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Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MARK D. SVEJDA,  
Bar No. 011116,**

Respondent.

**PDJ 2020-9093**

State Bar File No. **19-2468**

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

The State Bar of Arizona, and Respondent Mark D. Svejda who is represented in this matter by counsel, Gary Lester Stuart, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on August 31, 2020. A formal complaint was filed October 13, 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.

The State Bar is the complainant in this matter, therefore no notice of this agreement is required pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.7(a)(2) and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **sixty (60) days Suspension** and upon reinstatement shall be placed on one (1) year Probation. 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.<sup>1</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

## **FACTS**

### **GENERAL ALLEGATIONS**

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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.

1. Respondent was licensed to practice law in Arizona on October 25, 1986.

**COUNT ONE (File no. 19-2468/State Bar of Arizona)**

2. This lawyer discipline matter stems from a ruling in a case related to the “Mortgages Ltd.” scandal. Mortgages Ltd. (“ML”) was one of Arizona’s largest commercial lenders. It crashed in a \$1 billion collapse that left investors broke and various high-profile real estate projects unfinished and/or in foreclosure. Its CEO, Scott Coles, committed suicide in 2008. A slew of lawsuits ensued, including civil suits by various investor groups, and fraud prosecutions by regulators.

3. One of the investor suits was against Mortgages Ltd.’s professionals at Quarles & Brady (QB) and Greenberg Traurig (GT), brought by a subset of investors called the “Ashkenazi” group, formed by Joe Baldino. Respondent’s wife, Eva Sperber-Porter, managed two investor entities that were part of this group: Baseline & Val Vista Associates, LP (“Baseline”) and Litchfield Road Associates, LP (“Litchfield”).

4. The Ashkenazi group filed suit against QB and GT. The group had been formed with certain governing documents regarding the rights of members and how decisions were to be made and binding on the group.

5. The Ashkenazi group reached a settlement with GT for \$12 million. Baldino, Sperber-Porter and other investors opposed the settlement, but they were outvoted. Members of the Ashkenazi group then sought to enforce the settlement against Baldino, Sperber-Porter and her related entities, including Baseline and Litchfield.

6. In February, 2014, some members of the Ashkenazi group (the “Ashkenazi Plaintiffs”) sued Baldino, Sperber-Porter, and her related entities, including Baseline and Litchfield, for breaching their contract with the Ashkenazi Plaintiffs. On June 20, 2016, Judge Roger Broadman entered summary judgment in favor of the Ashkenazi Plaintiffs on their breach of contract claim against Baldino, Sperber-Porter and her related entities, including Baseline and Litchfield. On January 9, 2019, Judge Brodman entered final judgment in favor of the Ashkenazi Plaintiffs, and awarded delay damages of ~\$3.9 million, which is interest that would have accrued if the \$12 million settlement had been paid when it was reached, plus attorneys’ fees and costs. Baldino, Sperber-Porter and her related entities timely appealed to the Arizona Court of Appeals.

7. In conjunction with the appeal, Sperber-Porter sought to post a bond to stay execution on the Judgment. In accordance with Ariz. R. Civ. App. P. 7, on

February 7, 2019, Judge Brodman conducted a hearing to determine the amount of the bond to be posted by Sperber-Porter to stay execution of the Judgment. Sperber-Porter and Respondent testified at the hearing. Both Respondent and Sperber-Porter testified that on January 30, 2017, Sperber-Porter caused the family homestead property to be transferred from Sperber-Porter's sole and separate property to Respondent and Sperber-Porter, husband and wife as community property with right of survivorship. Respondent believed that the transfer was proper in accordance with Arizona law as set forth in A.R.S. Section 44-1001(b)(1), *Ferguson v. Roberts*, 64 Ariz. 357, 361 (1946); *Luhrs v. Hancock*, 6 Ariz. 340, 345-46 (1899) and *In re Rocca*, 404 B.R. 531, 547-48 (Bankr. D. Ariz. 2009). Judge Brodman did not accept Sperber-Porter's and Respondent's position. On February 8, 2019 Judge Brodman ruled that the transfer of the homestead property was ineffective for determining the value of Sperber-Porter's assets. As a result, Judge Brodman included the value of the homestead property in calculating the amount of the bond.

8. The original settlement with GT worked its way through the trial court and the appellate courts, with the end result that the \$12 million settlement with GT was approved.

9. During the course of the ongoing litigation between the Ashkenazi Plaintiffs and Baldino, Sperber-Porter and her related entities, assets of ML were sold and the sales proceeds were distributed to investors in ML. Distributions of this money were processed through an entity named “ML Manager” in accordance with approval from the Bankruptcy Court that supervised the bankruptcy of Mortgages Ltd. Nine (9) distributions had been made. On September 28, 2018, before the 10th distribution was made, ML Manager filed a motion to have the 10th distribution interpleaded into the clerk of the court in the case over which Judge Brodman presided.

10. Sperber-Porter objected to ML Manager’s interpleader motion. On October 25, 2018, Judge Brodman granted ML Manager’s motion and ordered that the 10th distribution be deposited with the clerk of the court. On October 26, 2018, the parties, including Sperber-Porter, filed a stipulation agreeing that ML Manger would deposit the 10th distribution with the clerk of the court.

11. While the motion to interplead was pending, however, on October 9, 2018, \$82,844.87 was mistakenly paid to Baseline and Litchfield by checks, which were accepted and negotiated. Respondent believed that the payments were not

mistakenly made and that ML Manager had a duty to make the distributions to Baseline and to Litchfield.

12. Then, on October 16, 2018, Baseline and Litchfield paid \$82,000 to Respondent by two checks, for services rendered from January 2013 – December 2017 in a different, but related, matter. These checks were signed by Sperber-Porter on behalf of Baseline and Litchfield and accepted by Respondent at a time after (1) Judge Brodman had entered summary judgment against Sperber-Porter, Baseline and Litchfield on the Ashkenazi Plaintiff's breach of contract claim, (2) Baseline and Litchfield had no ongoing business, and (3) a motion was pending to interplead the payment to the Superior Court.

13. ML Manager subsequently filed a motion for contempt regarding Baseline's and Litchfield's failure to return the money that was erroneously distributed to them by ML Manager. An evidentiary hearing was held on August 26, 2019, at which Respondent testified.

14. Judge Brodman applied the clear and convincing evidence standard and made certain findings, including:

Ms. Sperber-Porter controls at least 99 percent of the Partnerships. Ms. Sperber-Porter signed the checks to Mr. Svejda. The Court finds by clear and convincing evidence that Ms. Sperber-Porter made the decision to pay the 10<sup>th</sup> Distribution Partnership monies to her husband.

Well before the Partnerships made the payments to Mr. Svejda, the Court had entered a ruling in plaintiffs' favor that would result in a judgment of at least \$4 million against Ms. Sperber-Porter's separate assets and the Partnerships. By October 16, 2018, plaintiffs had submitted an application for attorneys' fees and costs for nearly \$1.9 million, and final judgment was around the corner waiting on the Court to rule on the attorneys' fees application. In other words, although no one knew the exact amount, Ms. Sperber-Porter, the Partnerships and Mr. Svejda all knew that a multimillion dollar judgment was going to be entered within a few weeks.

The Partnerships have no ongoing business and have not operated since 2008. As a result, the Partnerships had no money before they received the 10<sup>th</sup> Distribution. And the Partnerships have no money now that their accounts were emptied by payments to Mr. Svejda. Ms. Sperber-Porter's decision to use the Partnerships' 10<sup>th</sup> Distribution money to pay to her husband rendered the Partnerships insolvent. The Partnerships allege their poverty prevents them from complying with this Court's Order.

15. Judge Brodman noted that, with respect to payments for Respondent's legal services for Baseline and Litchfield, the recent payments were not consistent with past practices. For example, in June of 2013, the entities had received distributions of ~\$270,000, and Respondent was owed \$24,000 at that time. Respondent's outstanding fees were not, however, paid when the entities had those prior infusions of cash.

16. Likewise, the entities received an additional ~\$90,000 in November of 2013, when Respondent's outstanding fees were \$28,000, and he had not been paid for over eight months. Respondent was not paid then, either. Respondent's bills



accrued and went unpaid for five years, until Baseline and Litchfield received the 2018 ML Manager distributions.

17. Respondent received payment of \$82,000 from Baseline and Litchfield on October 16, 2018. At that time Respondent was aware that summary judgment had been entered in favor of the Ashkenazi Plaintiffs and against Baseline and Litchfield and that ML Manager had filed a motion to interplead the funds from the 10<sup>th</sup> Distribution.

18. After hearing Respondent testify, Judge Brodman concluded, inter alia:

In short, there is no evidence of a course of dealing in which the Partnerships used ML Manager distributions to pay Mr. Svejda's bills -- at least until the instant situation where payment was hurriedly made with the application for an interpleader pending and a multimillion dollar judgment around the corner. The instant transfer was not the payment of a legitimate debt owed by the Partnerships.

Fourth, in assessing the merits of this transaction the Court turns to fraudulent transfer law for guidance. Clear and convincing evidence demonstrates that Ms. Sperber-Porter's transfer to her husband was a fraudulent transfer. A transfer is fraudulent as to a creditor "if the debtor made the transfer or incurred the obligation. . .with actual intent to hinder, delay or defraud any creditor of the debtor." A.R.S. § 44-1004(A)(1). The UFTA identifies 11 specific factors that may be considered (among other factors) in determining "actual intent."

Here, considering the enumerated factors identified in § 44-1004(B), the evidence supports the finding of fraudulent transfer. The transfers left the Partnerships insolvent. The transfer of the \$82,000 was to Mr. Svejda, an insider and Ms. Sperber-Porter's husband. *See* (B)(1). Because money paid to her husband was presumptively community property, Ms. Sperber-Porter retained possession or control of the property transferred after the transfer. *See* (B)(2). Before the transfer of the \$82,000 was made, Ms. Sperber-Porter was aware that she and the Partnerships would owe plaintiffs a great deal of money. The transfer of the \$82,000 was made after a ruling against the Partnerships, and a multimillion dollar judgment was within several weeks. *See* B(4) and B(10). A motion to interplead the funds was pending. *Id.* The transfers were of all of the Partnerships' assets. *See* (B)(5). The Partnerships have no ongoing business and have not generated any significant revenues since the payments were made. As noted in the Pretrial Statement, the Partnerships have not been operating since about 2008. Pretrial ¶ 2; *see* (B)(9). The transfers were not consistent with the Partnerships' handling of past distributions. Until the 10<sup>th</sup> Distribution, Ms. Sperber-Porter never felt the need to pay her husband's legal fees (some of which went back to 2013). Thus, there was no legitimate business need to pay Mr. Svejda's fees and the consideration received was not equivalent to the value of the asset transferred. *See* B(8). Finally, Ms. Sperber-Porter's past conduct demonstrates a history of financial "shenanigans" in an attempt to avoid payment of debts. *See* B(7). The instant situation is another example of that behavior.

19. Respondent did not agree with the factual findings set forth in Judge Brodman's Orders. However, since Respondent was not a party to the litigation, he had no right to appeal Judge Brodman's Orders to the Arizona Court of Appeals.

20. Judge Brodman found Sperber-Porter, as the manager of Baseline and Litchfield in contempt, and referred Respondent to the Bar. Thereafter, the \$82,000

that was paid to Respondent was deposited with the Clerk of the Superior Court, thereby purging the contempt citation.

21. On March 31, 2020, the Arizona Court of Appeals, in a Memorandum Decision, reversed the decision of Judge Brodman and vacated the Judgment entered in favor of the Ashkenzai Plaintiffs granting them delay damages of approximately \$3.9 million against Baldino, Sperber-Porter, Baseline and Litchfield. The Ashkenazi Plaintiffs then filed a Petition for Review to the Arizona Supreme Court. On January 15, 2021, the Arizona Supreme Court denied the Ashkenazi Plaintiffs' Petition for Review and affirmed the decision of the Court of Appeals vacating the Judgment against Baldino, Sperber-Porter, Baseline and Litchfield.

### **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, Ariz. R. Sup. Ct., specifically ERs 1.7(a)(2) and 8.4(d).

### **CONDITIONAL DISMISSALS**

There State Bar has agreed to dismiss allegations regarding violations of Rule 42, Ariz. R. Sup. Ct., ER 8.4(c).

## **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 sanctions are appropriate: **Suspension of sixty (60) days, and one (1) year Probation upon Reinstatement, the terms of probation will consist of:**

1. TEN DEADLY SINS: Respondent shall complete the CLE program 10 Deadly Sins of Conflict within 90 days from the date of service of this Order. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program by providing a copy of handwritten notes. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

Respondent shall commit no further violations of the Rules of Professional Conduct.

## **NON-COMPLIANCE LANGUAGE**

If Respondent fails to comply with any of the foregoing probation terms and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether Respondent breached a term of probation and, if so, to recommend an appropriate sanction. If the State Bar alleges that Respondent failed to comply with any of the foregoing terms the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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 parties agree that the following *Standard 4.3 Failure to Avoid Conflicts of Interest* is the appropriate *Standard* given the facts and circumstances of this matter: *Standard 4.32* provides that 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. Here, Respondent accepted the transfer of his client/spouse's sole and separate property into the marital community when he knew his spouse/client's separate assets were at issue, and did not fully inform the client of the potential consequences of this. Respondent's spouse/client was thereafter subjected to an adverse ruling regarding the transfer. Additionally, Respondent accepted payments from his spouse/client when both of them knew the funds used for the payments were the subject of an interpleader motion, without fully informing his spouse/client of the potential consequences of this. Respondent's spouse/client was then subjected to a contempt motion, an evidentiary hearing, and an adverse ruling.

### **The duty violated**

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

**The lawyer's mental state**

Respondent knowingly assisted his spouse/client with the transfers of property and funds, in violation of the Rules of Professional Conduct.

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

There was actual harm to the client, and the legal system, because Respondent's client was subjected to hearings and adverse rulings, which also expended time and resources of the court and other parties.

**Aggravating and mitigating circumstances**

The presumptive sanction is Suspension and Probation. The parties conditionally agree that the following aggravating and mitigating factors should be considered:

**In aggravation:**

- a) 9.22(a) prior disciplinary offenses. SB 08-0613 (Supreme Court:10-0107) (Six month suspension and probation for ERs 1.7(a)(2), 1.8(c), 3.3(a)(1), 3.4(c), 8.4(a)(c)(d) and Rule 53.); and
- b) 9.22(i) substantial experience in the practice of law: Respondent was admitted in 1986

**In mitigation:**

- c) 9.32(b). Absence of a dishonest or selfish motive;
- d) 9.32(d). Timely good faith effort to make restitution or to rectify consequences of misconduct.
- e) 9.32(e). Full and free disclosure to disciplinary counsel and cooperative attitude toward proceedings.
- f) 9.32(l). Remorse.
- g) 9.32(m). Remoteness of prior offenses.

**Discussion**

The presumptive sanction should be Suspension with Probation.

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 with Probation and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

**DATED** this 5<sup>th</sup> day of April 2021

**STATE BAR OF ARIZONA**

/s/Kelly J. Flood  
Kelly J. Flood  
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 5<sup>th</sup> day of April, 2021.

  
\_\_\_\_\_  
Mark D. Svejda  
Respondent

**DATED** this \_\_\_\_\_ day of April, 2021.

\_\_\_\_\_  
Gary Lester Stuart  
Counsel for Respondent

Approved as to form and content

\_\_\_\_\_  
Maret Vessella  
Chief 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 April, 2021.

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Mark D. Svejda  
Respondent

DATED this 5<sup>th</sup> day of April, 2021.



---

Gary Lester Stuart  
Counsel for Respondent

Approved as to form and content

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Maret Vessella  
Chief 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 April, 2021.

---

Mark D. Svejda  
Respondent

**DATED** this \_\_\_\_\_ day of April, 2021.

---

Gary Lester Stuart  
Counsel for Respondent

Approved as to form and content

/s/Maret Vessella  
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 5<sup>th</sup> day of April, 2021.

Copy of the foregoing emailed  
this 5<sup>th</sup> day of April, 2021, to:

The Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

Copy of the foregoing emailed  
this 5<sup>th</sup> day of April, 2021, to:

Gary Lester Stuart  
2039 E Glenn Dr  
Phoenix, Az 85020-5647  
Email: [gstuart@keyed.com](mailto:gstuart@keyed.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 5<sup>th</sup> day of April, 2021, to:

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

By: /s/Jackie Brokaw  
KJF/jlb

**EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona  
Mark D. Svejda, Bar No. 011116, Respondent

File No. 19-2468

### 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

Total for additional costs \$ 0.00

**TOTAL COSTS AND EXPENSES INCURRED \$ 1,200.00**

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**EXHIBIT B**



**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MARK D. SVEJDA,  
Bar No. 011116,**

**PDJ 2020-9093**

**FINAL JUDGMENT AND  
ORDER**

State Bar No. 19-2468

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, **Mark D. Svejda**, is Suspended for sixty (60) days 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 placed on probation for a period of one (1) year **the terms of probation which will consist of:**

a) TEN DEADLY SINS: Respondent shall complete the CLE program 10 Deadly Sins of Conflict within 90 days from the date of service of this Order. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program by providing a copy of handwritten notes. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

Respondent shall commit no further violations of the Rules of Professional Conduct.

**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 \$ 1,200.00, 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 April, 2021.

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**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 April, 2021.

Copies of the foregoing mailed/mailed this \_\_\_\_\_ day of April, 2021, to:

Gary Lester Stuart, Esq.  
2039 E GLENN DR  
PHOENIX, AZ 85020-5647  
Email: gstuart@keyed.com  
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_ day of April, 2021, to:

Kelly J Flood  
Staff Bar Counsel  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
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Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N 24<sup>th</sup> 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,**

**MARK D. SVEJDA,  
Bar No. 011116**

Respondent.

**PDJ 2020-9093**

**DECISION ACCEPTING  
DISCIPLINE BY CONSENT**

[State Bar No. 19-2468]

**FILED APRIL 14, 2021**

Under Rule 57(a), Ariz. R. Sup. Ct.,<sup>1</sup> an Agreement for Discipline by Consent was filed on April 5, 2021. A Probable Cause Order issued on August 31, 2020 and the formal complaint was filed on October 13, 2020. The State Bar of Arizona is represented by Bar Counsel Kelly J. Flood. Mr. Svejda is represented by Gary Lester Stuart.

Rule 57 requires admissions be tendered solely “...in exchange for the stated form of discipline...” Under that rule, the right to an adjudicatory hearing is waived only if the “...conditional admission and proposed form of discipline is approved...” If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Mr. Svejda has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be asserted upon approval of the

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<sup>1</sup> Unless otherwise stated rule references are to the Ariz. R. Sup. Ct.

proposed form of discipline. The State Bar is the complainant in this matter therefore notice to the complainant and an opportunity to object under Rule 53(b)(3) is not needed.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Mr. Svejda admits he violated Rule 42, ERs 1.7(a)(2) (conflict of interest/current clients) and 8.4(d) conduct prejudicial to the administration of justice). As a sanction, the parties agree to a 60-day suspension, and upon reinstatement, one year of probation (continuing legal education), and the payment of costs within 30 days.

For purposes of the Agreement, the parties stipulate Mr. Svejda accepted the transfer of his client/spouse's sole and separate property into the marital community knowing that his spouse/client's separate assets were at issue. Mr. Svejda did not fully inform the client of the potential consequences and client/spouse was subjected to an adverse ruling regarding the transfer. Additionally, Mr. Svejda accepted payments from his spouse/client when both of them knew the funds used for the payments were the subject of an interpleader motion. Mr. Svejda did not fully inform his spouse/client of the potential consequences and the spouse/client was then subjected to a contempt motion, an evidentiary hearing, and an adverse ruling.

The parties stipulate Mr. Svejda knowingly violated his duties to his client and the legal system. His misconduct caused actual harm to the client and the legal system.

The presumptive sanction is suspension under ABA *Standards* 4.32, *Failure to Avoid Conflicts of Interest*. The parties stipulate to the presence of aggravating factors 9.22(a) prior disciplinary offenses and (i) substantial experience in the practice of law. In mitigation are factors 9.32(b) absence of selfish or dishonest motive, (d) timely good faith effort to make restitution or to rectify consequences of misconduct, (e) full and free disclosure to disciplinary counsel and cooperative attitude towards proceedings, (l) remorse, and (m) remoteness of prior offenses.

**IT IS ORDERED** accepting the Agreement and incorporating it with any supporting documents by this reference. A final judgment and order is signed this date.

**DATED** this 14<sup>th</sup> day of April 2021.

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

COPY of the foregoing e-mailed  
on this 14th day of April 2021 to:

Gary Lester Stuart  
2039 E. Glenn Drive  
Phoenix, AZ 85020-5647  
Email: [gstuart@keyed.com](mailto:gstuart@keyed.com)  
Respondent's Counsel

Kelly J. Flood  
Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6266  
Email: LRO@staff.azbar.org

by: SHunt

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**MARK D. SVEJDA,  
Bar No. 011116**

Respondent.

**PDJ 2020-9093**

**FINAL JUDGMENT AND  
ORDER**

State Bar No. [19-2468]

**FILED APRIL 14, 2021**

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

Accordingly:

**IT IS ORDERED** Respondent, **MARK D. SVEJDA, Bar No. 011116**, is suspended from the practice of law for sixty (60) days 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** upon reinstatement, Mr. Svejda shall be placed on probation for a period of one (1) year the terms of probation which will consist of:

- a) **TEN DEADLY SINS:** Respondent shall complete the Continuing Legal Education program 10 Deadly Sins of Conflict within ninety (90) days



from the date of this Order. Mr. Svejda shall provide the State Bar Compliance Monitor with evidence of completion of the program by providing a copy of handwritten notes. Mr. Svejda should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Mr. Svejda shall be responsible for the cost of the CLE.

Mr. Svejda shall commit no further violations of the Rules of Professional Conduct.

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

**IT IS FURTHER ORDERED** Mr. Svejda shall pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,200.00, within thirty (30) days from the date of this Order. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these disciplinary proceedings.

**DATED** this 14<sup>th</sup> day of April, 2021.

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

Copies of the foregoing emailed  
this 14<sup>th</sup> day of April, 2021, to:

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