BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **LINCOLN M. WRIGHT,** **Bar No. 020076,** Respondent.	**PDJ-2015-9028** **FINAL JUDGMENT AND ORDER** [State Bar No. 14-0060] **FILED JUNE 12, 2015**

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on April 1, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **LINCOLN M. WRIGHT**, is hereby suspended for six (6) months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, and the PDJ's Decision Accepting Consent for Discipline filed June 12, 2015, effective July 13, 2015.

IT IS FURTHER ORDERED Mr. Wright 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 Respondent pay the costs and expenses of the State Bar of Arizona in the amount of $ $1,349.70, within 30 days from the date of service of this Order.

DATED this 12th day of June, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 12th day of June, 2015.

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **LINCOLN M. WRIGHT,** **Bar No. 020076** **Respondent.**	**PDJ-2015-9028** **DECISION ACCEPTING CONSENT FOR DISCIPLINE** [State Bar No. 14-0060] **FILED JUNE 12, 2015**

Prior to any authorization by the Attorney Discipline Probable Cause Committee to file a complaint, the parties filed an agreement for discipline by consent on April 1, 2015. Supreme Court Rule 57(a) authorizes filing consent agreements with the presiding disciplinary judge ("PDJ") prior to the authorization by the Attorney Discipline Probable Cause Committee to file a complaint. See Rule 57(a), Ariz. R. Sup. Ct. Rule 57(a)(3)(B), specifically provides:

> If the agreement is reached before the authorization to file a formal complaint and the agreed upon sanction includes a reprimand or suspension, or if the agreement is reached after the authorization to file a formal complaint, the agreement shall be filed with the disciplinary clerk to be presented to the presiding disciplinary judge for review. The presiding disciplinary judge, in his or her discretion or upon request, may hold a hearing to establish a factual basis for the agreement and may accept, reject, or recommend the agreement be modified.

Id.

Supreme Court Rule 57 requires conditional admissions be tendered solely "…in exchange for the stated form of discipline…." The right to an adjudicatory hearing is waived only if the "…conditional admissions and proposed form of discipline is

approved…." If the agreement is not accepted, the conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Rule 57(a)(4)(C), Ariz. R. Sup. Ct.

Lincoln M. Wright, through counsel, self-reported his ethical violations to the State Bar. The agreement also states that after self-reporting, Mr. Dessaules, a lawyer representing two statutory beneficiaries discussed in the agreement, reported the matter to the State Bar. That charge was properly dismissed as duplicative of the self-report already received. However, it was not clear whether Mr. Dessaules was notified of the agreement or the parties concluded he was not a complainant and did not give him notice. On April 16, 2015, the PDJ requested clarification by email of whether there was notification to Mr. Dessaules. That email was received, clarifying Mr. Dessaules had been notified. He declined to take a position regarding the agreement.

Mr. Wright conditionally admitted his conduct violated Rule 42, ERs 1.1, 1.2(a) and (c), 1.4(a)(1), (2), and (3), 1.4(b), 1.5(b), 1.15(d), 4.1(a), 5.4(c), 5.5(a), and 8.4(c). For the agreement, the State Bar agreed it would not allege violations of ER 1.7(a)(1) and (2). Mr. Wright denies any violations of those rules. The parties stipulate to a sanction of suspension for six (6) months.

Facts

Lincoln M. Wright became friends with an Arizona licensed public adjuster, Daniel P. Korman. Occasionally Mr. Wright and his law firm were referred a few cases by him. Because of a deadly motor vehicle collision, eight surviving children were statutory beneficiaries under Arizona's Wrongful Death statutes. One of these beneficiaries, acted on behalf of the rest and sought the assistance of Mr. Korman

to negotiate a settlement with the insurance carrier for the driver causing the accident. The contract of Mr. Korman called for a 25% contingent fee. The liability insurer for the liable driver agreed to pay policy limits, but insisted the funds be handled by an attorney through an IOLTA account. Mr. Korman asked Mr. Wright, while he was an attorney with the law firm, *Udall Schumway PLC*, to send the carrier a letter of representation satisfying those demands. Mr. Wright agreed to do so for a $500 fee. Mr. Wright never discussed anything with any of the beneficiaries, such as that he was pretending to undertake representation for them or that his purpose was to mislead the insurance company into getting the funds to Mr. Korman.

Mr. Wright sent a letter to the insurance carrier assuring them: "We represent the surviving children…." In reality, Mr. Wright sent this letter without being retained by the beneficiaries or ever having communicated with them about his purported relationship to them. The letter he wrote was not on Udall Shumway letterhead, but rather on a fictitious letterhead created solely to give the insurance company the impression of legitimacy. The letterhead stated "*Law Offices of Lincoln M. Wright Personal Injury Law*" and bore the personal address of Mr. Wright. In reality, Mr. Wright did not practice law separately from *Udall Shumway*.

Mr. Wright requested the check be made payable to Lincoln M. Wright, in trust for the beneficiaries. Mr. Wright also assured the insurance company that as attorney for the beneficiaries, he would hold the funds in his trust account and committed himself and the beneficiaries to indemnify the insurance company. He stated,

> We agree to protect and satisfy any and all liens, including health care liens, known or unknown which may be outstanding as related to the above-referenced loss.

Mr. Wright then completed the scheme by directing the carrier to continue communicating with Mr. Korman on completing settlement. Upon receiving the $100,000 check, rather than use the *Udall Shumway* trust account, Mr. Wright deposited those funds in an IOLTA account he opened to facilitate the transfer of the monies to Mr. Korman. He then issued two settlement checks to Mr. Korman totaling $99,500, retaining $500 as his attorney fees.

Mr. Wright did not inform the beneficiaries of the receipt of the monies, or of his disbursements and did not supervise the distribution of the funds by Mr. Korman. Throughout this entire time, Mr. Wright never communicated with the beneficiaries and never discussed his purported representation, nor the objectives of the beneficiaries or the wrongful death settlement itself. Mr. Wright did no inquiry, nor did he analyze the factual and legal elements of the wrongful death claim. He used no independent professional judgment; but, instead relied on Mr. Korman.

The State of Arizona Department of Insurance precludes insurance adjusters from representing third-party claimants such as the beneficiaries. Because Mr. Korman legally could not negotiate the settlement of the beneficiaries' claims and because Mr. Korman was not a licensed attorney, Mr. Korman engaged in the unauthorized practice of law. Mr. Wright admits he negligently assisted Mr. Korman in the unauthorized practice of law.

Two other occupants of the vehicle were also injured, one was the daughter of the decedent and therefore also a beneficiary Mr. Wright, had by his letter, informed the insurance company he represented. The other was a grandson of the decedent. After settlement, Mr. Korman represented those two individuals in their separate claim which he settled for $109,000. The insurance carrier did not require the funds

be administered through an IOLTA account. Mr. Korman kept his 25% fee and retained an additional $38,356 purportedly to pay the medical bills of those persons. He did not pay those bills as he had an IRS lien and the funds were seized. Those individuals expressed their dissatisfaction to Mr. Korman, copying those emails to Mr. Wright.

Later, Jonathan Dessaules, a lawyer representing two of the statutory beneficiaries, wrote Mr. Wright demanding copies of documents that were relevant. He later sent a second letter enclosing a draft complaint and among other allegations stated Mr. Wright had violated numerous ethical rules. Over seven weeks later, Mr. Wright through counsel, self-reported his ethical violations to the State Bar. Shortly thereafter, Mr. Dessaules also reported Mr. Wright to the State Bar.

The Request for Modification

The parties conditionally agreed Mr. Wright knowingly and negligently conducted himself in these underlying events. There is no agreement he acted intentionally. In the agreement, Mr. Wright also denies there was any potential for *serious* harm by his conduct, but only potential harm. He distanced himself from the serious harm caused to the two separate claimants by Mr. Korman. Why there was no potential for the same harm as occurred to the two separate claimants is left unexplained.

The parties agree under *Standard* 5.11(b), suspension is the most egregious sanction for the violations of Mr. Wright because they did not agree that Mr. Wright's actions were intentional. The parties agree the presumptive sanction should be mitigated to six months as Mr. Wright has no prior disciplinary record and he cooperatively provided to Mr. Dessaules all the materials requested. He also self-

reported his misconduct to the State Bar after Mr. Dessaules informed him in writing of his ethical violations and after he retained his present attorney. The parties stipulated the suspension of Mr. Wright should not require reinstatement proceedings.

By order dated April 16, 2015, the PDJ recommended modification of the agreement as authorized under Rule 57, Ariz. R. Sup. Ct., to a suspension longer than six months. A motion for reconsideration was filed on May 5, 2015. The disciplinary rules do not authorize motions for reconsideration and the motion was denied. However, the PDJ ruled that notwithstanding the denial, Rule 57(a)(3)(B) authorizes the PDJ, "upon request, may hold a hearing to establish a factual basis for the agreement and may accept, reject, or recommend the agreement be modified." The holding of a hearing to establish a factual basis for the agreement is not a reconsideration of the agreement. The request is to determine whether the PDJ, "in his discretion" will hold a hearing to make a new decision based on the additional factual basis arising from such a hearing. That request was granted.

The PDJ in setting the hearing for June 10, 2015, gave the parties directions to aid in a discussion as follows:

> The following assists the parties in their presentation of a factual basis for the agreement. Respondent cites *In re Peasley*, 208 Ariz. 27, at 38, ¶ 48, (2004). It is an opinion offering great insight for a multitude of reasons.
>
> The Peasley opinion briefly discussed and quotes *In re Savoy*, 181 Ariz. 368, 371, 891 P.2d 236, 239 (1995). The quote used by the *Peasley* court focuses on one of the concerns. Regardless the experience, **"[E]very lawyer is expected to be truthful, regardless of the length of time he has practiced."**
>
> The agreement contingently admits Mr. Wright was untruthful. These admissions acknowledge Mr. Wright knew the insurance company would rely on his misrepresentation that the individuals requesting payment were his clients. Mr. Wright contingently admits he never met the "clients". Mr. Wright did not use the letterhead of the firm he was employed by, but created a fiction with its own firm

letterhead which likely furthered the deception, offering an appearance of an intent to avoid detection, including by his true employer.

If every lawyer is expected to be truthful, how Mr. Wright has now become truthful and why, as opposed to remorse of regret, would be of assistance. Evidence of why untruthfulness does not reflect an "underlying problem" which requires proof of resolution might also be offered.

Second, in *Peasley* the Court stated the "objective of disciplinary proceedings" is not to punish the offender, but to protect the public, the profession and the administration of justice. The Court then restated its long held view of the two-fold "purpose" of professional discipline. The Court stated at

> This court has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *Alcorn,* 202 Ariz. at 74, P41, 41 P.3d at 612 (citing *In re Kastensmith,* 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)); *see also Scholl,* 200 Ariz. at 227, P29, 25 P.3d at 715 **("The purpose of professional discipline is twofold: (1) to protect the public, the legal profession, and the justice system, and (2) to deter others from engaging in misconduct.").**

Evidence of how and whether the agreement adequately meets the stated purpose of professional discipline; to protect the public, the legal profession, and the justice system from the conduct of Mr. Wright and secondly to deter others from engaging in such misconduct would help guide the PDJ in his decision. In addition as untruthfulness is at issue, evidence of what terms of probation are suggested to either prevent untruthfulness or assist Mr. Wright in being truthful might be offered.

Third, evidence of why the insight of a hearing panel comprising the PDJ, a volunteer public and attorney member is not more appropriate under these allegations would guide the decision. In *Peasley,* there were differing views of the presumptive sanction under the facts; disbarment or suspension. In *Peasley*, the hearing officer found Mr. Peasley "was either oblivious to his obligations or intentionally disregarded them. Respondent acted intentionally." The hearing officer weighed the aggravating and mitigating factors and determined the sanction was a sixty day suspension. Thereafter, "[T]he Disciplinary Commission *adopted the hearing officer's findings of fact and conclusions of law* but viewed the aggravating and mitigating factors differently." (Emphasis added.) It determined disbarment was the sanction. The Court then explained its function,

> Our task in reviewing a lawyer disciplinary proceeding is to "examine the facts to determine if the evidence supports the factual findings made by the hearing officer and the Commission, as well as to decide on the appropriate sanction, if any." *In re Walker,* 200 Ariz. 155, 160, P20, 24 P.3d 602, 607 (2001). In conducting this review, "we give 'deference and serious consideration' to the recommendations of the hearing officer and the Commission." *Id.* (citing *In re Curtis,* 184 Ariz. 256, 261, 908 P.2d 472, 477 (1995)). However, "the responsibility to decide upon the appropriate sanction in a disciplinary proceeding is ultimately ours." *Id.*

The Court rejected the recommendation by the individual Hearing Officer, following instead the recommendation of the diverse Commission and ordered disbarment. To be clear, in *Peasley*, the Court agreed with the Commission finding the aggravating factor of dishonest motive was present. There is nothing within the agreement before the PDJ that suggests the level of aggravating factor from the egregious facts in *Peasley*. Further, while there is a reference by the State Bar to potential disbarment if the matter goes to hearing, the parties are clear under the agreement, that they are not considering disbarment, nor is the PDJ, given the parties proposed stipulation. However, the *Peasley* opinion demonstrates the differing and erroneous analysis that may result from a single officer, such as the PDJ, as compared to the Hearing Panel which includes a member of the public, an attorney member and the PDJ. Evidence of why this matter is more suitably resolved by the PDJ rather than the hearing panel would also be helpful.

See Order Setting Hearing, filed May 15, 2015.

Mr. Wright filed a Hearing Memorandum on June 3, 2015. Mr. Wright argued his actions, while "obviously a serious lapse in judgment" should be viewed in the context of his career to demonstrate those actions did not reflect a "deep-seated character flaw" that would force him to prove rehabilitation. He argued,

> Mr. Wright has been truthful throughout his fifteen-year career, as is evidenced by his previously unblemished record as an attorney, his reputation in the legal community and his representation in his religious and volunteer communities. Mr. Wright is truthful today, as evidenced by his self-reporting this lamentable episode."

It was also asserted,

> The absence of any evidence that he has been untruthful since this matter occurred, and the fact that he acted to rectify his errors, confirm that he is not only truthful now but that he understands why, as a lawyer, he cannot be less than truthful.

Little explains how the absence of evidence is proof of anything. The memorandum argued, "[T]he nature of Mr. Wright's violations strongly supports the conclusion that he has no 'underlying problem' which requires proof of rehabilitation in a reinstatement hearing." It stated, "Nor was his untruthfulness indicative of personal problems." Instead it submitted Mr. Wright only responded as "[H]is friend

asked him to do something that seemed like a simple, easy work-around of a technical requirement, and he made a very foolish mistake." The memorandum assured "he has no intention of repeating this error."

The memorandum argues Mr. Wright has suffered the "shame and mortification of self-reporting" and "he is paying dearly" for his mistake. It further argues the PDJ should consider how the sanction "will affect his standing in the professional community, his ability to support himself and his family, and his self-esteem." Such argument is unhelpful as it ignores the directive of our Supreme Court stated in *In re Shannon*, 179 Ariz. 52, 71, 876 P.2d 548, 567 (1994): "We do not consider the nature of the lawyer's practice, the effect on the lawyer's livelihood, or the level of pain inflicted when determining the appropriate sanction."

Regarding the proposed sanction, the memorandum referred to the consent agreement arguing only *Standard* 5.1 should apply as Mr. Wright's conduct was not done intentionally but rather only knowingly and therefore a "[R]eprimand is generally appropriate…."

The memorandum prefaced a similar argument presented at a hearing by relying on the 2001 opinion of the Supreme Court, *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001). As pointed out in that opinion, that case involved a judge who "developed a gambling habit and for several years did not accurately report winnings and losses on his federal income tax returns." *Id*. at 223, 711, Mr. Scholl was a judge, not a practicing lawyer at the time of the offenses and resigned from the bench because of the convictions.

The argument made for Mr. Wright was, the actions of Mr. Scholl were far worse with an emphasis on proportionality. This again supplemented the argument

Mr. Wright acted unintentionally in: stating he represented individuals he had never conversed with, creating a fictitious law firm letterhead and firm address, certifying he and the beneficiaries would indemnify the insurance carrier from "any and all liens" "known and unknown", opening an IOLTA account for what became the singular purpose of transferring monies to Mr. Korman and himself, writing two checks to Mr. Koram, and in paying himself an attorney fee. The argument was Mr. Wright was always honest; made an innocent mistake, that happened in a "few moments."

The impression to this judge, by both the consent agreement and the memorandum, was while Mr. Wright was embarrassed, there was relatively little to reflect upon because his actions were unintentional and held no potential for serious harm. This argument was emphasized by the memorandum and hearing assertions by Mr. Wright's counsel that in *Scholl*, Mr. Scholl's conduct was "far worse" and he only got a six month suspension. It is appropriate to review what was stated in the opinion that is absent in this matter.

Despite argument suggesting the Court offered little in the *Scholl* opinion that differentiates from the sanction proposed for Mr. Wright, there are unequivocal differences. In a fundamental way, lawyers must typically do two things; analyze and draw conclusions. When a lawyer fails to analyze the law, whether by experience or research, the allegations, facts or circumstances, that lawyer drifts down a path that can easily lead to injustice. When a lawyer only seemingly analyzes endlessly but never draws conclusions, that lawyer drifts down a path that can easily defraud a client. However, when a lawyer does neither he marches down a different path that can lead to great misery the public, the profession and the administration of justice.

Mr. Wright, as a lawyer, neither analyzed nor tried to draw conclusions. In comparison, Mr. Scholl, as a person, was addicted to gambling while he was a judge.

The Supreme Court Rules regarding proportionality that applied in *Scholl* have changed. The Court in *Scholl* stated, "To achieve proportionality, discipline must be tailored to the facts of each case. In determining the appropriate sanction this court assesses proportionality by reference to precedent." *Scholl*, 200 Ariz. At 227, 25 P.3d at 715 (citations omitted). The present rules no longer require an assessing of proportionality. Instead Rule 58(k) states, "sanctions imposed shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* and, if appropriate, a proportionality analysis."

In *Scholl* the Court required a hearing, where evidence was weighed and balanced, "in part to provide a complete record in the event of formal judicial review of the matter." *Scholl*, 200 Ariz at 223, 25 P.3d at 711. As a result, "several witnesses testified favorably to Scholl's fitness as a lawyer." *Id*. Because of the hearing, the Court had in mitigation before it the testimony of a nationally certified gambling counselor, who performed psychological testing on Scholl leading to a stated diagnosis. The Court had that expert's testimony of the intensive outpatient program completed by Scholl and the one year of follow-up care. It is in the evidence before it that the Court found his "conduct not likely to recur."

In the memorandum, while Mr. Wright acknowledges unethical conduct, he states his conduct did not involve "lying" and "felony convictions" and therefore his conduct is not as serious. Mr. Wright strongly opposes such an adjudicative process to weigh those assertions. For such a comparison of sanctions to be made, both cases should be processed the same; through an adjudication, where evidence and

testimony is weighed and balanced. As stated at the hearing, the consent agreement, memorandum and argument of Mr. Wright substantially undercut the argument for the acceptance of the consent agreement.

Ignored in Mr. Wright's memorandum was the Court in *Scholl*, in mitigation, pointed repeatedly to the fact it had already "imposed significant restrictions on his practice" and the federal criminal justice system had already imposed separate punishment upon him. The Court also found there was no harm, because "no back taxes were found due and no tax penalties imposed." *Id.* at 223, 711.

In the present matter, the insurance company had a right to rely on the assertion it was sending the check to the attorney for the "surviving children of Mary Ann Posmer" as certified by Mr. Wright. It is left unexplained in the agreement and the memorandum, how such a misrepresentation does not equal lying, but is only a knowing "untruth." It seems highly improbable that any other lawyer or member of the public would believe that Mr. Wright would make a representation to an insurance company of a non-existent attorney client relationship with individuals unintentionally. Such dancing with legal technicalities to evade reality seems to assure a misguided rehabilitation from minimized behaviors and a probable enhancement of continued disrespect by the public of the legal profession.

Similarly, it seems highly improbable that any other lawyer or member of the public would believe that a lawyer, being aware of the insurance company's requirement of the use of an IOLTA account to assure the actual receipt of the settlement proceeds by the injured parties, would unintentionally distribute the funds through a fictitious law firm IOLTA account to the party the insurance company was declining to issue the funds to without some corrective action.

In *Scholl* the hearing officer before whom the hearing was held recommended censure. A divided Commission recommended a two year suspension with the dissenting members "voicing a number of valid concerns" and arguing the two year suspension "was unnecessary and essentially punitive." *Id.* at 224, 712. In spite of such stated valid concerns, the State Bar and Mr. Scholl did not request the Court to review the sanction. It is not an insignificant difference that Mr. Scholl acknowledged the gravity of his misconduct by accepting a two year suspension without seeking a review by the Court. Perhaps in part because of that acknowledgment the Court *sua sponte* granted review and based on the significant evidence of mitigation, absent here, issued a modified sanction.

The PDJ requested insight into why, as in *Scholl*, a hearing should not proceed before a full panel, obtaining the insight of a volunteer public member, a volunteer lawyer member and the PDJ. The evidence may well lead such a hearing panel to conclude a lesser sanction is warranted rather than the present sanction or a greater sanction.

The statements of Mr. Wright were helpful and insightful. His statements gave a far more complete picture of a recognition of his failings, his clear, but misguided intentional conduct and a stated conviction to learn from his shortcomings. When coupled with his cooperation with the State Bar and his self-reporting, the PDJ has a better comfiture to make a different decision based upon such new information. A clear and profound remorse was apparent from the statements of Mr. Wright. Also, a seeming desire to identify with those he injured and put at risk. Even if his self-reporting came at the urging of his attorney, it reflects a willingness to choose to not only seek advice but the wisdom to reflect upon it.

True rehabilitation is based upon discernment, the ability to detect and identify with real truth, not an inner hunch or minimized declaration claimed to be the truth. That identification must lead to a resulting remorse, commitment and action demonstrating a sincere commitment to adhere to the ethical rules. Ethical misconduct is most often like an iceberg. Real rehabilitation begins with a recognition of what is beneath the surface and the growing recognition of correctly "sizing up" a situation. Because of Mr. Wright's statements and actions following his ethical misconduct, the agreement is accepted. The PDJ having found the consent agreement meets the purposes of attorney discipline, accordingly:

IT IS ORDERED incorporating by this reference the Agreement and any supporting documents by this reference. Respondent agrees to pay costs associated with the disciplinary proceedings in the amount of $1,349.70.

IT IS FURTHER ORDERED the Agreement is accepted. Costs as submitted are approved. Mr. Wright's six month suspension is effective July 13, 2015. Now therefore, the final judgment and order is signed this date.

DATED this 12th day of June, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 12th day of June, 2015.

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