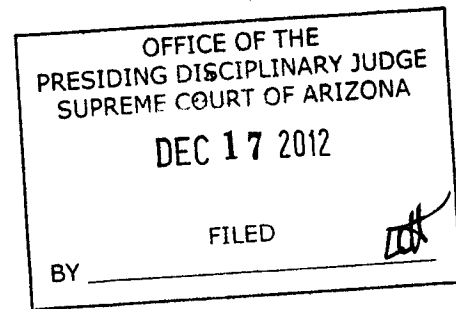


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Respondent

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

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

**Daniel P. Beeks  
Bar No. 012628**

Respondent.

PDJ-2012-9089

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

[State Bar File No. 12-0837]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Daniel P. Beeks, 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, Ariz. R. Sup. Ct., ERs 1.3, 1.4(a)(3), and 8.4(c). Upon acceptance of this

agreement, Respondent agrees to accept imposition of the following discipline: Suspension for six months and one day with the length and terms of probation to be determined upon reinstatement. Respondent requests that the suspension become effective on January 25, 2013, to provide Respondent with sufficient time to notify his clients of the suspension and to transition those clients to other counsel, if needed. The State Bar does not object to this request. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.<sup>1</sup> 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 21, 1989.

#### **COUNT ONE (State Bar File No. 12-0837)**

1. By letter dated March 28, 2012, Respondent self-reported certain alleged misconduct in two cases that he handled while a partner at Sherman & Howard L.L.C. (the Firm). By letter dated the same day, Joseph Bronesky, general counsel for the Firm, also reported Respondent's alleged professional misconduct. The substance of Mr. Bronesky's letter is consistent with that of Respondent.

2. In *Frantal v. Tourism and Sports Authority*, Maricopa County Superior Court Cause No. CV2008-028287, Respondent represented a dentist from Wisconsin who had slipped on water in the restroom during an Arizona Cardinals

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<sup>1</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.

football game and injured his knee. Respondent filed a notice of claim and filed a complaint on November 6, 2008.

3. Respondent failed to file a motion to set the case for trial and it was dismissed for lack of prosecution on October 21, 2009.

4. Sometime in 2010, Respondent determined through the online docket that the case had been dismissed. Respondent did not disclose to the plaintiff, his client, that the case had been dismissed in their subsequent conversations. Instead, Respondent told his client that the case was still proceeding and did so on a number of occasions over the next two years.

5. In *Thwaits et al. v. Aguas et al.*, Maricopa County Superior Court Cause No. CV2010-009154, Respondent represented the plaintiff in a professional negligence case against an investment broker and his broker dealer. Respondent filed the complaint in March 2010.

6. The defendants filed a motion to compel arbitration, to which Respondent filed a response. After the defendants filed a reply, the parties agreed to dismiss the litigation, without prejudice, and to proceed with arbitration before FINRA.

7. In late July 2010, the parties notified the court of the agreement. The court then placed the case on the inactive calendar for dismissal in September 2010, pending the filing of a notice of dismissal as part of the settlement.

8. Over the next few months, the parties exchanged several drafts of the settlement agreement. However, before the parties had finalized the settlement agreement, the court dismissed the case from the inactive calendar on October 1, 2010.

9. After the court dismissed the case, Respondent did not seek to have it reinstated; did not contact defense counsel to finalize the settlement agreement; or file a FINRA arbitration.

10. On several occasions after the case was dismissed, Respondent informed another attorney at the Firm who was working on the case that the arbitration had been filed, but that they were waiting for FINRA to appoint the arbitrators. Respondent knew that the attorney would pass this information on to the client.

11. During the week of March 19, 2012, another attorney in the Firm who was working on the *Thwaits* case requested copies of communications with FINRA from Respondent. At that time, he admitted what had actually happened. The next day, Respondent disclosed the misconduct in both cases to a member of the management committee of the Firm.

### **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 1.3, 1.4(a)(3), and 8.4(c).

### **CONDITIONAL DISMISSALS**

None.

### **RESTITUTION**

Restitution is not an issue in this matter.

## **SANCTION**

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Suspension for six months and one day with the length and terms of probation to be determined upon reinstatement.

### **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 and *Standard* 4.62 are the appropriate *Standards* given the facts and circumstances of this matter.

*Standard* 4.42 provides that 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. In *Thwait's*, having failed to finalize the settlement agreement before the court dismissed the case from the inactive calendar, Respondent did not seek to have the case reinstated; he did not contact defense counsel to finalize the settlement reached by the parties; and he did not file for FINRA arbitration. By failing to take any action, Respondent caused potential and possibly actual harm to his client. And, in *Frantal*, Respondent failed to file a motion to set the case for trial and, as a result, it was dismissed for lack of prosecution. By failing to take action, Respondent caused actual harm to his client.

*Standard 4.62* provides that Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client. Respondent lied to members of the Firm, and his clients regarding the status of the *Thwait's* and *Frantal* matters on more than one occasion and over an extended period of time.

**The duty violated**

As described above, Respondent's conduct violated his duty to his clients.

**The lawyer's mental state**

For purposes of this agreement the parties agree that Respondent knowingly, failed to take any action in the *Thwait's* and *Frantal* matters causing them to be dismissed for lack of prosecution; knowingly lied to members of the Firm, opposing counsel, and his clients regarding the status of the *Thwait's* and *Frantal* matters on more than one occasion and over an extended period of time; and that his conduct was in violation of the Rules of Professional Conduct.

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

For purposes of this agreement, the parties agree that there was actual harm to Respondent's client in the Frantal matter, and potential and possibly actual harm to his clients in the *Thwaits* matter.

### **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(c)*, a pattern of misconduct: In two cases Respondent misrepresented the status of the cases for more than one year.

*Standard 9.22(i)*, substantial experience in the practice of law: Respondent was admitted to the practice of law in Arizona on October 21, 1989. Respondent was a lawyer discipline hearing officer for approximately 10 years.

#### **In mitigation:**

*Standard 9.32(a)*, absence of prior disciplinary record.

*Standard 9.32(c)*, personal or emotional problems: Respondent was suffering from anxiety and depression at the time of the misconduct.

*Standard 9.32(d)*, timely good faith effort to make restitution or to rectify consequences of misconduct: Respondent is fully cooperating with resulting malpractice claims.

*Standard 9.32(e)*, full and free disclosure to disciplinary board or cooperative attitude toward proceedings: Respondent self-reported his misconduct.

*Standard 9.32(g)*, character or reputation.

*Standard 9.32(i)*, mental disability or chemical dependency including alcoholism or drug abuse when; (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely: Respondent is under medical and psychological treatment and is fully complying with the recommendation of his healthcare professionals.

*Standard 9.32(k)*, imposition of other penalties or sanctions: Respondent resigned from his former firm.

*Standard 9.32(l)*, remorse.

### **Discussion**

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: The substantial nature of Respondent's mitigation evidence.

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 suspension for six months and one day with the length and



terms of probation to be determined upon reinstatement and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

**DATED** this 12<sup>th</sup> day of December, 2012.

**STATE BAR OF ARIZONA**

Stacy L. Shuman  
Stacy L. Shuman  
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 \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Daniel P. Beeks  
Respondent

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Counsel for Respondent

Approved as to form and content

Maret Vessella  
Maret Vessella  
Chief Bar Counsel

terms of probation to be determined upon reinstatement and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "B."

DATED this 12<sup>th</sup> day of December, 2012.

STATE BAR OF ARIZONA

Stacy L. Shuman

Stacy L. Shuman  
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 17<sup>th</sup> day of December, 2012.

D. P. Beeks

Daniel P. Beeks  
Respondent

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

N/A

Counsel for 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  
this 17<sup>th</sup> day of December, 2012.

Copies of the foregoing mailed/emailed  
this 17<sup>th</sup> day of December, 2012, to:

Daniel P. Beeks  
*Law Offices of Daniel P. Beeks*  
1411 North 3<sup>rd</sup> Street, Suite 103  
Phoenix, Arizona 85004-1612  
Email: [danbeeks@gmail.com](mailto:danbeeks@gmail.com)  
Respondent

Copy of the foregoing emailed  
this 17<sup>th</sup> day of December, 2012, to:

William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
Email: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)  
[lhopkins@courts.az.gov](mailto:lhopkins@courts.az.gov)

Copy of the foregoing hand-delivered  
this 17<sup>th</sup> day of December, 2012, to:

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

By: *Aiane C. Heller*  
SLS:dch

EXHIBIT "A"

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
Daniel P Beeks, Bar No. 012628, Respondent

File No(s). 12-0837

### 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**

**\$1200.00**

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**

  
\_\_\_\_\_  
**Sandra E. Montoya**  
**Lawyer Regulation Records Manager**

12-3-12  
\_\_\_\_\_  
**Date**

EXHIBIT "B"

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

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

**Daniel P Beeks  
Bar No. 012628**

Respondent.

**PDJ-2012-9089**

**FINAL JUDGMENT AND ORDER**

[State Bar File No. 12-0837]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on December 17, 2012, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** that Respondent, **Daniel P Beeks**, is hereby suspended for six months and one day for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective January 25, 2013.

**IT IS FURTHER ORDERED** that, upon reinstatement, Respondent shall be placed on probation with the length and terms of probation to be determined at the reinstatement hearing.

**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.

**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 \$ \_\_\_\_\_.

**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 \_\_\_\_\_.

**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
**The Honorable 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 \_\_\_\_\_, 2012.

Copies of the foregoing mailed/emailed  
this \_\_\_\_\_ day of \_\_\_\_\_, 2012, to:

Daniel P. Beeks  
*Law Offices of Daniel P. Beeks*  
1411 North 3<sup>rd</sup> Street, Suite 103  
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By: \_\_\_\_\_