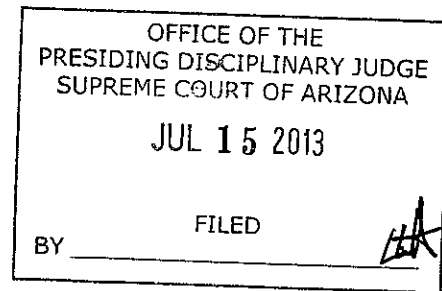


Nicole S. Kaseta, Bar No. 025244
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7386
Email: LRO@staff.azbar.org



Douglas G. Wymore, Bar No. 006513
7114 East Stetson Drive, Suite 350
Scottsdale, Arizona 85251-3245
Telephone: (480) 966-6900
Email: dwymore@q.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,**

**Douglas G. Wymore,
Bar No. 006513,**

Respondent.

PDJ-2013-9032

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar No. 12-2408

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Douglas G. Wymore, who has chosen not to seek the assistance of counsel, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing on the complaint, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER(s) 1.2(a), 1.3, 1.4, 1.16(d), 3.2, and 8.4(d). Upon acceptance of this

agreement, Respondent agrees to accept imposition of the following discipline: Reprimand, followed by one year of probation. The probation shall include participation in the Law Office Management Assistance Program (LOMAP), a Member Assistance Program (MAP) assessment, and compliance with any terms and conditions recommended by 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 October 4, 1980.

COUNT ONE (State Bar File No. 12-2408)

2. In 2011, Terry Jirovsky was attempting to reach an agreement where his business partners would purchase his shares in a business in which Mr. Jirovsky was a former employee.

3. The negotiations also involved the settlement of a wage dispute that arose from Mr. Jirovsky's termination from this business on December 16, 2010. Mr. Jirovsky estimated that the business owed him approximately \$45,000.00 to \$50,000.00 in unpaid wages.

4. If an agreement could not be reached with his business partners, Mr. Jirovsky was considering filing a complaint for unpaid wages against the business

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.

and further intended to request treble damages as part of this claim for unpaid wages.

5. According to Respondent, the statute of limitations on Mr. Jirovsky's claim for treble damages would expire on either December 23 or 30, 2011, depending upon the next payday, which Respondent contends is the statutory deadline for the payment of any deferred wages.

6. On or about October 24, 2011, Mr. Jirovsky met with Respondent to discuss strategies in response to his negotiations with his partners, including the possibility of filing a wage complaint and pursuing a breach of contract claim, or demand for arbitration.

7. Respondent was not directly involved in the negotiations with Mr. Jirovsky's business partners but only provided Mr. Jirovsky intermittent advice on these negotiations when Mr. Jirovsky requested it. Mr. Jirovsky's primary transactional counsel was Mike Montgomery, and Mr. Jirovsky handled most of the negotiations with his partners directly, and not through counsel.

8. In November of 2011, Mr. Jirovsky corresponded with his business partners and sought an increase in the price of his shares from previously discussed amounts, and he told his partners that if an agreement was not reached he would file his claim for unpaid wages and seek treble damages.

9. Mr. Jirovsky and Mr. Wymore met in Mr. Wymore's office on November 21, 2011 to discuss possible strategies for the negotiations.

10. Mr. Jirovsky's business partners sent Mr. Jirovsky an email on November 22, 2011 and stated that they would not offer an increased price. After

receiving this response, Mr. Jirovsky contacted Respondent and asked what his next step should be. Respondent did not respond to the email.

11. On November 28, 2011, Mr. Jirovsky again contacted Respondent and asked what his next step should be. Respondent did not respond to the email.

12. On November 30, 2011, Mr. Jirovsky's business partner emailed Mr. Jirovsky and questioned why Mr. Jirovsky did not respond to his November 22, 2011 correspondence. Mr. Jirovsky forwarded this email to Respondent on December 2, 2011.

13. On December 2, 2011, Mr. Jirovsky's business partner again emailed Mr. Jirovsky and followed up regarding the November 22, 2011 correspondence. Mr. Jirovsky forwarded this email to Respondent.

14. On December 7, 2011, Mr. Jirovsky sent Respondent an email stating: "Are you OK? I have left you several different type messages and NO response." After receipt of that email, Mr. Wymore contacted Mike Montgomery to go over the status of the negotiations.

15. On December 8, 2011, Mr. Jirovsky's business partner stated that they would be willing to negotiate the purchase price of Mr. Jirovsky's shares. Mr. Jirovsky forwarded this email to Respondent and stated: "As you can see, YOU were right..... As you know I spoke with Mike this afternoon . . . I was genuinely worried about you. Glad to hear you are alright Pls contact me at your earliest convenience to discuss our next step."

16. Respondent sent an email to Mr. Jirovsky on December 9, 2011 stating that it is sometimes best to "go silent", apologizing for having been so busy, advising him that they need to proceed cautiously, and stating that he would call

Mr. Jirovsky later that day. Later that day, after Respondent attempted to call Mr. Jirovsky without success, he sent Mr. Jirovsky an email suggesting that he file the wage claim and a notice of arbitration. Respondent further informed Mr. Jirovsky that he needed a signed retainer agreement.

17. On December 14, 2011, Respondent again emailed Mr. Jirovsky and advised that, if Mr. Jirovsky wanted to file the wage complaint, that Respondent would need a check for past services and for the filing fee and drafting of the wage complaint.

18. On December 15, 2011, Mr. Jirovsky sent Respondent an email responding to questions Respondent had raised about the specifics of the wage claim so he could draft a complaint, summarizing the factual background of his wage claim, and asking about the check. Respondent replied on the same date asking for a \$2,000.00 check "which should cover everything to date, including the fee and complaint drafting."

19. Mr. Jirovsky and Respondent met on either December 15, 2011 or December 16, 2011 and Mr. Jirovsky provided the \$2,000.00 check to Respondent.

20. During this meeting, Respondent informed Mr. Jirovsky that he could file the wage complaint within two weeks after the one year anniversary of his termination. Respondent also informed Mr. Jirovsky that they had time after filing the complaint to decide whether to proceed and serve the complaint. Finally, Respondent informed Mr. Jirovsky that he would file the complaint so that the statute of limitations did not bar Mr. Jirovsky's claim for treble damages.

21. Respondent drafted the complaint, and then signed it on December 20, 2011.

22. Respondent never filed the wage complaint.

23. Respondent alleged that he thought he filed the complaint because he prepared the complaint.

24. On January 2, 2012, Mr. Jirovsky advised Respondent that his business partners informed him that they did not want to proceed with the purchase of his shares of the business and asked Respondent what their next step should be and whether it was prosecuting the wage complaint. Respondent replied that he needed a couple of days to think about it.

25. In January of 2012, Mr. Jirovsky also spoke with Respondent on the phone and they discussed prosecuting the wage claim.

26. Respondent did not inform Mr. Jirovsky that he did not file the wage complaint.

27. On January 9, 2012, Mr. Jirovsky followed up with Respondent regarding his January 2, 2012 email asking Respondent for his thoughts on the wage complaint.

28. On January 18, 2012, Mr. Jirovsky again followed up with Respondent.

29. In late January or early February, Mr. Jirovsky and Respondent met but they did not discuss the wage complaint.

30. On February 14, 2012, Mr. Jirovsky sent Respondent another email asking whether there had been any progress. Respondent replied the next day stating "[n]ot yet but I am getting there."

31. On March 5, 2012, Mr. Jirovsky sent Respondent an email again asking Respondent if he had made any progress on the wage complaint that Respondent purportedly filed against Mr. Jirovsky's business partners.

32. On March 14, 2012, Mr. Jirovsky sent Respondent an email stating: "It appears you are too busy with other cases. I give up trying to get you to move forward with my case. . . . Please send me a release and copy of the court 'filing' regarding my wage deferment issue . . . that I believe you filed back in Dec 2011."

33. Respondent did not respond to this email.

34. On May 12, 2012, Mr. Jirovsky sent Respondent a letter stating that he provided Respondent \$2,000.00 "to start litigation" against his former employer relating to deferred wages. Mr. Jirovsky further stated: "The timing of the check had to do with my termination on December 16, 2010. . . and I understood there was a one year period to file any grievances. You told me as long as we got it filed within 2 weeks of that deadline (Dec. 16, 2011) . . . we would be fine. After numerous calls, text and emails. . . I have yet to receive a response." Mr. Jirovsky requested that Respondent forward "any and all files and information you have on this court filing and notes related to our discussions."

35. Respondent did not respond to this letter.

36. On July 27, 2012, Mr. Jirovsky had his new attorney send Respondent a letter threatening to contact the State Bar if Mr. Jirovsky did not receive his file by August 26, 2012.

37. Respondent did not respond to this letter.

38. Respondent stopped communicating with Mr. Jirovsky in approximately February of 2012.

39. On December 3, 2012, however, Respondent sent Mr. Jirovsky a letter enclosing his file and stating "I failed to file the litigation in a timely manner, so no complaint is attached." Respondent further stated: "Because I failed to file it, I am

returning a check for the \$2,000 you paid me, and you may cash it without prejudice to another rights that you feel you have against me due to the failure to file the litigation. . . . If a court determines that your previous employer acted in bad faith by not paying the wages that you claim are due, but rules that you are time barred from making a claim . . . due to my failure to timely file your complaint, I agree to be liable for the excess damage portion that you would have been titled to receive had the claim been made in a timely manner.”

40. Should this matter proceed to hearing, Respondent would testify that only the treble damages portion of Mr. Jirvosky’s wage claim is barred by the one-year statute of limitations. Respondent would further testify that the remainder of the wage claim arose out of contract, would likely be subject to a six-year statute of limitations, and would not be barred by the statute of limitations.

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 1.2(a), 1.3, 1.4, 1.16(d), 3.2, 8.4(d).

CONDITIONAL DISMISSALS

Because of evidentiary issues, the State Bar has conditionally agreed to dismiss the allegation that Respondent’s conduct violated ER 8.4(c).

RESTITUTION

Restitution is not an issue in this matter. On December 3, 2012, Respondent refunded Mr. Jirovsky the fee that Mr. Jirovsky paid him. See Exhibit "B."² On December 11, 2012, Mr. Jirovsky confirmed with the State Bar that he received the refund check and his file from Respondent.

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, followed by one year of probation. The probation shall include participation in the Law Office Management Assistance Program (LOMAP), a Member Assistance Program (MAP) assessment, and compliance with any terms and conditions recommended by MAP.

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ER 1.2(a), 1.3, and 1.4. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude one year from that date. Respondent shall be responsible for any costs associated with LOMAP.

² Respondent intends on filing a motion for protective order requesting that Exhibit "B" be sealed.

MAP

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at 602-340-7334 or 800-681-3057, 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 one year 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* 4.42 applies to Respondent's failure to timely communicate to Mr. Jirovsky his failure to file the wage complaint. *Standard* 4.42 provides that a suspension is generally appropriate when "(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client." The parties further agree that *Standard* 4.43 applies to Respondent's failure to timely file the wage complaint. *Standard* 4.43 provides: "Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client."

The duty violated

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

The lawyer's mental state

Respondent was negligent in failing to file the wage complaint, Respondent knowingly failed to communicate the same to his client, and this 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 client, to the profession, and the legal system.

Aggravating and mitigating circumstances

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

In aggravation:

Standard 9.22(i): Substantial experience in the practice of law: Respondent has been licensed to practice in Arizona since October 4, 1980.

In mitigation:

Standard 9.32(a): Absence of a prior disciplinary record.

Standard 9.32(c): Personal/emotional problems. Attached as Exhibit "B" is a letter summarizing Respondent's personal problems.

Standard 9.32(d): Timely good faith effort to make restitution or to rectify consequences of misconduct. On December 3, 2012, Respondent sent a letter to Mr. Jirovsky admitting that he failed to timely file the complaint, refunding Mr. Jirovsky's fees, and stating that he would be liable for any damages he caused if Mr. Jirovsky decides to proceed with his wage claim in the future but is prevented from doing so because of a statute of limitations defense. Respondent addresses restitution in Exhibit "B."

Standard 9.32(e): Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

Standard 9.32(g): Character and reputation. Attached as Exhibit "B" is a letter in which Respondent summarizes his character or reputation.

Standard 9.32(I): Remorse. On December 3, 2012, Respondent sent a letter to Mr. Jirovsky admitting that he failed to timely file the complaint, refunding Mr. Jirovsky's fees, and stating that he would be liable for any damages he caused if Mr. Jirovsky decides to proceed with his wage claim in the future but is prevented from doing so because of a statute of limitations defense. Respondent addresses his remorse in Exhibit "B."

Discussion

The parties have conditionally agreed that, based on the mitigating factors, a lesser sanction of reprimand is appropriate. This agreement was based on the following: Some of Respondent's conduct was knowing and some of Respondent's conduct was negligent. Even if the knowing *Standard* 4.42 applies, the mitigating factors outweigh the aggravating factors and make a reprimand appropriate. Specifically, the State Bar gives great weight to Respondent's lack of disciplinary history and to Respondent's personal problems which are outlined in Exhibit "B."

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, with one year of probation to include LOMAP, a MAP assessment, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "C."

DATED this 15th day of July, 2013.

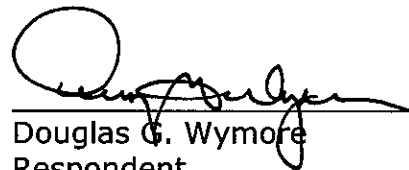
STATE BAR OF ARIZONA



Nicole S. Kaseta
Staff Bar Counsel

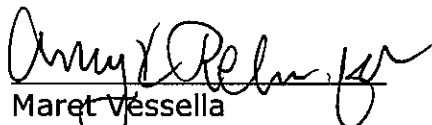
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. [I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property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

DATED this 10th day of July, 2013.



Douglas G. Wymore
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 15th day of July, 2013.

Copies of the foregoing mailed/emailed
this 15th day of July, 2013, to:

Douglas G. Wymore
7114 East Stetson Drive, Suite 350
Scottsdale, Arizona 85251-3245
Email: dwymore@q.com
Respondent

Copy of the foregoing emailed
this 15th day of July, 2013, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 15th day of July, 2013, to:

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

By: Rodney T. Burt
NSK/rb

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

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

**Douglas G. Wymore
Bar No. 006513**

Respondent.

PDJ-2013-9032

FINAL JUDGMENT AND ORDER

State Bar No. 12-2408

FILED JULY 31, 2013

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on July 15, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Douglas G. Wymore**, is hereby reprimanded effective the date of this Order for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that Respondent shall be placed on probation for a period of one year. The probation period is effective the date of this Order and order and will conclude one year from that date.

IT IS FURTHER ORDERED that during probation, Respondent shall also complete the following:

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at (602) 340-7332, within 30 days of the date of this

final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ER 1.2(a), 1.3, and 1.4. The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period is effective the date of this Judgment and Order and will conclude one year from that date. Respondent shall be responsible for any costs associated with LOMAP.

MAP

Respondent shall contact the director of the State Bar's Member Assistance Program (MAP), at (602) 340-7334 or (800) 681-3057, within 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 is effective the date of this judgment and Order and will conclude one year 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.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,200.00. 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 31st day of July, 2013.

/s/ William J. O'Neil

Hon. 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 31st day of July, 2013.

Copies of the foregoing mailed/emailed
this 31st day of July, 2013, to:

Douglas G. Wymore
7114 East Stetson Drive,
Suite 350
Scottsdale, Arizona 85251-3245
Email: dwymore@q.com
Respondent

Copy of the foregoing hand-delivered/emailed
this 31st day of July, 2013, to:

Nicole S. Kaseta
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

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

by: MSmith