### **In aggravation: Standard 9.22--**

- (b) selfish motive;
- (d) multiple offenses;
- (h) vulnerability of victims;
- (i) substantial experience in the practice of law.

#### **In mitigation: Standard 9.32—**

- (a) absence of a prior disciplinary record since first being admitted in Canada in 1976 and, in Arizona, since 1989;
- (b) absence of dishonest motive;
- (e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings;
- (k) imposition of other penalties or sanctions.

### **Proportionality**

Although Rule 57 does not mandate a proportionality analysis in connection with an Agreement for Discipline by Consent, it is useful to recall *Matter of Levine*, 174 Ariz. 146, 847 P.2d 1093 (1993). Although that case implicated different facts, evidence, and ERs, the Supreme Court's characterization of Mr. Levine's conduct, to a lesser extent, reasonably applies to Mr. Warnock. It said:

The testimony and evidence in this matter, in the words of the committee, "recounted a near decade long saga which arose from the breakup of the law firm of Levine & Harris [, P.C.]," and "[t]he fourteen-count Complaint relates to [that] one underlying fact situation and the Respondent's reaction to that situation." The commission noted the "unusual character" of the situation giving rise to the multiple counts of the bar complaint, and recognized that "cases like this one do not fit within 'cubby holes.'" We agree with these characterizations.

\* \* \*

In the nine years of this litigation, respondent exhibited unusual animosity toward his former partner and his associates, coupled with a concerted refusal to acknowledge the unreasonableness of his legal position in pursuing these claims. As the commission noted, respondent's actions "caused the expenditure of substantial sums, by lawyers, insurance companies and the court systems."

*Matter of Levine*, 174 Ariz. 146, 150, 172, 847 P.2d 1093, 1097, 1119 (1993). The court assessed Mr. Levine a six-month suspension as the principal term of discipline. Given the egregious nature of Levine's misconduct over a longer period of time, a six-month suspension for Mr. Warnock is within the boundaries of proportionality.

### **Discussion**

The parties conditionally agree that, upon application of the aggravating and mitigating factors, the presumptive sanction should be mitigated to a six-month suspension. Although the aggravating and mitigating factors numerically offset, the effect of those factors on the presumptive sanction is not determined numerically. After a 26-year career practicing law in Arizona and a 40-year ethically blemish-free career overall, Respondent's entire discipline history will now owe to his conduct in one group of related litigated cases. The parties conditionally agree that Respondent's lack of discipline, heretofore, is entitled to considerable weight as a mitigating factor ("We give great weight, in particular, to respondent's previous unblemished disciplinary record . . . ." *Matter of Levine*, 174 Ariz. 146, 172, 847 P.2d 1093, 1119 (1993)). Respondent has been transferred to the list of retired lawyers, in part due to health concerns, so there is less need to protect the public through formal reinstatement proceedings. Thus, the parties conditionally agree that a greater or lesser sanction than a suspension for six months is neither necessary nor appropriate.

Based on the *Standards* and in light of the facts and circumstances of this

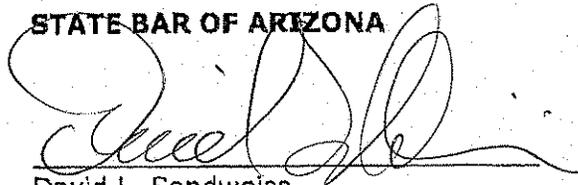
matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

### CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the presiding disciplinary judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of a six-month suspension on the terms and timetable above-stated, and the imposition of costs and expenses. A proposed form of order is attached as Exhibit B.

DATED this 6<sup>th</sup> day of June 2016.

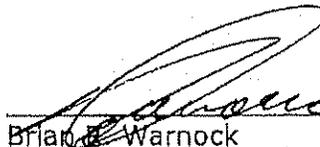
STATE BAR OF ARIZONA



David L. Sandweiss  
Senior Bar Counsel

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

DATED this 2<sup>nd</sup> day of June, 2016.



Brian Warnock  
Respondent

DATED this 2<sup>nd</sup> day of June, 2016.

Christian Dichter & Sluga PC



Stephen M. Dichter  
Counsel for Respondent

Approved as to form and content



Maret Vessella  
Chief Bar Counsel

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 7<sup>th</sup> day of June, 2016.

Copy of the foregoing emailed  
this 6<sup>th</sup> day of June, 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](mailto:officepdj@courts.az.gov)

Copy of the foregoing mailed/emailed  
this 6<sup>th</sup> day of June, 2016, to:

Stephen M. Dichter  
Christian Dichter & Sluga PC  
2700 N. Central Ave., Ste. 1200  
Phoenix, AZ 85004-1139  
Email: [sdichter@cDSLAWfirm.com](mailto:sdichter@cDSLAWfirm.com)  
Respondent Warnock's Counsel

Copy of the foregoing hand-delivered  
this 7<sup>th</sup> day of June, 2016, to:

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

by: Jacki Brokaw  
DLS: jlb

# **EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Brian R. Warnock, Bar No. 012400, Respondent

File No. 14-3333

### **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 B**

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

---

**IN THE MATTER OF MEMBERS OF  
THE STATE BAR OF ARIZONA,**

**BRIAN R. WARNOCK,  
Bar No. 012400 (retired),**

**and**

**ANDRE E. CARMAN,  
Bar No. 021448,**

Respondents.

**PDJ 2016-9023**

**FINAL JUDGMENT AND ORDER  
(BRIAN WARNOCK, ONLY)**

State Bar Nos. 14-3333 (Brian Warnock)  
and 14-3334 (Andre Carman)

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, **Brian R. Warnock**, is hereby suspended for six months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective June 2, 2016.

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

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

**IT IS FURTHER ORDERED** that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of \_\_\_\_\_, within 30 days from the date of service of this Order.

**DATED** this \_\_\_\_\_ day of June, 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 June, 2016.

Copies of the foregoing mailed/mailed this \_\_\_\_\_ day of June, 2016, to:

Stephen M. Dichter  
Christian Dichter & Sluga PC  
2700 N. Central Ave., Ste. 1200  
Phoenix, AZ 85004-1139  
Email: [sdichter@cDSLAWfirm.com](mailto:sdichter@cDSLAWfirm.com)  
Respondent Warnock's Counsel

Copy of the foregoing emailed/hand-delivered this \_\_\_\_\_ day of June, 2016, to:

David L. Sandweiss  
Senior Bar Counsel  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Copy of the foregoing hand-delivered  
this \_\_\_\_ day of June, 2016, to:

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

by: \_\_\_\_\_