

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**ROBERT A. IUSSA,
Bar No. 022197**

Respondent.

PDJ 2020-9109

**FINAL JUDGMENT AND
ORDER**

State Bar File No. 19-2993

FILED MARCH 23, 2021

This matter came for hearing before the hearing panel which rendered its decision on March 3, 2021, imposing disbarment, restitution, and the payment of costs against Respondent, Robert A. Iussa. No notice of appeal having been filed pursuant to Rule 59, Ariz. R. Sup. Ct., the time now having expired, and no objection to the State Bar's Statement of Costs and Expenses having been filed,

Accordingly:

IT IS ORDERED Respondent, **ROBERT A. IUSSA, Bar No. 022197** is disbarred from the State Bar of Arizona and his name is stricken from the roll of lawyers effective March 3, 2021 as set forth in the Panel's Decision and Order Imposing Sanctions. Mr. Iussa is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court.

IT IS FURTHER ORDERED Mr. Iussa shall comply with the requirements relating to notification of clients and others and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED Mr. Iussa shall pay restitution in the following amounts to the following persons:

\$3,900.00 to client Jodi Fisher (Count One); and

\$4,850.00 to Christopher Leaming (Count Two).

IT IS FURTHER ORDERED Mr. Iussa shall pay the costs and expenses of the State Bar of Arizona in the amount of \$2,000.00. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

DATED this 23rd day of March, 2021.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed
this 23rd day of March, 2021, to:

Hunter F. Perlmeter
Senior Bar Counsel
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Respondent

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**ROBERT A. IUSSA
Bar No. 022197**

Respondent.

PDJ 2020-9109

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar Nos. 20-0688, 20-1808]

FILED MARCH 3, 2021

SUMMARY

In two counts, Robert A. Iussa abandoned and injured his clients. In each count, he was hired by the respective client to obtain a patent. The United States Patent and Trademark Office informed him in writing that in each client's matter that his application was deficient. He took no corrective action and failed to tell either client of the deficiency. Each patent application was found to be abandoned for "Failure to Respond to an Office Action" Mr. Iussa did not apprise either client of these findings of abandonments or take corrective action. Instead, he was dishonest with his clients and ultimately abandoned them. He also repeatedly failed to respond to the State Bar despite the many efforts of Senior Bar Counsel to engage with him. Mr. Iussa appeared at the hearing and acknowledged receiving the multiple requests. He was forthright in acknowledging that he chose to ignore them.

PROCEDURAL HISTORY

The State Bar of Arizona (“SBA”) filed its complaint on November 19, 2020 and service was effective on Mr. Iussa. The Presiding Disciplinary Judge (“PDJ”) was assigned to the matter. Mr. Iussa filed no answer and effective default was entered. The matter was set for an aggravation/mitigation hearing which was held on March 1, 2021. Under Rule 58(d), Ariz. R. Sup. Ct., the allegations in the complaint were deemed admitted and were supported by the 17 admitted exhibits.

The hearing panel was comprised of volunteer public member Nance Daley, volunteer attorney member, Teri Rowe, and the PDJ, William J. O’Neil. Senior Bar Counsel, Hunter F. Perlmeter and self-represented Robert A. Iussa were present. Mr. Iussa did not dispute the allegations, agreed that he did not respond to the State Bar, and had no meaningful explanation for his misconduct. He understood and did not disagree with the State Bar recommendation for disbarment or restitution.

FINDINGS OF FACT

The deemed admitted facts stated in the complaint

1. Mr. Iussa was first licensed to practice law in the state of Arizona on February 10, 2004.

COUNT ONE (File no. 20-0688/Jodi Fisher)

1. Jodi Fisher hired Mr. Iussa for representation in a patent case. Fisher paid Mr. Iussa a total of \$3,900. [Ex. 1, SBA003.]

2. In April of 2015, Mr. Iussa filed a patent application on Fisher's behalf. [Ex. 1, SBA004.]

3. Thereafter, the United States Patent and Trademark Office ("USPTO") notified Mr. Iussa of a deficiency in the application that required that action be taken in order to avoid the application being deemed abandoned. [Ex. 4, SBA 014 (last full paragraph).]

4. Mr. Iussa did not notify Fisher of the deficiency and did not take corrective action. [Ex. 2, SBA011.]

5. On May 11, 2017, USPTO determined the patent to be abandoned for "Failure to Respond to an Office Action" and notified Mr. Iussa. Mr. Iussa did not apprise Fisher of the abandonment. [Ex. 1, SBA004.]

6. On January 2, 2018, Fisher emailed Mr. Iussa and requested a status update [Ex. 1, SBA005.]

7. On January 3, 2018, Mr. Iussa sent Fisher the following email:

I'm in the middle of updating all clients. Quickly, I an (sic) tell you we have your ring pending and I hope to get that finalized this first half of the year. The armband recall was a provisional patent application, so we can formalize that if you desire...I think we have until about the August time frame to formalize if you so choose. I'll follow up more in the very near term with specifics.

[Ex. 1, SBA008.]

8. On March 11, 2019, Fisher emailed: “When we spoke last week or so you indicated ou (sic) would provide update of status of Go Guarded ring patent, so I am circling back on that.” [Ex. 1, SBA006.]

9. Mr. Iussa did not respond. [Ex. 1, SBA007.]

10. On May 22, 2019, Fisher emailed Mr. Iussa: I have a new product idea; But before that I need to know what is going on with Go Guarded ring patent. “Did it ever get approved, or what is its status?” [*Id.*]

11. Mr. Iussa did not respond, and Fisher had to hire new counsel. [Ex. 2, SBA010.]

12. Thereafter, Fisher performed her own research and discovered that the patent application had been deemed abandoned by USPTO because Mr. Iussa failed to respond to the request for additional information. [Ex. 2, SBA011.]

13. On January 24, 2020, Fisher emailed Mr. Iussa and demanded a refund of \$3,500 within 30 days. She also advised Mr. Iussa that she had hired a new attorney. [Ex. 1, SBA001.]

14. Mr. Iussa did not respond or provide a refund.

COUNT TWO (File no. 20-1808/Wallace)

15. In 2017, Chris Leaming hired Mr. Iussa to assist him in applying for a patent. Mr. Iussa charged Leaming a flat fee of \$4,850 and Leaming made full payment. [Ex. 15, SBA089-094.]

16. By email of May 30, 2017, Mr. Iussa notified Leaming that he had filed the patent application. [Ex. 11, SBA043.]

17. On June 6, 2018, USPTO sent Mr. Iussa a Notice to File Corrected Application Papers and instructed Mr. Iussa to file replacement drawings. The notice instructed Mr. Iussa that failure to take action would result in the application being deemed abandoned. [Ex. 11, SBA047.]

18. Mr. Iussa did not notify Leaming of the notice and did not take any corrective action. [Ex. 11, SBA041.]

19. On February 5, 2019, USPTO send a Notice of Abandonment to Mr. Iussa “for failure to timely or properly reply to the Notice to File Missing Parts (Notice mailed on 06/06/2018). Mr. Iussa did not notify Leaming of the Notice of Abandonment. [Ex. 11, SBA056.]

20. On January 16, 2020, Leaming emailed Mr. Iussa asking for a status update. Mr. Iussa did not respond. [Ex. 11, SBA057.]

21. On February 28, 2020, Leaming again requested an update. Mr. Iussa did not respond. [Ex. 11, SBA058.]

22. On June 4, 2020, Leaming emailed Mr. Iussa and told Mr. Iussa to let him know when a good time would be to pick up his file as he would be hiring new counsel. Mr. Iussa did not respond. [Ex. 11, SBA062.]

23. On July 23, 2020, Leaming's new counsel, Michael Wallace requested the transfer of Mr. Iussa's file and information concerning why the application had been abandoned. [Ex. 11, SBA069.]

24. On July 28, 2020, Wallace sent Mr. Iussa a "friendly reminder" to respond. [Ex. 11, SBA067.]

25. Mr. Iussa responded on July 31, 2020 but did not directly address Wallace's questions concerning abandonment. [Ex. 11, SBA75-77.]

26. In his bar charge, Wallace noted:

Practitioner was apprised of the condition causing the abandonment via USPS mail, email and postcard eight months prior to the actual abandonment and was further apprised of the actual abandonment eight months later by USPS mail and email. Accordingly, Practitioner had the opportunity over those eight months to remedy the condition causing the abandonment, but failed to do so.

Not only did the Practitioner fail to apprise the Clients of the abandoned status of their Application, but failed to respond to four separate inquiries from the Clients subsequent to the abandonment. After obtaining power of attorney over the Application from the Clients, I was able to discern the reason for the abandonment and for the first time, apprise the Clients that their Application had been abandoned.

My personal communication with the Practitioner to determine the status of the Application prior to obtaining power of attorney on two different occasions was not met with candid responses, but rather a denial of the Practitioner's knowledge of the abandonment and the reasons therefore. I have since filed a petition to revive the Application, which required a \$1000 petition fee not

including attorney's fees, which but for Practitioner's unethical behavior, would not have been necessary.

[Ex. 12, SBA081-082.]

27. Mr. Iussa failed to respond to the State Bar's screening letter. [Ex. 13 and 14.]

28. Mr. Iussa also failed to respond to a second letter notifying him of his failure to timely respond and requiring a response within 10 days. [Ex. 13 and Ex. 14.]

29. Senior Bar Counsel on repeated occasions attempted to reach Mr. Iussa and have him engage in this matter to no avail. [Exs. 16 and 17.]

The findings stated in the USPTO judgment

The Director for the Office of Enrollment and Discipline ("OED") for the USPTO filed a disciplinary complaint against Mr. Iussa. Exhibit 8 is the Initial Decision on Default Judgment entered against Mr. Iussa by the USPTO. We note the failure of Mr. Iussa to respond that office either. He never filed an answer and, unlike in this proceeding, he never appeared. There, as here, the burden of proof upon that office was by clear and convincing evidence. [Ex. 8, SBA023.]

There Mr. Iussa initially charged a client \$6,730 for services. The United States Patent and Trademark Office Before the Administrative Law Judge found Mr. Iussa, as we do here, failed to be diligent, failed to follow the directives of the client, allowed the application for patent to be abandoned without the client's knowledge

or consent, failed to keep the client informed, failed to protect his client's interests, engaged in dishonesty, fraud, or misrepresentation, failed to cooperate with the OED, and engaged in conduct that prejudicial to the administration of justice. The exhibit demonstrates that his conduct is these two counts was not mistake, or inadvertence.

CONCLUSIONS OF LAW

Based upon the record, the Hearing Panel finds by clear and convincing evidence that Mr. Iussa violated the following:

- a. Count One: ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.16(d), 8.4(c), 8.4(d), and Rule 54(d).
- b. Count Two: ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.16(d), 8.4(c), 8.4(d), and Rule 54(d).

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152 (1990). In imposing a sanction, the following factors should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard* 3.0.

Mental State Injury and Duty:

Mr. Iussa violated his duty to clients, thereby implicating *Standard 4.4 Lack of Diligence*. Specifically, *Standard 4.41* states:

Disbarment is generally appropriate when:

- (a) A lawyer abandons the practice and causes serious or potentially serious injury to a client; or
- (b) A lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) A lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

Mr. Iussa abandoned two clients. Disbarment is warranted.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors are present in this matter:

1. 9.22(b) dishonest or selfish motive (Mr. Iussa failed to inform clients of the abandonment of their cases and failed to refund money). A court is likely to find a dishonest and selfish motive when a lawyer financially or personally benefits from the misconduct. *See, e.g., People v. Calvert*, 280 P.3d 1269 (Colo. O.P.D.J. 2011). False statements to a client can result in a finding of dishonest or selfish motive under Standard 9.22(b). *See, e.g., Matter of Arrick*, 180 Ariz. 136, 143 (1994)

2. 9.22(c) a pattern of misconduct. “This court views a continuing pattern of misconduct as calling for a lengthy suspension.” *E.g., In re Murphy*, 188 Ariz. 375, 380 (1997).
3. 9.22(d) multiple offenses. Multiple serious offenses committed by respondent including dishonesty and misrepresentations while representing two clients served as substantial aggravators under Standard 9.22(d) as well as pattern of misconduct under Standard 9.22(c). *In re Moak*, 205 Ariz. 351, 356 (2003).
4. We decline to find 9.22(e) bad faith obstruction of the disciplinary proceedings. Mr. Iussa failed to respond to multiple inquiries by the State Bar, but he also did not delay the proceedings by filing an answer.
5. 9.22(g) refusal to acknowledge wrongful nature of conduct At the hearing, Mr. Iussa never acknowledged that his behavior was wrongful or accepted meaningful responsibility for his misconduct. He acknowledged the ability to pay significant portions of the refunds but has never done so.
6. 9.22(i) substantial experience in the practice of law (Mr. Iussa was admitted in 2004).
7. 9.22(j) indifference to making restitution (Mr. Iussa has made no restitution).

CONCLUSION

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice

and not to punish the offender.” *Alcorn*, 202 Ariz. at 74 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20 (1994).

The Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the appropriate sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. Based upon the above, the Hearing Panel orders as follows:

- a) Mr. Iussa disbarred effective immediately.
- b) Mr. Iussa shall pay all costs and expenses incurred by the SBA.
- c) Mr. Iussa shall pay restitution as follows:
 - i. \$3,900.00 to client Jodi Fisher in Count one.
 - ii. \$4,850.00 to client Christopher Leaming in Count two.

A formal Final Judgment and Order shall follow separately.

DATED this 3rd day of March 2021.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Signature on File

Teri Rowe, Volunteer Attorney Member

Signature on File

Nance Daley, Volunteer Attorney Member

Copy of the foregoing mailed/mailed
this 3rd day of March, 2021, to:

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**ROBERT A. IUSSA,
Bar No. 022197,**

Respondent.

PDJ 2020-9109

COMPLAINT

[State Bar No. 20-0688, 20-1808]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted on February 10, 2004.

COUNT ONE (File no. 20-0688/Fisher)

2. Jodi Fisher hired Respondent for representation in a patent case. Fisher paid Respondent a total of \$3,900.

3. In April of 2015, Respondent filed a patent application on Fisher's behalf.

4. Thereafter, the United States Patent and Trademark Office ("USPTO") notified Respondent of a deficiency in the application that required that action be taken in order to avoid the application being deemed abandoned.

5. Respondent did not notify Fisher of the deficiency and did not take corrective action.

6. On May 11, 2017, USPTO determined the patent to be abandoned for "Failure to Respond to an Office Action" and notified Respondent. Respondent did not apprise Fisher of the abandonment.

7. On January 2, 2018, Fisher emailed Respondent and requested a status update.

8. On January 3, 2018, Respondent sent Fisher the following email:

I'm in the middle of updating all clients. Quickly, I an (sic) tell you we have your ring pending and I hope to get that finalized this first half of the year. The armband recall was a provisional patent application, so we can formalize that if you desire...I think we have until about the August time frame to formalize if you so choose. I'll follow up more in the very near term with specifics.

9. On March 11, 2019, Fisher emailed: “When we spoke last week or so you indicated ou (sic) would provide update of status of Go Guarded ring patent, so I am circling back on that.”

10. Respondent did not respond.

11. On May 22, 2019, Fisher emailed Respondent: I have a new product idea; But before that I need to know what is going on with Go Guarded ring patent. “Did it ever get approved, or what is its status?”

12. Respondent did not respond.

13. Thereafter, Fisher performed her own research and discovered that the patent application had been deemed abandoned by USPTO because Respondent failed to respond to the request for additional information.

14. On January 24, 2020, Fisher emailed Respondent and demanded a refund of \$3,500 within 30 days. She also advised Respondent that she had hired a new attorney.

15. Respondent did not respond or provide a refund.

16. Respondent committed the following violations in Count One: ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.16(d), 8.4(c), 8.4(d) and Rule 54(d).

COUNT TWO (File no. 20-1818/Wallace)

17. In 2017, Chris Leaming hired Respondent to assist him in applying for a patent. Respondent charged Leaming a flat fee of \$4,850 and Leaming made full payment.

18. By email of May 30, 2017, Respondent notified Leaming that he had filed the patent application.

19. On June 6, 2018, USPTO sent Respondent a Notice to File Corrected Application Papers and instructed Respondent to file replacement drawings. The notice instructed Respondent that failure to take action would result in the application being deemed abandoned.

20. Respondent did not notify Leaming of the notice and did not take any corrective action.

21. On February 5, 2019, USPTO send a Notice of Abandonment to Respondent “for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 06/06/2018). Respondent did not notify Leaming of the Notice of Abandonment.

22. On January 16, 2020, Leaming emailed Respondent asking for a status update. Respondent did not respond.

23. On February 28, 2020, Leaming again requested an update. Respondent did not respond.

24. On June 4, 2020, Leaming emailed Respondent and told Respondent to let him know when a good time would be to pick up his file as he would be hiring new counsel. Respondent did not respond.

25. On July 23, 2020, Leaming's new counsel, Michael Wallace requested the transfer of Respondent's file and information concerning why the application had been abandoned. Respondent did not respond.

26. On July 28, 2020, Wallace made a second inquiry.

27. Respondent responded on July 31, 2020 but did not directly address Wallace's questions concerning abandonment.

28. In his bar charge, Wallace noted:

Practitioner was apprised of the condition causing the abandonment via USPS mail, email and postcard eight months prior to the actual abandonment and was further apprised of the actual abandonment eight months later by USPS mail and email. Accordingly, Practitioner had the opportunity over those eight months to remedy the condition causing the abandonment, but failed to do so.

Not only did the Practitioner fail to apprise the Clients of the abandoned status of their Application, but failed to respond to four separate inquiries from the Clients

subsequent to the abandonment. After obtaining power of attorney over the Application from the Clients, I was able to discern the reason for the abandonment and for the first time, apprise the Clients that their Application had been abandoned.

My personal communication with the Practitioner to determine the status of the Application prior to obtaining power of attorney on two different occasions was not met with candid responses, but rather a denial of the Practitioner's knowledge of the abandonment and the reasons therefore. I have since filed a petition to revive the Application, which required a \$1000 petition fee not including attorney's fees, which but for Practitioner's unethical behavior, would not have been necessary.

29. Respondent failed to respond to the State Bar's screening letter.

30. Respondent also failed to respond to a second letter notifying him of his failure to timely respond and requiring a response within 10 days.

Rule Violations

31. Respondent committed the following violations in Count Two: ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.16(d), 8.4(c), 8.4(d) and Rule 54(d).

DATED this 19th day of November, 2020.

STATE BAR OF ARIZONA

/s/ Hunter F. Perlmeter
Hunter F. Perlmeter
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 19th day of November, 2020.

by: /s/ Karen E. Calcagno
HFP:kec

**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

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

**ROBERT A. IUSSA
Bar No. 022197**

Respondent.

No. 20-0688

PROBABLE CAUSE ORDER

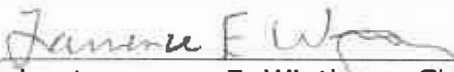
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on November 13, 2020, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 20-0688.

IT IS THEREFORE ORDERED pursuant to Rule 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 17 day of November, 2020



Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

¹ Committee member Jeffrey Pollitt did not participate in this matter.

Original filed this 17th day
of November, 2020, with:

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Copy e-mailed this 17th day
of November, 2020, to:

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Respondent

Copy mailed this 17th day
of November, 2020 to:

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Of the Supreme Court of Arizona
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By: /s/ Karen E. Calcagno

**BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA**

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

**ROBERT A. IUSSA
Bar No. 022197**

Respondent.

No. 20-1808

PROBABLE CAUSE ORDER


The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on November 13, 2020, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 20-1808.

IT IS THEREFORE ORDERED pursuant to Rule 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 17 day of November, 2020.



Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause
Committee of the Supreme Court of Arizona

¹ Committee member Jeffrey Pollitt did not participate in this matter.

