

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

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

**RYAN M. WACKERLY,
Bar No. 022077,**

Respondent.

PDJ-2012-9094

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar No. 11-2964]

By Judgment and Order filed March 20, 2012, Respondent was Reprimanded and placed on two years of Probation with the State Bar's Member Assistance Program ("MAP") pursuant to an Agreement for Discipline by Consent for violating Rule 42, Ariz.R.Sup.Ct., specifically ERs 3.4(c), 8.1(b), 8.4(d) and Rule 54(d). The Terms of Probation required Respondent to participate in MAP.

Thereafter, pursuant to Rule 60(a)(5)(C), Ariz.R.Sup.Ct, the State Bar filed a Notice of Non-Compliance with Probation on September 6, 2012 and requested a hearing to determine if an additional sanction should be imposed. The State Bar also filed a Motion to Determine Compliance with Evidence Rules 803(6) and 902(11), Ariz. R. Evid., which was granted. See Order filed October 9, 2012.

On September 12, 2012, notice of the hearing was mailed by the Disciplinary Clerk to Respondent's address of record with the State Bar's Membership Department and an alternate address. The hearing was held on Wednesday, October 10, 2012 at the Supreme Court of Arizona before the Presiding Disciplinary Judge ("PDJ"). Counsel for the State Bar was present, however Respondent did not

appear. The State Bar's Exhibits 1-4 were admitted. The State Bar requested that a suspension of six (6) months and one (1) day be imposed.

FINDINGS OF FACT

1. Respondent was admitted to the practice of law in Arizona on January 7, 2003.

2. An Agreement for Discipline by Consent was filed by the parties on March 12, 2012 for violation of ERs 3.4(c), 8.1(b), 8.4(d) and Rule 54(d). [SB Exhibit 1].

3. By Order filed on March 20, 2012, the PDJ accepted the Agreement for Discipline by Consent. [SB Exhibit 2]

4. A Final Judgment and Order was filed on March 20, 2012 reprimanding Respondent and placing him on probation for a period of two years. The effective date of the Order was April 23, 2012. [SB Exhibit 3]

5. Pursuant to the terms of probation, Respondent was required to contact MAP within 30 days of the date of the final judgment and order and submit to an assessment.

6. Respondent contacted MAP within the prescribed time period and met with Hal Nevitt, former MAP director on May 22, 2012.

7. Respondent's initial report from his counselor was not sufficient to establish specific MAP terms and conditions of probation and Respondent was asked to provide a report and recommendation from his doctor. [Notice of Non-Compliance]

8. On May 23, 2012, MAP forms were sent to Respondent for signature. The MAP forms were not signed by Respondent and not returned to MAP. No

communication was made by Respondent concerning the request. [Notice of Non-Compliance and SB Exhibit 4, Bates SBA000026 -27]

9. On July 17, 2012, Respondent was notified by mail and email that MAP needed additional documentation to develop specific terms and conditions of probation. Respondent was asked to respond by 5:00 p.m., July 30, 2012. [Notice of Non-Compliance and SB Exhibit 4, Bates SBA000028]

10. Respondent failed to respond to MAP's request and there has been no further communication between Respondent and MAP. [Notice of Non-Compliance]

11. On August 31, 2012, MAP notified bar counsel of Respondent's failure to comply with terms of probation. [SB Exhibit 4, Bates SBA000029]

Susan Kayler, Director of the Lawyer Assistance Program ("LAP")

Ms. Kayler certified that the documents in the State Bar's Exhibit 4 reflect regularly conducted activity of LAP staff and are the same as the "original" records maintained by the State Bar in paper or electronic format. The certification complied with the Rules of Evidence and the PDJ determined it was not necessary to present the testimony of witnesses to establish the foundation for those records.

CONCLUSIONS OF LAW

Pursuant to Rule 60(a)(5)(B), a violation of the terms of probation must be proven by a preponderance of the evidence. Here, the Final Judgment and Order required that specific terms & conditions of probation be developed by MAP based on Respondent's signing and returning of the requested MAP forms, releases and an evaluation from his doctor. Respondent failed to respond or comply and violated Rule 54(e) Violation of a Condition of Probation or Diversion.

ABA Standards for Imposing Lawyer Discipline

When imposing a 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, 33, 35, 90 P.3d 764, 770 (2004). See also *Standard 3.0*. Here Respondent violated his duty as a professional. *Standard 7.3* provides:

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

Based on his misconduct, Respondent was reprimanded, placed on probation for two years, and ordered to participate in MAP. Probation is a sanction that allows a lawyer to practice under specified conditions and protection of the public is paramount in attorney discipline matters. Suspension is appropriate when probation has been violated and Respondent has continually failed to respond to the State Bar in the underlying discipline matter and in this non-compliance matter.

Because Respondent has knowingly failed to comply with the terms and conditions of probation (MAP), Respondent shall be required to establish rehabilitation and fitness to practice through formal reinstatement proceedings. Rule 65, Ariz.R.Sup.Ct.

Standard 8.0 addresses sanctions that should be imposed on lawyers who violate the term of a prior disciplinary order. *Standard 8.2* provides:

Suspension is generally appropriate when a lawyer has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.

The legal system and profession are damaged by the refusal of lawyers to comply with the rules.

Aggravating and Mitigating Factors

The PDJ finds aggravating factor 9.22(1) substantial experience in the practice of law and mitigating factor 9.32(c) personal and emotional problems are present. It is because Respondent is experiencing personal and emotional problems (medical issues), a mitigating factor that was also considered in the underlying matter, that the PDJ determined a suspension of six (6) months and one (1) day is the appropriate sanction. In order to protect the public, Respondent must be required to demonstrate rehabilitation and his fitness to practice.

ORDER

1. Respondent is suspended for six (6) months and one (1) day effective immediately.

2. Upon reinstatement, Respondent shall be placed on probation for a period of two (2) years with terms and conditions as set forth in the Agreement for Discipline by Consent filed on March 15, 2012. Additional terms may be deemed appropriate by the PDJ at the time of reinstatement.

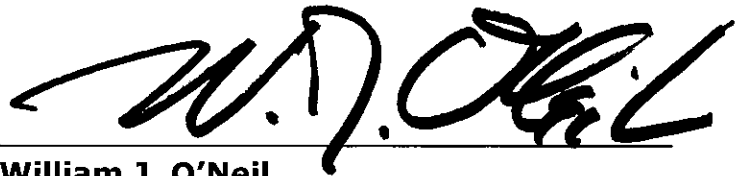
2. Respondent shall comply with all requirements of Rule 72, Rules of the Supreme Court of Arizona.

3. The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct., and a hearing may be held within thirty (30) days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

5. Respondent shall comply with all rule provisions regarding reinstatement proceedings.

6. Respondent shall be assessed costs and expenses of these disciplinary proceedings as provided in Rule 60(b).

DATED this 15 day of October, 2012.



William J. O'Neil
Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk this 15 day of October, 2012.

Copies of the foregoing mailed/emailed
this 15 day of October, 2012, to:

Ryan M. Wackerly
Office of Ryan M. Wackerly
40 N Central Ave Ste 1400
Phoenix, AZ 85004-4436
Email: Wackerlylaw@hotmail.com
Respondent

and

Ryan M. Wackerly
1121 N. 44th Street #1118
Phoenix, AZ 85008

Hunter F. Perlmeter
Bar Counsel
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266
lro@staff.azbar.org

by: 