

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

DEAN W. O'CONNOR,
Bar No. 011941

Respondent.

PDJ 2018-9111

[State Bar File No. 17-2961]

**FINAL JUDGMENT AND
ORDER**

FILED MARCH 18, 2019

The Presiding Disciplinary Judge, accepted the Agreement for Discipline by Consent filed by the parties on March 11, 2019.

Accordingly:

IT IS ORDERED Respondent, **DEAN W. O'CONNOR, Bar No. 011941**, is suspended for sixty (60) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective April 17, 2019.

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

IT IS FURTHER ORDERED Dean W O'Connor shall participate in the following programs:

Respondent will attend six (6) additional hours of CLE, in addition to the required 15 hours, and bar counsel must approve the CLE prior to Respondent's attendance. These six additional hours shall be completed within the first year of the probationary term. Terms of probation will be created by the State Bar and Respondent will sign the terms prior to his reinstatement. The probation is not subject to early termination.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED Respondent shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,480.00, within thirty (30) days from the date of this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

DATED this 18th day of March, 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed this 18th day of March, 2019, and mailed March 19, 2019, to:

Shauna R. Miller
Senior Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Dean W. O'Connor, Bar No. 011941
Dean W. O'Connor PLLC
5320 N. 16th Street, Suite 205
Phoenix, AZ 85016-3242
Email: Dean@Dean-Oconnor.com
Respondent

by: [AMcQueen](#)

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

DEAN W. O’CONNOR,
Bar No. 011941

Respondent.

PDJ-2018-9111

**DECISION ACCEPTING
DISCIPLINE BY CONSENT**

[State Bar Nos. 17-2961]

FILED MARCH 18, 2019

Under Rule 57(a), Ariz. R. Sup. Ct.,¹ an Agreement for Discipline by Consent (“Agreement”), was filed on March 11, 2019. A Probable Cause Order issued on November 20, 2018 and the formal complaint was filed on March 11, 2019. The State Bar of Arizona is represented by Senior Bar Counsel Shauna R. Miller. Mr. O’Connor is self-represented.

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. Mr. O’Connor has voluntarily waived the right to an adjudicatory hearing, and waived all

¹ Unless otherwise stated all Rule references are to the Ariz. R. Sup. Ct.

motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. Under Rule 53(b)(3), notice of this Agreement and the opportunity to object was sent by letter to Complainant on February 13, 2019. No objection has been filed.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Mr. O'Connor admits violating Rule 42, ER 3.4(b) (fairness to opposing party and counsel) and ER 8.1(a) (knowingly make a false statement of material fact). Upon acceptance of the agreement the parties stipulate to a sixty (60) day suspension, two (2) years of probation upon reinstatement (6 additional hours of continuing legal education), and the payment of costs totaling \$1,480.00 within thirty (30) days of this order. The State Bar agreed to dismiss ER 3.3(c) and ER 8.4(c).

The misconduct is briefly summarized. In 2017, a protective order against his client Mr. Kohner "(client)" was set to expire. The petitioner ("MB") had been a domestic partner of the client for many years, but they had separated. MB sought a new order of protection ("OOP") alleging that the client of Mr. O'Connor was in a neighbor's yard at night trying to see if she was in her house. A hearing was scheduled on the OOP. Prior to the hearing, Mr. O'Connor was talking to his client regarding the OOP petition unaware that the "For the Record" ("FTR") program was recording.

The court recording of the events prove that the client told Mr. O'Connor that he was in the neighborhood and trying to see if the house of the MB was occupied. Mr. O'Connor told his client "I wouldn't even say you were there. She didn't see it, so if you keep your mouth shut..." During the hearing Mr. O'Connor asked his client if he was around the protected person's house. He answered as told by Mr. O'Connor, "No." In his initial response to the state bar inquiry Mr. O'Connor untruthfully said, "I at no time had a conversation before or after the hearing directly with...my client." The petition for the OOP was dismissed after Respondent's client testified he was not there. Respondent's client returned to CB residence necessitating that a second petition be filed.

The parties agree *Standard 6.13, False Statements, Fraud, and Misrepresentations* applies to Mr. O'Connor's violation of ER 3.4(b) and *Standard 7.2, Violations of Other Duties Owed as a Professional* applies to his violation of 8.1(a). The presumptive sanction is suspension. Mr. O'Connor's conduct violated his duty to the profession, the legal system, and the public. His misconduct caused actual and potential harm to the profession, the legal system, and the public.

The parties have stipulated that factors 9.22(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process and 9.22(i) substantial experience in the practice of law are present in aggravation. There are no mitigating factors. The agreement is in accordance with the *Standards*.

Now Therefore,

IT IS ORDERED accepting the Agreement and incorporating it with any supporting documents by this reference. A final judgment and order is signed this date.

DATED this 18th day of March 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed this 18th day of March, 2019, and mailed March 19, 2019, to:

Shauna R. Miller
State Bar of Arizona
4201 N 24th Street, Suite 100
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Email: Dean@Dean-Oconnor.com
Respondent

by: AMcQueen

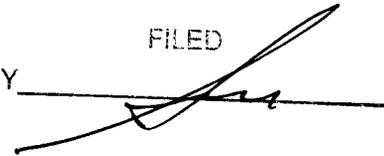
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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAR 11 2019

FILED

BY



Dean W. O'Connor, Bar No. 011941
Dean W. O'Connor PLLC
5320 N. 16th Street, Suite 205
Phoenix, AZ 85016-3242
Telephone 602-956-9555
Email: Dean@Dean-Oconnor.com
Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

DEAN W. O'CONNOR
Bar No. 011941

Respondent.

PDJ 2018-9111
[State Bar File No. 17-2961]

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Dean W. O'Connor, who has chosen not to seek the assistance of counsel, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A formal complaint was filed on November 26,

2018. 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.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant by letter on February 13, 2019. Complainant has been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. The State Bar has not received any objection from Complainant.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 3.4(b), and 8.1(a), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: 60 day suspension and a two-year probation upon reinstatement. 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.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 Arizona, having been admitted on May 21, 1988.

COUNT ONE (File no. 17-2961/Beatrice)

2. Cindy Beatrice ("Ms. Beatrice") and Jeffrey Kohner ("Mr. Kohner") were domestic partners for approximately fifteen years, but separated in 2015.

3. On August 21, 2017, Ms. Beatrice obtained an order of protection (OOP) against Mr. Kohner.

4. The initial OOP was set to expire, so Ms. Beatrice filed to obtain a new order.

5. Respondent represented Mr. Kohner in defending against the renewed order of protection.

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. On September 7, 2017, there was a hearing on the OOP.
7. Respondent appeared with his client, Mr. Kohner.
8. The petition for the OOP includes an allegation that on or about May 18, 2017, Mr. Kohner was in a neighbor's yard at night trying to see if Ms. Beatrice was in the house.
 9. Just prior to the hearing, Mr. Kohner was talking with Respondent about the petition.
 10. Mr. Kohner tells Respondent that he was in the neighborhood because he lives directly behind Ms. Beatrice, but he was not in the neighbor's yard.
 11. Mr. Kohner claims he was on public property and he was trying to see if Ms. Beatrice's house was occupied.
 12. On March 20, 2018, the State Bar received a copy of the court recording, For The Record ("FTR"). There are several places in the transcript that are marked "inaudible" during the conversation between Respondent and Mr. Kohner.
 13. On the FTR, Respondent tells Mr. Kohner that Ms. Beatrice has the burden of proof.

14. On the FTR Respondent tells Mr. Kohner, "I wouldn't even say you were there. She didn't see it, so if you keep your mouth shut...."

15. On the FTR, Respondent explains to Mr. Kohner that if Ms. Beatrice does not have a witness, then it is hearsay and she cannot testify about what the neighbor told her.

16. On the FTR, during direct examination, Respondent asks Mr. Kohner if he was around Ms. Beatrice's house three nights in a row around May 18, 2017; Mr. Kohner says, "No."

17. The OOP was dismissed after Mr. Kohner testified that he was not there.

18. Mr. Kohner returned to Ms. Beatrice's residence on October 1, 2017, and she had to file another petition for an order of protection.

19. In his initial response to the state bar inquiry, Respondent says, "I at no time had a conversation before or after the hearing directly with her or with my client Jeffrey Kohner."

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, ERs 3.4(b), and 8.1(a), Ariz. R. Sup. Ct.

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss ERs 3.3(c) and 8.4(c).

Although Respondent has represented Mr. Kohner for many years, he had not spoken to him specifically about the two incidences alleged in the order of protection until just prior to the hearing. He believed Mr. Kohner when he said he had not been physically present where Ms. Beatrice alleged he was, so he does not believe that Mr. Kohner lied to the court when he said he had not been there, meaning the particular location. However, after reviewing the transcript of the recording (which includes several inaudible words), Respondent understands that by telling his client to just say he was not there because Ms. Beatrice had the burden of proof, he understands that he negligently counseled his client to lie. Therefore, the State Bar conditionally dismisses ERs 3.3(a)(3) and 8.4(c).

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: sixty (60) day suspension and two years for probation. The probation will include the following: Respondent will attend six additional hours of CLE, in addition to the required 15 hours, and bar counsel must approve the CLE prior to Respondent's attendance. These six additional hours shall be completed within the first year of the probationary term. Terms of probation will be created by the state Bar and Respondent will sign the terms prior to his reinstatement. The probation is not subject to early termination. If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

LEGAL GROUNDS IN SUPPORT OF SANCTION

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

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

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

The parties agree that *Standard* 6.13 is the appropriate *Standard* regarding the violation of ER 3.4(b), and *Standard* 7.2 is the appropriate *Standard* regarding the violation of ER 8.1(a).

Standard 6.13 provides that Reprimand is generally appropriate when a lawyer is negligent in determining whether statements are false and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Respondent's failure to determine that his client had committed perjury on the stand caused the order of protection to be denied and Ms. Beatrice had to file another petition a month later based on Mr. Kohner's continued harassment of her.

Standard 7.2 provides that Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system.

Respondent's misstatement to the State Bar that he did not have a "conversation before or after the hearing" with Mr. Kohner, was a violation of his duty as a member of the State Bar.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent negligently advised his client to commit perjury, and he knowingly misrepresented to the State Bar that he did talk to his client just prior to the hearing on the order of protection. 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 and potential harm to the profession, the legal system, the public.

Aggravating and mitigating circumstances

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

In aggravation: *Standard 9.22*

- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (i) substantial experience in the practice of law. Respondent was admitted May 21, 1988, and has practiced law for over 30 years.

In mitigation: *Standard 9.32*

There are no factors in mitigation

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts and circumstances of this case, the presumptive sanction is appropriate. The parties have conditionally agreed that a sixty (60) days suspension serves the purposes of discipline. This agreement was

based on the following: Although violation of ER 3.4(b) does not require a knowing state of mind, the perception that a lawyer has counseled a client to commit perjury is extremely serious. But for the fact that Respondent believed his client when he told Respondent he was not where Ms. Beatrice alleged he was, a long term suspension would have been appropriate. Likewise, but for the fact that there was a recording of what transpired in the courtroom, Respondent's statements to the State Bar would have gone unchallenged, which reflects badly not only on Respondent, but on the entire profession. A sixty day suspension reflects the gravity of Respondent's misconduct.

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 and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this _____ day of March 2019.

STATE BAR OF ARIZONA

Shauna R. Miller
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 17th day of March, 2019.



Dean W O'Connor
Respondent

DATED this 11th day of March 2019.

STATE BAR OF ARIZONA



Shauna R. Miller
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 _____ day of March, 2019.

Dean W O'Connor
Respondent

Approved as to form and content

Maret Vessella

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 11th day of March, 2019.

Copy of the foregoing emailed
this 11th day of March, 2019, to:

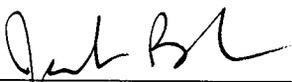
The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 11th day of March, 2019, to:

Dean W. O'Connor, Bar No. 011941
Dean W. O'Connor PLLC
5320 N. 16th Street, Suite 205
Phoenix, AZ 85016-3242
Email: Dean@Dean-Oconnor.com
Respondent

Copy of the foregoing hand-delivered
this 11th day of March, 2019, to:

Lawyer Regulation Records Manager
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4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

by: 

SRM/kec