

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**GEORGE A. TACKER,
Bar No. 019325,**

Respondent.

PDJ 2014-9030

FINAL JUDGMENT AND ORDER

[State Bar Nos. 12-1032 and 13-0075]

FILED SEPTEMBER 5, 2014

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on August 26, 2014, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **George A. Tacker**, is hereby suspended from the practice of law for two years for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately. A period of suspension of more than six months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona.

IT IS FURTHER ORDERED that Respondent shall participate in State Bar-sponsored fee arbitration with Complainants if they request it, and pay any resulting award within 30 days.

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 \$1,200.60. 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 5th day of September, 2014.

William J. O'Neil

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

Copies of the foregoing mailed/emailed
this 5th day of September, 2014, to:

George A. Tacker
14175 W. Indian School Rd., Ste. B4-522
Goodyear, AZ 85395-8369
Email: gtacker@tackerlaw.com
Respondent

David L. Sandweiss
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by:MSmith

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SUPREME COURT OF THE STATE OF ARIZONA
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1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

GEORGE A. TACKER,
Bar No. 019325

Respondent.

No. PDJ-2014-9030

**REPORT ACCEPTING CONSENT
FOR DISCIPLINE**

[State Bar Nos. 12-1032, 13-0075]

FILED SEPTEMBER 5, 2014

An Agreement for Discipline by Consent filed on August 26, 2014, was submitted pursuant to Rule 57 of the Rules of the Arizona Supreme Court. Pursuant to that rule the parties may tender an agreement regarding a respondent against whom a formal complaint has been filed. Here, a Probable Cause Order was filed on February 26, 2014 and July 17, 2014. The formal complaint was filed on April 4, 2014. Such tender is a conditional admission of unethical conduct in exchange for a stated form of discipline, other than disbarment.

Upon filing such agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate."

Bar Counsel provided notice of this agreement to complainant(s) by letter on August 18, 2014. Included within that letter was a notification of the opportunity for the complainant to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. An objection was filed by the complainant on August 26, 2014, stating that the agreed-upon sanction is insufficient

for the misconduct that occurred and that disbarment and incarceration is the appropriate sanction.

A two year suspension is a significant sanction. Mr. Tacker will be required to submit to formal reinstatement proceedings to be reinstated to the active practice law. He must prove compliance with disciplinary orders, fitness to practice, competence and rehabilitation by clear and convincing evidence. Fee arbitration will further address any issues regarding Mr. Tacker's fees earned or otherwise, and determine if and award of restitution is appropriate.

Complainant states Mr. Tacker in his responses never addressed why he did not show up at the Goodyear court or answer his calls. To prove rehabilitation, Mr. Tacker must first identify the weaknesses that caused the misconduct. *In re Johnson*, 231 Ariz. 556, 558-59, 298 P.3d 904, 906-07 (2013). As importantly, in seeking reinstatement to the practice of law under Arizona Supreme Court Rule 65, Mr. Tacker bears the burden of demonstrating possession of moral aptitude and must prove by clear and convincing evidence rehabilitation and/or an overcoming of the weakness that resulted in the lawyer's suspension. Ariz. R. Sup. Ct. 64(a); see also Ariz. R. Sup. Ct. 65(b)(2).

Accordingly,

IT IS ORDERED incorporating by this reference the Agreement for Discipline by Consent and any supporting documents by this reference. The agreed upon sanctions include the imposition of a two year suspension and participation in fee arbitration upon the clients' request and the payment of costs.

IT IS ORDERED the Agreement for Discipline by Consent is accepted. A proposed final judgment and order was submitted simultaneously with the

Agreement. Costs as submitted are approved in the amount of \$1,200.60. The proposed final judgment and order having been reviewed are approved as to form. Now therefore, the final judgment and order is signed this date.

DATED this 5th day of September, 2014

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 5th day of September, 2014, to:

David L. Sandweiss
Senior Bar Counsel
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Respondent

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Respondent

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

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

**GEORGE A. TACKER,
Bar No. 019325,**

Respondent.

PDJ 2014-9030

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar Nos. 12-1032 and 13-0075

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, George A. Tacker, 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.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainants on August 18, 2014, by letter and email in 12-1032

and by letter and telephone in 13-0075. Complainants have 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.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.1-Competence, 1.3-Diligence, 1.4-Communication, 1.16-Duties on Termination of Representation, 3.1-Frivolous and Non-Meritorious Claims, 3.2-Failure to Expedite Litigation, and 8.4(d)-Conduct Prejudicial to the Administration of Justice. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Long-Term Suspension of two years. A period of suspension of more than six months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona. Respondent also agrees to participate in State Bar-sponsored fee arbitration with Complainants if they request it, and pay any resulting award within 30 days. 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 January 12, 1999.

COUNT ONE of TWO (File no. 12-1032/ Goett)

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.

2. Starting in 2011, Respondent represented Complainant in various Maricopa County Superior Court cases. Those cases included:

a. Complainant's divorce case, *In Re the Marriage of Melissa T. Goett and Vincent W. Goett*, FC2009-054123;

b. A Special Detainer action, *4951 Associates, LLC v. Markers Arroyo Verde, LLC, and Vincent W. Goett*, CV2011-017470;

c. A breach of contract, conversion, fraud and civil RICO suit, *Vincent Goett, et al. v. Turner; Meyers; and Burch & Cracchiolo, P.A.*, CV2011-070058; and

d. A conversion, fraud, aiding and abetting, and civil RICO suit, *Vincent Goett, et al. v. Melissa Turner-Goett; Turner; Meyers; Burch & Cracchiolo, P.A.; and RTBMKS Partnership*, CV2012-070077.

A. FC2009-054123 – The Divorce Case

3. In FC2009-054123, there was a telephonic status conference scheduled for December 12, 2012, on Complainant's pending petition to modify support orders.

4. Opposing counsel appeared by phone but neither Complainant nor Respondent appeared and the court was unable to reach Respondent.

5. The court vacated the hearing, reset it to January 31, 2013, and warned that if Complainant did not appear the matter would be dismissed.

6. The court also assessed \$300 in sanctions against Complainant and Respondent.

7. The court set the matter for Accountability Court on March 6, 2013. The court's minute entry states: "Father must appear in person at the hearing Failure of father to appear at the above date and time may result in a finding of contempt and the issuance of a child support arrest warrant and a judgment may be entered for any additional arrearages." The court's minute entry was endorsed to Respondent.

8. Respondent did not notify Complainant of the March 6 hearing date until March 4, 2013.

9. Complainant was unable to travel from his business in Las Vegas on such short notice to attend the hearing.

10. Respondent also did not tell Complainant that the court might issue an arrest warrant as a consequence of the latter's failure to appear.

11. Respondent did appear at the hearing but the court held Complainant in contempt of court, ordered issuance of a child support arrest warrant, and set Complainant's purge amount at \$10,000 (cash only).

12. Complainant *in pro per* filed a motion for relief from the court's March 6, 2013, order, blaming Respondent for "blind-siding" him, but the motion was denied.

13. On March 29, 2013, the court granted Mrs. Goett's motion to dismiss Complainant and Respondent's claim re: after-discovered community assets, agreeing with Mrs. Goett that the community did not own an undivided interest in a limited partnership at the time the Goetts got divorced, as Complainant and Respondent alleged.

14. The court assessed attorney's fees against both Complainant and Respondent pursuant to A.R.S. §§12-349 (frivolous claims) and 25-324, for \$8,250.00.

15. On May 13, 2013, with Complainant's consent, Respondent was substituted out as Complainant's counsel.

16. New counsel appeared in accountability court and tried to quash the child support arrest warrant.

17. The court declined to quash the warrant and affirmed the \$10,000 cash purge. Complainant later paid the purge and the court quashed the warrant.

B. CV2012-070077 – The RICO, etc. Case

18. In CV2012-070077, Respondent represented Complainant in a suit they filed against Mrs. Goett, her family, and her attorney.

19. The suit asserted claims for conversion, fraud, civil RICO, and aiding and abetting.

20. The suit alleged that the defendants conspired to deprive Complainant of his community interest in home furnishings, a limited partnership, residence, and jewelry purportedly worth \$9M.

21. In the prayer, Complainant and Respondent asked for “not less than” \$4M, \$12M, and \$8M, respectively, in actual, treble, and punitive damages, plus attorneys’ fees. The defendants filed counterclaims.

22. On various motions, the court ordered Complainant to post a bond for security for costs in part because Respondent did not timely file a response to the defendants’ motion requesting that relief.

23. On March 13, 2013, the court struck a portion of the Complaint, dismissed the balance of the Complaint with prejudice, and granted the defendants’ request for attorneys’ fees under A.R.S. §12-349 because all of the claims asserted in the Complaint were unsupported, and were barred by *res judicata* and/or collateral estoppel as a result of prior bankruptcy litigation implicating CV2011-017470, and the divorce litigation in FC2009-054123.

24. The defendants filed applications for attorneys’ fees against Complainant and Respondent.

25. On April 16, 2013, Respondent filed "Plaintiff's Response to Defendants' Motion for Sanctions against Attorney George Tacker" and argued that the court ought not to assess attorneys' fees against him (Respondent).

26. On May 14, 2013, the court denied the defendants' motions for attorneys' fees against Respondent and gave Complainant 10 days by which to respond to the defendants' applications for fees against him.

27. On June 4, 2013, Respondent sent Complainant an email in the middle of which he told Complainant that "the court dismissed all claims" other than the counterclaim against Complainant.

28. Respondent did not explain the significance of dismissal or warn about an appeal deadline.

29. On June 5, 2013, Respondent filed a motion to withdraw as counsel for Complainant because Complainant filed a bar charge against Respondent with the State Bar. In the motion, Respondent claimed that he did not know Complainant's address.

30. Respondent also asked that the court extend Complainant's deadline to respond to the fee applications.

31. However, by June 3, 2013, the court already had signed a Rule 54(b)-certified final judgment (the counterclaim was still pending) dismissing Complainant's complaint and assessing fees and costs against him totaling approximately \$60,000.

32. The judgment against Complainant was entered on June 6, 2013.

33. On July 18, 2013, though, in addition to granting Respondent's motion to withdraw the court also granted Complainant's request to extend the deadline to object to the attorney fee applications.

34. The defendants filed a motion to clarify the deadline extension portion of the court's July 18, 2013, minute entry since it appeared to address an issue that was rendered moot by the judgment signed on June 3 and entered on June 6.

35. Defense counsel called Complainant and told him his claims were dismissed and his appeal deadline had passed.

36. Complainant retained new counsel who filed a response to the motion to clarify. She asserted that Complainant was unaware Respondent filed a motion to withdraw, and that Respondent lied about not knowing Complainant's address.

37. Complainant's motion to clarify also claimed that Respondent did not notify Complainant of the court's May 14, 2013, order giving Complainant 10 days to respond to the attorneys' fees applications, and claimed that Respondent did not notify Complainant of the court's March 13, 2013, order dismissing the Complaint and granting attorneys' fees.

38. Finally, new counsel argued that Complainant was in the dark about the case because Respondent failed to communicate with or return phone calls from Complainant.

39. On August 14, 2013, the court clarified that in its July 18, 2013, minute entry it did not grant additional time for additional filings.

40. The June 6, 2013, judgment is and was final as of the time of the July 18 order.

41. On September 12, 2013, Dennis Wilenchik entered an appearance as counsel for Complainant and on November 4, 2013 filed a motion to vacate judgment.

42. As of the drafting of this complaint, argument on that motion is set for April 9, 2014.

43. Defense counsel issued a subpoena to Respondent to produce records detailing his communications with Complainant regarding the dismissal and appeal deadline.

44. Mr. Wilenchik filed a motion to quash the subpoena.

45. Pursuant to a subsequent stipulation, the parties agreed to have Respondent produce relevant records to Mr. Wilenchik. Mr. Wilenchik was then to produce redacted records to defense counsel, create a log of documents claimed to be privileged that he did not produce, and provide the latter category of documents to an independent third-party.

46. Complainant once owned a home in Paradise Valley, AZ, and had offices in Phoenix and Las Vegas. He was evicted from his Paradise Valley home and moved to Las Vegas in 2011. In July 2013 Complainant asked Respondent for his files and Respondent replied that he did not know Complainant's address.

47. Respondent informed the State Bar during the screening investigation that he did not know Complainant's address.

48. In FC2009-054123 (the divorce case), Respondent filed documents as early as June 2012, stating that Complainant moved to Las Vegas. In a motion Respondent filed in September 2012, he attached an exhibit that expressly listed Complainant's Las Vegas address.

49. In FC2009-054123, by failing to notify Complainant of the December 12, 2012 status conference, failing to appear for the December 12, 2012 status conference, failing to inform the Complainant of the March 6, 2013 Accountability Court date, and failing to notify Complainant that his failure to appear could result in a contempt finding and issuance of an arrest warrant, Respondent failed to act with reasonable diligence and promptness, and failed to communicate reasonably with Complainant, in violation of Rule 42, Ariz. R. Sup. Ct., ERs 1.3 and 1.4.

50. In FC2009-054123, by filing a claim re: after-discovered community assets that the court dismissed and for which the court sanctioned Complainant and Respondent, Respondent asserted frivolous and non-meritorious claims in violation of Rule 42, Ariz. R. Sup. Ct., ER 3.1.

51. In CV2012-070077, Respondent failed to timely file responses that resulted in the court's order that a bond be posted for security for costs, in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.3.

52. In CV2012-070077, Respondent failed to respond, and notify Complainant of a need to respond, to the defendants' motion for attorneys' fees, in violation of Rule 42, Ariz. R. Sup. Ct., ERs 1.3 and 1.4.

53. In CV2012-070077, Respondent failed to inform Complainant of the significance of the dismissal of his claims in the lawsuit against Mrs. Goett and her family; failed to warn Complainant of an appeal deadline; failed to inform Complainant that he had filed a motion to withdraw as counsel; and failed to notify Complainant of the court's order giving him 10 days to respond to the attorneys' fees application, in violation of Rule 42, Ariz. R. Sup. Ct., ERs 1.3 and 1.4.

54. In CV2012-070077, by withdrawing from the representation without notice to the client, failing to apprise Complainant of deadlines and the case status, and by failing promptly to give Complainant his case file, Respondent failed to protect his client's interests in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.16.

55. In CV2012-070077, Respondent filed a complaint containing allegations against Mrs. Goett and her family with no good faith basis in law and fact for doing so, in violation of Rule 42, Ariz. R. Sup. Ct., ER 3.1.

56. In FC2009-054123 (the divorce case) and CV2012-070077, Respondent's conduct burdened the court and justice system and was otherwise prejudicial to the administration of justice in violation of Rule 42, Ariz. R. Sup. Ct., ER 8.4(d).

COUNT TWO of TWO (File no. 13-0075/Ellenberger)

57. In November 2009, Jerry Ellenberger (Complainant) was convicted of DUI in the Goodyear Municipal Court.

58. Complainant hired Respondent to appeal the DUI conviction.

59. Respondent entered his appearance in late February 2010, about 10 days prior to Mr. Ellenberger's sentencing on March 2, 2010.

60. Respondent filed a notice of appeal on the sentencing date. The appeal memorandum was due by May 3, 2010.

61. On April 22, 2010, Respondent filed a motion to continue to extend the deadline for filing the memorandum on appeal.

62. On May 3, 2010, the motion was granted extending Respondent's deadline to June 16, 2010.

63. On June 8, 2010, the court received from Respondent a second motion to continue the deadline for filing the appeal memorandum.

64. Respondent received the trial transcript on or about June 10, 2010.

65. The court granted Respondent a final extension on the deadline to file an appeal memorandum, to June 22, 2010.

66. The court clerk "(c)alled and left message for Def Counsel advising him of new extension date."

67. On June 21, 2010, a court clerk called Respondent's office to remind Respondent that the appeal memorandum was due by 4:30 p.m. the next day, June 22, 2010.

68. Respondent filed the appeal memorandum on June 23, 2010, at 4:30 p.m., a day after the deadline, along with a motion to extend the deadline for filing the appeal memorandum.

69. On June 24, 2010. Respondent filed a non-certified transcript, which did not comply with applicable rules.

70. The court granted Respondent's motion to extend the deadline for filing the appeal memorandum.

71. Respondent did not file the required transcript with the appeal memorandum.

72. A court clerk contacted Respondent's office on July 20, 2010, and left a message informing Respondent that he had two days to provide a certified copy of the transcript.

73. In his appeal memorandum, Respondent raised a claim of ineffective assistance of trial counsel, something that must be raised in a petition for post-conviction relief.

74. In its November 8, 2010, minute entry the court ruled that the claim of ineffective assistance of counsel had to be raised first to the trial court via a petition for post-conviction relief.

75. Respondent, or someone from his office, contacted the Court on July 21, 2010, and informed the clerk that a copy of the certified transcript was being overnighted to him and that it would be filed the next day, July 22, 2010.

76. Respondent did not file the transcript with the Court on July 22nd.

77. On July 26, 2010, Respondent or someone on his behalf appeared at the Court and filed the transcript.

78. The file was transmitted to Superior Court and oral argument was scheduled for September 29, 2010.

79. The oral argument was later continued to November 8, 2010, on Respondent's motion with a comment in the Municipal Court docket that "no further continuances will be granted."

80. The Superior Court affirmed Mr. Ellenberger's judgment of guilt and sentence, and remanded the case to the Municipal Court on November 8, 2010.

81. The minute entry to that effect was filed on November 9, 2010, and was received by the Municipal Court on November 12, 2010.

82. On December 28, 2010, an order scheduling a January 25, 2011, sentencing review to "set up jail and alcohol program" was mailed to Respondent and to Mr. Ellenberger. Mr. Ellenberger was resentenced on January 25, 2011.

83. On February 25, 2011, Respondent filed a motion for stay of execution of sentence and a Criminal Rule 32 motion for post-conviction relief, and requested an evidentiary hearing.

84. Respondent stated that he was unable to file those items before February 25 because Mr. Ellenberger was trying to get a recanting statement from the independent witness in his DUI and did not provide it until February 23, 2011.

85. In March 2011 Mr. Ellenberger failed to report to the jail and fulfill other obligations of his sentence.

86. On March 30, 2011, the Court granted the stay of execution of sentence and set oral argument and an evidentiary hearing for April 11, 2011. A copy of the order was mailed to Respondent.

87. On April 11, 2011, Respondent appeared and made an oral motion to continue the evidentiary hearing and oral argument.

88. The court granted the motion and later set the hearing/argument to April 28, 2011.

89. On April 28, 2011, the hearing commenced but was not concluded and was continued to June 6, 2011, at 9:00 a.m.

90. Respondent was present in the courtroom when the hearing was continued.

91. Mr. Ellenberger appeared for the June 6, 2011, continuation date at 9:00 a.m. but Respondent did not.

92. The Court waited until 10:30 a.m. while Mr. Ellenberger tried several times, unsuccessfully, to contact Respondent.

93. The Court then granted the State's motion to vacate the hearing, denied Mr. Ellenberger's petition for post-conviction relief, and ordered the sentence executed. Mr. Ellenberger was taken into custody.

94. Four days later, Respondent's staff requested a video of the June 6th hearing.

95. On July 11, 2011, Respondent filed a motion to reinstate the Rule 32 hearing or in the alternative to reset it, and requested oral argument.

96. After the State responded to Respondent's motion to reinstate or reset, the Court scheduled oral argument for August 1, 2011. That information was communicated to Respondent by mail, fax and by phone message.

97. On July 22, 2011, Respondent's office confirmed receipt of the messages and confirmed the date and time of the oral argument.

98. The Court denied the motion to reinstate the Rule 32 hearing on August 2, 2011.

99. Respondent filed a notice of appeal on August 12, 2011. The Superior Court later found that Respondent instead should have filed a petition for review pursuant to Rule 32.9(c), Ariz. R. Crim. P.

100. On October 11, 2011, Respondent filed a motion for more time to file the appeal memorandum. However, because the relief sought should have been filed as a petition for review, an appeal memorandum was not an appropriate filing.

101. Respondent's motion was granted and the deadline was extended until November 8, 2011.

102. Respondent filed an opening appeal memorandum on November 2, 2011.

103. In the meantime, Mr. Ellenberger had completed jail time and his home detention (165 days), Respondent had filed or responded to a number of procedural motions on Mr. Ellenberger's behalf, and Respondent had received extensions for a number of his responses as well.

104. Mr. Ellenberger continually asked Respondent and his wife/paralegal for an update on the appeal.

105. Respondent assured him that they were waiting for a court date.

106. Respondent's wife/paralegal regularly responded to Mr. Ellenberger's requests for a status on his appeal by telling him that she would look into it, but did not thereafter provide responsive information to him.

107. Some time prior to January 5, 2012, the State filed a motion to strike Mr. Ellenberger's appeal memorandum based on the fact that the court lacked jurisdiction to hear an appeal as opposed to a petition for review, and that Respondent did not comply with Rule 8, Superior Court Rules of Appellate Procedure-Criminal because his appeal memorandum did not contain a statement of facts or a transcript.

108. Respondent filed a response on January 5, 2012. At that time he also filed another request for an extension to respond to a procedural motion filed by the State. The Court granted a "final extension" until January 6, 2012.

109. Respondent filed his response to the State's motion in the Goodyear Municipal Court when it should have been filed with the Superior Court.

110. The Municipal Court attempted to transfer the filing but the Superior Court would not accept it.

111. A court clerk informed Respondent, by leaving a message at his office, that he had to personally file his response to the State's motion with the Superior Court and that the Municipal Court could not forward it for him.

112. The Superior Court issued its ruling on March 30, 2012. The Court treated the incorrectly-filed appeal as if it had been appropriately styled a petition for review, but denied the petition for review. The Court's findings included the following:

a. Mr. Ellenberger's petition for post-conviction relief was not timely filed. It should have been filed either 90 days from the date on which the lower court imposed judgment, or 30 days from the issuance of the order and mandate.

b. The lower court imposed judgment on March 2, 2010, so the petition should have been filed on May 31, 2010.

c. In the alternative, the Superior Court affirmed the judgment and sentence and remanded on November 8, 2010. Since the Court's action was the equivalent of an order and mandate, the petition could have been appropriately filed within 30 days of that date, on December 8, 2010.

d. Under either scenario, filing the petition for post-conviction relief on February 25, 2011 was untimely.

e. Even assuming the petition was timely filed, the trial court denied the petition on June 6, 2011. Under Rule 32.9, Ariz. R. Crim. P., Mr. Ellenberger had 15 days to file a motion for rehearing, which would have been June 21, 2011, and 30 days to file a petition for review, which would have been July 6, 2011.

f. Respondent, on Mr. Ellenberger's behalf, filed the motion for rehearing on July 11, 2011, and his appeal (treated by the Court as a petition for review) on August 12, 2011. Both were untimely.

113. Because Respondent's filings were untimely, the Court held that it lacked jurisdiction and had to dismiss the appeal/petition for review.

114. The Court also held that having reviewed the trial record, the trial court was correct in dismissing the petition for post-conviction relief. The wording of the

minute entry leaves no doubt, however, that the Court dismissed the appeal/petition for review due to untimeliness.

115. On April 3, 2012, Complainant's case was remanded from Superior Court.

116. The Municipal Court set the matter for a sentencing review regarding Mr. Ellenberger's failure to comply with alcohol counseling.

117. Respondent and Mr. Ellenberger appeared in court on April 17, 2012.

118. In November 2012, Mr. Ellenberger checked the status of his appeal on-line, still believing that they were waiting for a court date and learned that his case had been remanded in April 2012.

119. Although Respondent and Mr. Ellenberger appeared in court in April 2012 regarding Mr. Ellenberger's failure to complete alcohol counseling, Mr. Ellenberger did not fully understand the procedural status of his appeal due to Respondent's failure to adequately communicate with him.

120. By raising a claim for ineffective assistance of counsel in the appeal of Mr. Ellenberger's conviction when such a claim must be raised to the trial court first by petition for post-conviction relief; by miscalendaring the filing date for Mr. Ellenberger's petition for review; by filing a document with the wrong court; by filing an appeal rather than a petition for review; and by failing to file the required transcript with his June 23, 2011 filing despite having received the transcript approximately two weeks earlier, Respondent failed to provide competent representation to Mr. Ellenberger in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.1.

121. By failing to timely file Mr. Ellenberger's petition for post-conviction relief; by failing to file the required transcript and docket with the appeal

notwithstanding that Respondent received the transcript approximately two weeks earlier; by failing to attend court on June 6, 2011, even though he was present in court when the hearing on the petition for post-conviction relief was continued to June 6, 2011, Respondent failed to act with reasonable diligence and promptness in representing Mr. Ellenberger in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.3.

122. By failing to communicate with Mr. Ellenberger after filing the February 25, 2011 appeal, and failing to apprise Mr. Ellenberger of the status of his appeal, Respondent failed to promptly or reasonably communicate with Mr. Ellenberger in violation of Rule 42, Ariz. R. Sup. Ct., ER 1.4.

123. By obtaining multiple continuances and extensions throughout the case, some while the stay of execution of Mr. Ellenberger's sentence was lifted such that Mr. Ellenberger served the active and house-arrest portion of his sentence before the appeal/petition for review was even decided, Respondent failed to make reasonable efforts to expedite litigation consistent with Mr. Ellenberger's interests in violation of Rule 42, Ariz. R. Sup. Ct., ER 3.2.

124. By obtaining numerous continuances and extensions in Mr. Ellenberger's matter, frequently at the last moment, and by filing documents in the wrong court, Respondent's conduct burdened the court and legal system and was otherwise prejudicial to the administration of justice in violation of Rule 42, Ariz. R. Sup. Ct., ER 8.4(d).

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 1.1-Competence, 1.3-Diligence, 1.4-Communication, 1.16-Duties on Termination of Representation, 3.1-Frivolous and Non-Meritorious Claims, 3.2-Failure to Expedite Litigation, and 8.4(d)-Conduct Prejudicial to the Administration of Justice.

CONDITIONAL DISMISSALS

The State Bar conditionally agrees to dismiss the allegations in Count One, CV2012-070077, that Respondent falsely alleged in his June 5, 2013, motion to withdraw as counsel that he did not know Complainant's address, and later failed to correct the false statement, in violation of Rule 42, Ariz. R. Sup. Ct., ER 3.3; that Respondent knowingly claimed in his response to the State Bar's investigation that he did not know Complainant's address, in violation of Rule 42, Ariz. R. Sup. Ct., ER 8.1(a); and that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation when he claimed in his June 5, 2013, motion and in his response to the State Bar that he did not know Complainant's address, in violation of Rule 42, Ariz. R. Sup. Ct., ER 8.4(c).

The State Bar conditionally agrees to dismiss the allegations in Count Two that by repeatedly telling or causing his office staff to tell Mr. Ellenberger that they were waiting for a court date for his appeal even after the Superior Court had denied the appeal and remanded the case to municipal court, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 42, Ariz. R. Sup. Ct., ER 8.4(c).

The State Bar conditionally agrees that the evidence on these allegations conflicts and that, in view of its "clear and convincing" burden of proof, it is fair to dismiss these charges in exchange for this agreement.

RESTITUTION

Restitution is not an issue in this matter. Respondent agrees to participate in State Bar-sponsored fee arbitration with both Complainants and pay any award that may be rendered against him within 30 days.

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: Long-Term Suspension of two years. Respondent also agrees to participate in State Bar-sponsored fee arbitration with Complainants if they request it, and pay any resulting award within 30 days.

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 the following *Standards* are the appropriate ones given the facts and circumstances of this matter:

ER 1.1 (Competence)

Standard 4.53

Reprimand is generally appropriate when a lawyer:

- (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
- (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

ER 1.3 (Diligence) and ER 1.4 (Communication)

Standard 4.42

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.

ER 1.16 (Duties on Termination of Rep.)

Standard 7.2

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.

ER 3.1 (Nonmeritorious Contentions) and ER 3.2 (Failure to Expedite Litigation)

Standard 6.22

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

ER 8.4(d) (Conduct Prej. to Admin. of Justice)

Standard 6.22 (see above)

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent committed the above-described violations with a negligent and knowing mental state.

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 clients, the legal 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*):

(a) prior disciplinary offenses—

- April 2007, 05-1069, Censure (currently Reprimand) and probation (TAEEP one year). Respondent committed a number of trust account violations and failed to respond to the State Bar's requests for information. He violated ERs 1.15, 8.1, and Rules 43, 44 (since repealed), and 53(f).

- March 2009, 07-0303, Informal Reprimand (currently, Admonition) and probation (LOMAP one year). Respondent failed to act diligently on behalf of a client, failed to expedite litigation, failed to comply with discovery requests, and lengthened proceedings through his misconduct in violation of ERs 1.3, 3.2, 3.4, 4.4, and 8.4(d).

- November 2013, 11-1995 and 12-1624, Suspension for six months and one day, probation following reinstatement for two years (LOMAP and CLE), restitution of \$22,000, and compliance with bankruptcy court orders to file certain documents, ERs 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 1.16(d), 3.1, 3.2, 3.4(c), 8.1, and 8.4(d); and Rules 54(c) and 54(d).

- (c) a pattern of misconduct;
- (d) multiple offenses;
- (h) vulnerability of victim;

- (i) substantial experience in the practice of law;

In mitigation (*Standard 9.32*):

- (k) imposition of other penalties or sanctions.

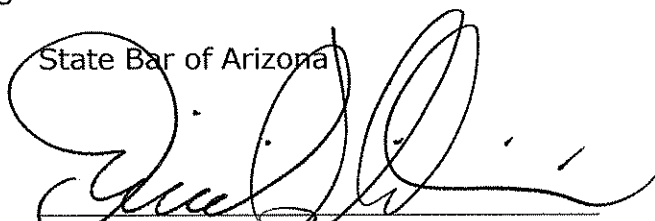
Discussion

The parties conditionally agree that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. Suspension is the presumptive principal sanction and the preponderance of aggravating over mitigating factors compels that the suspension be long-term. 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 fee arbitration, and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit "B."

DATED this 25th day of August 2014.

State Bar of Arizona

David L. Sandweiss
Senior Bar Counsel

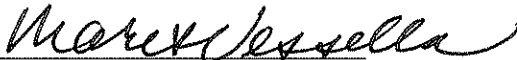
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property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

DATED this 25th day of August, 2014.



George A. Tacker
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 26th day of August 2014.

Copies of the foregoing mailed/emailed
this 26th day of August 2014 to:

George A. Tacker
14175 W. Indian School Rd., Ste. B4-522
Goodyear, AZ 85395-8369
gtacker@tackerlaw.com
Respondent

Copy of the foregoing emailed
this 26th day of August, 2014, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov

Copy of the foregoing hand-delivered
this 20th day of August, 2014, to:

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

by 
DLS: DDS

EXHIBIT "A"

Statement of Costs and Expenses

In the Matter of a Suspended Member of the State Bar of Arizona,
George A. Tacker, Bar No. 019325, Respondent

File Nos. 12-1032 and 13-0075

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.

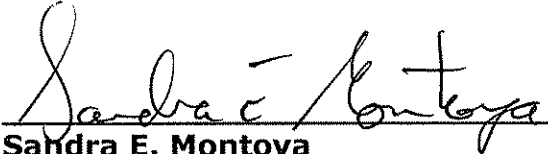
General Administrative Expenses for above-numbered proceedings

\$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

12/06/12	Computer investigation reports, PACER	\$	0.60
	Total for staff investigator charges	\$	0.60
	TOTAL COSTS AND EXPENSES INCURRED	\$	1,200.60



Sandra E. Montoya
Lawyer Regulation Records Manager

8-26-14

Date

EXHIBIT "B"

IN THE
SUPREME COURT OF THE STATE OF ARIZONA
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**George A. Tacker,
Bar No. 019325,**

Respondent.

PDJ 2014-9030

FINAL JUDGMENT AND ORDER

State Bar Nos. 12-1032 and 13-0075

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, **George A. Tacker**, is hereby suspended from the practice of law for two years for his 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 or _____. A period of suspension of more than six months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona.

IT IS FURTHER ORDERED that Respondent shall participate in State Bar-sponsored fee arbitration with Complainants if they request it, and pay any resulting award within 30 days.

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 \$ _____, within thirty (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 thirty (30) days from the date of service of this Order.

DATED this _____ day of August, 2014.

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 August, 2014.

Copies of the foregoing mailed/emailed
this _____ day of August, 2014, to:

George A. Tacker

14175 W. Indian School Rd., Ste. B4-522
Goodyear, AZ 85395-8369
Email: gtacker@tackerlaw.com]
Respondent

Copy of the foregoing emailed/hand-delivered
this ____ day of August, 2014, to:

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

Copy of the foregoing hand-delivered
this ____ day of August, 2014 to:

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

by: _____