

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**BETH H. ZUCKERBERG,**  
**Bar No. 018908,**

Respondent.

**PDJ 2017-9072**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 15-2956]

**FILED OCTOBER 26, 2017**

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on September 25, 2017, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement. Accordingly:

**IT IS ORDERED** Respondent, **Beth H. Zuckerberg, Bar No. 018908** is suspended for two (2) years for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this order.

**IT IS FURTHER ORDERED** upon reinstatement, Ms. Zuckerberg shall be placed on probation for a period of two (2) years.

**IT IS FURTHER ORDERED** within ten (10) days from the date of reinstatement, Ms. Zuckerberg shall contact the State Bar Compliance Monitor at (602) 340-7258. Ms. Zuckerberg shall submit to a Law Office Management

Assistance Program (LOMAP) examination of her office procedures, and a Member Assistance Program (MAP) assessment. Ms. Zuckerberg shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Ms. Zuckerberg shall be responsible for any costs associated with LOMAP and MAP.

**IT IS FURTHER ORDERED** Ms. Zuckerberg shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

**WARNING RE: NON-COMPLIANCE WITH PROBATION**

If Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5). The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, whether to impose 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** pursuant to Rule 72 Ariz. R. Sup. Ct., Ms. Zuckerberg shall immediately comply with the requirements relating to notification of clients and others.

**IT IS FURTHER ORDERED** Ms. Zuckerberg shall pay the costs and expenses of the State Bar of Arizona in the amount of \$ \$1,200.00, within thirty (30) days from the date of order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

**DATED** this 26<sup>th</sup> day of October, 2017.

*William J. O'Neil*  

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

Copies of the foregoing mailed/mailed  
this 26<sup>th</sup> day of October, 2017, to:

Donald Wilson, Jr.  
Broening Oberg Woods & Wilson PC  
P.O. Box 20527  
1122 E. Jefferson  
Phoenix, AZ 85036-0527  
Email: [dwj@bowwlaw.com](mailto:dwj@bowwlaw.com)  
Respondent's Counsel

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)

by: [MSmith](#)

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**BETH H. ZUCKERBERG,**  
**Bar No. 018908**

Respondent.

**PDJ-2017-9072**

**DECISION AND ORDER  
ACCEPTING DISCIPLINE  
BY CONSENT**

[State Bar File No. 15-2956]

**FILED OCTOBER 26, 2017**

Probable cause issued on May 4, 2017 and the formal complaint was filed on June 5, 2017. The parties filed their Agreement for Discipline by Consent filed on September 25, 2017 pursuant to Rule 57(a), Ariz. R. Sup. Ct.

Rule 57 requires admissions be tendered solely “...in exchange for the stated form of discipline...” Under that rule, the right to an adjudicatory hearing is waived only if the “...conditional admission and proposed form of discipline is approved....” If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Ms. Zuckerman has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. The State Bar is the complainant in this matter therefore the notice required by Rule 53(b)(3), Ariz. R. Sup. Ct. is unnecessary.

The Agreement details a factual basis to support the conditional admissions. Ms. Zuckerberg conditionally admits she violated Rule 42, ERs 1.15(a) (safekeeping property) 8.4(c) (engage in conduct involving dishonesty, deceit, fraud or representation) and Rule 43(a) and (b) (trust account). The agreed upon sanctions include a two (2) year suspension and upon reinstatement, two (2) years of probation with the State Bar's Law Office Management Assistance Program (LOMAP) and Member Assistance Program (MAP), and costs totaling \$1,200.00. The conditional admissions are briefly summarized.

Beginning in February 2015, Ms. Zuckerberg overall failed to adhere to guidelines and rules governing her client trust account causing overdrafts of the account. Ms. Zuckerberg admits her client trust account held excessive funds from medical providers who had not cashed their checks, and she borrowed funds from the trust account and transferred those funds into her operating account. Ms. Zuckerberg further admits she treated the trust account monies as loans and misappropriated client trust account funds for approximately nine months. When Ms. Zuckerberg replenished the trust account funds, she comingled client funds with her personal funds and on three occasions converted client funds for her own use.

Rule 58(k) provides sanctions shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, ("*Standards*").

The parties agree the presumptive sanction is disbarment. *Standard 4.1, Failure to Preserve the Client's Property* applies to Ms. Zuckerberg's violation of ER 1.15(a) and provides that disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

*Standard 4.61, Lack of Candor* applies to Ms. Zuckerberg's violation of ER 8.4(c) and provides disbarment is generally appropriate when a lawyer knowingly deceives a client intending to benefit the lawyer or another, and causes serious or potentially serious injury to a client. *Standard 5.11(b), Failure to Maintain Personal Integrity* also applies and provides disbarment is appropriate when a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Ms. Zuckerberg violated her duties to clients and to the public by intentionally withdrawing client trust accounts funds for her own use and negligently failing to maintain accurate trust account records. Her misconduct cause both actual and potential harm to her clients, and actual harm to the public.

The parties agree the following aggravating factors are present in the record: *Standard 9.22(b)* (dishonest or selfish motive), 9.22(d) multiple offenses, 9.22(i) substantial experience in the practice of law, 9.22(k) illegal conduct. The parties agree in mitigation are factors 9.32(a) absence of prior disciplinary record, 9.32(d) timely good faith effort to make restitution or to rectify consequences, 9.32(e) full

and free disclosure to disciplinary board or cooperative attitude toward proceedings, 9.32(g) character or reputation, 9.32(h) physical disability, and 9.32(l) remorse.

Counsel for Respondent supplemented the record with extensive medical records to support the mitigating factor 9.32(h), physical disability. The PDJ commends such proper advocacy for the client. The comments to mitigating factor 9.32(h), however, are clear that issues of physical disability when “offered as mitigating factors in disciplinary proceedings require careful analysis.” Direct causation between the disability and the offense, “must be established.” *See American Bar Association Standards for Imposing Lawyer Sanctions* 9.32(h) cmt.

The Supreme Court in *In re Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004) held that Physical disability is a mitigating factor only if there is a direct causal connection between the physical disability and the misconduct. *Standard* 9.32(h) & cmt. The stronger the connection between the disability and the misconduct, the greater the weight it must be given. Although the medical records support that Ms. Zuckerberg experienced medical issues that caused her to miss work, there is no nexus established that her physical disability caused her to commingle and convert client funds. Therefore, Ms. Zuckerberg’s medical issues will be considered under mitigating factor 9.32(c) personal and emotional problems and weighed accordingly.

The parties further agree that given the significant mitigation present, a reduction in the presumptive sanction of disbarment is appropriate. The agreed upon

sanction is a two (2) year suspension and upon reinstatement, two (2) years of probation (LOMAP and MAP), and the payment of the State Bar's costs and expense totaling 1,2000.00 within thirty (30) days.

Now therefore,

**IT IS ORDERED** accepting and incorporating the Agreement and any supporting documents by this reference. There are no costs incurred by the Office of the Presiding Disciplinary Judge. A final judgment and order is signed this date.

**DATED** this 26<sup>th</sup> October, 2017.

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

COPY of the foregoing e-mailed/mailed  
on October 26, 2017, 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)

Donald Wilson, Jr.  
Broening Oberg Wood & Wilson  
P.O. Box 20527  
1122 E. Jefferson  
Phoenix, AZ 85036-0527  
Email: [dwj@bowwlaw.com](mailto:dwj@bowwlaw.com)  
Respondent's Counsel

by: MSmith

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

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

SEP 25 2017

FILED  
BY 

Donald Wilson, Jr., Bar No. 005205  
Broening Oberg Woods & Wilson PC  
P.O. Box 20527  
1122 E. Jefferson  
Phoenix, AZ 85036-0527  
Telephone 602-271-7717  
Email: [dwj@bowwlaw.com](mailto:dwj@bowwlaw.com)  
Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**BETH H. ZUCKERBERG,  
Bar No. 018908,**

Respondent.

**PDJ 2017-9072**

**State Bar File No. 15-2956**

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

The State Bar of Arizona and Respondent Beth H. Zuckerberg, who is represented by Donald Wilson, Jr., 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 May 4, 2017, and the State Bar filed its formal complaint on June 5, 2017. Respondent did not file an answer and her default became effective on July 25, 2017. Through her former counsel, Respondent thereafter filed a Motion to Set Aside Default, which the court denied on August 14, 2017. Respondent's current counsel entered his appearance for Respondent on August 18, 2017. The court set this matter for an aggravation/mitigation hearing on September 11, 2017, but on September 7, 2017, the State Bar filed a Notice of Settlement.

Respondent 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 admission and proposed form of discipline is approved.

The State Bar is the complainant in this matter; therefore notice of this agreement pursuant to Rule 53(b)(3) is not required.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ERs 1.15(a) and 8.4(c), and Rule 43(a) and (b).

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

Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Suspension for two years; probation for two years upon reinstatement with the State Bar's Law Office Management Assistance Program (LOMAP) to monitor Respondent's trust account compliance and law firm management, and to assure that Respondent employs qualified personnel to help her operate her firm, especially if she is absent for acute medical care; and probation for two years upon reinstatement with the State Bar's Member Assistance Program (MAP) to ensure Respondent gets adequate treatment for her migraine syndrome so her debilitating migraine headaches do not interfere with managing her firm and, more importantly, client funds. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding within 30 days from the date of this order, and if costs are not paid within the 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.

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<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.

## **CAUTION RE: PROBATION**

If Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5). The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, whether to impose 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.

## **FACTS**

### **COUNT ONE of ONE (File no. 15-2956/Trust Account)**

1. Due to Respondent's default, the following facts taken from the State Bar's complaint are deemed admitted.
2. 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 May 16, 1998.

3. On November 4, 2015, Respondent's trust account check number 1522 for \$4,304.68 was presented to her IOLTA (Interest on Lawyer's Trust Account) for payment when the account balance was only \$2,300.00.

4. The bank paid the check and did not charge an overdraft fee, leaving the account with a negative balance of (\$2,004.68).

5. The bank notified the State Bar, and the bar's Trust Account Examiner initiated a conventional trust account investigation.

6. On December 29, 2015, Respondent explained: For a long time her trust account contained excessive funds; medical providers in Respondent's bodily injury cases did not cash their checks. Respondent's firm began to operate at a deficit and, knowing which medical providers' checks were outstanding, Respondent borrowed the corresponding clients' funds from the trust account and transferred those funds to her operating account.

7. Respondent furnished a purportedly full accounting of the borrowed and fully repaid funds.

8. Respondent explained that she had not completed all of the repayments prior to all medical providers cashing their checks, including check number 1522, which unfortunately led to the overdraft.

9. Respondent stated, "I do understand that the trust account is not mine to access;" however, small businesses unfortunately fall on hard times and she made a decision that she thought was in the best interest of her business.

10. Respondent claimed that she treated the funds as a loan, not as personal funds; "I ask the State Bar to understand the predicament that I was in."

11. Respondent added: Her bookkeeper and trusted office manager who reconciled her books through QuickBooks for the prior three years was diagnosed with cancer and had been unable to work for four months. This left Respondent's finances in disarray while she tried to learn bookkeeping and operate her practice but Respondent admitted that she failed to do so within the Bar's guidelines.

12. Respondent's records show that she borrowed trust account funds beginning in February 2015.

13. Respondent admitted that from February to November 2015 she borrowed money from her trust account six times totaling \$18,700.00, and deposited eight repayments totaling \$19,000.00.

14. However, her trust account records did not support that accounting.

15. The transfer of funds from the trust account to the operating account on February 9, 2015 for \$2,500.00 is reflected both on the individual client ledgers

as earned fees from representing two clients, and on the breakdown of borrowed funds. Respondent clarified that the disbursement in question was earned fees for the clients.

16. Likewise, Respondent described check number 1394 for \$2,000.00 as both borrowed funds and as earned fees on a client ledger. Respondent confirmed that these, too, were earned fees.

17. Respondent claimed to have repaid borrowed funds of \$1,000.00 on July 23, 2015.

18. However, the only IOLTA deposit on July 23, 2015, for \$1,000.00 was to correct a bank error in a client matter. Respondent admitted that she mistakenly ascribed the correction to a trust account loan repayment.

19. Respondent claimed to have made a \$7,000 trust account loan repayment on November 17, 2015.

20. However, the trust account records for that day show a deposit of \$9,700.00 from the operating account.

21. Respondent stated that \$8,500.00 was to repay borrowed funds and \$1,200.00 was to replenish accounts for two clients.

22. A deposit on November 12, 2015 for \$1,200.00 was on behalf of the same clients. Therefore, the entire amount of the \$9,700.00 deposit on November 17, 2015, was to repay borrowed funds.

23. Respondent actually borrowed from her trust account \$14,200.00 (Respondent's original amount of \$18,700.00 minus the two payments of earned fees totaling \$4,500 she mistakenly described as loans), and Respondent actually reimbursed to the trust account \$20,700.00 (Respondent's original amount of \$19,000.00 minus the \$1,000 deposit she mistakenly described as a loan repayment plus the additional \$2,700 she mistakenly omitted from her calculation of loan repayments), leaving \$6,500.00 in excess funds in the trust account.

24. The net result is that by borrowing money that wasn't hers Respondent misappropriated client funds in various amounts for approximately nine months; and then, by repaying the loans with too much money, Respondent commingled her personal funds in the trust account.

25. The individual client ledger for client Campos shows a deposit for \$27,500.00; however the only Campos-related deposit actually made was for \$20,626.51.

26. Respondent disbursed \$27,500.00 leaving the client with a negative balance of (\$6,873.49).

27. Respondent explained that the client's case settled for a gross of \$27,500.00 but the liability insurer paid liens of \$6,873.49 directly to the lienholder.

28. Although the settlement check the insurer issued to Respondent was \$20,626.51, Respondent mistakenly recorded the gross settlement amount of \$27,500, and disbursed funds believing that she had to pay the liens.

29. The lienholder realized it had been paid twice and refunded \$6,873.49 to Respondent on July 26, 2016.

30. Upon receipt of the refund Respondent still did not realize she had recorded the initial deposit incorrectly, and disbursed the funds again, claiming she paid 75% (\$4,811.44) to the client and 25% (\$2,062.05) in fees to her firm. Based on her actual records, Respondent is correct about the dollar amounts but wrong about the percentages.

31. Respondent stated that the firm has been operating at a loss and until this bar charge and related trust account examination she had not discovered this error.

32. Respondent added that she now knows that she disbursed \$4,811.44 to the client that was not owed, and this is an error that cannot be corrected but must be absorbed by the firm. However, \$6,873.49 was disbursed from the trust account in error; therefore, Respondent owes that sum to her trust account.

33. The individual client ledger for client Hasanzada shows a \$0.00 unexpended balance; however due to a calculation error the client actually holds a negative balance of (\$2.49).

34. The individual client ledger records the disbursement of check number 1430 for \$23.46; however the actual amount of the check was \$25.46 for a difference of \$2.00, resulting in an inaccurate unexpended balance.

35. The client ledger reflects an outstanding check; when the check is presented for payment the client will hold a negative balance of (\$2.00).

36. Respondent wrote IOLTA check number 1439 on July 24, 2015, for \$660.00, payable to Que Magazine, on behalf of an unknown client. Respondent has no idea why she wrote that check from her IOLTA and admitted that it should have been written from the operating account.

37. Respondent's three-way reconciliations reflect several outstanding deposits totaling \$4,269.29, which are noted on the reconciliation reports as "errors."

38. Respondent explained that while her office manager was on leave for cancer treatment her replacement made a number of bill payments from the wrong account without her knowledge.

39. Respondent was supposed to make the payments from the general account by phone but made them from the IOLTA instead.

40. Respondent identified the errors and admitted that she must replenish her IOLTA.

41. Respondent disbursed \$68.00 from her IOLTA for a service fee that she did not record on the general ledger.

42. Earlier, Respondent deposited \$68.00 in administrative funds into the IOLTA and did record it on the general ledger, creating the discrepancy.

43. Respondent is unable to match \$3,314.07 on deposit at the beginning of the State Bar's trust account examiner's period of review to specific clients.

44. On three occasions, Respondent converted client funds when she disbursed from her IOLTA before depositing the corresponding funds, creating negative client balances.

45. Respondent issued check number 1495 for \$25.00 in earned fees on September 8, 2015, when the client balance was \$0.00. This created a negative balance of (\$25.00), which remained until September 18, 2015, when Respondent deposited \$101.00.

46. Respondent issued check number 1553 for \$1,330.78 on December 1, 2015, but the payment posted to the trust account on November 30, 2015, when the client balance was \$900.00. This created a negative client balance of (\$430.78), which remained until December 4, 2015, when Respondent deposited \$5,000.00.

47. Respondent paid earned fees of \$2,000 on June 2, 2015, with check number 1394. At that time the client had no funds on deposit in the account creating a negative client balance of (\$2,000.00). Respondent made the corresponding deposit on June 4, 2015, for \$15,200.00.

48. Respondent issued check number 1484 for \$110.97 on August 31, 2015, when the client held a zero balance.

49. However, the check did not post to the trust account until after Respondent made the corresponding deposit; therefore other client funds were not converted.

50. The individual client ledgers Respondent provided do not include an unexpended balance.

51. The individual ledger entries do not record the name of the payor of deposited funds or the name of the payee of disbursed funds.

52. Not all of the entries on the client ledgers reflect the date the transaction occurred; others are not listed in chronological order.

53. The general ledger Respondent provided does not record the name of the payor of deposited funds or the name of the payee of disbursed funds, and not all of the entries are in chronological order.

54. The general ledger and individual client ledgers Respondent provided contain ten instances of incorrect disbursement dates and the individual client ledgers reflect three inaccurate deposit dates.

55. The administrative fund balance could not be determined since the administrative funds ledger does not reflect an unexpended balance and includes non-administrative transactions.

56. Also, the administrative funds ledger does not reflect entries for the deposit on August 19, 2015, of \$68.00, or the disbursement on August 27, 2015, of \$68.00 for an account service fee.

57. Respondent's administrative funds ledger reflects the initial disbursement of borrowed funds and the return of said funds, which is also reflected on Respondent's borrowed funds ledger.

58. The items should only be recorded on one ledger to ensure that the total of all client ledgers and administrative funds ledgers reconcile.

59. The administrative funds ledger also reflects entries for the deposit of earned fees on behalf of three clients, which are not reflected as a disbursement on the individual client ledgers.

60. If earned fees are adjusted as administrative funds this should be recorded to avoid inaccurate unexpended balances.

61. Respondent's client ledgers in bodily injury cases contain entries for payments that liability insurers made directly to medical care providers and lienholders.

62. Respondent did not handle those funds or process those payments. The individual client ledgers should contain only transactions that occurred in the

trust account to prevent inaccurate accounting and avoid creating an inaccurate unexpended balance.

63. The total amount of the individual client ledgers shown on Respondent's monthly three-way reconciliations do not match the actual amounts on the ledgers.

64. The three-way reconciliations reflected four checks that were outstanding starting prior to the period of review in the amounts of \$6,500.00, \$.95, \$6.00 and \$.04.

65. Regarding the \$6,500.00 check, Respondent explained that a client was supposed to pay off a loan from her net settlement proceeds, but did not.

66. As a result, in June 2014, Respondent paid the loan for her. Respondent was unable to explain why this was not recorded on the individual client ledger.

67. The client currently does not hold any funds on deposit in the trust account; therefore, if the check is presented for payment this will create a negative client balance.

68. Respondent explained that the outstanding disbursements in the amounts of \$.04 and \$.95 were due to the bank cashing the checks for an amount that differed from what was written on the check.

69. Respondent stated that this has resulted in a small discrepancy that she is trying to note on the reconciliations.

70. Respondent stated that the remaining outstanding disbursement of \$6.00 appears to be an accumulation of similar banking errors.

71. Respondent failed to make corrective entries on the general and individual client ledgers.

72. An additional disbursement of \$69.51 was made in February 2015, at the beginning of the period of review that remained outstanding through the end of the period of review.

73. Respondent failed to void all stale-dated checks and reissue the funds to the appropriate recipient.

### **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 her conduct violated Rule 42, ERs 1.15(a) and 8.4(c), and Rule 43(a) and (b).

### **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 sanctions are appropriate: Suspension for two years, and probation for two years upon reinstatement with LOMAP and MAP, as discussed above.

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.

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. *In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004); *Standard 3.0*.

**The duty violated**

Respondent's conduct violated her duties to her clients and to the public.

**The lawyer's mental state**

The parties agree that Respondent intentionally withdrew IOLTA funds for her own use, and negligently failed to maintain accurate IOLTA records.

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

The parties agree that there was actual and potential harm to Respondent's clients, and actual harm to the public.

The parties agree that the following *Standards* apply:

*Standard 4.11* - Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

*Standard 4.61* - Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potential serious injury to a client.

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

**Aggravating and mitigating circumstances**

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

**In aggravation:**

*Standard 9.22* -- Factors which may be considered in aggravation.

- (b) dishonest or selfish motive;
- (d) multiple offenses;
- (i) substantial experience in the practice of law;
- (k) illegal conduct.

**In mitigation:**

*Standard 9.32* -- Factors which may be considered in mitigation.

- (a) absence of a prior disciplinary record;

Ms. Zuckerberg has no prior disciplinary record. She accepted diversion in another matter, but diversion is an alternative to formal discipline. Rule 56(a).

(d) timely good faith effort to make restitution or to rectify consequences of misconduct;

It is undisputed that Ms. Zuckerberg replenished the trust account. She maintains, and there is no evidence to the contrary, that she did so as soon as she was able.

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

Ms. Zuckerberg has exhibited a cooperative attitude towards these proceedings and has made a full and free disclosure. In the screening stage, when she was self-represented, she freely admitted her misconduct and did not make excuses for it or attempt to rationalize it. She merely asked for understanding. It was only after predecessor counsel was engaged that problems arose and Ms. Zuckerberg's default was entered. She is now bound by all those allegations, even allegations which she might have been able to disprove. Ms. Zuckerberg did not know what was occurring and thought her former lawyer had the matter under control. She should not be considered as having been uncooperative because of the actions of another.

(g) character or reputation;

Ms. Zuckerberg has a good reputation and character. Attached as an attestation to that fact is the Declaration of Robert Schmitt, marked as Exhibit B.

(h) physical disability;

Ms. Zuckerberg had a history of severe migraine headaches for years. This chronic, debilitating medical problem is gradually being brought under control by her physicians, but a severe flare up, sometimes requiring hospitalization, impacted her judgment. Her hospital records from October 2013 through October 2016 are attached as Exhibit C. For the several years prior to the critical February-November 2015 time period, Ms. Zuckerberg sought intermittent medical care at Barrows Neurological Institute. In October 2013 she presented at BNI with severe

dizziness, diagnosed as probable migranous vertigo. She had been taking Citalopram, which is an antidepressant, and Triamterene. That latter drug is utilized to treat Meniere's disease, but that disease was ruled out. She was directed to continue both medications.

Three months later, she had started on Effexor, which is used to treat major depressive disorder and for migraine headaches. That same month, January 2014, she was back at BNI with complaints of vestibular migraines, which is a migraine predominantly featuring dizziness or vertigo. She suffered a fall where she struck her head, and her headaches were worse. During that same time, Ms. Zuckerberg was displaced from her home and moved into temporary housing when her home was found to have mold in it. Her family was then forced to move to another residence, during a period of time when her husband was back and forth to Michigan to visit his ailing father, who ultimately succumbed to cancer in March 2014.

Ms. Zuckerberg next appeared at BNI in September 2014. Although there is a 7 and ½ month gap between hospitalizations, it cannot be said that she was asymptomatic. In fact, the simple truth is that the symptoms she was experiencing were severe enough, in her judgment, to warrant the hospital's intervention. At the time, she was on Propranolol for her migraines and tremors. Unfortunately, Propranolol increases dizziness. She was on Venlafaxine, for migraines and depression, another drug which causes dizziness. Ms. Zuckerberg was also taking Ketorolac and Lortab, as needed, for pain. Lortab, in particular is a powerful drug in the opioid family, and can cause drowsiness and mental clouding. Ms. Zuckerberg was taking only what her treating physicians prescribed and was following their orders. Clearly, they were attempting to find from this medley of drugs something which would give Ms. Zuckerberg relief from her frequent, oftentimes incapacitating, migraine headaches.

It is at this point, in February 2015, that Ms. Zuckerberg first transferred funds from the trust account to the operating account, and it is at this point that she began to experience a dramatic and continuing increase in her migraine symptoms. She transferred funds on six occasions:

February 3, 2015  
February 9, 2015  
April 16, 2015  
April 22, 2015  
June 2, 2015  
November 12, 2015

She has fully and forthrightly admitted these transgressions. But, it bears examining her very active medical situation during this critical time:

- February 18, 2015: Call to BNI with severe migraine for 4 days. (query, how many days before it became severe and was just an intense migraine? Typically the migraine builds from bad to severe within 24 hours.).
- March 31, 2015: Another call to BNI, with migraine for 3 days. Naproxen (a pain reliever and anti-inflammatory), Rizatriptan (for migraines) and Lortab (an opioid pain reliever) were prescribed.

Again, one should not assume that Ms. Zuckerberg is symptom-free between these calls to BNI; on the contrary, the problems were ongoing, and Ms. Zuckerberg only sought help from the hospital when they reached their zenith. Moreover, it seems pellucid that the prescription cocktails being prescribed for Ms. Zuckerberg would adversely impact her ability to concentrate, to be productive and to exercise flawless judgment.

- May 26, 2015: Ms. Zuckerberg presented at BNI with three severe migraines per week, and sedated herself with Vicodin. Yet more drugs are suggested: Botox and Axert.
- June 15, 2015: Ms. Zuckerberg is back at BNI, again reporting a bad migraine headache and dizziness; "she is having really bad headaches." Yet, more drugs are tested on this woman: Decadron, Maxalt, Naratriptan, Fioricet, and occipital nerve blocks.
- June 19, 2015: Ms. Zuckerberg is again at BNI for headaches. She reported that she had only worked two hours since the last (June 15, 2015) visit. She

reported 17 medications. She was administered right and left occipital nerve blocks, right and left auriculotemporal, supraorbital and suprachlear nerve blocks.

- June 22, 2015: Ms. Zuckerberg was seen at Thompson Peak Honor Health, reporting migraine pain of 8 out of 10. She preferred discharge to home rather than admission, after the pain was brought under control with (what else?) drugs.
- June 23, 2015: Ms. Zuckerberg called BNI to report that the migraines persisted and the nerve blocks had not been successful. Now, the hospital is suggesting DHE therapy, which is used to treat cluster migraines, but which also causes dizziness and drowsiness.
- June 24, 2015: Mr. Zuckerberg called BNI for his wife, reporting that her headaches were "unbearable." The pain was reportedly 10 out of 10. She was too confused to be able to discuss her medications. At the advice of BNI, she went to the emergency department at Thompson Peak Honor Health.
- June 24, 2015: Ms. Zuckerberg was admitted at Thompson Peak Honor Health, with a persistent migraine headache, with dizziness and nausea. She was administered DHE.
- June 30, 2015: Ms. Zuckerberg was seen at BNI for headaches. At this appointment, she listed 19 meds. The diagnosis was chronic migraine and medication overuse headache. She was given bilateral occipital and trigeminal nerve blocks.
- September 29, 2015: Ms. Zuckerberg got a 90-day reprieve, but on this day she had been suffering headaches for six days, and presented at BNI. More nerve blocks and Botox injections were administered.
- November 17, 2015: Ms. Zuckerberg contacted BNI and reported she had been bedridden with a migraine for five days. BNI elected to administer DHE.

There were many, many more visits and contacts with healthcare providers which post-date the last entry, above. If deemed relevant, they can be examined in the medical records provided. Suffice it to say, Ms. Zuckerberg has been afflicted with a serious and debilitating medical problem, a problem for which she has sought medical intervention to rectify. This chronic neurological disorder caused distraction, lack of productivity and clouded her judgment. It should be noted that one of the conditions of any future reinstatement is for MAP to monitor her syndrome and assure that she is getting adequate medical treatment and her practice is not suffering.

(l) remorse.

Ms. Zuckerberg is both sorry for and ashamed of her conduct giving rise to this proceeding. She has recognized that the conduct was wrongful and has expressed deep regret and anguish for what she did.

### **Discussion**

The parties conditionally agree that upon application of the aggravating and mitigating factors the presumptive sanction of disbarment should be mitigated to a long-term suspension. Mitigating factors preponderate over aggravating factors, and Respondent's personal and business circumstances caused her to act uncharacteristically. Before Respondent can interact with the public again as a lawyer she will have to participate in formal reinstatement proceedings and, if successful, submit to probationary monitoring for two years. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties

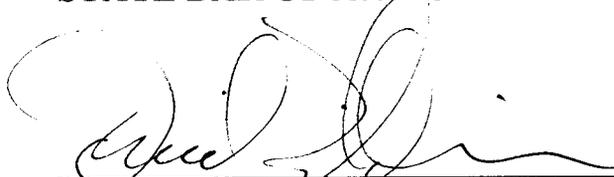
conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

### 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 two-year suspension and probation, and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this 25<sup>th</sup> day of September 2017.

### 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**

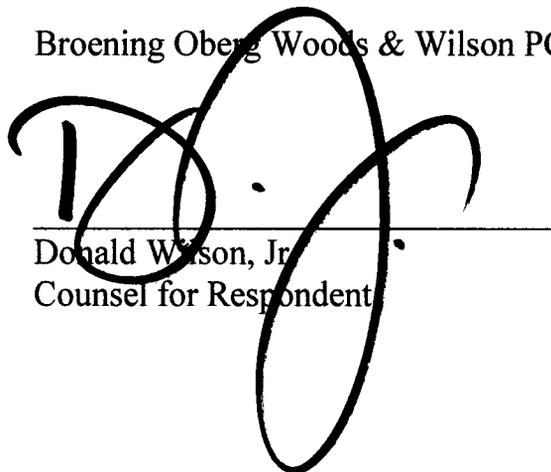
**reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.**

**DATED** this 21 day of September, 2017.

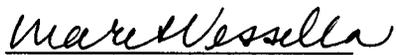
  
Beth H. Zuckerberg  
Respondent

**DATED** this 19 day of September, 2017.

Broening Oberg Woods & Wilson PC

  
Donald Wilson, Jr.  
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 25<sup>th</sup> day of September, 2017.

Copy of the foregoing emailed  
this 25<sup>th</sup> day of September, 2017, 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 25<sup>th</sup> day of September, 2017, to:

Donald Wilson, Jr.  
Broening Oberg Woods & Wilson PC  
P.O. Box 20527  
1122 E. Jefferson  
Phoenix, AZ 85036-0527  
Email: [dwj@bowwlaw.com](mailto:dwj@bowwlaw.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 25<sup>th</sup> day of September, 2017, to:

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> St., Suite 100  
Phoenix, Arizona 85016-6266  
by: Karen E. Calcano  
DLS/kec

**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Beth H. Zuckerberg, Bar No. 018908, Respondent

File No. 15-2956

### 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 A  
CURRENT MEMBER OF  
THE STATE BAR OF ARIZONA,

**BETH H. ZUCKERBERG,**  
**Bar No. 018908,**

Respondent.

**PDJ 2017-9072**

**FINAL JUDGMENT AND  
ORDER**

State Bar No. 15-2956

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, **Beth H. Zuckerberg**, is hereby suspended for two years for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order or \_\_\_\_\_.

**IT IS FURTHER ORDERED** that, if Respondent is reinstated to the practice of law in Arizona, upon reinstatement Respondent shall be placed on probation for a period of two years.

**IT IS FURTHER ORDERED** that if Respondent is reinstated to the practice of law in Arizona, within 10 days from the date of service of the order of her reinstatement Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258. Respondent shall submit to a LOMAP examination of her office procedures, and a MAP assessment. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP and MAP.

**IT IS FURTHER ORDERED** that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

**WARNING RE: NON-COMPLIANCE WITH PROBATION**

If Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5). The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, whether to impose 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 \$ \_\_\_\_\_, 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 September, 2017

---

**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 September, 2017.

Copies of the foregoing mailed/emailed  
this \_\_\_\_\_ day of September, 2017, to:

Donald Wilson, Jr.  
Broening Oberg Woods & Wilson PC  
P.O. Box 20527  
1122 E. Jefferson  
Phoenix, AZ 85036-0527  
Email: [dwj@bowwlaw.com](mailto:dwj@bowwlaw.com)  
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_ day of September, 2017, to:

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

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