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**State Bar Court of California
Hearing Department
Los Angeles
REPROVAL **PUBLIC MATTER****

<p>Counsel for the State Bar</p> <p>Angie Esquivel Deputy Trial Counsel 845 S. Figueroa Street Los Angeles, CA 90017-2515 (213) 765-1080</p> <p>Bar # 286432</p>	<p>Case Number(s): 17-J-00133</p>	<p>For Court use only</p> <p align="center">FILED SEP 26 2018 P.B. STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>Counsel For Respondent</p> <p>Ellen A. Pansky Pansky Markle 1010 Sycamore Ave., Suite #308 South Pasadena, CA 91030 (213) 626-7300</p> <p>Bar # 77688</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p>PUBLIC REPROVAL</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: PETER KRISTOFER STROJNIK</p> <p>Bar # 242728</p> <p>A Member of the State Bar of California (Respondent)</p>		

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **June 1, 2006**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **14** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



Effective July 1, 2018
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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law."
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.
 - Case ineligible for costs (private reproof).
 - It is ordered that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. SELECT ONE of the costs must be paid with Respondent's membership fees for each of the following years:

If Respondent fails to pay any installment as described above, or as may be modified in writing by the State Bar or the State Bar Court, the remaining balance will be due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs."
 - Costs are entirely waived.
- (9) The parties understand that:
- (a) A private reproof imposed on a Respondent as a result of a stipulation approved by the Court prior to initiation of a State Bar Court proceeding is part of the Respondent's official State Bar membership records, but is not disclosed in response to public inquiries and is not reported on the State Bar's web page. The record of the proceeding in which such a private reproof was imposed is not available to the public except as part of the record of any subsequent proceeding in which it is introduced as evidence of a prior record of discipline under the Rules of Procedure of the State Bar.
 - (b) A private reproof imposed on a Respondent after initiation of a State Bar Court proceeding is part of the Respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.
 - (c) A public reproof imposed on a Respondent is publicly available as part of the Respondent's official State Bar membership records, is disclosed in response to public inquiries and is reported as a record of public discipline on the State Bar's web page.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(h) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline:**
- (a) State Bar Court case # of prior case:

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- (b) Date prior discipline effective:
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline:
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below.
-
- (2) **Intentional/Bad Faith/Dishonesty:** Respondent's misconduct was dishonest, intentional, or surrounded by, or followed by bad faith.
 - (3) **Misrepresentation:** Respondent's misconduct was surrounded by, or followed by misrepresentation.
 - (4) **Concealment:** Respondent's misconduct was surrounded by, or followed by concealment.
 - (5) **Overreaching:** Respondent's misconduct was surrounded by, or followed by overreaching.
 - (6) **Uncharged Violations:** Respondent's conduct involves uncharged violations of the Business and Professions Code or the Rules of Professional Conduct. **See page 10.**
 - (7) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
 - (8) **Harm:** Respondent's misconduct harmed significantly a client, the public, or the administration of justice. **See page 10.**
 - (9) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of Respondent's misconduct.
 - (10) **Candor/Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of Respondent's misconduct, or to the State Bar during disciplinary investigations or proceedings.
 - (11) **Multiple Acts:** Respondent's current misconduct evidences multiple acts of wrongdoing.
 - (12) **Pattern:** Respondent's current misconduct demonstrates a pattern of misconduct.
 - (13) **Restitution:** Respondent failed to make restitution.
 - (14) **Vulnerable Victim:** The victim(s) of Respondent's misconduct was/were highly vulnerable.
 - (15) **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [Standards 1.2(i) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not likely to recur.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of Respondent's misconduct or to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps demonstrating spontaneous remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of Respondent's misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced Respondent.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and objectively reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct, Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by Respondent, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond Respondent's control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in Respondent's personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of Respondent's misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.
- (13) **No mitigating circumstances** are involved.

Additional mitigating circumstances:

No Prior Discipline, see pages 10-11.
Prefiling Stipulation, see page 11.
Emotional Difficulties, see page 11.

D. Discipline:

Discipline – Reproval

Respondent is **Publicly** reproval. Pursuant to the provisions of rule 5.127(A) of the Rules of Procedure of the State Bar, this reproval will be effective when this stipulation becomes final. Furthermore, pursuant to rule 9.19(a) of the California Rules of Court and rule 5.128 of the Rules of Procedure, the court finds that the protection of the public and the interests of Respondent will be served by the following conditions being attached to this reproval. Failure to comply with any condition attached to this reproval may constitute cause for a separate disciplinary proceeding for willful breach of rule 1-110 of the State Bar Rules of Professional Conduct. Respondent is ordered to comply with the following conditions attached to this reproval for **one (1) year** (Reproval Conditions Period) following the effective date of the reproval.

- (1) **Review Rules of Professional Conduct:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must (1) read the California Rules of Professional Conduct (Rules of Professional Conduct) and Business and Professions Code sections 6067, 6068, and 6103 through 6126, and (2) provide a declaration, under penalty of perjury, attesting to Respondent's compliance with this requirement, to the State Bar's Office of Probation in Los Angeles (Office of Probation) with Respondent's first quarterly report.
- (2) **Comply with State Bar Act, Rules of Professional Conduct, and Reproval Conditions:** Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of Respondent's reproval.
- (3) **Maintain Valid Official Membership Address and Other Required Contact Information:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must make certain that the State Bar Attorney Regulation and Consumer Resources Office (ARCR) has Respondent's current office address, email address, and telephone number. If Respondent does not maintain an office, Respondent must provide the mailing address, email address, and telephone number to be used for State Bar purposes. Respondent must report, in writing, any change in the above information to ARCR within ten (10) days after such change, in the manner required by that office.
- (4) **Meet and Cooperate with Office of Probation:** Within 30 days after the effective date of the order imposing discipline in this matter, Respondent must schedule a meeting with Respondent's assigned probation case specialist to discuss the terms and conditions of Respondent's discipline and, within 45 days after the effective date of the court's order, must participate in such meeting. Unless otherwise instructed by the Office of Probation, Respondent may meet with the probation case specialist in person or by telephone. During the Reproval Conditions Period, Respondent must promptly meet with representatives of the Office of Probation as requested by it and, subject to the assertion of applicable privileges, must fully, promptly, and truthfully answer any inquiries by it and provide to it any other information requested by it.
- (5) **State Bar Court Retains Jurisdiction/Appear Before and Cooperate with State Bar Court:** During Respondent's Reproval Conditions Period, the State Bar Court retains jurisdiction over Respondent to address issues concerning compliance with reproval conditions. During this period, Respondent must appear before the State Bar Court as required by the court or by the Office of Probation after written notice mailed to Respondent's official membership address, as provided above. Subject to the assertion of applicable privileges, Respondent must fully, promptly, and truthfully answer any inquiries by the court and must provide any other information the court requests.
- (6) **Quarterly and Final Reports:**

- a. **Deadlines for Reports.** Respondent must submit written quarterly reports to the Office of Probation no later than each January 10 (covering October 1 through December 31 of the prior year), April 10 (covering January 1 through March 31), July 10 (covering April 1 through June 30), and October 10 (covering July 1 through September 30) within the Repeval Conditions Period. If the first report would cover less than 30 days, that report must be submitted on the next quarter date and cover the extended deadline. In addition to all quarterly reports, Respondent must submit a final report no earlier than ten (10) days before the last day of the Repeval Conditions Period and no later than the last day of the Repeval Conditions Period.
 - b. **Contents of Reports.** Respondent must answer, under penalty of perjury, all inquiries contained in the quarterly report form provided by the Office of Probation, including stating whether Respondent has complied with the State Bar Act and the Rules of Professional Conduct during the applicable quarter or period. All reports must be: (1) submitted on the form provided by the Office of Probation; (2) signed and dated after the completion of the period for which the report is being submitted (except for the final report); (3) filled out completely and signed under penalty of perjury; and (4) submitted to the Office of Probation on or before each report's due date.
 - c. **Submission of Reports.** All reports must be submitted by: (1) fax or email to the Office of Probation; (2) personal delivery to the Office of Probation; (3) certified mail, return receipt requested, to the Office of Probation (postmarked on or before the due date); or (4) other tracked-service provider, such as Federal Express or United Parcel Service, etc. (physically delivered to such provider on or before the due date).
 - d. **Proof of Compliance.** Respondent is directed to maintain proof of Respondent's compliance with the above requirements for each such report for a minimum of one year after the Repeval Conditions Period has ended. Respondent is required to present such proof upon request by the State Bar, the Office of Probation, or the State Bar Court.
- (7) **State Bar Ethics School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
- (8) **State Bar Ethics School Not Recommended:** It is not recommended that Respondent be ordered to attend the State Bar Ethics School because
- (9) **State Bar Client Trust Accounting School:** Within one year after the effective date of the order imposing discipline in this matter, Respondent must submit to the Office of Probation satisfactory evidence of completion of the State Bar Client Trust Accounting School and passage of the test given at the end of that session. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and Respondent will not receive MCLE credit for attending this session.
- (10) **Minimum Continuing Legal Education (MCLE) Courses – California Legal Ethics [Alternative to State Bar Ethics School for Out-of-State Residents]:** Because Respondent resides outside of California, within **one (1) year** after the effective date of the order imposing discipline in this matter, Respondent must either submit to the Office of Probation satisfactory evidence of completion of the State Bar Ethics School and passage of the test given at the end of that session or, in the alternative, complete **six (6) hours** of California Minimum Continuing Legal Education-approved participatory activity in California legal ethics and provide proof of such completion to the Office of Probation. This requirement is separate from any MCLE requirement, and Respondent will not receive MCLE credit for this activity.
- (11) **Criminal Probation:** Respondent must comply with all probation conditions imposed in the underlying criminal matter and must report such compliance under penalty of perjury in all quarterly and final reports submitted to the Office of Probation covering any portion of the period of the criminal probation. In each quarterly and final report, if Respondent has an assigned criminal probation officer, Respondent must

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Peter Kristofer Stojnik

CASE NUMBER: 17-J-00133

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 17-J-00133 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. On May 14, 2008, respondent was admitted to the practice of law in the State of Arizona.
2. On November 10, 2016, respondent and the State Bar of Arizona entered into an Amended Agreement for Discipline by Consent (“Amended Agreement”) in respondent’s disciplinary proceeding entitled, In the Matter of Peter Kristofer Stojnik, case no. PDJ 2016-9083. In the Amended Agreement, respondent waived his right to an adjudicatory hearing and conditionally admitted that his conduct violated Arizona Supreme Court Rule 42, ERs 4.4(a) [respect of rights of others], 8.4(d)[conduct prejudicial to the administration of justice], and rule 41(g) [engaging in misconduct prejudicial to the administration of justice]. (See Exhibit 1, Amended Agreement attached hereto, 17 pages and Exhibit 2, Arizona Supreme Court Rule 42, ERs 4.4(a), 8.4(d) and rule 41(g) attached hereto, 20 pages.)
3. Pursuant to the terms of the Amended Agreement, respondent conditionally agreed that he engaged in overly zealous tactics to ruin the opposing party personally and that his conduct “under all circumstances, was unprofessional and prejudicial to the administration of justice.” The parties further agreed that the respondent’s actions “caused actual harm to the opposing party, and violated his duty to the profession, legal system and the public.”
4. In the Amended Agreement, the parties agreed that mitigating factors included American Bar Association Standards for Imposing Lawyer Sanctions, Model Rules Standards 9.32(a) [absence of prior disciplinary record and successful completion of the terms of the conditional admission order]; 9.32(b) [absence of selfish or dishonest motive]; and 9.32(c) [personal or emotional problems]. Aggravating factors included Standard 9.22(i) [substantial experience in the practice of law]. (See Exhibit 3, attached hereto, 5 pages.)
5. On November 16, 2016, the Presiding Disciplinary Judge of the Supreme Court of Arizona issued a Final Judgment and Order (“Order”), in case no. PDJ 2016-9083, approving the Amended Agreement. (See Exhibit 4, attached hereto, 9 pages.)

6. The Order suspended respondent from the practice of law in Arizona for thirty (30) days, placed him on two (2) years of probation under conditions set forth in the agreement, and ordered him to pay disciplinary costs and expenses. The Order thereafter became final.

7. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

8. In December of 2014, respondent was retained to represent a client in a sexual harassment lawsuit against her former employer and three other restaurants, collectively referred to as "Complainants."

9. On March 19, 2015, respondent filed a complaint in Federal District Court for the State of Arizona on his client's behalf against the Complainants.

10. After he filed the complaint, respondent used harassment and intimidation tactics in an effort to compel settlement. In his initial demand to Complainants, respondent threatened to use frequent press releases to alert the public of the alleged sexual misconduct that occurred at the restaurants.

11. On February 1, 2015, respondent created a website entitled "stoneandvinesexualallegations.com" regarding his client's sexual allegations and personally posted unprofessional comments about the Complainants on that website. The respondent also assured Complainants that a "shame on" you banner would be placed in a public area of their restaurants.

12. In a further effort to force settlement, respondent told Complainants that CBS 5 Investigates of Arizona was investigating his client's allegations. He also told Complainants that he had a meeting with Scottsdale police about the lawsuit, and that he scheduled a meeting with the Department of Justice to report Complainants' hiring and harboring of undocumented workers.

13. On February 2, 2015, Complainants warned respondent that his conduct was actionable under Arizona law and violated his ethical obligations. For approximately five weeks, respondent removed his website, but reverted to his previous conduct when settlement efforts with Complainants failed.

14. When a new restaurant opened in Chandler, Arizona, respondent posted content on its webpage and arranged to have flyers distributed that referred to his client's former employer as a "predator" and posted a picture of his client's former employer with the tagline "[John Doe]. Does he look like a sexual predator to you?"

15. In response to a settlement offer from Complainants' counsel on March 17, 2015, respondent wrote: "I do not engage in hyperbole. What I say is what I do. I intend to destroy these restaurants. Two years from now, we'll wind up with quadruple, [the Restaurant] will be out of business and [John Doe] will sue [the insurance] on fiduciary issues. No big deal. We'll wait."

16. The Complainants answered the complaint and because of respondent's conduct, also filed a

Cross-Complaint, an application for a temporary restraining order (“TRO”) against respondent, a Motion to Disqualify respondent, and a Motion to Strike portions of the Complaint. A Senior District Judge (“Judge”) of the Federal District Court for the State of Arizona held a scheduling hearing on April 3, 2015, in order to eliminate the need for a hearing on the TRO, and at the Judge’s direction, respondent agreed to cease the conduct which precipitated the TRO request. The court made it very clear, however, that respondent’s behavior was unprofessional.

17. On July 24, 2015, the lawsuit was dismissed by court order after the parties reached a settlement.

CONCLUSIONS OF LAW:

18. As a matter of law, respondent’s culpability of professional misconduct determined in the proceeding before the State Bar of Arizona warrants imposition of discipline under the laws and rules binding upon respondent in the State of California at the time respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

AGGRAVATING CIRCUMSTANCES.

Uncharged Violations of State Bar Act/Rules of Professional Conduct (Standard 1.5(d)):

Respondent’s misconduct herein is aggravated by the fact that he did not report a recent State Bar of Arizona disciplinary matter, case no. PDJ 2017-9096, to the State Bar of California in violation of Business and Professions Code section 6068(o)(6), which requires an attorney to self-report to the State Bar, within 30 days of the time he has knowledge of, the “imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.” On August 24, 2017, in case no. PDJ 2017-9096, respondent was reprimanded for violating Arizona Supreme Court Rule 42, ERs 4.4. [Respect for Rights of Others], 8.4(d) [conduct prejudicial to the administration of justice] and rule 41(g) [unprofessional conduct]. (See Exhibit 5, attached hereto, 27 pages.) To date, respondent failed to fulfill his reporting requirement to the State Bar of California.

Significant harm to the client, the public, or the administration of justice (Std. 1.5 (j)):

Respondent’s misconduct resulted in actual harm to the Complainants as slanderous statements regarding the Complainants were publicized on respondent’s website. Respondent’s misconduct also caused a cross-complaint to be filed against his client, and opposing counsel to file a Motion to Strike portions of his client’s complaint, thereby increasing litigation costs to Complainants and respondent’s client. (*In the Matter of Dixon* (1999) 4 Cal. State Bar Ct. Rptr. 23, 45 [finding serious aggravation for respondent’s pattern of falsely accusing opposing counsel, witnesses, judges, and others as committing misconduct, as racists, fascists, pedophiles, and persons covering up molestation and abuse of minor children seriously harms the administration of justice, the public, and the profession]; *In the Matter of Casey* (Review Dept. 2008) 5 Cal. State Bar Ct. Rptr. 117, 126 [Additional attorney’s costs incurred for an attorney’s misconduct constitute significant harm].)

MITIGATING CIRCUMSTANCES.

No Prior Discipline: Respondent was admitted to practice law in California on June 1, 2006 and has been active at all times since. Respondent has been discipline free for approximately 8 years of practice from admission to the time of the misconduct committed herein and is therefore entitled to mitigation. (*Hawes v. State Bar* (1990) 51 Cal.3d 587, 596 [ten years of a discipline free practice given

“significant weight” in mitigation]; *In the Matter of Aguiluz* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 32, 44 [7 years of a discipline free practice worth only slight mitigation].)

Prefiling Stipulation: By entering into this stipulation, respondent has acknowledged misconduct and is entitled to mitigation for recognition of wrongdoing and saving the State Bar significant resources and time. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability]; *In the Matter of Spaith* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 511, 521 [where the attorney's stipulation to facts and culpability was held to be a mitigating circumstance].)

Emotional Difficulties: At the time of the misconduct committed herein, respondent was addressing his alcoholism. His alcoholism created and exacerbated personal issues including chronic fatigue; anger and irritability; interpersonal and marital conflict; and family dysfunction.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to standards are to this source.) The standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silvertown* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In this matter, respondent was found culpable of professional misconduct in the other jurisdiction, and to determine the appropriate sanction in this proceeding, it is necessary to consider the equivalent rule or statutory violation under California law. Specifically, respondent’s misconduct in the other jurisdiction demonstrates a violation of the California Rules of Professional Conduct, rule 5-100(A) [Threatening Criminal, Administrative or Disciplinary Charges].

In determining whether to impose a sanction greater or less than that specified in a given standard, in addition to the factors set forth in the specific standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In the instant case, Standard 2.19 applies and provides that reproof or suspension not to exceed three years is the appropriate sanction for a violation of a provision of the Rules of Professional Conduct, not specified in the Standards.

While respondent's misconduct is mitigated by 8 years of a discipline free practice at the time the misconduct began and by entering into a prefiling stipulation, it is aggravated by the significant harm caused to his client and the Complainants as well as by his failure to self-report a recent discipline imposed upon him by the State Bar of Arizona in an unrelated matter, PDJ 2017-9096.

On balance, the aggravation outweighs the mitigation, and given the serious harm to respondent's client and Complainants, public reproof on the terms and conditions set forth herein is appropriate in order to protect the public, the courts, and the profession; maintain the highest professional standards; and preserve public confidence in the legal profession.

The outcome is consistent with case law. In *In the Matter of Elkins*, (Rev. Dept. 2009) 5 Cal. State Bar Ct. Rptr. 160, after the attorney was removed as co-executor of his father's estate (the "estate"), he sent 53 threatening and abusive voicemail messages to the successor administrator of the estate, the attorney for the administrator, and the ex officio judge of the Forsyth County Superior Court of North Carolina, who was responsible for overseeing the estate. The attorney in *Elkins* also threatened to report these individuals to state and federal agencies to gain an advantage in the civil dispute and accused the ex officio judge of taking a bribe. Although *Elkins* was admonished for his behavior by opposing counsel, *Elkins'* behavior continued, causing the successor administrator and his attorney to fear for their safety, which prompted them to obtain a restraining order against the attorney.

The attorney in *Elkins* was charged and found culpable of Business and Professions Code sections 6106, 6068(b) and the Rules of Professional Conduct, rule 5-100(A). The attorney was also found culpable of Business and Professions Code section 6068(j) for failing to update his membership address with the State Bar. However, the Review Department did not apply additional weight for disciplinary purposes, the attorney's violation of Rule 5-100(A) since the Court had relied on the same set of facts to establish the attorney's culpability for violating Business and Professions Code section 6106. While the Review Department gave the attorney significant amount of mitigation for his 24 years of a discipline free practice, he did not receive any mitigation for extreme emotional difficulties. The attorney in *Elkins* was suspended for two-years stayed, placed on two-years probation with standard conditions including ninety (90) days actual suspension, ordered to comply with rule 9.20 and to submit to the Office of Probation satisfactory evidence of completion and passage of State Bar Ethics School and the Multistate Professional Responsibility Examination. *Id. citing to In the Matter of Kennon* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 267, 277.

Like *Elkins*, respondent repeatedly harassed Complainants by publically shaming them and threatening to use press releases to alert the public of the Complainants' alleged sexual improprieties in addition to threatening to report them to law enforcement. Respondent, like the attorney in *Elkins* engaged in this conduct in order to seek leverage in a civil dispute and engaged in the same type of behavior even after being alerted that he was engaging in unethical conduct. Unlike *Elkins*, however, respondent only committed one act of misconduct in violation of rule 5-100(A), which did not involve moral turpitude. Although respondent engaged in harassing behavior, it did not rise to the level where the Complainants had to seek a restraining order against the respondent for fear for their own safety. Thus, discipline less severe than what was recommended in *Elkins* is appropriate in the present matter.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of Chief Trial Counsel has informed respondent that as of August 24, 2018, the discipline costs in this matter are approximately \$2,518. Respondent further acknowledges that should this stipulation be rejected or should relief from stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MINIMUM CONTINUING LEGAL EDUCATION (“MCLE”) CREDIT

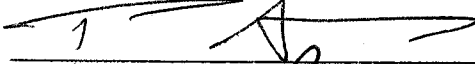


Respondent may not receive MCLE credit for completion of State Bar Ethics School ordered as a condition of probation. (Rules Proc. of State Bar, rule 3201.)

(Do not write above this line.)

In the Matter of: PETER KRISTOFER STROJNIK	Case Number(s): 17-J-00133
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>9-12-18</u> Date	 Respondent's Signature	<u>Peter Kristofer Strojnik</u> Print Name
<u>9/17/18</u> Date	 Respondent's Counsel Signature	<u>Ellen A. Pansky</u> Print Name
<u>9/18/18</u> Date	 Deputy Trial Counsel's Signature	<u>Angie Esquivel</u> Print Name

(Do not write above this line.)

In the Matter of: PETER KRISTOFER STROJNIK	Case Number(s): 17-J-00133
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REPROVAL ORDER

Finding that the stipulation protects the public and that the interests of Respondent will be served by any conditions attached to the reproof, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED AND THE REPROVAL IMPOSED.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the REPROVAL IMPOSED.
- All court dates in the Hearing Department are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See Rules Proc. of State Bar, rule 5.58(E) & (F).) **Otherwise the stipulation shall be effective 15 days after service of this order.**

Failure to comply with any conditions attached to this reproof may constitute cause for a separate proceeding for willful breach of rule 1-110, Rules of Professional Conduct.

Sept. 26, 2018
Date

Cynthia Valenzuela
CYNTHIA VALENZUELA
Judge of the State Bar Court

Shauna R. Miller, Bar No. 015197
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7278
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

NOV 10 2016

FILED
BY Am

Peter Kristofer Strojnik, Bar No. 026082
The Strojnik Firm LLC
Esplanade Center III
2415 East Camelback Road, Suite 700
Phoenix, Arizona 85016-4245
Telephone (602)510-9409
Email: strojnik@skplaw.com
Respondent

The foregoing instrument is a full, true, and correct copy of the original on file in this office
Certified this 15th day of Dec., 2016
By Am
Disciplinary Clerk
Supreme Court of Arizona

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**PETER KRISTOFER STROJNIK,
Bar No. 026082,**

Respondent.

PDJ 2016-9083

[State Bar File No. 15-0695]

**AMENDED AGREEMENT FOR
DISCIPLINE BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Peter Kristofer Strojnik, who chooses not to be represented by counsel, hereby submit their Amended Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on January 27, 2016, and a formal complaint was filed on September 2, 2016. On July 12, 2016, the State Bar and Respondent submitted an agreement for discipline by consent. On August 2, 2016, the presiding disciplinary judge (PDJ) file a recommendation for modification. On August 16, 2016, a motion to extend time to file modified agreement for a discipline by consent was filed. On August 18, 2016, the PDJ filed an order extending the time

to file a modified agreement. On or about September 6, 2016, Respondent decided to proceed to hearing. Respondent, however, has again decided to settle this matter with the State Bar and the parties submit this amended agreement for discipline by consent.

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), Ariz. R. Sup. Ct., notice of the previous agreement was provided to the complainants by letter on May 11, 2016. None of the complainants filed a written objection to the agreement for a reprimand. The parties do not believe it is necessary to give further notice of a greater sanction.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 4.4 (respect for rights of others), 8.4(d) (conduct prejudicial to the administration of justice), and Rule 41(g) (unprofessional conduct). Upon acceptance of this agreement, Respondent agrees to accept imposition of a thirty (30) day suspension and two years' of probation. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 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, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on May 14, 2008.

COUNT ONE (File no. 15-0695/ Mullis & Peters)

2. Complainants submitted the bar complaint on behalf of their clients, JGP Restaurants, LLC (whose principal is Joseph Popo ("Mr. Popo")), and three other LLC's collectively referred to as the "Restaurants." The underlying dispute arises out a claim of sexual harassment against Mr. Popo and the Restaurants by a former employee, Amy Patterson. Ms. Patterson worked at each of the Restaurants for a varying period of time as a server and a manager. She resigned in December of 2014, and retained Respondent.

3. On March 19, 2015, Respondent filed a complaint in Federal Court on Ms. Patterson's behalf.

4. Respondent used inappropriate means to compel settlement in the matter. In his initial demand to Complainants, he threatened to use press releases to alert the public to the sexual allegations that occurred at the Restaurants. In a February 1, 2015, correspondence, Respondent announced the opening of his www.stoneandvinesexualallegations.com website. Respondent assured Complainants that a "shame on" banner would be placed in a public area of the Restaurants. Respondent told Complainants that he had had a meeting with Scottsdale police about the lawsuit, that CBS 5 Investigates was looking at the matter, and that his client would be meeting with the Department of Justice to report the hiring and harboring of undocumented workers.

5. On February 2, 2015, Complainants warned Respondent that his conduct was actionable under Arizona law and violated his ethical obligations. For about five weeks, Respondent removed the website, but when settlement efforts failed, he reverted to his previous conduct. If this matter were to proceed to hearing, Respondent would testify that, at least in part, Respondent's posts and conduct after the settlement offer was rejected were made in response to vile and degrading online posts about his client that he believed were directly or indirectly initiated by the plaintiff.

6. When a new restaurant opened in Chandler, Respondent posted content on its webpage and arranged to have flyers distributed calling Mr. Popo a "predator" and posted a picture of Mr. Popo's picture with the tagline "Joe Pop. Does he look like a sexual predator to you?"

7. On March 17, 2015, in response to a settlement offer from Complainant Mullis' firm, Respondent wrote: "Robert, I do not engage in hyperbole. What I say is what I do. I intend to destroy these restaurants. Two years from now, we'll wind up with quadruple, [the Restaurant] will be out of business and Popo will sue Farmers on fiduciary issues. No big deal. We'll wait."

8. Mr. Popo and the Restaurants answered the complaint and, because of Respondents conduct, also filed a cross-complaint, an application for a temporary restraining order, a motion to disqualify Respondent, and a motion to strike portions of the complaint. Judge Wake held a scheduling hearing on Friday, April 3, 2015.

9. To eliminate the need for a hearing on the Temporary Restraining Order ("TRO"), and at the insistence of Judge Wake, Respondent agreed to cease the

conduct which precipitated the TRO request. The Court made it very clear, however, that Respondent's behavior was unprofessional.

10. Respondent engaged in overly zealous tactics to ruin Mr. Popo personally, and take the restaurants down. If this matter were to proceed to hearing Respondent would testify that his conduct was also meant to protect his client. His conduct, under all of the circumstances, was unprofessional and prejudicial to the administration of justice.

11. On July 24, 2015, the lawsuit was dismissed by court order after the parties reached a settlement.

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 his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 4.4 (respect for rights of others), 8.4(d) (conduct prejudicial to the administration of justice), and Rule 41(g) (unprofessional conduct).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss ERs 3.6(a) and 4.2.

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: thirty (30) day suspension and probation for two years. The terms of probation are addressed in the proposed order.

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

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The parties agree that *Standard* 7.2, violation of duties owed as a professional, are appropriate given the facts and circumstances of this matter.

Standard 7.2

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public, or the legal system.

The parties agree that the more egregious misconduct was when Respondent knowingly reopened his website, posted content on that site, and arranged for flyers to be distributed at the business of the defendants stating that defendant was a "predator" with defendant's picture. Respondent also stated that he does not engage in hyperbole, and that he intended to "destroy" defendant's business. Thus, the presumptive sanction is suspension.

The duty violated

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

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent acted knowingly in his zealouslyness in representing his client.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual harm to the opposing party.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22 (a) Although Respondent has not had any prior discipline, he was conditionally admitted to practice, which the State Bar treats as a prior probation.

Standard 9.22 (i) Substantial experience in the practice of law.

In mitigation:

Standard 9.32 (a) Absence of a prior disciplinary record and successful completion of the terms of the conditional admission order.

Standard 9.32 (b) Absence of a dishonest or selfish motive.

Standard 9.32 (c) Personal or emotional problem. Respondent has been addressing a substance abuse problem involving alcohol. This issue created and exacerbated personal issues including chronic fatigue; anger and irritability; interpersonal and marital conflict; family dysfunction; and estrangement from close and supportive family members including Respondent's mother and sister.

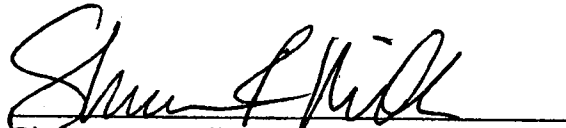
The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, a thirty (30) day suspension is appropriate.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of a thirty (30) days suspension with two years' probation and the imposition of costs and expenses. A proposed form order is attached hereto as exhibit B.


DATED this 10th day of November 2016.

STATE BAR OF ARIZONA



Shauna R. Miller
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 10th day of November, 2016.


Peter Kristofer Strojnik
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 10th day of November, 2016.

Copy of the foregoing emailed
this 10th day of November, 2016, 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 10th day of November, 2016, to:

Peter Kristofer Strojnik, Bar No. 026082
The Strojnik Firm LLC
Esplanade Center III
2415 E Camelback Rd Ste 700
Phoenix, AZ 85016-4245
Telephone 602-510-9409
Email: strojnik@skplaw.com
Respondent

Copy of the foregoing hand-delivered
this 10th day of November, 2016, to:

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

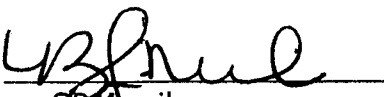
by: 
SRM aib

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
PETER Kristofer. STROJNIK Bar No. 026082, Respondent

File No. 15-0695

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

11/25/15 Investigator Mileage to Serve Subpoena \$ 10.35

Total for staff investigator charges \$ 10.35

TOTAL COSTS AND EXPENSES INCURRED \$1,210.25

EXHIBIT B

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**PETER KRISTOFER STROJNIK,
Bar No. 026082,**

Respondent.

PDJ 2016-9083

[State Bar File No. 15-0695]

FINAL JUDGMENT AND ORDER

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the agreement for discipline by consent filed on November 10, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Peter Kristofer Strojnik**, is suspended for thirty (30) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents. The suspension is effective thirty (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 two years. The terms of probation are as follows:

1. Respondent will undergo intensive outpatient chemical dependency (IOPCD) treatment in a group setting and shall follow the program's aftercare recommendations. The IOPCD group that Respondent chooses must first be approved by Dr. Lett. Respondent must start treating in an approved group within 30 days from signing the terms of probation.

2. Respondent shall not use alcohol, other drugs, or any other mood-altering substances except on prescription from a treating health care professional; provided, however, that said prescription has been fully disclosed to the compliance monitor.
3. Within 30 days of completing the IOPCD, Respondent shall undergo a comprehensive psychological evaluation. Any recommendations generated from the psychological evaluation shall be incorporated into the terms of probation.
4. Respondent shall comply with all other standard MAP terms as set forth in the terms of probation that will be prepared by the compliance monitor of the State Bar.

IT IS FURTHER ORDERED that Respondent will be responsible for any costs associated the terms of probation.

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.

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 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.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,210.25 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 November, 2016.

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 November, 2016.

Copies of the foregoing mailed/emailed
this _____ day of November, 2016, to:

Peter Kristofer Strojnik, Bar No. 026082
The Strojnik Firm LLC
Esplanade Center III
2415 E Camelback Rd Ste 700
Phoenix, AZ 85016-4245
Telephone 602-510-9409
Email: strojnik@skplaw.com
Respondent

Copy of the foregoing emailed/hand-delivered
this ____ day of November, 2016, to:

Shauna R. Miller
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this ____ day of November, 2016, to:

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

by: _____



Ariz. Sup. Ct. R. 42

This document reflects changes effective as of January 1, 2018.

Arizona Court Rules > RULES OF THE SUPREME COURT > V. REGULATION OF THE PRACTICE OF LAW > D. LAWYER OBLIGATIONS

Rule 42. Arizona Rules of Professional Conduct

Annotations

Notes

EDITOR'S NOTE.

In the *Arizona Annotated Rules of Court*, the Rules of Professional Conduct are set out separately from the Supreme Court Rules. The Rules of Professional Conduct may be found directly following the Supreme Court Rules.

ARIZONA COURT RULES ANNOTATED

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End of Document

Ariz. Rules of Prof'l Conduct R. 4.4

This document reflects changes received by the publisher as of April 4, 2017.

Arizona Court Rules > ARIZONA RULES OF PROFESSIONAL CONDUCT > TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

ER 4.4. Respect for rights of others

- (a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person, or use methods of obtaining evidence that violate the legal rights of such a person.
- (b) A lawyer who receives a document or electronically stored information and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender and preserve the status quo for a reasonable period of time in order to permit the sender to take protective measures.

History

Effective December 1, 2003 by R-02-0045; amended by R-13-0060, effective January 1, 2015.

Annotations

Commentary

COMMENT

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of others. It is impracticable to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from others and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

[2] Paragraph (b) recognizes that lawyers sometimes receive a documents or electronically stored information that was mistakenly sent or produced by opposing parties or their lawyers. A document or electronically stored information is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document or electronically stored information is accidentally included with information that was intentionally transmitted. If a lawyer knows or reasonably should know that such a document or electronically stored information was sent inadvertently, then this **ER** requires the lawyer to stop reading the document, to make no use of the document, and to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the document or electronically stored information, is a matter of law beyond the scope of these ERs, as is the question of whether the privileged status of a document or electronically stored information has been waived. Similarly, this **ER** does not address the legal duties of a lawyer who receives a document or electronically stored information that the lawyer knows or reasonably should know may have been inappropriately obtained by the sending person. For purposes of this **ER**, "document or electronically

Ariz. Rules of Prof'l Conduct R. 4.4

stored information" includes, in addition to paper documents, e-mail and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form. A receiving lawyer who discovers metadata embedded within a document or electronically stored communication and who knows or reasonably should know that the metadata reveals confidential or privileged information has a duty to comply with the procedures set forth in ER 4.4(b).

[3] Some lawyers may choose to return a document or delete electronically stored information unread, for example, when the lawyer learns before receiving it that it was inadvertently sent. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document or delete electronically stored information is a matter of professional judgment ordinarily reserved to the lawyer. See ERs 1.2 and 1.4.

Case Notes

DELAY.
 INAPPROPRIATE METHODS.
 KNOWING ACTS OF DISHONESTY.
 VIOLATION NOT SHOWN.

DELAY.

Attorney's actions in delaying dismissal of suit for months after he had acknowledged he had no claim against defendant violated rule 3.1 and this rule. In re Levine, 174 Ariz. 146, 847 P.2d 1093 (1993).

INAPPROPRIATE METHODS.

In making surreptitious tape recordings, respondent violated this rule. In re Wetzel, 143 Ariz. 35, 691 P.2d 1063 (1984), cert. denied, 469 U.S. 1213, 105 S. Ct. 1184, 84 L. Ed. 2d 331 (1985).

When counsel misplaced evidence, he was not entitled to submit a false substitute in its place, because to do so was a violation of this rule. In re Wetzel, 143 Ariz. 35, 691 P.2d 1063 (1984), cert. denied, 469 U.S. 1213, 105 S. Ct. 1184, 84 L. Ed. 2d 331 (1985).

KNOWING ACTS OF DISHONESTY.

Lawyer committed professional misconduct by failing to take action to obtain a formal agency interview as directed by the client, by abandoning the client at the hearing, and by falsely telling the agency that he had been retained only the week before. In another case, the lawyer settled without the client's consent and misrepresented to the court that the client had not responded to his attempts to communicate. In re Isler, 233 Ariz. 534, 315 P.3d 711, 2014 Ariz. LEXIS 32 (2014).

VIOLATION NOT SHOWN.

Protective order was valid even though it was obtained from a court that lacked jurisdiction in the matter, and a lawyer who gave a client incorrect advice about where to apply for the order did not commit professional misconduct absent any evidence shows that the lawyer sought to embarrass, delay, or burden the person subject to the order. In re Isler, 233 Ariz. 534, 315 P.3d 711, 2014 Ariz. LEXIS 32 (2014).

Attorney did not violate this rule in relation to a civil RICO lawsuit she was assigned to handle by her boss because she did not serve as one of her boss's senior advisors, she was not involved in the decision to initiate the lawsuit,

Ariz. Rules of Prof'l Conduct R. 4.4

and she did not ask to be assigned to the case; at most, the evidence showed that she was motivated to pursue the RICO lawsuit in order to please her boss, thereby furthering her career. *In re Alexander*, 232 Ariz. 1, 659 Ariz. Adv. Rep. 19, 300 P.3d 536, 2013 Ariz. LEXIS 127 (2013).

ARIZONA COURT RULES ANNOTATED

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Ariz. Rules of Prof'l Conduct R. 8.4

This document reflects changes received by the publisher as of April 4, 2017.

Arizona Court Rules > ARIZONA RULES OF PROFESSIONAL CONDUCT > MAINTAINING THE INTEGRITY OF THE PROFESSION

ER 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable Code of Judicial Conduct or other law.
- (g) file a notice of change of judge under *Rule 10.2, Arizona Rules of Criminal Procedure*, for an improper purpose, such as obtaining a trial delay or other circumstances enumerated in Rule 10.2(b).

History

Effective December 1, 2003 by R-02-0045; amended in final form June 8, 2004, effective October 1, 2004.

Annotations

Commentary

COMMENT

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client of action the client is lawfully entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be

Ariz. Rules of Prof'l Conduct R. 8.4

construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. This does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status, or other similar factors, are issues in the proceeding. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

COURT COMMENT TO EXPERIMENTAL 2001 AMENDMENT TO ER 8.4(G) Arizona is one of only a few states that allow by judicial rules a party to notice a change of judge without cause. The purpose of the rule is to allow a party to ask for a new judge when a party may perceive a bias that does not rise to disqualification under the rules allowing a challenge for actual bias or prejudice. Historically, the reasons for exercising a challenge were not inquired into. Just as peremptory challenges of jurors lead to abuses of race or gender based disqualification, however, the peremptory notice of judge has been abused by some to obtain trial delay.

The rule was amended in 2001 on an experimental basis to make clear that filing a notice of change of judge for an improper purpose, such as trial delay or other circumstances enumerated in Rule 10.2(b), is unprofessional conduct. The Court adopted this amendment and the amendments to Rule 10.2, Rules of Criminal Procedure, in an effort to address abuse of Rule 10.2. If such abuse is not substantially reduced as a result of the amendments at the conclusion of the one-year experiment on June 30, 2002, the Court at that time will abolish the peremptory change of judge in most criminal cases as recommended in a proposal by the Arizona Judicial Council. See R-00-0025.

COURT COMMENT TO 2004 AMENDMENT Arizona is one of a minority of states that allow a party to file a notice of change of judge without cause. The purpose of the rule is to allow a party to ask for a new judge when a party may perceive a bias that does not rise to disqualification under the rules allowing a challenge for actual bias or prejudice.

Arizona's rule permitting peremptory change of judge has historically been viewed as "salutary" on the grounds that "it is not necessary to embarrass the judge by setting forth in detail the facts of bias, prejudice or interests which may disqualify him nor is it necessary for judge, litigant and attorney to involve themselves in an imbroglio which might result in everlasting bitterness on the part of the judge and the lawyer." Anonymous v. Superior Court, 14 Ariz. App. 502, 504, 484 P.2d 655 (1971).

However, just as peremptory challenges of jurors led to abuses of race or gender-based disqualification, the peremptory notice of judge has been subject to abuse, including attempts through "blanket" challenges to bring pressure upon judges and thereby undermine judicial independence. State v. City Court of City of Tucson, 150 Ariz. 99, 722 P.2d 267.

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The rule was amended in 2004 to make clear that filing a notice of change of judge for an improper purpose, such as trial delay or other circumstances enumerated in Rule 10.2(b), is unprofessional conduct. The Court adopted this amendment and the amendments to Rule 10.2, Rules of Criminal Procedure, in an effort to address abuse of Rule 10.2 while preserving the traditional benefits of the right to peremptory change of judge.

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IN GENERAL.

Attorney was suspended for 120 days and placed on probation for 2 years where he admitted that he had failed to act with diligence and promptness in his representation of his clients in collection matters, that with respect to a number of important matters, that with respect to a number of important matters, failed to keep the clients reasonably informed, failed to comply with reasonable requests for information and failed to promptly comply with requests for information, and had kept his accounts and records poorly. In re Giles, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 191 (Nov. 1, 2002).

Attorney should have been disbarred because of numerous, significant complaints against him; for example, he negligently made a false statement of fact to the court in requesting court awarded attorney's fees when his client had entered into a contingency fee agreement, and he shared legal fees with nonlawyers; however, he was suspended for 4 years and 11 months; the attorney discipline commission took into account the psychological effect

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of the shock of his father's incarceration as a mitigating factor because it resulted in the attorney's inability to function competently. In re Winski, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 174 (Sept. 30, 2002).

The plaintiff's claims of fraud and intentional infliction of emotional distress against opposing counsel failed to comprise recognized causes of action. Although the plaintiffs were foreclosed from bringing a fraud claim against opposing counsel, they had other remedies available to them which they did not utilize. Linder v. Brown & Herrick, 189 Ariz. 398, 943 P.2d 758 (Ct. App. 1997).

By virtue of his conviction of perjury, attorney violated **ER 3.3(a)(1)** by making a false statement of material fact to a tribunal; violated subsection (b) of this rule by committing a criminal act that reflects adversely on his honesty, trustworthiness, and/or fitness as a lawyer; violated subsection (c) of this rule by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and violated subsection (d) of this rule by engaging in conduct prejudicial to the administration of justice. Additionally, his conviction of a felony violated Supreme Court Rule 51(a). In re Savoy, 181 Ariz. 368, 891 P.2d 236 (1995).

PURPOSE.

The purpose of lawyer discipline is not to punish the lawyer but to protect the public, the profession, and the administration of justice. In re Allen, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 33 (Apr. 26, 2000).

The goal of disciplinary proceedings is different than the goal of criminal proceedings; the goal in disciplinary proceedings is to protect the public in the future, not to punish the offender. In re Rivkind, 164 Ariz. 154, 791 P.2d 1037 (1990).

The object of disciplinary proceedings is not to punish the lawyer, but to protect the public and deter similar conduct by other lawyers. In re Rivkind, 164 Ariz. 154, 791 P.2d 1037 (1990).

APPLICABILITY.

Actions warranted six month suspension of practice, enrollment in law office management assistance program and restitution to client where attorney violated many rules, including this rule, which prohibits conduct involving dishonest or misrepresentation. In re Carrasco, 176 Ariz. 459, 862 P.2d 219 (1993).

A lawyer does not cease to be bound by the ethical code merely because he is an officer or director of a company. Although a lawyer is not guilty of an ethical violation every time a business loses money or fails, a lawyer is bound not to engage in "conduct involving dishonesty, fraud, deceit, or misrepresentation," whether he has one hundred clients or none and whether he acts as a principal or as an agent. In re Kersting, 151 Ariz. 171, 726 P.2d 587 (1986).

ADMINISTRATION OF JUSTICE.

Attorney working for the office of the county attorney violated (d) of this rule by maintaining a civil RICO lawsuit against sitting judges, and impeded the administration of justice by demonstrating to all judges in the county that they risked having to defend against a civil damages lawsuit if they made rulings that displeased the county attorney's office. In re Alexander, 232 Ariz. 1, 659 Ariz. Adv. Rep. 19, 300 P.3d 536, 2013 Ariz. LEXIS 127 (2013).

ATTORNEY DISBARRED.

Suspended attorney was disbarred where because of prior discipline, he clearly was on notice that his sexual misconduct, which involved exploitation and extortion, and the practice of meeting with clients in his home, was

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inappropriate, and he still had not returned the nude photos of one of his clients, despite repeated requests to do so and he offered to show the nude photographs to bar counsel. In re Piatt, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 192 (Oct. 31, 2002).

Suspended attorney was disbarred where, he admitted he revealed the current identity and whereabouts of his client who was involved in a federal witness protection program and further admitted he knew the client's identity was confidential. In re Piatt, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 192 (Oct. 31, 2002).

BREACH OF FIDUCIARY DUTY.

Attorney disbarred for consistently refusing or failing to communicate with clients; terminating representation of a client without taking steps reasonably practical to protect the client's interests; repeatedly lying to the state bar about his involvement in the forgery of client's signature; counseling, encouraging, and participating in the preparation of a forged document; and for failing to respond to and cooperate with the state bar's investigations. In re Redeker, 177 Ariz. 305, 868 P.2d 318 (1994).

Where lawyer settled clients' cases without their permission or knowledge; failed to notify his clients that he had received settlement funds on their behalf, and failed to deliver the funds to his clients; converted his clients' money to his own use; and allowed two of his clients' cases to be dismissed for lack of prosecution; disbarment was the appropriate sanction. In re LaLonde, 172 Ariz. 60, 834 P.2d 146 (1992).

Where lawyer failed to adequately research New York law, and failed to make reasonable inquiry into the factual allegations he made to the court regarding the adoption of the children, and where transfer of funds to his own general account was against his client's wishes, but lawyer believed, albeit mistakenly, that he was legally entitled to keep those funds, a public censure, in addition to a probationary period with a practice monitor, was warranted. In re Garnice, 172 Ariz. 29, 833 P.2d 700 (1992).

By failing to ascertain the client's objectives and negotiating a settlement without authority, attorney intentionally breached a fiduciary duty to a client, the most important ethical duty a lawyer owes. In re Zang, 166 Ariz. 426, 803 P.2d 419 (1990).

Respondent's slipshod and sloppy accounting practices violated this rule. In re Grumble, 157 Ariz. 448, 759 P.2d 594 (1988).

A 90-day suspension was warranted where attorney failed to exercise even minimal care over his various trust accounts. In re Scanlan, 144 Ariz. 334, 697 P.2d 1084 (1985).

BUSINESS ADVICE.

When a judge gives business advice to a person or entity other than one closely held by the judge or members of the judge's family, he or she serves as an advisor in violation of Canon 4D(3), even when the advice is limited to one contract. In re Fleischman, 188 Ariz. 106, 933 P.2d 563 (1997).

CENSURE.

Respondent judge, disciplined for sexual harassment of female attorneys who appeared before him, violated this rule by placing his own sexual desires above his obligation to exhibit the highest standards of honesty and integrity; the judge was censured, permanently enjoined from holding judicial office in Arizona, and his license to practice law was suspended. In re Abrams, 227 Ariz. 248, 257 P.3d 167, 2011 Ariz. LEXIS 76 (2011).

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Attorney who, either directly or de facto, represented a client and the tenants of that client without discussing the potential conflict of interest that existed between them was censured and ordered to pay costs. In re Clark, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 21 (Feb. 13, 2002).

Attorneys who violated their duties of candor and truthfulness in the course of settlement proceedings were censured rather than suspended. In re Fee, 182 Ariz. 597, 898 P.2d 975 (1995).

COMPENSATION FOR EXTRA-JUDICIAL ACTIVITIES.

A stream of income flowing directly to a superior court judge and his estate over a period of years as a result of a business contract that he negotiated while holding judicial office created the appearance that performance of his judicial duties could have been influenced or compromised and further gave the obvious appearance of judicial impropriety. In re Fleischman, 188 Ariz. 106, 933 P.2d 563 (1997).

When a judge receives compensation or reimbursement for expenses for extra-judicial activities that are prohibited by the Code of Judicial Conduct, he or she has violated Canon 4(H)1, regardless of the amount of compensation. In re Fleischman, 188 Ariz. 106, 933 P.2d 563 (1997).

CONCEALMENT OF DOCUMENTS.

Attorney was censured and given one year probation where the attorney negligently misrepresented to an expert that portions of his file were non-discoverable and negligently advised the expert to remove documents from his file, thereby resulting in concealing documents from the opposing party. In re Hoyt, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 51 (Apr. 6, 2001).

CONTRACT ATTORNEY.

Violation of Ariz. R. Prof. Conduct 8.4(c) did not create a per se presumption of ineffective assistance of counsel, and a prisoner failed to show that use of contract counsel was inappropriate or that there was a displacement of the adversarial process. Cohen v. United States, -- F. Supp. 2d --, 2010 U.S. Dist. LEXIS 28556 (D. Ariz. Mar. 24, 2010).

COOPERATION WITH STATE BAR.

Where attorney retained for divorce proceeding failed to return client's telephone calls and failed to transfer the file to subsequent counsel, which caused the client to incur additional attorney's fees and costs and attorney later failed to respond and cooperate with the State Bar in the investigation of said matters, he was suspended for violations of subsection (d) of this Rule, ER 1.4, ER 1.16(d), ER 8.1(b), and Arizona Supreme Court Rule 51(h) & (i). In re Sill, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 32 (Apr. 26, 2000).

CRIMINAL CONDUCT.

Attorney was suspended from practice for six months after he pled guilty to felony drug offenses and the supreme court found that he had knowingly made a false statement of material fact in connection with the disciplinary matter. In re Vice, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 46 (Mar. 28, 2002).

Where attorney pled guilty to attempted aggravated assault (a class 4 felony) and unlawful flight from a pursuing law enforcement vehicle (a class 5 felony), the attorney was suspended for three years and ordered to pay costs

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and expenses of disciplinary proceedings. In re Farley, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 135 (Dec. 18, 2000).

Attorney was disbarred and ordered to pay costs of the disciplinary hearing where attorney failed to adequately represent his clients, failed to notify parties of his suspension, caused considerable delays in proceedings of his clients due to his lack of diligence, made false statements of material fact to the court, committed a criminal act by his use of methamphetamine, and failed to cooperate with the State Bar in the investigation of the matter. In re Bradshaw, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 17 (Mar. 15, 2000).

Attorney's criminal negligence in an automobile accident which caused the death of two innocent people and substantial illegal drug use reflected "adversely on a lawyer's fitness to practice law." In re Horwitz, 180 Ariz. 20, 881 P.2d 352 (1994).

The criminal acts committed by the attorney being disciplined (securities law violations committed in ignorance) did not reflect adversely on his honesty, trustworthiness or fitness as a lawyer. In re Beren, 178 Ariz. 400, 874 P.2d 320 (1994).

Six-month suspension followed by a two-year period of probation upon reinstatement was the appropriate sanction where lawyer was arrested for driving while under the influence and driving with a suspended license and convicted of aggravated driving, a class five felony. In re Keefe, 172 Ariz. 394, 837 P.2d 1129 (1992).

Discipline in cases of felony convictions is now determined on a case-by-case basis. In re Rivkind, 164 Ariz. 154, 791 P.2d 1037 (1990).

Disbarment was neither required nor appropriate where attorney knowingly engaged in illegal use of drugs but was not involved in the sale, distribution, or importation of drugs, and there was compelling rehabilitation evidence; therefore, two-year suspension was an adequate and appropriate sanction. In re Rivkind, 164 Ariz. 154, 791 P.2d 1037 (1990).

DECEITFUL CONDUCT.

Attorney was censured for representing couple regarding renovations to their home and then, while the wife was on a trip, signing a lease with the husband to rent the house and threatening the wife by filing a forcible detainer to have her removed. In re Herbert, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 37 (Mar. 5, 2002).

Where attorney was suspended from the practice of law yet continued to practice law during the suspension period, falsely stated that he did not engage in the practice of law during the suspension, and failed to cooperate with the State Bar investigation, the attorney's conduct violated this Rule, **ER** 5.5, **ER** 8.1, and Supreme Court Rule 51 subsections (e),(h), (i), and (k). In re Royston, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 50 (May 31, 2000).

Member of the state bar of Arizona, was disbarred for accepting retainers in at least ten cases he never intended to pursue. In re Wurtz, 177 Ariz. 586, 870 P.2d 404 (1994).

Actions warranted six month suspension of practice, enrollment in law office and restitution to client where attorney violated many rules, including this rule, which prohibits conduct involving dishonesty or misrepresentation. In re Carrasco, 176 Ariz. 459, 862 P.2d 219 (1993).

Attorney was censured and ordered to pay costs to the state bar where attorney signed his clients' name on powers of attorney naming himself as attorney, even though the attorney did not intend any personal gain. In re Charles, 174 Ariz. 91, 847 P.2d 592 (1993).

Attorney's conduct violated **ER** 1.1 when he failed to provide client with competent representation; **ER** 1.2 when he failed to consult with client regarding a summary judgment; **ER** 1.3 by his failure to act with reasonable diligence in

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representing client; ER 1.4 when he failed to keep client reasonably informed; ER 8.1(a) when he falsely stated that he had, in fact, responded to client's former attorney; ER 8.1(b) when he failed to respond to the state bar's inquiries into the matter; and this rule by engaging in conduct involving dishonesty. In re Riddle, 175 Ariz. 379, 857 P.2d 1233 (1993).

A six-month suspension was appropriate where attorney pleaded guilty to conspiracy to commit promotion of gambling. In re Schwartz, 176 Ariz. 455, 862 P.2d 215 (1993).

Lawyer's conduct violated ER 3.3(a)(1) when he knowingly submitted false information to the State Optometry Board, and because his conduct involved dishonesty and deceit, it also violated this rule. In re Tatham, 171 Ariz. 169, 830 P.2d 1215 (1992).

Where lawyer entered into a scheme or artifice to defraud his employer, disbarment was the appropriate sanction. In re Bruno, 172 Ariz. 27, 833 P.2d 698 (1992).

Disbarment is generally appropriate when a lawyer knowingly deceives a client with the intent to benefit the lawyer or another, and causes serious injury or potentially serious injury to a client. In re Zang, 166 Ariz. 426, 803 P.2d 419 (1990).

Where respondent indicated to another attorney that a response had been filed when in fact this had not been done, this was not acceptable conduct for an attorney and violated this rule. In re Douglas, 158 Ariz. 516, 764 P.2d 1 (1988).

Respondent violated ethical rules by wrongfully accepting settlement money he knew had been tendered in error. In re Zang, 154 Ariz. 134, 741 P.2d 267 (1987), cert. denied, 484 U.S. 1067, 108 S. Ct. 1030, 98 L. Ed. 2d 994 (1988).

Where the attorney agreed to represent a woman in an uncontested divorce for a set fee, this rule was violated when the attorney asked for additional money for services not provided. In re Wetzel, 143 Ariz. 35, 691 P.2d 1063 (1984), cert. denied, 469 U.S. 1213, 105 S. Ct. 1184, 84 L. Ed. 2d 331 (1985).

FAILURE TO PERFORM SERVICES.

Attorney was suspended for two years and ordered to pay restitution where the attorney's admitted misconduct arose from his failure to communicate with his clients and his failure to diligently pursue their legal matters, which caused harm to his clients, some in the form of adverse rulings. Additionally, attorney failed to respond or cooperate with the State Bar in the investigation of these matters. In re Summers, -- Ariz. --, -- P.2d --, 2000 Ariz. LEXIS 7 (Feb. 15, 2000).

Attorney was given a six month and one day suspension, and ordered to pay the costs of disciplinary proceedings for knowingly failing to comply with the rules of the tribunal, failing to carry out court ordered duties as an arbitrator, knowingly failing to appear as ordered at a hearing, and failing to comply with requests for information from the State Bar. In re Merchant, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 87 (August 25, 2000).

Member of the state bar of Arizona was disbarred for abandoning his practice to the detriment of his clients. In re Peartree, 178 Ariz. 114, 871 P.2d 235 (1994).

Censure and restitution ordered where attorney failed to notify court and opposing counsel that his client had filed a bankruptcy petition causing them to spend unnecessary time on litigation that had been stayed and where attorney failed to pay the sanctions ordered by the court for his behavior. In re Manning, 177 Ariz. 496, 869 P.2d 172 (1994).

Disbarment was appropriate for attorney whose actions included conversion of funds, failure to perform work for which he was retained and for which he accepted retainers, failure to pursue the clients' cases with diligence and competence, failure to maintain communication with clients, misrepresentation to clients concerning the status of

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their case, failure to return client files and property, practice of law after being placed on interim suspension, threatening adverse parties with physical violence, failure to remit money received on the clients' behalf, and allowing clients' cases to be dismissed or delayed. In re Woltman, 178 Ariz. 548, 875 P.2d 781 (1994).

Censure was proper discipline for attorney who did not intentionally allow the client's case to be dismissed, but unwisely relied on a process serving company to handle location and service of the parties in a responsible manner. In re Boettcher, 176 Ariz. 314, 861 P.2d 599 (1993).

Disbarment was appropriate for a lawyer who knowingly failed to perform services for client and engaged in a pattern of neglect with respect to client matters, and caused serious or potentially serious injury to clients, where attorney was previously suspended for matters arising out of circumstances similar to the incidents in this matter. In re Feeley, 176 Ariz. 196, 859 P.2d 1329 (1993).

A 90-day suspension was appropriate for attorney who, in corporate sale, failed to provide shareholder with the fully executed supplemental escrow instructions, failed to inform shareholder that the supplemental instructions had been altered after his signature, and submitted those altered instructions to the escrow company. In re Duckworth, 176 Ariz. 199, 859 P.2d 1332 (1993).

A statutory suspension followed by a two-year period of probation was warranted, where attorney failed to adequately communicate with his clients or keep them informed of the developments in their case, failed to comply with discovery which necessitated a motion to compel, and in addition he failed to timely respond to the state bar complaint, and as a result he had to be subpoenaed for a deposition. In re Cassalia, 173 Ariz. 372, 843 P.2d 654 (1992).

Disbarment was appropriate where a lawyer knowingly neglected viable claims against multiple defendants, and agreed to an inadequate insurance settlement without authority, causing serious injury to his client. In re Zang, 166 Ariz. 426, 803 P.2d 419 (1990).

Disbarment was the proper sanction, where respondent engaged in numerous acts of misconduct that centered on his lack of diligence in handling several clients' matters, to the injury of those clients. In re MacAskill, 163 Ariz. 354, 788 P.2d 87 (1990).

Failure to properly inform himself of the law regarding the legal status of the amount of the Air Force lien reflected adversely on attorney's fitness to practice law, and was a violation of this rule. In re Burns, 139 Ariz. 487, 679 P.2d 510 (1984).

FRAUDULENT CONDUCT.

Attorney was censured where the attorney engaged in fraudulent conduct by having his secretary sign deeds as a witness, even though the clients did not sign the deeds in the secretary's presence. In re Lamont, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 20 (Feb. 2, 2001).

Attorney violated this rule by providing false opinion letters to the Navajo Tribe, enabling his clients to profit from an undisclosed double sale and escrow, and thus would be disbarred. In re Duckworth, 185 Ariz. 197, 914 P.2d 900 (1996).

FULL DISCLOSURE REQUIRED.

When a judge is charged with a violation of the Code of Judicial Conduct, complete disclosure and cooperation with the Commission is absolutely required in order to preserve the integrity of the judicial system. In re Fleischman, 188 Ariz. 106, 933 P.2d 563 (1997).

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IMPROPER COMMUNICATIONS WITH JUDGE.

Evidence held sufficient to support attorney's guilt as to improper ex parte communication with a judge. In re Riley, 142 Ariz. 604, 691 P.2d 695 (1984).

KNOWING ACTS OF DISHONESTY.

Lawyer committed professional misconduct by failing to take action to obtain a formal agency interview as directed by the client, by abandoning the client at the hearing, and by falsely telling the agency that he had been retained only the week before. In another case, the lawyer settled without the client's consent and misrepresented to the court that the client had not responded to his attempts to communicate. In re Isler, 233 Ariz. 534, 315 P.3d 711, 2014 Ariz. LEXIS 32 (2014).

Where judge was convicted of seven felony offenses involving knowing acts of dishonesty, specifically filing false tax returns and structuring currency transactions to avoid treasury reporting requirements, the judge was suspended for six months. In re Scholl, 200 Ariz. 222, 345 Ariz. Adv. Rep. 16, 25 P.3d 710, 2001 Ariz. LEXIS 57 (2001).

LACK OF CANDOR.

Attorney was suspended for 30 days and ordered to pay costs and expenses where the attorney demonstrated a willful lack of candor to the trial court and was also found to be less than candid with the Hearing Officer in the discipline hearing. In re Coffee, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2001 Ariz. LEXIS 79 (May 31, 2001).

MALPRACTICE.

Attorney's negligence in allowing the statute of limitations to run may have been malpractice, but it was not an ethical violation. In re Pappas, 159 Ariz. 516, 768 P.2d 1161 (1988).

MENTAL ILLNESS.

Mental illness, whether it is a result of alcoholism or otherwise, is not sufficient to preclude the imposition of sanctions. In re Loftus, 171 Ariz. 672, 832 P.2d 689 (1992).

A finding of M'Naghten insanity is a complete defense to crime. In re Hoover, 161 Ariz. 529, 779 P.2d 1268 (1989).

MISREPRESENTATION.

Violation of Ariz. R. Prof. Conduct 8.4(c) does not create a per se presumption of ineffective assistance of counsel; use of contract counsel was not necessarily inappropriate, nor was there a displacement of the adversarial process. Cohen v. United States, -- F. Supp. 2d --, 2010 U.S. Dist. LEXIS 28556 (D. Ariz. Mar. 24, 2010).

Attorney who sought permission of the Superior Court of Maricopa County to appear pro hac vice and submitted an affidavit that he was an active member of the Utah and California bar associations, but was at that time suspended from both of those bar associations, warranted censure. In re Olsen, 180 Ariz. 5, 881 P.2d 337 (1994).

When a lawyer knowingly engages in any conduct (other than criminal) that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law, censure is an appropriate disciplinary action. In re Tatham, 171 Ariz. 169, 830 P.2d 1215 (1992).

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Where attorney being investigated for ethical violations appeared before the disciplinary committee and testified falsely under oath, disbarment was proper. In re Fresquez, 162 Ariz. 328, 783 P.2d 774 (1989).

Where respondent intentionally misrepresented the date his client acquired an interest in certain property so that he could claim depreciation allowances to which he was not entitled, thus defrauding the federal and state governments, attorney violated this disciplinary rule. In re Spear, 160 Ariz. 545, 774 P.2d 1335 (1989).

When attorney discovered that the statute of limitations had run on client's case, he had a duty to inform client rather than offer client a settlement out of attorney's own funds; the client was entitled to know the source of the funds and should have been advised to confer with another attorney. Respondent by silence misrepresented the actual state of client's affairs in violation of this rule. In re Pappas, 159 Ariz. 516, 768 P.2d 1161 (1988).

Where attorney attempted to frustrate discovery, disobeyed court orders, wrongly appropriated partnership assets, and misrepresented the value of property to be posted as security, the hearing committee found that attorney's conduct involved dishonesty, fraud, deceit or misrepresentation, and was prejudicial to the administration of justice and adversely reflected on fitness to practice law. In re Douglas, 158 Ariz. 516, 764 P.2d 1 (1988).

Respondent's refusal to inform his client of a mistaken payment or to return the portion of his fee that was based on the erroneous payment constituted ethical misconduct. In re Zang, 154 Ariz. 134, 741 P.2d 267 (1987), cert. denied, 484 U.S. 1067, 108 S. Ct. 1030, 98 L. Ed. 2d 994 (1988).

Respondent violated this rule when he helped land development company to effect substitutions by failing to disclose some material facts and actively misrepresenting others. In re Kersting, 151 Ariz. 171, 726 P.2d 587 (1986).

In falsely denying to the disciplinary committee that he had ex parte communications with a judge, the attorney was found guilty of misrepresentation, conduct prejudicial to the administration of justice and false statements. In re Riley, 142 Ariz. 604, 691 P.2d 695 (1984).

Where what the attorney submitted at his disciplinary hearing was not an affidavit, but was simply the statement to which he hoped a witness would attest, the attorney violated this rule. In re Wetzel, 143 Ariz. 35, 691 P.2d 1063 (1984), cert. denied, 469 U.S. 1213, 105 S. Ct. 1184, 84 L. Ed. 2d 331 (1985).

When counsel misplaced evidence, he was not entitled to submit a false substitute in its place; to do so was a violation of this rule and **ER 4.4**. In re Wetzel, 143 Ariz. 35, 691 P.2d 1063 (1984), cert. denied, 469 U.S. 1213, 105 S. Ct. 1184, 84 L. Ed. 2d 331 (1985).

NEGOTIATOR OR REPRESENTATIVE.

When a judge acts as a negotiator or a representative of a person or entity and advises that person or entity regarding a contractual relationship, he or she is practicing law in violation of Canon 4G. In re Fleischman, 188 Ariz. 106, 933 P.2d 563 (1997).

PERJURY.

Attorney's felony conviction for perjury was conclusive evidence of his guilt for the purposes of discipline proceeding warranting disbarment. In re Savoy, 181 Ariz. 368, 891 P.2d 236 (1995).

PREJUDICIAL CONDUCT.

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A prosecutor prejudiced the administration of justice when she obtained a grand jury indictment knowing the statute of limitations had run, and when she improperly sought to interview judges to inquire into the judges' mental processes and intimidate the judges. In re Member of the State Bar of Ariz., 233 Ariz. 62, 669 Ariz. Adv. Rep. 28, 309 P.3d 886, 2013 Ariz. LEXIS 169 (2013).

Disciplinary Commission erred when it accepted the hearing officer's finding of fact, yet rejected the finding that an attorney acted negligently, not intentionally or knowingly, when he transferred assets of his sole proprietorship into a professional corporation, then told another creditor of the transfer, thus, prejudicially affecting his client's judgment against the attorney; nevertheless, the attorney did violate Ariz. Sup. Ct. R. 42, ER 8.4(d). In re Clark, 207 Ariz. 414, 422 Ariz. Adv. Rep. 3, 87 P.3d 827, 2004 Ariz. LEXIS 44 (2004).

Attorney, who had been suspended for six months for failing to comply with mandatory continuing legal education requirements, was suspended for another year for practicing while suspended and ordered to undergo an independent medical evaluation, because she presented bar counsel with a dead rat during her deposition to demonstrate that she "smelled a rat" in connection with her suspension for failing to comply with mandatory continuing legal education requirements. In re Axford, -- Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2002 Ariz. LEXIS 189 (Oct. 31, 2002), cert. denied, 538 U.S. 1057, 123 S. Ct. 2219, 155 L. Ed. 2d 1106 (2003).

Confidential agreement between attorneys that was not communicated to the judge and allowed the plaintiff to proceed with his case in chief without limitation just so he could educate the judge on the facts for a later hearing was prejudicial to the administration of justice as it wasted the time of the court, the jury, and the witnesses. In re Alcorn, 202 Ariz. 62, 378 Ariz. Adv. Rep. 101, 41 P.3d 600, 2002 Ariz. LEXIS 12 (2002).

Attorney was censured and ordered to pay costs for violations of ER 1.2, ER 1.3, ER 1.4, and ER 8.4 where the attorney improperly handled a plea agreement in a drug case, coercing the defendant to plead guilty. In re Bickart, - Ariz. --, -- Ariz. Adv. Rep. --, -- P.3d --, 2000 Ariz. LEXIS 117 (Nov. 22, 2000).

Respondent was guilty of unethical conduct for wrongfully settling a property damage claim with two insurers, thereby prejudicing the first insurer's subrogation rights. In re Zang, 154 Ariz. 134, 741 P.2d 267 (1987), cert. denied, 484 U.S. 1067, 108 S. Ct. 1030, 98 L. Ed. 2d 994 (1988).

PREVIOUS MISCONDUCT.

Disbarment is generally appropriate when a lawyer has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession. In re Zang, 166 Ariz. 426, 803 P.2d 419 (1990).

Respondent's almost two-year delay in compliance with a former clear and direct court order violated these rules. In re Arrick, 161 Ariz. 16, 775 P.2d 1080 (1989).

STANDARD OF PROOF.

Clear and convincing evidence established respondent's violations of this section. In re Brady, 186 Ariz. 370, 923 P.2d 836 (1996).

VIOLATION OF COURT AGREEMENT.

Where the parties had agreed not to contact the media, the prosecutor's actions in giving a personal were improper as a transgression of rules relating to trial publicity; in addition, by posing for photos to accompany the article after having agreed not to contact the media, the prosecutor blatantly violated an agreement with the trial court. State v. Bracy, 145 Ariz. 520, 703 P.2d 464 (1985), cert. denied, 474 U.S. 1110, 106 S. Ct. 898, 88 L. Ed. 2d 932 (1986).

VIOLATION NOT SHOWN.

Protective order was valid even though it was obtained from a court that lacked jurisdiction in the matter, and a lawyer who gave a client incorrect advice about where to apply for the order thus did not commit professional misconduct. *In re Isler*, 233 Ariz. 534, 315 P.3d 711, 2014 Ariz. LEXIS 32 (2014).

ARIZONA COURT RULES ANNOTATED

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End of Document

Ariz. Sup. Ct. R. 41

This document reflects changes received by the publisher as of April 4, 2017.

Arizona Court Rules > RULES OF THE SUPREME COURT > V. REGULATION OF THE PRACTICE OF LAW > D. LAWYER OBLIGATIONS

Rule 41. Duties and obligations of members

The duties and obligations of members shall be:

- (a) Those prescribed by the Arizona Rules of Professional Conduct adopted as Rule 42 of these rules.
- (b) To support the constitution and the laws of the United States and the State of Arizona.
- (c) To maintain the respect due to courts of justice and judicial officers.
- (d) To counsel or maintain no other action, proceeding or defense than those which appear to him legal and just, excepting the defense of a person charged with a public offense.
- (e) To be honest in dealings with others and not make false or misleading statements of fact or law.
- (f) To fulfill the duty of confidentiality to a client and not accept compensation for representing a client from anyone other than the client without the client's knowledge and approval.
- (g) To avoid engaging in unprofessional conduct and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the duties to a client or the tribunal.
- (h) To support the fair administration of justice, professionalism among lawyers, and legal representation for those unable to afford counsel.
- (i) To protect the interests of current and former clients by planning for the lawyer's termination of or inability to continue a law practice, either temporarily or permanently.

History

Amended Sept. 7, 1984, effective Feb. 1, 1985, amended by R-05-0021, effective January 1, 2008; amended by R-15-0023, effective January 1, 2016; amended by R-16-0029, effective January 1, 2017.

Annotations

Notes

SOURCE:

Section 41(a): former rule 29 (a).

Sections 41(b)-(h): formerly items 1 through 7 in an undesignated subsection following Code of Professional Responsibility DR 9-102 when it was appended to former rule 29(a).

Commentary

COMMENT

COMMENT [AMENDED 2007 AND 2016]

[1] Lawyers, whether or not engaged in the practice of law, should act honorably and treat others with courtesy and respect. Unprofessional conduct, as defined by Rule 31(a)(2)(E), during the practice of law may result in discipline pursuant to Rules 41(g) and 53(j). Specified conduct outside the practice of law, such as conviction of a felony, Rule 53(h), or engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, Rule 42, ER 8.4(c), and Rule 53(a), may also be grounds for discipline.

[2] Lawyers must plan for the possibility that they will be unable or unwilling to discharge their duties to current and former clients or to protect, transfer and dispose of client files, property or other client-related materials. As part of their succession plan, solo practitioners should arrange for one or more responsible transition counsel agreeable to assuming these responsibilities. Lawyers in multi-lawyer firms and lawyers who are not in private practice, such as those employed by government or corporate entities, should have a similar plan reasonable for their practice setting.

Case Notes

INEFFECTIVE COUNSEL.
LAWYER OBLIGATIONS.
RESPECT DUE TO COURTS.
SEXUAL HARASSMENT.

INEFFECTIVE COUNSEL.

Proceedings to terminate a mother's parent-child relationship were not fundamentally fair under the due process clause because appointed counsel provided ineffective representation since counsel (1) failed to investigate or procure documentation of the mother's participation in counseling services, (2) did not maintain adequate contact with the mother, and (3) effectively acted as an advocate against the mother. Donald W. v. Ariz. Dep't of Econ. Sec., 215 Ariz. 199, 504 Ariz. Adv. Rep. 33, 159 P.3d 65, 2007 Ariz. App. LEXIS 79 (Ct. App. 2007).

Disbarment was appropriate for attorney whose actions included conversion of funds, failure to perform work for which he was retained and for which he accepted retainers, failure to pursue the clients' cases with diligence and competence, failure to maintain communication with clients, misrepresentation to clients concerning the status of their case, failure to return client files and property, practice of law after being placed on interim suspension, threatening adverse parties with physical violence, failure to remit money received on the clients' behalf, and allowing clients' cases to be dismissed or delayed. In re Woltman, 178 Ariz. 548, 875 P.2d 781 (1994).

In succumbing to his client's demand that he call witnesses whose veracity and credibility counsel strongly doubted, counsel did not fulfill his duty to make tactical, strategic decisions and fell below minimal standards. Counsel therefore failed to provide effective assistance. State v. Lee, 142 Ariz. 210, 689 P.2d 153 (1984).

LAWYER OBLIGATIONS.

Ariz. Sup. Ct. R. 41

Counsel does not violate any ethical norm by urging a defense, as long as he or she relies on the sound, non-perjurious evidence introduced at trial and does not rely on the perjurious testimony. State v. Lee, 142 Ariz. 210, 689 P.2d 153 (1984).

RESPECT DUE TO COURTS.

Court did not abuse its discretion by imposing sanctions against attorneys for plaintiffs and a defendant in a malpractice action who conducted what the trial court characterized as a "sham" trial, and executed an agreement kept secret from the court. Hmielewski v. Maricopa County, 192 Ariz. 1, 960 P.2d 47 (Ct. App. 1997).

SEXUAL HARASSMENT.

Respondent judge, disciplined for sexual harassment of female attorneys who appeared before him, violated this rule by placing his own sexual desires above his obligation to exhibit the highest standards of honesty and integrity; the judge was censured, permanently enjoined from holding judicial office in Arizona, and his license to practice law was suspended. In re Abrams, 227 Ariz. 248, 257 P.3d 167, 2011 Ariz. LEXIS 76 (2011).

Attorney was representing client in a domestic matter and was censured for, inter alia, making inquiries of client concerning personal matters of a sexual nature and embracing her upon arrival and departure, which made the client uncomfortable. In re Moore, -- Ariz. --, -- P.3d --, 2002 Ariz. LEXIS 36 (Mar. 5, 2002).

It does not matter that the words "sexual harassment" do not appear in the Rules of Professional Conduct, ER 1.7(b) prohibits a lawyer from representing a client if that representation is going to be materially limited by the lawyer's own interests; clearly sexual harassment by a lawyer serves the lawyer's interest and not the client's. In re Piatt, 191 Ariz. 24, 951 P.2d 889 (1997).

Lawyer who asked inappropriate questions and made obscene comments to his female clients was properly publicly censured, placed on supervised probation and required to complete counseling with the prospect that noncompliance could lead to revocation of probation, suspension or disbarment. In re Piatt, 191 Ariz. 24, 951 P.2d 889 (1997).

ARIZONA COURT RULES ANNOTATED

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Stds. Imp. Law. Sanct. Standard 9.3

American Bar Association Original Publication Date 1986
Standards for Imposing Lawyer Sanctions
C. Factors to Be Considered in Imposing Sanctions
9.0 Aggravation and Mitigation

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STANDARD 9.3 MITIGATION

Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Factors which may be considered in mitigation. Mitigating factors include:

- (a) absence of a prior disciplinary record;**
- (b) absence of a dishonest or selfish motive;**
- (c) personal or emotional problems;**
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;**
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;**
- (f) inexperience in the practice of law;**
- (g) character or reputation;**
- (h) physical disability;**
- (i) mental disability or chemical dependency including alcoholism or drug abuse when:**
 - (1) there is medical evidence that the respondent is affected by a chemical dependency or mental disability;**
 - (2) the chemical dependency or mental disability caused the misconduct;**
 - (3) the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and**
 - (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely.**
- (j) delay in disciplinary proceedings;**
- (k) imposition of other penalties or sanctions;**
- (l) remorse;**

(m) remoteness of prior offenses.**Commentary**

While the courts generally agree that each of these factors can be considered in mitigation, the courts differ on whether restitution is a mitigating factor. Some courts hold that restitution should not be considered. See, e.g., *Ambrose v. State Bar*, 31 Cal. 3d 184, 643 P.2d 486, 481 Cal. Rptr. 903 (1982); *Oklahoma Bar Association v. Lowe*, 640 P.2d 1361 (Okla. 1982); *In re Galloway*, 300 S.E.2d 479 (S.C. 1983). Other courts do consider restitution. See, e.g., *People v. Luxford*, 626 P.2d 675 (Colo. 1981); *The Florida Bar v. Pincket*, 398 So.2d 802 (Fla. 1980); *In re Suernick*, 100 Wis. 2d 427, 321 N.W.2d 298 (1982). While restitution should not be a complete defense to a charge of misconduct, the better policy is to allow a good faith effort to make restitution to be considered as a factor in mitigation. Such a policy will encourage lawyers to make restitution, reducing the degree of injury to the client and helping ensure that the lawyer has recognized the wrongfulness of his conduct. Restitution which is made upon the lawyer's own initiative should be considered as mitigating; lawyers who make restitution prior to the initiation of disciplinary proceedings present the best case for mitigation, while lawyers who make restitution later in the proceedings present a weaker case.

Cases concerning personal and emotional problems as mitigating factors include a wide range of difficulties, most often involving marital or financial problems. The two factors which have been treated most inconsistently by the courts are mental disability or impairment and chemical dependency. These cases include the following: mental disorders, *In re Rich* 559 A.2d 1251 (Del. Supr. 1989), *In re Peek*, 565 A.2d 627 (D.C. App. 1989); *In re Weyhrich*, 339 N.W. 2d 274 (Minn. 1983); senility, *In re Hansen*, 318 N.W. 2d 856 (Minn. 1982); alcoholism, *Howard v. State Bar of California*, 793 P.2d 62 (1990), *The Florida Bar v. Ullensvang*, 400 So.2d 969 (Fla. 1981), *In re Robert Kunz*, 122 Ill.2d 547, 524 N.E.2d 544 (1988), *Attorney Greivance Comunn of Maryland v Kolonder*, 316 Md. 203, 557 A.2d 1332 (1989), *Matter of Willis*, 114 N.J. 42, 552 A.2d 979 (1989); and drug abuse, *In re Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990), *Iowa State Bar v. Washburn*, 456 N.W.2d 907 (Iowa 1990), *Nebraska State Bar v. Miller*, 225 Neb. 261, 404 N.W. 2d 40 (1987), *In re Maragos* 285 N.W.2d 541 (N.D. 1979), *In re Eads*, 303 Or. 111, 734 P.2d 340 (1987). While most courts treat such disabilities or impairments as mitigating factors, it is important to note that the consideration of these factors does not completely excuse the lawyer's misconduct. In the words of the Illinois Supreme Court, "alcoholism is at most an extenuating circumstance, a mitigating fact, not an excuse." *In re Driscoll*, 85 Ill.2d 312, 423 N.E.2d 873, 874 (1981).

Issues of physical and mental disability or chemical dependency offered as mitigating factors in disciplinary proceedings require careful analysis. Direct causation between the disability or chemical dependency and the offense must be established. If the offense is proven to be attributable solely to a disability or chemical dependency, it should be given the greatest weight. If it is principally responsible for the offense, it should be given very great weight; and if it is a substantial contributing cause of the offense, it should be given great weight. In all other cases in which the disability or chemical dependency is considered as mitigating, it should be given little weight. A showing of rehabilitation from chemical dependency may be considered but should not, in and of itself, be a justification for a recommendation for discipline less than that which would have been imposed upon an attorney in similar circumstances where a chemical dependency was not present.

Cases citing each of the factors listed above include: (a) absence of a prior disciplinary record: *In re Battin*, 617 P.2d 1109, 168 Cal. Rptr. 477. (1980), *The Florida Bar v. Shannon*, 398 So.2d 453 (Fla. 1981); (b) absence of selfish or dishonest motive: *People ex rel. Goldberg v. Gordon*, 607 P.2d 995 (Colo. 1980), *People v. Creasy*, 793 P.2d 1159 (Colo. 1990); (c) personal/emotional problems: *In re Stout*, 75 N.J. 321, 382 A.2d 630 (1981), *Matter of Barron*, 246 Ga. 327, 271 S.E.2d 474 (1980); (d) timely good faith effort to make restitution or to rectify consequences of misconduct: *Matter of Byars*, 268 S.E.2d 155 (Ga. 1980), *Matter of Rubi*, 133 Ariz. 491, 652 P.2d 1014 (1982); (e) full and free disclosure to disciplinary board/cooperative attitude toward proceedings: *Matter of Shaw*, 298 N.W.2d 1 33 (Minn. 1980), *In the Matter of Rhame*,

416 N.E.2d 823 (Ind. 1981); (f) inexperience in the practice of law: *In re Jensen*, 468 N.W. 2d 541 (Minn. 1991); *In re: James M. Pool*, No. 83-37 BD (Sup. Jud. Ct. Suffolk Cty., Mass. 1984), *Matter of Price*, 429 N.E.2d 961 (Ind. 1982); (g) character/reputation: *Matter of Shaw*, 298 N.W.2d 133 (Minn. 1980); *In re Bizar*, 97 Ill. 2d 127, 454 N.E.2d 271 (1983); (h) physical disability or not of impairment: *In re Manahan* 430 N.E.2d 1150 (Ind. 1982). *In re Krystofer*, 296 S.C. 372 S.E.2d 473 (1988) (i) mental disability or impairment including alcoholism or drug abuse: *In re Barry* 90 N.J. 286, 447 A.2d 9 23 (1982), *In re Wechsler*, 165 A.D.2d 39, 565 N.Y. 2d 489 (1991), *Tenner v. State Bar of California*, 617 P.2d 486, 168 Cal. Rptr. 333 (1980), *In re Johnson*, 322 N.W. 2d 616 (Minn. 1982) *In re Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990); (j) delay in disciplinary proceedings: *Yokozeki v. State Bar*, 11 Cal. 3d 436, 521 P. 2d 858 113 Cal. Rptr. 602 (1974), *The Florida Bar v. Thomson*, 429 So. 2d 2 (Fla. 1983); (k) imposition of other penalties or sanctions: *In re Lamberis*, 93 Ill. 2d 222, 443 N. E.2d 549 (1982), *In re John E. Walsh*, SJC-53.9 (Maine 1980), *Matter of Garrett*, 399 N.E.2d 369 (Ind. 1980) (l) remorse: *In re Power*, 91 N.J. 408, 451 A.2d 666 (1982), *In re Nadler*, 91 Ill.2d 326, 438 N.E.2d 198 (1982); (m) remoteness of prior offenses: (no cases found).

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Stds. Imp. Law. Sanct. Standard 9.2

American Bar Association Original Publication Date 1986
Standards for Imposing Lawyer Sanctions
C. Factors to Be Considered in Imposing Sanctions
9.0 Aggravation and Mitigation

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STANDARD 9.2 AGGRAVATION

9.21 Definition. Aggravation or aggravating circumstances are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors which may be considered in aggravation. Aggravating factors include:

- (a) prior disciplinary offenses;
- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution.
- (k) illegal conduct, including that involving the use of controlled substances.

Commentary

Cases citing each of the factors listed above include: (a) prior disciplinary offenses: *Matter of Walton*, 251 N.W.2d 762 (N.D. 1977), *People v. Vernon*, 660 P.2d 879 (Colo. 1982); (b) dishonest or selfish motive: *In re: James H. Dineen*, 481 A.2d 499 (Maine 1984); (c) pattern of misconduct: *The Florida Bar v. Mavrides*, 442 So. 2d 220 (Fla. 1983); *State v. Dixon*, 233 Kan. 465, 664 P.2d 286 (1983); (d) multiple offenses: *State ex rel. Oklahoma Bar Association v. Warzya*, 624 P.2d 1068 (Okla. 1981), *Ballard v. State Bar of California*, 35 Cal.3d 274, 673 P.2d 226, 197 Cal. Rptr. 556 (1983); (e) bad faith obstruction of disciplinary proceedings: *In re Brody*, 65 Ill.2d 152, 357 N.E.2d 498 (1976), *Committee on Prof.*

Ethics v. Brodsky, 318 N.W.2d 180 (Iowa 1982); (f) lack of candor during the disciplinary process: *In re Stillo*, 68 Ill. 2d 49, 368 N.E.2d 897 (1977), *Weir v. State Bar*, 23 Cal. 3d 564, 591 P.2d 19, 152 Cal. Rptr. 921 (1979); (g) refusal to acknowledge wrongful nature of conduct: *Greenbaum v. State Bar*, 18 Cal. 3d 893, 544 P.2d 921, 126 Cal. Rptr. 785 (1976), *H. Parker Stanley v. Bd. of Professional Responsibility*, 640 S.W.2d 210 (Tenn. 1982); (h) vulnerability of victim: *People v. Lanza*, 613 P.2d 337 (Colo. 1980); (i) substantial experience in the practice of law: *John F. Buckley*, 2 Mass. Atty. Dis. Rpt. 24 (1980); (j) indifference to making restitution: *The Florida Bar v. Zinzell*, 387 So. 2d 346 (Fla. 1980); *Bate v. State Bar of California*, 34 Cal. 3d 920, 671 P.2d 360, 196 Cal. Rptr. 209 (1983); (k) illegal conduct including voluntary use of controlled substances: *In re Stein*, 97 N.J. 550, 483 A.2d 109 (1984).

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The following instrument is a full, true, and correct copy of the original on file in this office
Certified this 15th day of July Dec.
By *[Signature]*
Disciplinary Clerk
Supreme Court of Arizona

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**PETER KRISTOFER STROJNIK,
Bar No. 026082**

Respondent.

PDJ 2016-9083

[State Bar File No. 15-0695]

FINAL JUDGMENT AND ORDER

FILED NOVEMBER 16, 2016

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the agreement for discipline by consent filed on November 10, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS ORDERED Respondent, **Peter Kristofer Strojnik**, is suspended for thirty (30) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents. The suspension is effective thirty (30) days from the date of this order.

IT IS FURTHER ORDERED upon reinstatement Mr. Strojnik shall be placed on probation for a period of two (2) years. The terms of probation are as follows:

1. Mr. Strojnik will undergo intensive outpatient chemical dependency (IOPCD) treatment in a group setting and shall follow the program's aftercare recommendations. The IOPCD group that Mr. Strojnik chooses must first be approved by Dr. Lett. Mr. Strojnik shall start treating in an approved group within thirty (30) days from signing the terms of probation.

2. Mr. Strojnik shall not use alcohol, other drugs, or any other mood-altering substances except on prescription from a treating health care professional; provided, however, that said prescription has been fully disclosed to the compliance monitor.
3. Within thirty (30) days of completing the IOPCD, Mr. Strojnik shall undergo a comprehensive psychological evaluation. Any recommendations generated from the psychological evaluation shall be incorporated into the terms of probation.
4. Mr. Strojnik shall comply with all other standard Member Assistance Program (MAP) terms as set forth in the terms of probation that will be prepared by the compliance monitor of the State Bar.

IT IS FURTHER ORDERED Mr. Strojnik shall be responsible for any costs associated with the terms of probation.

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

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 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.

IT IS FURTHER ORDERED Mr. Strojnik shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,210.25 within thirty (30) days from the date of this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 16th day of November, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 16th day of November, 2016, to:

Peter Kristofer Strojnik, Bar No. 026082
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Respondent

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State Bar of Arizona
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Email: LRO@staff.azbar.org

by: AMcQueen

The foregoing instrument is a full, true, and correct copy of the original on file in this office.
Certified this 15th day of Dec., 2016
By [Signature]
Disciplinary Clerk
Supreme Court of Arizona

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

PETER KRISTOFER STROJNIK,
Bar No. 026082

Respondent.

PDJ-2016-9083

**DECISION ACCEPTING
CONSENT FOR DISCIPLINE**

[State Bar File No. 15-0695]

FILED NOVEMBER 16, 2016

In PDJ-2016-9072, an Agreement for Discipline by Consent was filed on July 12, 2016, and submitted under Rule 57(a), Ariz. R. Sup. Ct. The parties conditionally concluded Mr. Strojnik acted "negligently" not "knowingly." As a result the parties stipulated *Standard 7.3*, applied and stipulated to the entry of a reprimand followed by probation. An Order of Probable Cause issued on January 27, 2016 however, no formal complaint had been filed. Under Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant by letter on May 11, 2016. Complainants were notified of the opportunity to file a written objection within five days. No objection was received.

The PDJ noted the admissions supported no negligent state of mind but, at a minimum, a knowing state of mind. The PDJ directed "the parties file a modification stipulating to a knowing state of mind with a thirty (30) day suspension followed by the same terms of probation not later than August 17, 2016. When no modification was submitted, that Agreement For Discipline by Consent was rejected.

On September 2, 2016, the complaint was filed and assigned File No. PDJ-2016-9083. An answer was filed on September 28, 2016. The telephonic initial case management conference was conducted on October 4, 2016, and a firm hearing was set to commence January 12, 2017. On November 10, 2016, the parties filed an Amended Agreement for Discipline by Consent, ("Agreement"), which mirrored the modifications recommended by the PDJ.

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.

The Agreement details a factual basis for the admissions to the charge in the Agreement. The parties agree that while representing a client, Mr. Strojnik used inappropriate means to compel a settlement. Representation of the client began in December 2014 and Mr. Strojnik filed a complaint in Federal Court on March 19, 2015 alleging sexual harassment of his client. In his demand to defendants, Mr. Strojnik threatened to use press releases to alert the public to the sexual allegations to facilitate settlement.

In a correspondence to the opposing party he announced he had created a website regarding the allegations and personally posted unprofessional comments. He assured the opposing party he would cause a "shame on" you banner to be placed in a public area of the businesses of the defendants. To force settlement, Mr. Strojnik also told the opposing party he scheduled meetings with police and the Department of Justice regarding the lawsuit alleging the hiring and harboring of undocumented

workers, and asserted that through his efforts that CBS 5 Investigates was investigating the allegations to compel settlement.

Mr. Strojnik was warned his conduct was actionable under Arizona law and violated his ethical obligations. For about five weeks Mr. Strojnik stopped. When "settlement efforts broke down he reverted to his previous conduct." He reopened his website, posted content on that site and arranged to have flyers distributed at the business of defendants stating defendant was a "predator" with defendant's picture. In response to a settlement offer Mr. Strojnik stated, "I do not engage in hyperbole. What I say is what I do." Mr. Strojnik stated he intended to "destroy" the businesses of defendant.

The parties conditionally stipulate that at the insistence of Senior United States District Court Judge Neil V. Wake, Mr. Strojnik eliminated the need for a restraining order by agreeing to cease his inappropriate conduct. The parties stipulate "The Court made it very clear, however, that Respondent's behavior was unprofessional." It is stipulated Mr. Strojnik was warned his conduct was illegal and unprofessional. It is stipulated Mr. Strojnik returned to that behavior *after* the warning.

Mr. Strojnik conditionally admits he violated Supreme Court Rule 42, ERs 4.4 (respect for rights of others), 8.4(d) (conduct prejudicial to the administration of justice), and Rule 41(g) (unprofessional conduct). Mr. Strojnik conditionally agrees he engaged in overly zealous tactics to ruin the opposing party personally and that his conduct "under all of the circumstances, was unprofessional and prejudicial to the administration of justice." The parties agree the actions of Mr. Strojnik caused actual harm to the opposing party, and violated his duty to the profession, the legal system, and the public."

Rule 42, ER 4.4(a) precludes a lawyer from using "means that have no substantial purpose other than to embarrass, delay, or burden a third person." Rule 4.4(a) prohibits conduct that has no *substantial* purpose other than to embarrass, delay, or burden a third person. The wording replaces that of the predecessor Model Code provision, DR 7-102(A)(1), which forbade the lawyer from taking action that would serve *merely* to harass or maliciously injure another. It is not uncommon that charges of violating Rule 4.4(a) involve conduct that has both a "legitimate purpose and an illegitimate purpose." *In re Royer*, 78 P.3d 449 (Kan. 2003).

The parties stipulate *Standard 7.2* applies. It states,

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.

The parties agree aggravating factors are present: *Standard 9.22(a)* (prior discipline); although not considered prior discipline, Mr. Strojnik was *conditionally admitted* to the practice of law and placed on probation. There is no information regarding the conditional admission in the Agreement; and 9.22(i) (substantial experience in the practice of law). Mitigating factors include: *Standard 9.32 (a)* (absence of prior disciplinary record and successful completion of the terms of the conditional admission order); 9.32(b) (absence of selfish or dishonest motive), and 9.32(c) (personal or emotional problems arising from his addressing a substance abuse problem involving alcohol which exacerbated personal issues).

The purpose of Lawyer Discipline is stated in *Standard 1.1*.

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.

IT IS ORDERED incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: thirty (30) days suspension, two (2) years of probation under conditions set forth in the agreement, and the payment of costs and expenses of the disciplinary proceeding for \$1,210.25 to be paid within thirty (30) days of the final order.

IT IS FURTHER ORDERED the Agreement is accepted. Costs as submitted are approved for \$1,210.25 and shall be paid not later than December 21, 2016. Now therefore, a final judgment and order is signed this date. Mr. Strojnik is suspended effective thirty (30) days from the date of this order.

IT IS FURTHER ORDERED all additional case management dates and deadlines set forth in the Order re: Initial Case Management Conference, including the hearing set for January 12 and 13, 2016, are vacated.

The State Bar shall give notice to the assigned settlement officer that the scheduled settlement conference is hereby vacated.

DATED this 16th day of November, 2016.

William J. O'Neil

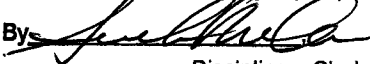
William J. O'Neil, Presiding Disciplinary Judge

Copy of the foregoing mailed/emailed
this 16th day of November to:

Shauna R. Miller
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Peter Kristofer Strojnik
The Strojnik Firm LLC
Esplanade Center III
2415 E. Camelback Rd. Ste. 700
Phoenix, AZ 85016-4245
Email: strojnik@skplaw.com

by: AMcQueen

The foregoing instrument is a full, true, and correct copy of the original on file in this office.
Certified this 30th day of March 2018
By: 
Disciplinary Clerk
Supreme Court of Arizona

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

PETER KRISTOFER STROJNIK,
Bar No. 026082

Respondent.

PDJ 2017-9096

**FINAL JUDGMENT AND
ORDER**

[State Bar File Nos. 16-2670, 16-3365,
17-0340]

FILED AUGUST 24, 2017

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on August 2, 2017, under Rule 57(a), Ariz. R. Sup. Ct., accepted the parties' proposed agreement. Accordingly:

IT IS ORDERED Respondent, **PETER KRISTOFER STROJNIK** is reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective immediately.

IT IS FURTHER ORDERED Mr. Strojnik shall pay the costs and expenses of the State Bar of Arizona for \$1,305.96, 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 with these disciplinary proceedings.

DATED this 24th day of August 2017.

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

COPY of the foregoing e-mailed/mailed
on August 24, 2017, to:

Shauna R. Miller
Senior Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602) 340-7386
Email: LRO@staff.azbar.org

Geoffrey M. T. Sturr
Osborn Maledon PA
2929 N. Central Ave. Ste 2100
Phoenix, AZ 85012-2765
Email: gsturr@omlaw.com

by: AMcQueen

The foregoing instrument is a full, true, and correct copy of the original on file in this office.

Certified this 30th day of March 2018

By [Signature]
Disciplinary Clerk
Supreme Court of Arizona

Shauna R. Miller, Bar No. 015197
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7386
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

AUG 2 2017

FILED
BY [Signature]

Geoffrey M. T. Sturr, Bar No. 014063
Osborn Maledon PA
2929 N. Central Ave., Ste. 2100
Phoenix, AZ 85012-2765
Telephone 602-640-9377
Email: gsturr@omlaw.com
Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

PETER KRISTOFER STROJNIK
Bar No. 026082

Respondent.

PDJ 2017-9096

[State Bar File Nos. 16-2670, 16-3365,
17-0340]

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Peter Kristofer Strojnik, who is represented in this matter by counsel, Geoffrey M. T. Sturr, submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. No probable cause orders have been entered and no formal

complaint has been filed in this matter. 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), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant C. Christine Burns by letter July 10, 2017. 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 violated Rule 41(g) (Professionalism). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand. Respondent is currently on probation; therefore, probation is not being sought in these matters. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will

begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached as Exhibit A.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on May, 14, 2008.
2. On November 10, 2016, in PDJ 2016-9083, Respondent and the State Bar entered into an Amended Agreement for Discipline by Consent, which arose from Respondent's conduct while representing a client in a federal court proceeding between February and July 2015. Respondent conditionally admitted to violations of ERs 4.4 (respect for rights of others) and 8.4(d) (conduct prejudicial to the administration of justice), and Rule 41(g) (unprofessional conduct). Before entering into the Agreement, Respondent had voluntarily been evaluated by Dr. Phillip Lett (who found Respondent to have Severe Alcohol Use Disorder); acknowledged he suffered from alcoholism; and agreed, as part of the proposed discipline, to be

¹Respondent 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.

subject to a two-year probation which included, among other things, intensive outpatient chemical dependency (IOPCD) treatment in a group setting.

3. On November 16, 2016, the Agreement was accepted, and a Final Judgment and Order entered, pursuant to which Respondent was suspended for thirty days and placed on probation for two years upon reinstatement. The terms of probation included IOPCD treatment in a group setting and full compliance with terms of probation to be established by the compliance monitor of the State Bar.

4. Respondent signed a probation agreement on December 5, 2016 and began IOPCD treatment on January 4, 2017. Respondent asserts that he is in full compliance with the terms of the probation agreement.

5. Respondent applied for reinstatement on January 16, 2017 and was reinstated on February 8, 2017.

COUNT ONE
(File no. 16-2670/State Bar)

6. The complaint in this matter was initiated by the State Bar after receiving an Order Dismissing Cases for Lack of Jurisdiction, involving four cases before the

United States District Court Central District of California². The matter was before Judge Andrew J. Guilford and his May 23, 2016 order contained the Court's statements regarding Respondent's conduct before the Court during a May 2, 2016 hearing; for example³:

7. "... Peter K. Strojnik, responded to the Court's questions with terse, unhelpful responses."

8. "Strojnik not only failed to accurately answer the Court's questions, but he also expressed extreme disrespect to the Court throughout the hearing – most notably in his repeated, intentional interruptions of the Court."

9. "Counsel's unresponsiveness to the Court's questions and disrespectful demeanor indicated that Strojnik wanted the Court to rule against his client."

10. "The Court could have construed Strojnik's refusal to answer the Court's questions as willful violations of the Court's Orders. Strojnik's defiant dedication to not engaging the Court on the issues presented in the case, as well as

² SACV 16-0435 AG (DFMx); SACV 16-0618 AG (DFMx); SACV 16-0665 AG (KESx); SACV 16-0738 AG (AGRx). May 13, 2016.

³ The examples listed are not all inclusive of the Court's comments regarding Respondent's conduct during the hearing.

some outrageous statements by counsel, also seemed to be inviting error into the Court's decisions.”

11. If the matter were to go to hearing, Respondent would testify that he did not intend to be disrespectful or to avoid answering the Court's questions, but would acknowledge that his conduct did not meet his obligations under the Creed of Professionalism and the Oath of Admission. Respondent would further testify that his conduct during the May 2, 2016 hearing was the result of his alcoholism, for which he has received and continues to receive treatment since January 2017.

COUNT TWO
(File no. 16-3365/State Bar)

12. A former Arizona Attorney General, Thomas Allen, contacted the State Bar about Respondent's unprofessional behavior during a deposition that took place on August 23, 2013 in a Superior Court action, *Tracy Rexroat v. State of Arizona ex rel. Arizona Department of Education*, CV2012-011571.

13. During the deposition, Assistant Attorney General Allen sought to have Respondent admit, on the record, that he had made an inappropriate statement to Mr. Allen during a deposition break, which Respondent refused to do.

14. The Attorney General's Office and Respondent thereafter filed motions with the Court. The motion filed by the Attorney General's Office sought an order terminating the deposition and precluding any further deposition of the witness, an order instructing Respondent "to refrain from all personal insults, attacks, tirades, angry outbursts, and demeaning, oppressive, annoying and abusive conduct and language," and an award of fees and costs. Respondent's motion, filed on the same day, sought an order compelling the completion of the deposition. In his motion, Respondent said that he "did not engage in name calling." Respondent also filed a declaration with his motion "under the penalty of perjury" that he did not "disparage Mr. Allen or call him a name."

15. A little more than a week later, Respondent after sending an e-mail to Mr. Allen in which he stated that he "did in fact use inappropriate language and . . . did address you inappropriately," filed an amended motion which stated, in part, that he "did in fact refer to the opposing attorney inappropriately off the record" and had engaged in "name-calling," and an "amended and substituted" declaration by Mr. Strojnik in which he stated, that he had "referred to Mr. Allen inappropriately" during the deposition..

16. The only sanction imposed by the court was to terminate the deposition, pursuant to Rule 30(d).

17. If the matter were to go to hearing, Respondent would acknowledge that he failed to fulfill his obligations under the Creed of Professionalism and the Oath of Admission during the August 23, 2013 deposition by using inappropriate language when speaking to Mr. Allen and calling him names, and that he regrets having done so. Respondent would further testify that his conduct during that deposition was the result of his alcoholism, for which he has received and continues to receive treatment since January 2017.

COUNT THREE
(File no. 17-0340/Burns)

18. Respondent was a member of Orangetheory Fitness. On December 14, 2016, Respondent sent an email to the franchise owner and alleged that he had “been kicked out of [a] class.” Respondent “asked” that the owner remove the instructor who kicked him out of class from “the 7th Street and Glendale Avenue location immediately OR a written and in-person apology from him for removing [Respondent] from tonight’s class, and [Respondent] will draft the apology and he will sign.” Otherwise Respondent threatened to bring an ADA lawsuit, revoke his

and his wife's memberships, advise his friends to revoke their memberships, and advise the public that members are "kicked out of classes for immaterial and absurd bases."

19. On December 19, 2016, Respondent sent an e-mail to the franchise owner cancelling his and his wife's memberships. Respondent did not initiate an ADA lawsuit against the franchise owner.

20. If the matter were to go to hearing, Respondent would acknowledge that his December 14, 2016 e-mail was intemperate and inconsistent with the spirit of the Creed of Professionalism and the Oath of Admission. Respondent would further testify that the e-mail was the result of his alcoholism and was sent shortly before he began treatment for alcoholism.

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 his conduct violated Rule 41(g), Ariz. R. Sup. Ct.

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: Reprimand.

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

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard 3.0*.

The parties agree that *Standard 7.2* is the appropriate *Standard*, although they acknowledge that because of the Respondent's alcoholism it does not neatly fit the facts and circumstances of this matter. *Standard 7.2* provides that:

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.

Standard 7.3, by comparison, provides that:

Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed to the profession, and causes injury or potential injury to a client, the public or the legal system.

This agreement involves two separate instances, separated by three years, in which Respondent admits having acted in an unprofessional manner while representing a client. The first such instance (the August 23, 2013 deposition in Count Two) was committed knowingly as affected by Respondent's alcoholism, while the second incident (the May 2, 2016 federal court hearing in Count One),

arguably involved negligent conduct, but Respondent is willing, in the interests of reaching an agreement, to admit to having acting knowingly. As to both instances, Respondent's conduct violated his duty to the profession and the legal system. While there was no actual harm, there was potential harm to the profession and the legal system. As for Count Three, Respondent's conduct was negligent and did not involve the representation of a client. On balance, the parties agree that *Standard 7.2* is the appropriate *Standard*.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is suspension. After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

In aggravation:

9.21 Aggravating factors include:

- (a) prior disciplinary offenses; As noted above, in PDJ 2016-9083, Respondent was suspended from the practice of law for 30 days, effective December 16, 2016, with a two-year term of probation when reinstated. Respondent violated Rule 42, ERs 4.4 (respect for rights of others), 8.4(d) (conduct prejudicial to the administration of justice), and Rule 41(g) (unprofessional conduct), Ariz. R. Sup. Ct.

- (c) a pattern of misconduct; Respondent acted unprofessionally in three separate instances.

Standard 9.31 Definition

Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Mitigating factors include:

- (b) absence of a dishonest or selfish motive; Respondent's conduct was not motivated by dishonesty or personal gain.
- (c) personal or emotional problems; Respondent was suffering from alcoholism for which he is now being treated.
- (e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings; Respondent cooperated fully with the State Bar in its investigation of each Count, acknowledging that his conduct was affected by alcoholism, and has willingly agreed to resolve this matter through a consent agreement.
- (k) imposition of other penalties or sanctions; Respondent was sanctioned in PDJ 2016-9083 through a 30-day suspension and two-year probation for unprofessional conduct during 2015 that also stemmed from his alcoholism. Respondent has complied fully with the terms of his probation. He attends weekly Alcoholics Anonymous meetings, submits to random drug testing, and abstains from alcohol and other drugs. Respondent has used his suspension and ongoing probation as an opportunity to improve his personal life and law practice.
- (l) remorse; Respondent has acknowledged that he engaged in unprofessional conduct and expressed remorse for having done so. Respondent has taken steps, in addition to those required by the Final

Judgment and Order in PDJ 2016-9083, to better understand and meet his professionalism obligations, such as voluntarily taking the State Bar's February 2017 Professionalism Course.

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction should be mitigated to a reprimand.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: Respondent's three acts of unprofessional conduct were the result of his alcoholism, and occurred before Respondent began his ongoing treatment for alcoholism. Mitigating his misconduct to a reprimand is appropriate under the mitigating factors discussed above and because of the steps Respondent has taken to acknowledge his alcoholism and obtain treatment for it. Given Respondent's sincere and ongoing efforts to rehabilitate himself, and his continued compliance with the terms of probation in PDJ 2016-9083, the three instances of unprofessional conduct addressed herein are unlikely to be repeated.

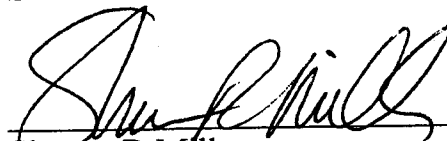
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand and the imposition of costs and expenses. A proposed form order is attached as Exhibit B.

DATED this 2nd day of August 2017

STATE BAR OF ARIZONA



Shauna R Miller
Senior Bar Counsel

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

DATED this 28 day of July, 2017.



Peter Kristofer Strojnik
Respondent

DATED this _____ day of July, 2017.

Osborn Maledon, PA

Geoffrey M. T. Sturr
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 2nd day of ~~July~~, 2017.

August

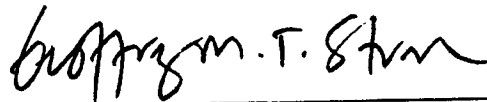
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this _____ day of July, 2017.

Peter Kristofer Strojnik
Respondent

DATED this 28^m day of July, 2017.

Osborn Maledon, PA



Geoffrey M. T. Sturr
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 ___ day of July, 2017.

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

DATED this _____ day of July, 2017.


Peter Kristofer Strojnik
Respondent

DATED this _____ day of July, 2017.

Osborn Maledon PA

Geoffrey M. T. Sturr
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 ___ day of July, 2017.

Copy of the foregoing emailed
this 2nd day of August, 2017, 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

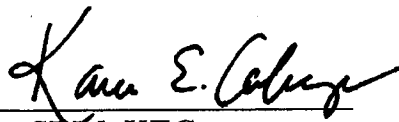
Copy of the foregoing mailed/emailed
this 2nd day of August, 2017, to:

Geoffrey M T Sturr
Osborn Maledon PA
2929 N Central Ave Ste 2100
Phoenix, AZ 85012-2765
Email: gsturr@omlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 2nd day of August, 2017, to:

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

by:



SRM: KEC

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Peter Kristofer Strojnik, Bar No. 026082, Respondent

File Nos. 16-2670, 16-3365, & 17-0340

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

09/09/16	Copy of 05/02/16 Hearing Transcript	\$ 96.36
09/09/16	PACER Invoice	\$ 9.10
11/01/16	PACER Invoice	\$.50

Total for staff investigator charges \$ 105.96

TOTAL COSTS AND EXPENSES INCURRED **\$1,305.96**

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

PETER KRISTOFER STROJNIK,
Bar No. 026082,

Respondent.

PDJ 2017

[State Bar File Nos. 16-2670, 16-3365,
17-0340]

**FINAL JUDGMENT AND
ORDER**

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, **Peter Kristofer Strojnik**, is hereby Reprimanded for his or her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,305.96, 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 July, 2017

**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, 2017.

Copies of the foregoing mailed/mailed
this _____ day of July, 2017, to:

Geoffrey M. T. Sturr
Osborn Maledon PA
2929 N. Central Ave., Ste. 2100
Phoenix, AZ 85012-2765
Email: gsturr@omlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of July, 2017, to:

Shauna R. Miller
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 July, 2017 to:

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

by: _____

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Court Specialist of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 26, 2018, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

ELLEN ANNE PANSKY
PANSKY MARKLE ATTORNEYS AT LAW
1010 SYCAMORE AVE UNIT 308
S PASADENA, CA 91030 - 6139

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

ANGIE ESQUIVEL, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 26, 2018.



Paul Barona
Court Specialist
State Bar Court