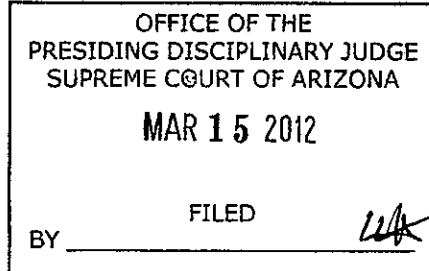


Hunter F. Perlmeter, Bar No. 024755
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, Arizona 85016-6288
Telephone: 602-340-7247
Email: LRO@staff.azbar.org

Ryan M. Wackerly, Bar No. 022077
Office of Ryan M. Wackerly
40 North Central Avenue, Suite 1400
Phoenix, Arizona 85004-4436
Telephone: (602) 343-1858
Email: Wackerlylaw@hotmail.com
Respondent



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

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

Ryan M. Wackerly

Bar No. 022077

Respondent.

PDJ-2012-9017

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

No. 11-2964

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Ryan M. Wackerly, 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) 3.4(c), 8.1(b), 8.4(d), Rule 54(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand and two years probation requiring participation in MAP. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on January 7, 2003.

COUNT ONE (State Bar File No. 11-2964)

2. On December 17, 2010, the Maricopa County Superior Court appointed Respondent as the arbitrator in CV2010-018570 pursuant to Rule 73(b) of the Arizona Rules of Civil Procedure.

3. On June 11, 2011, a minute entry from Court Administration notified Respondent that an arbitration award was due.

4. Respondent did not conduct an arbitration hearing or file an arbitration decision.

5. On July 7, 2011, a Motion for Appointment of New Arbitrator was filed by Plaintiff's attorney in the civil suit over which Respondent was to preside as arbitrator.

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.

6. In an August 25, 2011, minute entry, Respondent was ordered to appear in Maricopa County Superior Court on September 7, 2011, to show cause as to why he failed to perform his duties as arbitrator.

7. Respondent failed to appear at the Order to Show Cause hearing on September 7, 2011.

8. Upon Respondent's failure to appear, the judge's judicial assistant contacted Respondent at his office at 1:50pm. Respondent indicated that he had not received notice of the hearing and that he believed he had performed all of his duties with respect to the arbitration. The judicial assistant instructed Respondent to appear in court in one hour and Respondent consented.

9. At 3:10 pm, when Respondent did not appear, the judicial assistant contacted Respondent's office. Respondent's receptionist indicated that Respondent was on his way to the court. The judicial assistant asked the receptionist to contact Respondent on his cell phone to obtain an update regarding his status. The Receptionist did so and communicated to the judicial assistant that Respondent indicated he would arrive at the court in one hour.

10. At 4:20 pm the judicial assistant again contacted Respondent's office. The receptionist answered and immediately transferred her to Respondent. Respondent told the judicial assistant that he was at the intersection of "Van Buren and 3rd" and getting ready to park. The judicial assistant informed him that the judge would not wait any longer and that he was to report to the judge's office at 8:30 am the next morning, September 8th. Respondent answered, "yes, Ma'am."

11. On September 8, 2011, Respondent appeared with counsel, Otilia Diaz. Ms. Diaz told the court that Respondent never received the minute entry appointing him

as arbitrator and that, in January of 2011, after learning that he had been appointed, he called Court Administration and was told that he did not have to serve as arbitrator.

12. Respondent testified at the hearing that he had a virtual office and that he only checked mail once every four days. He also testified that he phoned Court Administration sometime during April of 2011 after receiving inquiries from the attorneys in the case he was to arbitrate. He indicated that he did not respond to the attorneys who left messages for him regarding the arbitration because he had medical issues stemming from a previous brain tumor, surgical rescission, and resulting cognitive effects.

13. Because of Respondent's medical problems, the court did not find Respondent to be in contempt, but a complaint was filed with the State Bar.

14. A letter was sent by the Bar to Respondent on September 15, 2011, requesting a response within twenty days. When no response was received, a letter was sent by the Bar to Respondent on October 13, 2011, requesting a response within ten days. Respondent failed to respond by the new deadline.

15. Shortly thereafter, Respondent called the State Bar and requested a copy of the Bar's screening letter and the initial complaint. An email was sent to Respondent on November 18, 2011 requesting a response by November 23, 2011. No response was received by that date.

16. On November 29, 2011, Respondent emailed Bar Counsel and asked for his phone number. On November 30, 2011, Respondent submitted a written response to the complaint at 6:14 pm.

17. Respondent admitted that he failed to perform his professional duties as an arbitrator.

18. On December 8, 2011 Bar Counsel emailed respondent requesting additional information by December 16, 2011. Respondent did not respond to the email request and did not contact the Bar for an extension.

19. On January 25, 2012, the Bar's investigator served a Subpoena Duces Tecum on Respondent ordering him to produce medical records and appear for deposition on February 2, 2012.

20. Respondent appeared for deposition more than thirty minutes late on February 2, 2012 and produced the requested records.

21. Respondent violated ER 3.4(c) by knowingly disobeying an obligation under the rules of a tribunal when he failed to perform his arbitration duties and failed to appear for an order to show cause hearing.

22. Respondent violated ER 8.1(b) by knowingly failing to respond to a demand for information by the State Bar. Respondent failed to timely respond to multiple requests for information during the investigation.

23. Respondent violated ER 8.4(d) by engaging in conduct prejudicial to the administration of justice when he failed to failed to appear for his Order to Show Cause hearing.

24. Respondent violated Rule 54(d) by failing to meet his obligation to provide timely information to the Bar during the disciplinary investigation.

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 ERs 3.4(c), 8.1(b), 8.4(d) and Rule 54(d).

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: Reprimand and two years probation requiring participation in MAP.

MAP

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at 602-340-7332, within thirty (30) 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 years from that date. Respondent shall be responsible for any costs associated with MAP.

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* 6.23 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 6.23 provides that Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order

or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding. Respondent failed to carry out his duties as arbitrator, failed to appear for an order to show cause hearing and failed to timely respond to the Bar's investigation.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent negligently failed to perform his duties as an arbitrator and failed to appear for an order to show cause hearing and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

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

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(d): Multiple offenses – Respondent failed to carry out his duties as an arbitrator, failed to appear for an order to show cause hearing and failed to timely respond to the Bar's investigation.

In mitigation:

Standard 9.32(a): Absence of prior disciplinary record

Standard 9.32(c): Personal or emotional problems. An explanation of the specific issues faced by Respondent is contained in Respondent's response to the Bar attached as Exhibit C. The parties request that exhibit C be placed under seal.

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: Respondent failed to complete his duties as an arbitrator, failed to appear for an order to show cause hearing and failed to timely respond to the Bar's investigation. However, he claims not to have received actual notice of his appointment as arbitrator or of the order to show cause hearing. Additionally, he has produced evidence of health issues that may have impacted his failings in the past. Participation in the MAP program should address some of the issues with which Respondent has been dealing.

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.

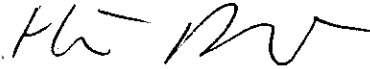
CONCLUSION

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 Reprimand, two years probation with MAP and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 12th day of March, 2012.

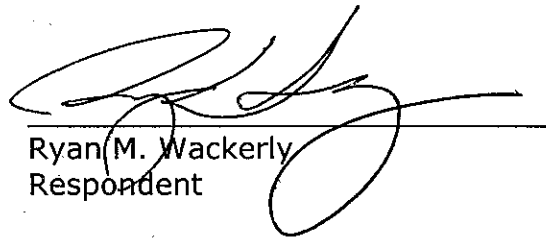
STATE BAR OF ARIZONA



Hunter F. Perlmeter
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.

DATED this 12th day of March, 2012.



Ryan M. Wackerly
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 ~~13th~~_{15th} day of March, 2012.

Copies of the foregoing mailed/emailed
this ~~13th~~_{15th} day of March, 2012, to:

Ryan M. Wackerly
Office of Ryan M. Wackerly
40 North Central Avenue, Suite 1400
Phoenix, Arizona 85004-4436
Email: Wackerlylaw@hotmail.com
Respondent

Copy of the foregoing emailed
this 15th day of March, 2012, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street
Phoenix, Arizona 85007
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 15th day of March, 2012, to:

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

By: *Rodney T. Bruce*
HFP/rtb