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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, **Michael W. Baldwin, Bar No. 012625,** Respondent.	**PDJ-2012-9111** **AGREEMENT FOR DISCIPLINE BY CONSENT** [State Bar No. 11-3684]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Michael W. Baldwin, 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 the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER(s) 1.15(a), 8.1(b), and Rules 43(b)(1)(C), 43(b)(2)(A), 43(b)(2)(B),

43(b)(2)(C), 43(b)(2)(D), 43(b)(5), 43(b)(1)(A), and 54(d)(2). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Thirty (30) day suspension, followed by two (2) years probation. The probation shall include participation in the Law Office Management Assistance Program (LOMAP) and the Member Assistance Program (MAP), and attendance at the Trust Account Ethics Enhancement Program (TAEEP). Respondent requests that the suspension not become effective until April 1, 2013 so that he has sufficient time to transfer any outstanding client matters to another attorney while he is suspended. The State Bar does not object to this request.

Finally, 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 October 21, 1989.

COUNT ONE (State Bar File No. 11-3684)

2. On November 21, 2011, the State Bar received an insufficient funds notice on Respondent's client trust account.

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[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.

3. The notice indicated that on November 14, 2011 check number 2246 in the amount of $2,076.02 attempted to pay against the account when the balance was only $20.67.

4. The bank returned the check and did not charge an overdraft, leaving the account with a balance of $20.67.

5. On November 22, 2011, a State Bar trust account examiner sent Respondent a copy of the overdraft notice and requested an explanation of the overdraft and copies of related records within twenty days.

6. On December 12, 2011, Respondent informed the trust account examiner that he was unable to timely provide the requested information and documentation but would provide it by December 16, 2011.

7. Respondent did not provide the requested information and documentation by December 16, 2012.

8. Accordingly, on January 3, 2012, the trust account examiner sent a letter to Respondent informing him that the failure to comply with the November 22, 2011 letter may result in the subpoenaing of his trust account records.

9. On January 17, 2012, Respondent provided some of the requested information and explained that the overdraft was the result of check number 2246 for $2,076.02 that Respondent wrote in January of 2011. Respondent did not keep track of the transaction and, when the check attempted to clear in November of 2011, there was only a minimal amount of money remaining in the client trust account. Respondent provided documentation demonstrating that he provided a replacement cashier's check to his client in the amount of $2,100.00. Respondent

admitted, however, that he failed "to follow the requirements for Trust Account management as provided in Rule 43(d)."

10. On January 19, 2012, the trust account examiner sent Respondent a request for additional information and documentation.

11. Respondent failed to respond in a timely manner.

12. On February 28, 2012, after multiple phone calls, Respondent provided a partial response. Respondent advised that he would supply the remaining documentation by the end of the same day.

13. Respondent failed to provide the remaining documentation requested.

14. On March 7, 2012, Respondent informed the trust account examiner that he would provide the remaining documentation by March 9, 2012.

15. Respondent failed to provide the remaining documentation.

16. On March 20, 2012, the State Bar issued a subpoena requiring Respondent to provide the remaining documentation. The subpoena was personally served on Respondent on March 27, 2012.

17. Respondent did not timely comply with the subpoena.

18. On June 4, 2012, the State Bar filed a petition for a show cause order.

19. On June 6, 2012, the presiding disciplinary judge ("PDJ") entered a show cause order and scheduled a hearing for June 18, 2012. At the hearing, the PDJ entered an order requiring Respondent to provide the outstanding documentation by June 25, 2012, which Respondent did.

20. On June 26, 2012, the trust account examiner sent Respondent an additional request for information and documentation. The trust account examiner

requested that Respondent provide the information and documentation within 20 days.

21. Respondent failed to provide the requested information.

22. On August 14, 2012, the State Bar issued a second subpoena requiring Respondent to provide the previously requested information and documentation by August 22, 2012.

23. Respondent was unable to provide the requested information and documentation by August 22, 2012.

24. The State Bar provided Respondent an extension until August 29, 2012.

25. Respondent provided the requested documents by August 29, 2012 but these documents raised additional questions, including what clients had money in Respondent's trust account and to whom Respondent made disbursements from January 2011 through March 2012.

26. The trust account examiner spoke with Respondent on August 30, 2012 seeking certain further information including information relating to a deposit made on February 7, 2011 in the amount of $16,039.00 and a disbursement on January 6, 2012 for $1,590.00. Respondent advised the trust account examiner that he would provide this information on August 31, 2012.

27. Respondent again failed to provide the requested information.

28. The investigation of Respondent's trust account revealed that Respondent converted client funds as follows:

A. According to Respondent, as of January 1, 2011, there should have been a balance in his trust account of $6,039.00 for a retainer paid

by client T.M. and $2,961.00 for a retainer paid by client S.S. for a total of $9,000.00. As of that date, however, there was a balance of only $8,216.99 for a difference of $783.01;

B. According to documents Respondent submitted, Respondent received a deposit of $7,500.00 on March 4, 2011 for client J.L. Respondent then made disbursements. Starting in April of 2011, Respondent began disbursing more than what client J.L. had on deposit, withdrawing $5,850.00 more than what J.L. had on deposit;

C. In April and June of 2011, Respondent made disbursements from his trust account to Paypal. Respondent conceded that these disbursements should not have occurred and reimbursed his trust account in July of 2011;

D. On June 8, 2011, Respondent disbursed $7,510.00 on behalf of client J.M. when there were no funds on deposit for client J.M.;

E. On January 6, 2012, Respondent disbursed $1,590.00 for client S.W. when it appeared that there were no funds on hand. The trust account examiner asked Respondent if there was a corresponding deposit but Respondent failed to provide a response; and

F. Pursuant to Respondent's August 29, 2012 response, Respondent's trust account is still short $226.75, which Respondent stated would be remedied when he disbursed fees earned from his client A.M. Respondent has converted other client funds for over 21 months.

29. The investigation of Respondent's trust account further revealed the following deficiencies:

A. Respondent provided general ledgers on February 28, 2012 that indicated a deposit of $16,039.00 on February 7, 2011 belonging to client J.L. In subsequent submissions of additional general ledgers, Respondent reported that the deposit actually pertained to client A.M. The trust account examiner subsequently confirmed with Respondent that the deposit belonged to client A.M.;

B. Respondent has three disbursements from his trust account for which he is unable to explain. Respondent disbursed $1,500.00 on February 7, 2011, $2,850.56 on February 15, 2011, and $2,350.00 on March 15, 2011. These transactions have no corresponding client ledger and Respondent does not know to whom they pertain;

C. Respondent failed to properly perform 3-way reconciliations during the time period covered by the investigation; and

D. On June 8, 2011, Respondent purchased a cashier's check for $7,500.00 on behalf of client J.M. For this transaction, Respondent failed to use a pre-numbered check or an electronic transfer.

30. On January 31, 2013, the State Bar deposed Respondent. Respondent testified that his wife left him unexpectedly in 2010 and that this caused him to become depressed. Because of this, Respondent testified that he was too overwhelmed and distraught to maintain his trust account records and did not maintain client ledgers, general ledgers, an administrative funds ledger, or three-way reconciliations from 2010-2012. Respondent denied intentionally converting

or misappropriating client funds and also testified that he rectified the shortage in his trust account of $226.75 that existed as of August of 2012. Respondent also testified that many of the deficiencies discovered during the State Bar's investigation were the result of him not maintaining his trust account records. For example, Respondent testified that he failed to record a deposit for client J.M. on his ledgers, resulting in the appearance of this client having no funds on deposit. Finally, Respondent testified that he now maintains his trust account records but currently has no client funds in his trust account.

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 Rule 42, Ariz. R. Sup. Ct., specifically, ER(s) 1.15(a), 8.1(b), and Rules 43(b)(1)(C), 43(b)(2)(A), 43(b)(2)(B), 43(b)(2)(C), 43(b)(2)(D), 43(b)(5), 43(b)(1)(A), and 54(d)(2).

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, as set forth above, the following sanction is appropriate: Thirty (30) day suspension, followed by two (2) years probation and participation in Law Office Management Assistance Program (LOMAP), Member Assistance Program (MAP), and attendance at the Trust Account Ethics Enhancement Program (TAEEP). Respondent and the State Bar of Arizona agree

that the probation will commence immediately when the final judgment and order is entered.

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 ER 1.15(a) and Rule 43(b)(1)(C). The LOMAP examination shall occur after Respondent's suspension is concluded. 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 (2) years from that date. Respondent shall be responsible for any costs associated with LOMAP.

MAP

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at 602-340-7334 or 800-681-3057, within five (5) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment. The director of MAP shall develop "Terms and Conditions of Probation" if he determines that the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will begin to run at the time of the entry of the final judgment and order and will conclude two (2) years from that date. Respondent shall be responsible for any costs associated with MAP.

TAEEP

Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). Respondent must contact the TAEEP Program Coordinator, State Bar of Arizona, at (602) 340-7278, within 20 days from the date of the final judgment and order. Respondent shall be responsible for the cost of attending the program.

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.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in

various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley,* 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

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

The parties agree that *Standard* 4.12 and 7.2 apply in this matter, given the facts and circumstances involved. Standard 4.12 provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. Standard 7.2 provides that 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. Respondent failed to maintain his trust account records resulting in the negligent conversion of client funds and failed to timely respond to the State Bar's investigation.

The duty violated

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

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent negligently converted client funds, knowingly failed to maintain his trust account

records, and knowingly failed to timely respond to the State Bar in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

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

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(a): Prior disciplinary offenses. Respondent received an informal reprimand in file no. 06-1546 for violation of ER 1.8 when he engaged in a business transaction with his client and failed to advise the client of the potential conflict of interest.

Standard 9.22(e): Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Respondent failed to comply with the trust account examiner's requests for information, resulting in two subpoenas being issued and one show cause hearing.

Standard 9.22(i). Substantial experience in the practice of law. Respondent has been an Arizona attorney since October 21, 1989.

In mitigation:

Standard 9.32(c): Personal or emotional problems.[2]

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: The violations appear to be a result of

[2] *See* Exhibit C, filed under seal.

Respondent's personal and emotional problems experienced by Respondent during the time at issue. Specifically, Respondent testified in his deposition that his wife left him in 2010 and this caused him to be too overwhelmed and distraught to maintain his trust account records from 2010-2012. Respondent testified that he did not intentionally convert client funds, and any negligent conversion of clients has been rectified and appears to be the result of Respondent failing to maintain his trust account records.

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 thirty (30) day suspension, followed by two (2) years probation and participation in Law Office Management Assistance Program (LOMAP), Member Assistance Program (MAP), attendance at the Trust Account Ethics Enhancement Program (TAEEP), and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

/ / /

/ / /

DATED this 20th day of March, 2013.

STATE BAR OF ARIZONA

Nicole S. Kaseta
Staff Bar Counsel

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

DATED this _____ day of _____, 2013.

Michael W. Baldwin
Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

/ / /

/ / /

DATED this _____ day of _____, 2013.

STATE BAR OF ARIZONA

_____
Nicole S. Kaseta
Staff 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 17th day of March, 2013.

Michael W. Baldwin
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 21st day of March, 2013.

Copies of the foregoing mailed/emailed
this 21st day of March, 2013, to:

Michael W. Baldwin
6222 E. Placita Aspecto
Tucson, AZ 85750-1286
Email: michael.baldwin@azbar.org
Respondent

Copy of the foregoing emailed
this 21st day of March, 2013, to:

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

Copy of the foregoing hand-delivered
this 21st day of March, 2013, to:

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

By: Diane C. Heller
NSK:dch

BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **Michael W. Baldwin, Bar No. 012625** Respondent.	**PDJ-2012-9111** [State Bar No. 11-3684] **ORDER**

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, has reviewed a Request for Protective Order.

IT IS ORDERED that the Respondent's request for a Protective Order is **granted**.

IT IS FURTHER ORDERED, that Exhibit C to the Agreement for Discipline by Consent that the State Bar filed on March 21, 2013 shall be sealed and kept confidential from the general public pursuant to Rule 70(g), Ariz. R. Sup. Ct. Sealed material shall be opened and viewed only by an order of the committee, the presiding disciplinary judge, a hearing panel, the board or the court for use by such body and the parties in pending proceedings, and otherwise only upon notice to and an opportunity to be heard by the parties and the witness or other person who is the subject of the information. A party aggrieved by an order relating to a request for a protective order may seek review by filing a petition for special action with the court.

DATED this 26th day of March, 2013.

William J. O'Neil
The Honorable William J. O'Neil
Presiding Disciplinary Judge of the
Supreme Court of Arizona

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 26th day of March, 2011.

Copies of the foregoing were mailed/emailed
this 26th day of March, 2013, to:

Michael W. Baldwin
6222 E. Placita Aspecto
Tucson, AZ 85750-1286
Email: Michael.baldwin@azbar.org
Respondent

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Email: LRO@staff.azbar.org

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

by: Dan R. Hopkins
dch

BEFORE THE PRESIDING DISCIPLINARY JUDGE OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **Michael W. Baldwin** **Bar No. 012625** Respondent.	**PDJ-2012-9111** **FINAL JUDGMENT AND ORDER** [State Bar No. 11-3684]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on March 21, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Michael W. Baldwin**, is hereby suspended for a period of thirty (30) days for his for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective April 1, 2013.

IT IS FURTHER ORDERED that, upon entry of this final judgment and order, Respondent shall be immediately placed on probation for a period of two years.

IT IS FURTHER ORDERED that, during the probation period of two (2) years, Respondent shall also complete the following:

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 ER 1.15 and Rule 43(b)(1)(C). The LOMAP examination shall occur after Respondent's suspension is concluded. 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 (2) years from that date. Respondent shall be responsible for any costs associated with LOMAP.

MAP

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at 602-340-7334 or 800-681-3057, within five (5) days of the date of the final judgment and order. Respondent shall submit to a MAP assessment. The director of MAP shall develop "Terms and Conditions of Probation" if he determines that the results of the assessment so indicate, and the terms shall be incorporated herein by reference. The probation period will begin to run at the time of the entry of the final judgment and order and will conclude two (2) years from that date. Respondent shall be responsible for any costs associated with MAP.

TAEEP

Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). Respondent must contact the TAEEP Program Coordinator, State Bar of Arizona, at (602) 340-7278, within 20 days from the date of the final judgment and order. Respondent shall be responsible for the cost of attending the program.

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.

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 $1,558.60.

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 —0—.

DATED this 26th day of March, 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 26th day of March, 2013.

Copies of the foregoing mailed/emailed
this 26th day of March, 2013, to:

Michael W. Baldwin
6222 E. Placita Aspecto
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4201 North 24th Street, Suite 100
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Lawyer Regulation Records Manager
State Bar of Arizona
4201 North 24th Street, Suite 100
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By: Jane A. Hopkins