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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**HEATH H. MCWHORTER,
Bar No. 021224,**

Respondent.

PDJ 2020-9111

State Bar File No. **19-3208**

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, and Respondent Heath H. McWhorter who is represented in this matter by counsel, Donald Wilson Jr, hereby submit their

Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct.¹ A probable cause order was entered on November 17, 2020. A formal complaint was filed November 23, 2020. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3) notice of this agreement was provided to the complainant by email/telephone on June 9, 2021. Complainant has been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.2(a) and (d), 1.7 (a) and (b), 1.8(a), 1.16(a) and (b), 3.3(a) and (b), 3.4(a) and (c), 3.7(a), and 8.4(c) and (d). Upon acceptance of this

¹ All references to rules are to the Arizona Rules of the supreme Court, unless stated otherwise.

agreement, Respondent agrees to accept imposition of a suspension for nine months. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order. If costs are not paid within the 30 days interest will begin to accrue at the legal rate.² The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

COUNT ONE of ONE (File no. 19-3208/ Ducharme)

FACTS

1. Respondent was licensed to practice law in Arizona on March 19, 2002.
2. In May 2018 Complainant *in pro per* filed a paternity action against Stephanie Ostwald, the mother of their daughter Peyton, to obtain parenting time and legal decision-making. Complainant also represented himself in an Order of Protection case Stephanie filed against him for herself and Peyton. The Superior Court entered an order of protection against Complainant and ordered that he may not have parenting time while that order was in effect.

² 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.

3. In July 2018 Complainant hired Respondent to represent him in the paternity case. The scope of services in the written fee agreement included paternity, legal decision-making, parenting time, and child support. There was a provision to resolve fee disputes through State Bar Fee Arbitration.

4. The agreement also allowed Respondent to stop work and withdraw from the "legal representation and/or case" "without further written consent" if Complainant didn't pay his bill, and "at any time and for any reason permitted under the ethical rules that bind attorneys."

5. Respondent had Complainant sign a separate document entitled "Consent For Withdrawal of Attorney of Record:" that reads: I, ETHAN DUCHARME, consent to the withdrawal of the McWhorter Law Firm, PLLC, and Heath H. McWhorter, as my attorney of records [sic] in this case."

6. Maricopa County Superior Court Judge Dawn Bergin conducted an evidentiary hearing in April 2019 that resulted in a decision adverse to Complainant. Judge Bergin criticized some of Stephanie's behavior but awarded her sole legal decision-making, made her the primary residential parent, and granted Complainant parenting time only if supervised by a qualified agency, with increasing frequency if he complied with drug testing orders.

7. Complainant's income was at issue in the case.

8. On his Affidavit of Financial Information ("AFI") Complainant claimed that he earned \$2,000/mo. On a document Complainant presented to Terros (a drug testing facility) Complainant claimed that he earned \$2,000/mo. On a loan application to buy a \$70,000 Camaro Complainant claimed that he earned \$5,000/mo. Due to his testimonial and discovery evasiveness Judge Bergin ascribed to him a monthly income of \$5,000.

9. Complainant is a self-employed mechanic who buys, fixes, and resells cars. Respondent has a used automobile dealer license in the name Alpha Motors and does business in the name Branch Houston, LLC. After the legal representation began, Respondent authorized Complainant to use Respondent's license to buy and sell cars at auctions until Complainant obtained his own license.

10. Complainant and Respondent made a business deal with specific terms that included:

- a. Complainant was an independent contractor doing business as EZ Swap, LLC for, and not as an employee of, Alpha Motors;
- b. Complainant paid Alpha Motors \$100/mo.;

c. Complainant paid Alpha Motors \$50 for every car Complainant bought for $< \$1,000$;

d. Complainant paid Alpha Motors \$100 for every car Complainant bought for $\geq \$1,000$;

e. Complainant was responsible for and had to pay Alpha Motors all applicable sales taxes (8.5% of the sales prices);

11. Complainant sold some vehicles to Sierra Auctions, which made checks payable to Branch Houston, d/b/a Alpha Motors. Initially, Complainant brought the checks to Respondent who then transferred cash to Complainant. Starting in December 2018, Respondent had Complainant deposit checks issued by Sierra Auctions into Respondent's Branch Houston, LLC bank account at Desert Financial Credit Union, from which Respondent transferred cash to Complainant.

12. Respondent and Complainant signed a document Respondent prepared that Respondent intended to comply with ER 1.8(a). Respondent did not "fully" disclose to Complainant that the business arrangement made Respondent a potential witness for or against Complainant in a case in which Complainant's income was an issue. And, Respondent did not "fully" disclose to Complainant Respondent's ER 3.3 duties to the court if Complainant understated his income.

13. From December 2018 through the April 4, 2019 trial date in the family court case, Complainant deposited into Respondent's Branch Houston bank account \$92,635. From the trial date until Complainant obtained his own dealer license in August 2019, Complainant deposited another \$96,623.85 into Respondent's Branch Houston bank account. All of the deposits represented proceeds of sales of motor vehicles Complainant sold using Respondent's auto dealer license.

14. Under the applicable Rules of Family Law Procedure, Complainant and Respondent were required to disclose all of Complainant's sources of income in a disclosure statement, answers to discovery, and AFI. The only sources of income they disclosed about Complainant's auto sales business, however, were from transactions with Regal Auto Sales and Home Brew Performance, businesses with which Respondent was not affiliated.

15. In an exchange of correspondence leading up to Stephanie's Motion to Compel Discovery, and in his response to that motion, the only auto sales-related income Respondent disclosed for Complainant was from Regal Auto Sales and Home Brew Performance.

16. Through access to his own bank records, Respondent knew he omitted from disclosures, discovery, and Complainant's AFI Complainant's receipts from transactions using the Alpha Motors license.

17. Respondent knew that despite being asked expressly about all sources of income at his deposition, Complainant omitted Complainant's income from transactions using the Alpha Motors license during his sworn deposition testimony.

18. Respondent knew Complainant omitted from his trial testimony Complainant's income from transactions using the Alpha Motors license.

19. Despite knowing of Complainant's foregoing misrepresentations about Complainant's income from transactions using the Alpha Motors license, Respondent did nothing to correct or supplement the disclosures or discovery responses, correct Complainant's misrepresentations, or take other appropriate remedial measures.

20. Respondent had first-hand knowledge from his own business transactions with Complainant that Complainant falsified his income to Stephanie and the court. Respondent collaborated with Complainant to conceal their business arrangement and the gross receipts Complainant earned, thereby depriving

Stephanie and her legal team of the knowledge needed, using discovery, to determine Complainant's self-employment income.

21. Judge Bergin awarded attorney's fees to Stephanie against Complainant, and Stephanie requested about \$28,000 in fees and costs. Eventually the parties negotiated and presented to Judge Bergin, and she approved, a proposed edited stipulated order that Complainant gave up his paternity rights, and had to pay \$6,047 in child support arrears, no ongoing child support, and no attorney's fees.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits that he violated Rule 42, ERs 1.2(a) and (d), 1.7 (a) and (b), 1.8(a), 1.16(a) and (b), 3.3(a) and (b), 3.4(a) and (c), 3.7(a), and 8.4(c) and (d).

RESTITUTION

Restitution is not an issue in this matter. Any fee dispute between Complainant and Respondent is subject to contractual State Bar-sponsored fee arbitration.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, a sanction of a nine-month suspension is appropriate. If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

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 determining an appropriate sanction the Court considers 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. *Standard* 3.0.

The duty violated

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

The lawyer's mental state

Respondent acted with an intentional mental state with respect to some violations and knowingly with respect to others, as more specifically stated below.

The extent of the actual or potential injury

There was actual harm to the client, who did not fare well with Judge Bergin, and to the public--opposing party and counsel were burdened with incomplete information about Complainant's income. The legal system was burdened by Judge Bergin having to address Complainant's failure to comply with mandatory disclosure requirements.

The parties agree that the following *Standards* are relevant:

ER 1.2(a). Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. . . .

Standard 4.43 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.

ER 1.2(d). Scope of Representation and Allocation of Authority Between Client and Lawyer

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Standard 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

ER 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: . . . (2) there is a significant risk that the representation of one or more clients will be materially limited . . . by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client gives informed consent, confirmed in writing, and:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law; and

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Standard 4.32 Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

ER 1.8. Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

* * *

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction

Standard 4.32, above.

ER 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

See *Standard 4.32* above.

ER 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

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 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; . . . or (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or

fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

See *Standard 6.12* above.

ER 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

* * *

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

Standard 6.22 Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

ER 8.4(c). Misconduct

It is professional misconduct for a lawyer to: . . . (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

Standard 5.11 Disbarment is generally appropriate when: . . . (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Or

Standard 5.13 Reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

(**Standard 5.12**, suspension, requires criminal conduct.)

ER 8.4(d). Misconduct

It is professional misconduct for a lawyer to: . . . (d) engage in conduct that is prejudicial to the administration of justice

See **Standards 6.12 and 6.21**, above.

Aggravating and mitigating circumstances

The presumptive sanction 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--

2008, 03-1960, suspended 30 days. Respondent represented a client in a domestic relations case. During the representation he and the client engaged in a personal, intimate relationship. While testifying under oath, the client denied the relationship and Respondent did not take appropriate remedial measures. ERs 1.7, 3.3, 3.4, 4.1 and 8.4.

(b) dishonest or selfish motive;

(d) multiple offenses;

(g) refusal to acknowledge wrongful nature of conduct;

(i) substantial experience in the practice of law (admitted in 2002).

In mitigation: *Standard 9.32*—

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

(g) character or reputation;

(m) remoteness of prior offenses – prior suspension was 12 years ago.

Discussion

The parties conditionally agree that upon application of the aggravating and mitigating factors the presumptive sanction of suspension is appropriate and that the length of suspension should be long-term rather than short-term, such that Respondent will have to apply formally for reinstatement. 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.

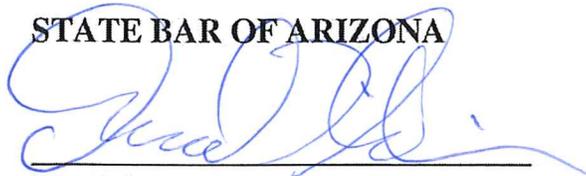
CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. In re *Peasley*, 208 Ariz. 27 (2004). 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 and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this 8th day of June 2021.

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.

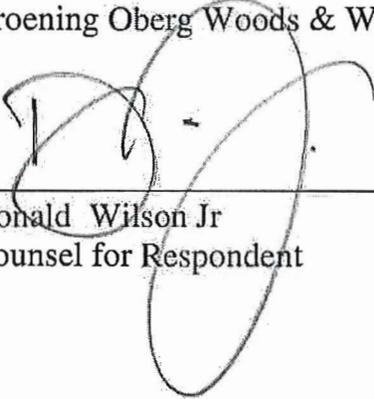
DATED this 8th day of June, 2021.



Heath H. McWhorter
Respondent

DATED this 8 day of June, 2021.

Broening Oberg Woods & Wilson PC



Donald Wilson Jr
Counsel for 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 8th day of June, 2021.

Copy of the foregoing emailed
this 8th day of June, 2021, to:

The Honorable Margaret H. Downie
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/
emailed this 8th day of June, 2021, to:

Donald Wilson Jr
Broening Oberg Woods & Wilson
PC 2800 N CENTRAL AVE STE
1600 PHOENIX, AZ 85004-1047
Email: dwj@bowwlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 8th day of June, 2021, to:

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

by: *Amy Ralston*
DLS/asr

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Heath H. McWhorter, Bar No. 021224, Respondent

File No. 19-3208

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.

Additional Costs

03/02/21	Investigator Mileage	\$ 19.04
03/16/21	Evidence Retrieval: Desert Financial	\$ 177.50
04/01/21	Evidence Retrieval: Wells Fargo	\$ 45.00
06/03/21	Alliance Reporting-Deposition of Heath McWhorter	\$ 798.35
Total for additional costs		<u>\$ 1,039.89</u>

TOTAL COSTS AND EXPENSES INCURRED \$ 2,239.89

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**HEATH H. MCWHORTER,
Bar No. 021224,**

PDJ 2020-9111

**FINAL JUDGMENT AND
ORDER**

State Bar No. 19-3208

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

Accordingly:

IT IS ORDERED that Respondent, **Heath H. McWhorter**, is Suspended for nine months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be subject to any terms of probation imposed as a result of reinstatement hearings held.

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 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 30 days from the date of service of this Order.

DATED this _____ day of June, 2021.

**Margaret H. Downie, 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 June, 2021.

Copies of the foregoing mailed/mailed
this _____ day of June, 2021, to:

Donald Wilson
Broening Oberg Woods & Wilson PC
2800 N CENTRAL AVE STE 1600
PHOENIX, AZ 85004-1047
Email: dwj@bowwlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of June, 2021, 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 June, 2021 to:

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

by:_____

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

HEATH H. MCWHORTER,
Bar No. 021224

Respondent.

PDJ 2020-9111

**DECISION ACCEPTING
AGREEMENT FOR DISCIPLINE
BY CONSENT**

[State Bar No. 19-3208]

FILED JUNE 21, 2021

Pursuant to Rule 57(a), Ariz. R. Sup. Ct., an Agreement for Discipline by Consent was filed on June 8, 2021. A Probable Cause Order issued on November 17, 2020, and the formal complaint was filed on November 23, 2020. The State Bar of Arizona is represented by David L. Sandweiss. Respondent Heath H. McWhorter is represented by Donald Wilson, Jr.

Contingent on approval of the proposed form of discipline, Mr. McWhorter has voluntarily waived the right to an adjudicatory hearing, as well as all motions, defenses, objections, or requests that could be asserted. Pursuant to Rule 53(b)(3), notice of the consent agreement was sent to the complainant(s) by email on June 9, 2021. No objections have been received.

The Agreement details a factual basis to support the conditional admissions and is incorporated by reference. *See* Rule 57(a)(4). Mr. McWhorter admits he

violated Rule 42, ER 1.2(a) and (d) (scope of representation), ER 1.7(a) and (b) (conflict of interest/current clients), ER 1.8(a) (conflict of interest/current clients/specific rules), ER 1.16(a) and (d) (declining or terminating representation), ER 3.3(a) and (b) (candor towards tribunal), ER 3.4(a) and (c) (fairness to opposing party and counsel), ER 3.7(a) (lawyer as a witness), ER 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and ER 8.4(d) (conduct prejudicial to the administration of justice). As a sanction, the parties agree to a nine-month suspension and the payment costs in the sum of \$2,239.89 within 30 days.

Mr. McWhorter represented a client in a paternity matter. He conditionally admits that he failed to comply with mandatory disclosure requirements regarding his client's income and subsequently entered into a business arrangement with his client that made Mr. McWhorter a potential witness in the case. Mr. McWhorter knowingly failed to disclose income his client received through their business arrangement and failed to correct his client's misstatements about his income.

Mr. McWhorter conditionally admits that he knowingly, and in some instances, intentionally violated his duty to his client, the legal profession, the legal system and the public. His conduct caused actual harm. The parties stipulate that the presumptive sanction is suspension under §§ 4.32, 6.12, 6.22 and 7.2 of the ABA *Standards for Imposing Lawyer Sanctions* ("ABA Standards").

The parties stipulate to the existence of aggravating factors 9.22(a) (prior disciplinary offenses), 9.22(b) (selfish or dishonest motive), 9.22(d) (multiple offenses), 9.22(g) (refusal to acknowledge wrongful nature of conduct), and 9.22(i) (substantial experience in the practice of law). The parties further stipulate to the existence of mitigating factors 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude towards proceedings), 9.32(g) (character or reputation), and 9.22(m) (remoteness of prior offenses).

Although a lengthier term of suspension is arguably appropriate for the admitted misconduct, Mr. McWhorter will be required to apply for reinstatement and demonstrate rehabilitation before once again being permitted to practice law.

IT IS ORDERED accepting the Agreement for Discipline by Consent. A final judgment and order is signed this date.

DATED this 21st day of June 2021.

Margaret H. Downie

Margaret H. Downie

Presiding Disciplinary Judge

COPY of the foregoing e-mailed
on this 21st day of June 2021 to:

David L. Sandweiss
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
Email: LRO@staff.azbar.org

Donald Wilson, Jr.
Broening Oberg Woods & Wilson, PC
2800 N. Central Avenue, Suite 1600
Phoenix, AZ 85004-1047
Email: dwj@bowwlaw.com

by: MSmith

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

HEATH H. MCWHORTER,
Bar No. 021224

Respondent.

PDJ 2020-9111

FINAL JUDGMENT AND ORDER

State Bar No. 19-3208

FILED JUNE 21, 2021

The Presiding Disciplinary Judge accepted the parties' Agreement for Discipline by Consent submitted pursuant to Rule 57(a), Ariz. R. Sup. Ct.

IT IS ORDERED that Respondent, **HEATH H. MCWHORTER, Bar No. 021224**, is suspended from the practice of law for nine months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents. The suspension is effective 30 days from the date of this order.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be subject to any terms of probation imposed as a result of reinstatement hearings held.

IT IS FURTHER ORDERED that pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses of the State Bar of Arizona in the amount of \$2,239.89, within 30 days from the date of service of this order. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

DATED this 21st day of June, 2021.

Margaret H. Downie

Margaret H. Downie

Presiding Disciplinary Judge

Copies of the foregoing emailed
this 21st day of June, 2021, to:

Donald Wilson
Broening Oberg Woods & Wilson PC
2800 N. Central Avenue, Suite 1600
Phoenix, AZ 85004-1047
Email: dwj@bowwlaw.com
Respondent's Counsel

David L Sandweiss
Senior Bar Counsel
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4201 N 24th Street, Suite 100
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Email: LRO@staff.azbar.org

by: MSmith