

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**DANIEL ROBERT WARNER,
BAR NO. 026503**

Respondent.

PDJ 2018-9012

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 16-3120]

FILED JULY 30, 2018

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on July 27, 2018, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed Agreement. Accordingly:

IT IS ORDERED Respondent, **Daniel R. Warner**, is admonished for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents effective the date of this order.

IT IS FURTHER ORDERED Respondent, **Daniel R. Warner**, is placed on probation for two (2) years.

IT IS FURTHER ORDERED Mr. Warner shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from this order. Mr. Warner shall submit to a LOMAP examination of his office procedures. Mr. Warner shall sign terms and conditions of participation, including reporting requirements,

which shall be incorporated by reference. Mr. Warner shall be responsible for any costs associated with LOMAP.

IT IS FURTHER ORDERED Mr. Warner shall pay the costs and expenses of the State Bar of Arizona for \$1,643.72, within thirty (30) days from this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

DATED this 30th day of July, 2018.

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

Copy of the foregoing emailed
this 30th day of July, 2018, and
mailed July 31, 2018, to:

Bradley F. Perry
Staff Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

J. Scott Rhodes
Kerry A. Hodges
Jennings, Strouss & Salmon, PLC
One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
Emails: khodges@jsslaw.com
srhodes@jsslaw.com
Respondent's Counsel

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**DANIEL ROBERT WARNER,
Bar No. 026503**

Respondent.

PDJ-2018-9012

**DECISION ACCEPTING
DISCIPLINE BY CONSENT**

[State Bar No. 16-3120]

FILED JULY 30, 2018

Under Rule 57(a), Ariz. R. Sup. Ct.,¹ an Agreement for Discipline by Consent (“Agreement”) was filed July 27, 2018. A probable cause order was entered on November 2, 2017, and a formal complaint was filed on January 26, 2018. The State Bar of Arizona is represented by Staff Bar Counsel, Bradley F. Perry. Mr. Warner is represented by Kerry A. Hodges and J. Scott Rhodes, *Jennings Strouss & Salmon PLC*.

Rule 57 requires admission 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

¹ Unless otherwise stated all Rule references are to the Ariz. R. Sup. Ct.

proceeding. Mr. Warner 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 proposed form of discipline. The State Bar is the complainant and, therefore, no notice of this agreement is required under Rule 53(b)(3).

The Agreement details a factual basis to support the conditional admissions. It is incorporated by reference. Mr. Warner conditionally admits he violated Rule 42, ER 3.1~Meritorious Claims and Contentions. The State Bar agrees to conditionally dismiss the allegations of violations of ERs 1.2, 1.3, 1.4, 3.3, 8.4(a), 8.4(c), and 8.4(d). The misconduct is briefly summarized.

General Facts

Mr. Warner was retained by Client to remove allegedly defamatory statements about Client from the internet. According to Client, all the allegedly defamatory statements were written by a woman named Krista Ivanski, who would cooperate to have the statements removed. He agreed to file a complaint and attempt to obtain a stipulated injunction against defamation and present them to various search engine entities of the internet.

Client provided Mr. Warner a list of approximately 55 web pages which Client claimed contained defamatory statements written by Ivanski. Mr. Warner reviewed the web pages and determined that several them did not contain

defamatory statements despite Client's claims. Based on his experience, Mr. Warner believed that Client's demeanor and general communication was consistent with the conduct of a victim of internet defamation. He knew that some web pages frequently change. Mr. Warner never asked Client why the non-offending web pages were included.

Prior to filing a complaint, Mr. Warner and others in his firm communicated with an individual identifying herself as defendant Ivanski. Ivanski's contact information was provided by Client, however all communication between the firm and Ivanski was done via email. Although Mr. Warner never spoke with Ivanski on the phone or in person, he believed that the person with whom his firm communicated was Ivanski.

Before filing the complaint for Client, Mr. Warner asked both Client and Ivanski to sign certain documents in front of a notary. The signed and notarized documents were returned to Mr. Warner's firm. Subsequently, Mr. Warner filed a complaint on behalf of Client in Maricopa County Superior Court. When he filed the complaint, Mr. Warner believed that both Client and Ivanski had verified the factual basis for the lawsuit under penalty of perjury and in the presence of real notaries.

The complaint alleges defendant Ivanski defamed Client by posting false statements about Client on 38 websites. Before filing the complaint, Mr. Warner

reviewed the original 55 websites submitted by Client and determined that only 38 contained allegedly false statements that could be pursued in the complaint.²

In June 2016, Mr. Warner filed a stipulated order for permanent injunction ostensibly signed by Ivanski. The Court entered the stipulated order for permanent injunction, and Mr. Warner submitted the injunction to Google with a request that the websites listed be de-indexed. Warner later learned the notarizations were fake.

On July 8, 2016, Google sent Mr. Warner's firm an email regarding the de-indexing request. It stated, "it is unclear whether the material in question was published by the defendant in the case, or by a third party not bound by the court's order." Google asked Mr. Warner to provide additional specified information. Mr. Warner certifies he had never previously received such a response from Google.

Mr. Warner submitted a revised request asking Google to de-index only the traditional gripe sites listed in the injunction. While this request was pending, Mr. Warner filed an amended Order for permanent injunction, which, at Client's request, added one website to the previous list. Like the original stipulated order, Mr. Warner did not file this document until he received Ivanski's ostensibly notarized signature on it.

² In preparing for his deposition, Mr. Warner realized that 3 of the 38 websites did not contain defamatory statements and were included in error.

The request for an amended order for permanent injunction was granted by the Court. Mr. Warner informed Client that he would take no further action until Google responded to the revised de-indexing request. On August 29, 2016, Google responded, denying the revised request. Mr. Warner informed Client of the denial and provided him with three options for proceeding. Mr. Warner says he informed Client he believed Google had likely “blacklisted for suspected abuse” and felt that no explanation would convince Google to honor the de-indexing request.

False Information

The first website is a page containing statements about an alleged scam run by Client. The page claims Client uses several aliases including “Sara Wood” to run scams. Client provided Mr. Warner with the email address Sarawood776@gmail.com as a contact for Ivanski. Mr. Warner had already reviewed the pages before receiving the contact information and did not notice the possible connection between the email address and the statements in the first webpage.

The complaint states Ivanski resides in Turkey and Client resides in Colorado. Many documents filed by Mr. Warner contained a notarized signature by Client and Ivanski. The “Plaintiff’s Verification” attached to the complaint is signed by Client and notarized by John William Kichko, a legitimate notary in Fulton County, Georgia.

The proposed order signed by Ivanski and notarized by Amanda Sparks, a notary from Fulton County, Georgia. However, there is no notary in Fulton County named Amanda Sparks. Although neither Client nor Ivanski resided in Georgia, Client informed Mr. Warner that he and Ivanski were in Atlanta and would have the documents notarized there. Ivanski (or someone posing as her) emailed him on May 26, 2016, notifying Mr. Warner's firm that she could get the proposed order notarized while travelling to the United States during June. Based on these communications, Mr. Warner says he saw nothing unusual or suspicious about the place where the signatures were ostensibly notarized.

The signature of Ivanski in the proposed Amended Order for Permanent Injunction was notarized by Samantha Pierce, a notary from Colorado. As Mr. Warner later learned, there is no notary in Colorado named Samantha Pierce. Further, the notary ID used by Samantha Pierce- 20121234567- is the same notary ID that appears in the sample notary seal displayed on the Colorado Secretary of State's general notary information web page.

Mr. Warner's Investigation

On September 12, 2016, Client sent Mr. Warner a letter threatening a Bar charge if Mr. Warner failed to have the websites de-indexed or failed to provide a full refund. This letter prompted Mr. Warner to investigate the information

previously provided by Client. Because of that investigation, Mr. Warner determined that Client had likely used his services to perpetrate a fraud.

On September 19, 2016, Mr. Warner sent Client a letter stating Client “committed perjury, likely defrauded the Maricopa County Superior Court” and was “likely engaging in a continuing criminal enterprise to defraud courts across the United States.” Mr. Warner acknowledged that he suspected Client initially but gave him the benefit of the doubt until he could no longer do so.

Thereafter, Mr. Warner severed ties with Client and refunded his fee. Mr. Warner failed to alert the Court of Client’s fraud because the representation had ended. Mr. Warner recognizes that he had a duty to inform himself of the facts of Client’s case and determine if he could make good-faith and non-frivolous arguments on Client’s behalf. Mr. Warner believed he met those duties pursuing Client’s claims until his investigation revealed otherwise. Mr. Warner acknowledges that, while lawyers may generally rely on the personal knowledge of their clients in making allegations on their behalf, they have a continuing duty to evaluate the factual and legal basis for those allegations and cannot ignore facts that should prompt further investigation.

Mr. Warner admits in hindsight, that after receipt of Google’s rejection of original de-indexing request, he should have done further investigation. If he had done so, Mr. Warner believes that investigation may have revealed his client’s

misconduct sooner and prevented the filing of the stipulation for amended order of permanent injunction.

The agreed upon sanction includes admonition and probation for two (2) years, the term of which shall be participation in the State Bar's Law Office Management Assistance Program (LOMAP).

Rule 58(k) provides sanction shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, ("Standards"). The parties stipulate that *Standard 6.23* is appropriate.

Standard 6.23 provides that reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule and causes interference or potential interference with a legal proceeding. Mr. Warner should have done additional investigation to determine whether the claims asserted on behalf of his client were meritorious and, if they were not, to mitigate the client's fraud to the extent possible. However, after the fraud was discovered, Mr. Warner only terminated the attorney-client relationship and returned the client's money. This caused no harm to his client, and apparently none to the party in the case, but potential harm to the legal system.

The allegations in the complaint are troubling and raise multiple concerns. Parties can agree to resolve matters for several reasons. Compromises are often reached when the risk of proceeding to hearing is uncertain either way. Here, the

presumption of innocence when coupled with the apparent absence of proof for the claims support prosecutorial discretion as well as the agreement by Respondent. The facts stipulated to warrant a finding of misconduct.

The presumptive sanction is reprimand. The parties stipulate there are no aggravating factors and in mitigation are factors 9.32(a) absence of a prior disciplinary record, 9.32(b) absence of a dishonest or selfish motive, 9.32(e) full and free disclosure to the disciplinary board or cooperative attitude toward proceedings.

The parties stipulate, and the presiding disciplinary judge accepts, that upon application of the aggravating and mitigating factors the sanction is admonition with probation.

Accordingly:

IT IS ORDERED accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanction is admonition and probation for two (2) years, the terms of which include LOMAP. Costs of \$1,643.72, to be paid within thirty days is approved. A final judgment and order is signed on this date.

DATED this 30th day of July, 2018.

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

Copy of the foregoing emailed
this 30th day of July, 2018, and
mailed July 31, 2018, to:

Bradley F. Perry
Staff Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Kerry A. Hodges
J. Scott Rhodes
Jennings, Strouss & Salmon, PLC
One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
Emails: khodges@jsslaw.com
 srhodes@jsslaw.com
Respondent's Counsel

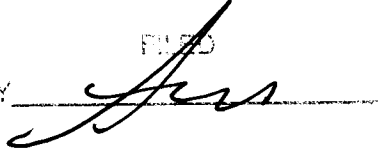
by: AMcQueen

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
COURT OF APPEALS, ARIZONA

JUL 27 2018

FILED

BY



Bradley F. Perry, Bar No. 025682
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7247
Email: LRO@staff.azbar.org

Kerry A. Hodges, Bar No. 025547
J. Scott Rhodes, Bar No. 016721
Jennings, Strouss & Salmon, PLC
One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
Telephone 602-262-5820
Email: khodges@jsslaw.com
Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**DANIEL ROBERT WARNER,
Bar No. 026503,**

Respondent.

PDJ 2018-9012

State Bar File Nos. **16-3120**

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Daniel Warner, who is represented in this matter by counsel, Kerry A. Hodges and J. Scott Rhodes, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A Probable Cause Order was entered on November

2, 2017. A formal complaint was filed on January 26, 2018. Respondent timely answered on February 26, 2018. 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 resolution 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, Ariz. R. Sup. Ct., ER 3.1. Upon acceptance of this Agreement, Respondent agrees to accept imposition of the following sanction: Respondent shall be admonished and placed on probation for a period of two (2) years, the term of which shall be participation in the State Bar's Law Office Management Assistance Program (LOMAP). Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within thirty (30) days from the date of this Order, and if costs are not paid within the thirty (30) days, interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

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,

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on October 22, 2008.

COUNT ONE (File No. 16-3120/ Arizona)

1. In 2016, Respondent Warner was hired by Joseph Chinnoek to remove allegedly defamatory statements about Chinnoek from the internet. Chinnoek informed Respondent that all of the allegedly defamatory statements were written by a woman named Krista Ivanski, who was willing to cooperate with Respondent and Chinnoek to have the statements removed.

2. Respondent agreed to try to accomplish Chinnoek's goal by obtaining a stipulated injunction against defamation, presenting the injunction to Google and/or other search engines, and requesting the search engines de-index the offending websites from search results.

3. Chinnoek provided Respondent a list of approximately 55 web pages which Chinnoek claimed contained defamatory statements written by Ivanski. The

the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

type of web pages identified by Chinnock ranged from traditional “gripe sites,” such as Ripoff Report, to web pages containing bitcoin discussion forums, style blogs, employment postings, hair extension sales, and a wide variety of other content.

4. Respondent reviewed the web pages and determined that a number of the web pages did not contain defamatory statements despite Chinnock’s claims. Respondent did not ask Chinnock why the non-offending web pages were included in Chinnock’s list of pages to be de-indexed. According to Respondent, he never thought to ask Chinnock this question because, based on Respondent’s experience with other internet defamation cases, Chinnock’s demeanor and general communications were consistent with the conduct of a victim of internet defamation, and some web pages frequently change.

5. Prior to filing a complaint on behalf of Chinnock, Respondent and others in his firm communicated with an individual identifying herself as defendant Ivanski. Ivanski’s contact information had been provided to Respondent by Chinnock. All communication with this person was conducted through email. No one from the firm spoke with Ivanski on the phone or in person. Respondent believed that the person with whom his firm communicated was Ivanski.

6. In June 2016, Respondent filed a complaint on behalf of Chinnock in Maricopa County Superior Court case *Chinnock v. Ivanski*, CV 2016-094256. Before filing the complaint, Respondent asked both Chinnock and Ivanski to sign certain documents in front of a notary. Chinnock and Ivanski – or a person identifying herself as Ivanski – returned signed and notarized documents to Respondent's firm. As explained below, Respondent would later learn that the notarization of Ivanski's signature was fake. At the time he filed the complaint, however, and at all relevant times until the problem with the notarization came to light in September 2016, Respondent believed that both Chinnock and Ivanski had verified the factual basis for the lawsuit under the penalty of perjury and in the presence of real notaries.

7. The complaint states Ivanski resides in Turkey and Chinnock resides in Colorado.

8. The complaint alleges defendant Ivanski defamed Plaintiff Joseph Chinnock by posting 38 false statements about Chinnock on the internet.

9. The internet address (URL) of each of the 38 allegedly false statements is listed in the complaint. During his deposition, Respondent explained the process by which he reviewed the original, approximately 55 URLs submitted by Chinnock

and concluded that 38 URLs contained allegedly false statements that could be pursued in the complaint. Respondent also explained that, in preparing for his deposition, he realized that 3 of the 38 websites did not contain defamatory statements and were included in the complaint in error.

10. The first URL listed in the complaint (<https://bitcointalk.org/index.php?topic=669614.0>) routes to a page containing statements about an alleged scam run by Joseph Chinnock. The page claims Chinnock uses the aliases of Sara Wood, Sara Ward, and Patrick McDowell to run scams.

11. Sarawood766@gmail.com was one of the email addresses that Chinnock had provided to the firm for Ivanski; however, Chinnock had provided this email after Respondent had reviewed the web pages to determine which pages would be included in the complaint. Respondent did not notice the possible connection between the email address and the statements in the first URL.

12. The “Plaintiff’s Verification” attached to the complaint is signed by Chinnock and notarized by John William Kichko, a legitimate notary in Fulton County, Georgia.

13. In June 2016, Respondent Warner filed a document entitled “Stipulation for Permanent Injunction and Dismissal Without Prejudice,” ostensibly signed by Ivanski. The “Stipulation for Permanent Injunction and Dismissal without Prejudice,” asks the Court to enter a stipulated order for permanent injunction.

14. The proposed order states that “Defendant shall permanently remove the Statements from the Webpages, and Plaintiff shall not republish any applicable Statements. In the event Defendant is unable to remove any Statement from a Webpage, Plaintiffs may submit this Order to Google, and/or any other applicable Internet search engines, so that the applicable Webpages can be removed, delisted, and de-indexed from all search engine results in accordance with the policies of the search engine.”

15. The proposed order is signed by Ivanski and notarized by Amanda Sparks, a notary from Fulton County, Georgia. The Plaintiff’s Verification attached to the original complaint and signed by Chinnock was also notarized in Fulton County, Georgia. According to the complaint, neither Ivanski nor Chinnock resided in Georgia. Chinnock, however, had informed Respondent that he and Ivanski were in Atlanta and would have the documents notarized there. Additionally, Ivanski (or someone posing as her) sent an email on May 26, 2016, notifying Respondent’s firm

that she could get the proposed order notarized while traveling in the United States during the first week of June. Based on these communications, Respondent did not see anything unusual or suspicious about the place where Chinnock's and Ivanski's signatures were ostensibly notarized.

16. As Respondent later learned, however, there is no notary in Fulton County named Amanda Sparks. The notarization by Amanda Sparks is fake.

17. The Court entered the stipulated order for permanent injunction, and Respondent submitted the injunction to Google with a request that the websites listed therein be de-indexed.

18. On July 8, 2016, Google sent Respondent's firm an e-mail regarding the de-indexing request. The email stated "it is unclear whether the material in question was published by the defendant in the case, or by a third party not bound by the court's order." Google asked Respondent to provide additional information that showed Ivanski was the author of the relevant content. Google also asked Respondent to explain "what statements you believe to be false and/or defamatory and the specific reasons why these statements could be considered false and/or defamatory in the context of the page as a whole."

19. Google indicated that it would take no further action on the de-indexing request until Respondent provided the information.

20. Respondent had never received a response like that from Google before. In hindsight, he agrees that Google's concern that Ivanski was not the author of the allegedly-defamatory content should have put him on notice that Chinnock may have been untruthful in his dealings with Respondent's firm. At the time, however, it did not occur to him that Chinnock and Ivanski (or some person posing as Ivanski) would be willing to knowingly affirm false information under penalty of perjury or create a fake notary signature. He believed Google's concerns stemmed from the fact that some of the websites contained in the de-indexing request were not traditional "gripe" sites.

21. On July 11, 2016, in an attempt to address what he believed to be Google's concern, he submitted a revised request asking Google to de-index only the traditional gripe sites listed in the injunction. On August 9, 2016, while that request was pending, Respondent filed a document entitled "Stipulation for Amended Order for Permanent Injunction," which, at Chinnock's request, added one website to the previous list of 38 URLs contained in the original injunction. Like

with the original stipulated order for permanent injunction, Respondent did not file this document until he received Ivanski's ostensibly notarized signature on it.

22. The signature of Ivanski in the proposed Amended Order for Permanent Injunction was notarized by "Samantha Pierce," a notary from Colorado.

23. As Respondent later learned, however, there is no notary in Colorado named Samantha Pierce. The notarization by Samantha Pierce is fake. Respondent now knows that the notary ID used by Samantha Pierce—20121234567—is the same notary ID that appears in the sample notary seal displayed on the Colorado Secretary of State's general notary information web page.

24. The request for an amended order for permanent injunction was granted by the Court.

25. Respondent informed Chinnock that they would take no further action on the basis of the amended injunction until Google responded to the revised de-indexing request, which remained pending.

26. On August 29, 2016, Google responded, denying the revised request. Respondent notified Chinnock of Google's position and explained that he believed Chinnock or the case had been "blacklisted for suspected abuse." Respondent provided Chinnock with three options for proceeding: (i) provide Google with the

requested information in an attempt to persuade Google to reconsider its denial of the de-indexing request; (ii) file a new case to obtain a new injunction with a new case number that could be submitted to Google as part of a new de-indexing request; or (iii) send Google the notarized verifications used to obtain the injunction as a cheap, final attempt to convince Google of the propriety of the de-indexing request. However, Respondent informed Chinnock that, because the case was likely “blacklisted for suspected abuse” by Google, Respondent felt that no explanation would convince Google to honor the de-indexing request.

27. On September 12, 2016, Chinnock sent Respondent a letter threatening a Bar charge if Respondent failed to have the websites de-indexed or failed to provide a full refund.

28. Chinnick’s September 12, 2016, letter prompted Respondent to re-evaluate and further investigate the information previously provided by Chinnock. As a result of that investigation, Respondent determined that Chinnock had likely used his services to perpetrate a fraud.

29. On September 19, 2016, Respondent sent Chinnock a letter stating Chinnock “committed perjury, likely defrauded the Maricopa County Superior Court” and was “likely engaging in a continuing criminal enterprise to defraud courts

across the United States.” Respondent also informed Chinnock that notaries Amanda Sparks and Samantha Pierce were not listed in their respective state’s “registration list for notaries.”

30. Respondent acknowledged that he was “suspicious of [Chinnock] initially,” but gave Chinnock the “benefit of the doubt when suspicions arose until [Respondent] could no longer do so.”

31. Respondent severed ties with Chinnock and refunded Chinnock’s fee.

32. Respondent did not alert the Court of Chinnock’s fraud. Respondent considered whether to take any remedial measures with the Court under the circumstances, but concluded against taking such action because the representation had ended.

33. Respondent recognizes that he had a duty to inform himself of the facts of Chinnock’s case and to determine if he could make good-faith and non-frivolous arguments on Chinnock’s behalf. Respondent believed that he had met these duties and that he had a good-faith basis in fact and law for pursuing Chinnock’s claims. He continued to have this belief until his September 2016 investigation revealed otherwise. Respondent acknowledges that, while lawyers are generally entitled to rely on the personal knowledge of their clients in making allegations on their behalf,

they have a continuing duty to evaluate the factual and legal basis for those allegations and cannot ignore facts that should prompt further investigation. Respondent did not, at any time, purposely ignore any facts. Respondent admits in hindsight, however, that after receipt of Google's July 8, 2016, rejection of the original de-indexing request, he should have done further investigation. If he had done so, Respondent believes that investigation may have revealed his client's misconduct sooner, and prevented the filing of the stipulation for amended order of permanent injunction.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of resolution stated below and are 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 ER 3.1.

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss ERs 1.2, 1.3, 1.4, 3.3, 8.4(a), 8.4(c), and 8.4(d), and the allegations described in count two of the complaint.

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Respondent shall be admonished and placed on probation for a period of two (2) years, the term of which shall be participation in the State Bar's Law Office Management Assistance Program (LOMAP). Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within thirty (30) days from the date of this Order, and if costs are not paid within the thirty (30) days, interest will begin to accrue at the legal rate.

If Respondent violates any of the terms of this Agreement, further discipline proceedings may be brought.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, 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 thirty (30) days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation 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.

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.

For purposes of this Agreement, the parties agree that *Standard* 6.23 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 6.23 provides that reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule and causes interference or potential interference with a legal proceeding.²

The duty violated

As described above, Respondent's conduct violated his duty to the legal system.

The lawyer's mental state

For purposes of this Agreement, the parties agree that Respondent acted negligently and that his conduct was in violation of the Rules of Professional Conduct.

² For purposes of this Agreement, the parties agree that *Standard* 6.23 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 6.23 provides that reprimand is appropriate. However, if this matter were to proceed to a hearing, Respondent would argue that, at most, this matter involves an "isolated instance of negligence" that caused no actual or potential harm to his client and only "little" potential interference with a legal proceeding, and thus that admonition is the presumptive sanction based on *Standard* 6.24.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was no harm to the client and potential harm to the legal system.

Aggravating and mitigating circumstances

For purposes of this Agreement, the parties agree that the presumptive sanction in this matter is reprimand. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation: None.

In mitigation:

Standard 9.32(a) (absence of a prior disciplinary record). Respondent has no prior discipline.

Standard 9.32(b) (absence of a dishonest or selfish motive). Respondent's conduct was solely motivated by a desire to help his client achieve what he believed to be legitimate litigation objectives. The immediate actions he took upon discovering his client's fraud—firing the client and returning all of the client's money—demonstrate the absence of any dishonest or selfish motive.

Standard 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude toward proceedings). Respondent cooperated fully and freely with the State Bar during its screening investigation and the formal proceedings.

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the mitigating factors outweigh the aggravating factors. The appropriate sanction is admonition with probation.

At the outset of the representation, Respondent appropriately gave his client the benefit of the doubt as allowed under the Arizona rules. However, once put on notice by Google that Krista Ivanski was likely not the author of the content in question, Respondent should have done additional due diligence to determine whether the claims asserted on behalf of his client were meritorious and, if they were not, to mitigate the client's fraud to the extent possible.

Once Respondent did discover the client's fraud, however, Respondent promptly and appropriately terminated the attorney-client relationship and returned the client's money upon discovering the fraud. Respondent's conduct caused no harm to his client, no harm to a party in the case, and no harm to Google. The

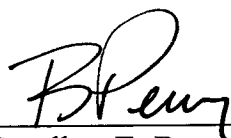
fraudulent injunction, while still technically in existence, is without power to remove the statements about Chinnock from the internet.

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 and the imposition of costs and expenses. A proposed form order approving this Agreement is attached hereto as Exhibit B.

DATED this 27th day of July 2018.

STATE BAR OF ARIZONA



Bradley F. Perry
Staff Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this _____ day of July, 2018.

Daniel Warner
Respondent

DATED this _____ day of July, 2018.

Jennings, Strouss & Salmon, PLC

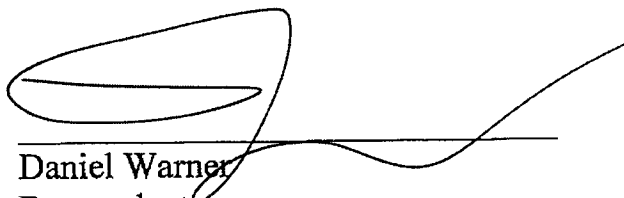
Kerry A. Hodges
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

DATED this 26th day of July, 2018.



Daniel Warner
Respondent

DATED this _____ day of July, 2018.

Jennings, Strouss & Salmon, PLC

Kerry A. Hodges
Counsel for Respondent

Approved as to form and content

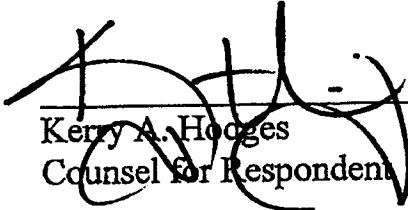
Maret Vessella
Chief Bar Counsel

DATED this _____ day of July, 2018.

Daniel Warner
Respondent

DATED this 27th day of July, 2018.

Jennings, Strouss & Salmon, PLC



Kerry A. Hodges
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 27th day of July, 2018.

Copy of the foregoing emailed
this 27th day of July, 2018, 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

Copy of the foregoing mailed/emailed
this 27th day of July, 2018, to:

Kerry A. Hodges
Jennings, Strouss & Salmon, PLC
One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
Email: khodges@jsslaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 27th day of July, 2018, to:

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

by: 

BFP: sab

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Daniel R. Warner, Bar No. 026503, Respondent

File No. 16-3120

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

04/13/17	Accurint invoice	\$	2.32
08/24/17	Accurint invoice	\$	6.96
02/27/18	Accurint invoice	\$	29.24
03/01/18	Accurint invoice; Certified documents from the Florida Department of State	\$	50.90
03/12/18	Public records from the Miami-Dade Clerk of Court	\$	7.00
04/20/18	Flash Drive for deposition exhibits	\$	12.80
04/24/18	Alliance invoice: Deposition of Daniel Warner	\$	337.50
Total for staff investigator charges		\$	443.72

TOTAL COSTS AND EXPENSES INCURRED

\$1,643.72

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**DANIEL ROBERT WARNER,
BAR NO. 026503,**

Respondent.

PDJ 2018-9012

**ORDER APPROVING
AGREEMENT FOR DISCIPLINE
BY CONSENT**

[State Bar No. 16-3120]

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, **Daniel R. Warner**, is admonished for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that Respondent, **Daniel R. Warner**, is hereby placed on probation for a period of two (2) years.

IT IS FURTHER ORDERED that Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of service of this Order. Respondent shall submit to a LOMAP examination of his office

procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.

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 July, 2018

**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 July, 2018.

Copy of the foregoing mailed/emailed
this _____ day of July, 2018, to:

Kerry A. Hodges
Jennings, Strouss & Salmon, PLC
One East Washington Street, Suite 1900
Phoenix, Arizona 85004-2554
Email: khodges@jsslaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this _____ day of July, 2018, to:

Bradley F. Perry
Staff 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 July, 2018 to:

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

by: _____