

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**BARBARA K. BERRETT,  
Bar No. 020994**

Respondent.

**PDJ 2017-9082**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 15-1289]

**FILED NOVEMBER 24, 2017**

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on October 27, 2017, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement. Accordingly:

**IT IS ORDERED** Respondent, **Barbara K. Berrett**, is suspended from the practice of law for ninety (90) days, effective thirty (30) days from this order.

**IT IS FURTHER ORDERED** upon reinstatement, Ms. Berrett shall be placed on probation for two (2) years.

**IT IS FURTHER ORDERED** Ms. Berrett shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). Ms. Berrett shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from this order to

schedule attendance at the next available class. Ms. Berrett shall be responsible for the cost of attending the program.

**IT IS FURTHER ORDERED** Ms. Berrett shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from this order. Ms. Berrett shall submit to a LOMAP examination of her office procedures. Ms. Berrett shall sign terms and conditions of participation, including reporting requirements, which are incorporated by this reference. Ms. Berrett shall be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** Ms. Berrett shall be subject to any additional terms imposed by the Presiding Disciplinary Judge because of any reinstatement hearings held.

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

**IT IS FURTHER ORDERED** Ms. Berrett shall pay the costs and expenses of the State Bar of Arizona for \$1,200.00 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 24<sup>h</sup> day of November, 2017.

*William J. O'Neil*

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

Copies of the foregoing mailed/mailed  
this 24th day of November, 2017, to:

Counsel for Respondent

Donald Wilson, Jr.  
Broening, Oberg, Woods & Wilson, P.C.  
P.O. Box 20527  
1122 East Jefferson Street  
Phoenix, Arizona 85036-0527  
Email: dwj@bowwlaw.com

Counsel for State Bar

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

by: MSmith

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**BARBARA K. BERRETT,**  
**Bar No. 020994**

Respondent.

**PDJ-2017-9082**

**DECISION AND ORDER  
ACCEPTING DISCIPLINE BY  
CONSENT AND SEALING  
PORTION OF AGREEMENT**

[State Bar No. 15-1289]

**FILED NOVEMBER 24, 2017**

A Probable Cause order issued on May 31, 2017 and a formal complaint was filed on June 28, 2017. The answer was filed on July 24, 2017. The parties filed a Notice of Settlement on September 18, 2017. They requested an extension of time to file their consent agreement, which request was granted. The parties filed their Agreement for Discipline by Consent filed on October 27, 2017 pursuant to Rule 57(a), Ariz. R. Sup. Ct.

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. Ms. Berrett has voluntarily waived the right to an adjudicatory hearing,

and waived all motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. Notice of this Agreement and an opportunity to object within five days as required by Rule 53(b)(3), Ariz. R. Sup. Ct., was provided by letter to the complainant(s) on September 18, 2017. No objections have been filed.

The Agreement details a factual basis to support the conditional admissions. Ms. Berrett conditionally admits she violated Rule 42, ERs 1.15 (safekeeping client property), 5.3 (responsibilities regarding non-lawyer assistants), and Rule 43 (trust accounts). An allegation of an ER 8.4(c) violation is dismissed if the agreement is accepted. The agreed upon sanctions include a ninety (90) day suspension and upon reinstatement, two (2) years of probation with the State Bar Trust Account Ethics Enhancement Program (TAEEP) and Law Office Management Assistance Program (LOMAP), and costs totaling 1,200.00 within thirty (30) days from the date of this order. The conditional admissions are briefly summarized.

Ms. Berrett failed to adhere to the rules and guidelines governing her client trust account. She delegated the management of her trust account to her employees which included her office manager in Utah and a non-lawyer employee in Arizona. Ms. Berrett acknowledges she had an affirmative duty to ensure her trust account was being managed properly. She failed to meet this duty by wholly relying on staff,

thereby allowing a series of trust account violations to occur. Because of her reliance on staff, a number of these violations went unnoticed.

These technical failings resulted in an overdraft in her client trust account when a check for \$15,051.14 attempted to pay against a trust account balance of \$9,743.50. A second overdraft occurred five months later when a check for \$4,520.40 attempted to pay against a trust account balance of \$157.36.

Settlement proceeds in the amount of \$75,000 deposited into her trust account and she transferred earned fees of \$25,690.30 into her operating account. However, the remaining \$49,309.70 was due to the client but no check was presented for payment by the client against the trust account. It is stipulated Ms. Berrett did not notice this due to reliance on her staff. Over the next twelve months, transfers from her trust account to her operating account were made in the amount of \$59,186.55 were spent. These sums exceeded the monies owed her client. It is stipulated this was done by staff members in error who believed the monies were earned fees.

Despite this infusion of monies, the operating account had a negative balance. The client was deprived of the monies due to it for over one year. When the error was discovered, the money due to the client was reimbursed to the trust account and the client was paid. The parties agree this was a conversion of those monies.

Rule 58(k) provides sanctions shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, (“Standards”). The parties

agree *Standard 4.12, Failure to preserve the Client's Property* applies to the violation of ER 1.15 and provides that suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

Ms. Berrett knowingly allowed her non-lawyer staff to control her client trust account and engaged in a pattern of negligence. She failed to ensure three-way reconciliations were completed and/or reviewed. Her misconduct caused potential harm to her clients, however no funds were permanently misappropriated.

The parties agree aggravating factor 9.22(c) pattern of misconduct is present. The agreed upon factors present in mitigation are *Standard 9.32(a)* absence of prior disciplinary record, 9.32(b) absence of dishonest or selfish motive, 9.32(c) personal or emotional problems, 9.32(h) physical disability, 9.32(g) character or reputation, and 9.32(l) remorse.<sup>1</sup> Respondent moved to seal pages 12 through 14 as they contain personal medical information. The State Bar is not opposed.

**IT IS ORDERED** sealing pages 12 through 14 of the Agreement.

The parties agree to a ninety (90) day suspension and upon reinstatement, two (2) years of probation (TAEPP and LOMAP). Ms. Berrett shall also pay the State

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<sup>1</sup> The agreement was initially devoid of any objective evidence to support factor 9.32(g), and (h). The 9.32(g) record was supplemented on November 15, 2017. Application of 9.32(h) is declined as direct causation is required that the disability caused the misconduct. The PDJ accepts that the health issues are existent, but no direct causation is evident.

Bar's costs and expenses totaling \$1,2000.00 within thirty (30) days from the date of this order.

Now therefore,

**IT IS ORDERED** accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are a ninety (90) day suspension, upon reinstatement two (2) years of probation (TAEPP and LOMAP), and costs. There are no costs incurred by the Office of the Presiding Disciplinary Judge. A final judgment and order is signed this date.

**DATED** this 24<sup>th</sup> day of November, 2017.

*William J. O'Neil*  

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

COPY of the foregoing e-mailed/mailed on this 24<sup>th</sup> day of November 2017, to:

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

Donald Wilson, Jr.  
Broening, Oberg, Woods & Wilson, P.C.  
P.O. Box 20527  
1122 East Jefferson Street  
Phoenix, Arizona 85036-0527  
Respondent's Counsel

by: MSmith

OCT 27 2017

FILED

BY \_\_\_\_\_

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

Donald Wilson, Jr., Bar No. 005205  
Broening, Oberg, Woods & Wilson, P.C.  
P.O. Box 20527  
1122 East Jefferson Street  
Phoenix, Arizona 85036-0527  
Telephone 602-271-7717  
Email: [dwj@bowwlaw.com](mailto:dwj@bowwlaw.com)  
Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**BARBARA K. BERRETT,  
Bar No. 020994,**

Respondent.

**PDJ 2017-9082**

State Bar File Nos. **15-1289**

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Barbara K Berrett, who is represented in this matter by counsel, Donald Wilson Jr., hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on June 1, 2017. A formal

Complaint was filed on June 28, 2017. An Answer was filed on July 24, 2017. 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(s) by letter on September 18, 2017. Complainant(s) have 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 her conduct, as set forth below, violated Rule 42, ERs 1.15 and 5.3, and Rule 43, Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Respondent shall be suspended from the practice of law for ninety (90) days. Upon her reinstatement, Respondents shall be placed on probation for a period of two (2) years, the terms of which shall include participation in the Trust Account Ethics Enhancement Program (TAEEP) and the Law Office Management Assistance

Program (LOMAP). Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within thirty (30) days from the date of this order, and if costs are not paid within the thirty (30) days, interest will begin to accrue at the legal rate.<sup>1</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

## FACTS

### GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on October, 29, 2001.
2. At all times relevant, Respondent maintained a law office in both Utah and Arizona.
3. Respondent delegated the management of her trust and operating account to her employees. The management responsibilities were divided between Respondent's office manager in the Utah office and a non-lawyer employee in the Arizona office.

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<sup>1</sup> Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

4. Respondent, as one of the members of the firm and one of the account signors (Brett Hanna was the other member and signor), had an affirmative duty to ensure her trust account was being managed properly. Respondent failed to meet this duty by wholly relying on staff, thereby allowing a series of trust account violations to occur. Due to Respondent's reliance on staff, a number of the violations went unnoticed.

**COUNT ONE (File No. 15-1289/ Hanna)**

**Recordkeeping Deficiencies**

5. Not all of Respondent's general ledger entries record the actual name of the payor for funds received and deposited into the trust account. In addition, the general ledger does not include an unexpended balance

6. Not all of the individual client ledger entries reflect the actual name of the payor for funds received and deposited into the trust account. Respondent also did not provide the State Bar with individual client ledgers for all clients that held funds on deposit during the period of review.

7. Respondent failed to provide a copy of the administrative funds ledger. Although the trust account did not hold any administrative funds on deposit, three

service fees were charged to the trust account which should have been recorded on the administrative funds ledger.

8. Respondent failed to provide copies of all cancelled check disbursed from the trust account and deposit records for all items deposited into the trust account.

9. Respondent failed to provide three-way reconciliations for the period of review. If Respondent had performed proper monthly three-way reconciliations the violations outlined below would have been discovered.

### **Overdrafts**

10. The first overdraft occurred in Respondent's client trust account on 12/16/2014 when check number 1117 in the amount of \$15,051.14 attempted to pay against the trust account when the balance was \$9,743.50.

11. A second overdraft occurred on 4/28/2015 when check number 1202 in the amount of \$4,520.40 attempted to pay against the trust account when the balance was \$157.36. The check was returned and an overdraft fee was charged leaving the account with a balance of \$122.36.

### **Cincinnati Insurance**

12. A settlement on behalf of Cincinnati Insurance (C.I.), reflected as CN12137 on the trust account records, in the amount of \$75,000.00 was deposited into the trust account on 10/28/2013.

13. On 10/30/2013, earned fees in the amount of \$25,690.30 were disbursed from the trust account to the operating account by way of check number 1171.

14. The remaining funds in the amount of \$49,309.70 were due to the client.

15. Check number 1123 which was issued to the client on 11/22/2013 in the amount of \$49,309.70, however the check was never presented for payment against the trust account. Respondent's trust account continued to hold \$49,309.70 due to C.I.

16. Due to her reliance on staff, Respondent failed to notice the disbursement check was not cashed.

17. During the period of November 2013 to November 2014, seven transfers of client funds were made from the trust account to the operating account in the total amount of \$59,186.55, exceeding the amount of money held for C.I. This resulted in conversion of other client's funds.

18. These transfers were made by the managing staff members in error. The staff members believed the money represented earned fees. Due to her reliance on staff, Respondent failed to notice the improper transfers.

19. The operating account statements reflect that the client funds deposited into the operating account were spent. In July 2014, the operating account reflects a negative balance when it should have held trust account funds in an amount of more than \$50,000.00

20. On 12/23/2014, over a year after the funds should have been disbursed to C.I., the error was discovered and \$49,309.70 was reimbursed to the trust account from the operating account. On 12/29/2014 check number 1125 was issued to C.I. for that amount.

21. Additional funds were deposited into the trust account in the on 1/8/2015 and 4/30/2015 to offset the conversion identified in paragraph 19.

22. Respondent's choice to rely wholly on resulted in client C.I. being deprived of approximately \$50,000.00 for one year.

## **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 her conduct violated Rule 42, Ariz. R. Sup. Ct., specifically, ERs 1.15 and 5.3, and Rule 43, Ariz. R. Sup. Ct.

## **CONDITIONAL DISMISSALS**

The State Bar has conditionally agreed to dismiss the allegation that Respondent's conduct violated ER 8.4(c).

## **RESTITUTION**

Restitution is not an issue in this matter.

## **SANCTION**

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Respondent shall be suspended from the practice of law for 90 days. Upon her reinstatement, Respondents shall be placed on probation for a period of two years, the terms of which shall include participation in the Trust Account Ethics Enhancement Program (TAEEP) and the Law Office Management Assistance

Program (LOMAP). 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.

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

#### **NON-COMPLIANCE LANGUAGE**

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

#### **LEGAL GROUNDS IN SUPPORT OF SANCTION**

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant

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

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

The parties agree that Standard 4.12 is appropriate. Standard 4.12 states that suspension is generally appropriate when a lawyer knows or should have known that she is dealing improperly with client property and causes injury or potential injury to a client.

### **The duty violated**

As described above, Respondent's conduct violated his duty to her clients.

### **The lawyer's mental state**

For purposes of this agreement the parties agree that Respondent knowingly allowed her staff to assume control of her trust account and subsequently engaged in a pattern of negligence that allowed the violations to occur. Respondent did not intend to violate the rules, but admits that she should have known her firm was dealing improperly with client property. Respondent would have identified most, if not all, of the problems if she more diligently ensured 3-way reconciliations were properly completed and reviewed.

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

For purposes of this agreement, the parties agree that there was potential harm to Respondent's clients. Reconstruction of the trust account showed client C.I. was deprived of its money for approximately a year and that other client funds were temporarily converted. There is no evidence to show that any client funds were permanently misappropriated.

### **Aggravating and mitigating circumstances**

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

**In aggravation:**

Standard 9.22(c) – Pattern of Misconduct

**In mitigation:**

Standard 9.32(a) – Absence of a prior disciplinary record.

Ms. Berrett was admitted to practice in Utah in 1984, and in Arizona in 2001.

In her 33 year career, she has never been the subject of discipline.

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

Ms. Berrett did not have a dishonest, selfish or otherwise improper motive when she failed to diligently supervise certain staff members.

Standard 9.32(c) – Personal or emotional problems.

Health issues have plagued both Ms. Berrett and her young daughter, issues which have been a distraction for Ms. Berrett.<sup>2</sup> At least as to the daughter, A.B., and the impact it had on Ms. Berrett, this issue is fairly characterized as a personal or emotional problem. Ms. Berrett has had to watch her daughter suffer, and assist her with her medical needs and treatments. It has been both emotionally tolling and time consuming.

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<sup>2</sup> With respect to Ms. Berrett, please see Standard 9.32(h), below.

In 2003, Ms. Berrett's then 15-year-old daughter was diagnosed with Crohn's disease. Crohn's disease is an inflammatory bowel disease that affects the lining of the digestive tract. A.B. went for years with the Crohn's disease not well-controlled. She had dozens of doctor and hospital visits, most of which she was accompanied by Ms. Berrett, in both Arizona and Utah. A.B.'s physicians tried to control the disease with a whole host of medications, but ultimately landed on Humira. Humira is an immunosuppressant drug. As a result of using Humira, A.B. fell victim to one of its unfortunate side effects—she developed drug-induced lupus.

While A.B.'s diagnosis of Crohn's well predates the events giving rise to this proceeding, some of the above was occurring during the critical period involved here, October 2013 through April 2015, a period of approximately eighteen months. Between 2012 and 2014, A.B. was hospitalized 4 or 5 times, in both Arizona and Utah. The lupus diagnosis was on January 24, 2014. To demonstrate the impact this had on Ms. Berrett, A.B.'s medical records indicate that she and Ms. Berrett could not celebrate Christmas 2013 due to A.B.'s situation and the increased stress it caused.

Ms. Berrett allowed her daughter's health to be a distraction. Combined with misplaced reliance upon a staff person, the trust account suffered. This explanation

is just that—a 20/20 hindsight explanation. It is not offered as an excuse for the neglect. Fortunately, A.B.'s health has stabilized now that she is taking a drug which seems to help.

As mentioned above, Ms. Berrett has also had health issues, and her issues are every bit as serious as those of her daughter, if not more so. In approximately 2012, Ms. Berrett was diagnosed with hemochromatosis. Hemochromatosis is a disease loads the body with excess iron. It adversely impacts just about every system in the body. Incredibly, the treatment for hemochromatosis is bloodletting. From October 2012 through 2015, Ms. Berrett went in weekly to have 500 milliliters of blood drained from her body. This left her tired, weak, with low red counts and with difficulty clotting. During this period she underwent two liver biopsies (hemochromatosis is particularly damaging to the organs), heart test and joint MRIs.

Recall, the critical period here is October 2013 through April 2015. On January 5, 2015, Ms. Berrett suffered a perforated intestine due to hemorrhaging associated with the hemochromatosis. She was hospitalized for two weeks, followed by home rest ordered by her physician for six weeks. During this period, she was unable to drive.

In April 2015, Ms. Berrett underwent a follow up colonoscopy. The negative findings resulted in a second surgery, on May 15, 2015. Again, Ms. Berrett was hospitalized for two weeks, confined to home for six weeks, and unable to drive during that period.

Finally, on December 27, 2015, Ms. Berrett went in for her third surgery to finally repair her intestines. Again, after her surgery she was hospitalized for two weeks and had home rest for six weeks.

In addition to the hemochromatosis, Ms. Berrett suffers migraines approximately two to three times per month. The migraines cause her to experience vision loss and pain.

Currently, Ms. Berrett is able to control the hemochromatosis and migraines with diet, pain medication, anti-inflammatory medication, anti-nausea medication, and the occasional bloodletting.

Again, these problems contributed to Ms. Berrett taking her eye off the ball; they are not offered as an excuse or justification.

Standard 9.32(d) – Timely good faith efforts to make restitution or to rectify consequences of misconduct.

Upon learning of the overdrafts and CIC issues, Ms. Berrett promptly took action to remedy the problems.

Standard 9.32(e) – Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

During the course of the screening investigation, Ms. Berrett has voluntarily produced thousands of pages of documents, many or most of which at the request of Bar Counsel. She has spent hours responding to inquiries from Bar Counsel, and has not resisted providing any documents or information available to her.

Standard 9.32(g) – Character or reputation.

Respondent will supplement this section with character letters.

Standard 9.32(l) – Remorse.

Ms. Berrett was mortified to learn what had transpired with her trust account. She has never had any problems or issues with any of her law firm bank accounts, and truly regrets that she failed to better monitor her staff and the trust account. She believes she may have been lulled into a false sense of security because of the close personal and professional relationship she had with the former staff member who was tasked with maintaining the trust account, and because the Utah rules (where Ms. Berrett maintains her primary office) regarding trust accounts are less stringent

than those in Arizona. Importantly, however, Ms. Berrett recognizes that none of the above excuses her lapse, and vows it will not recur.

### **Discussion**

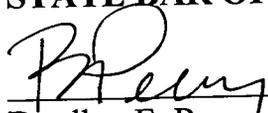
The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction 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 and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 27<sup>th</sup> day of October, 2017.

**STATE BAR OF ARIZONA**

  
\_\_\_\_\_  
Bradley F. Perry  
Staff Bar Counsel

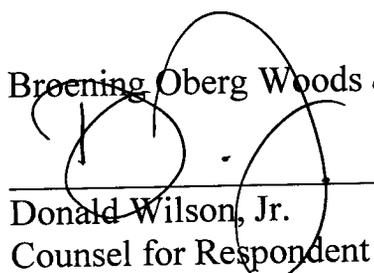
**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.**

DATED this \_\_\_\_\_ day of October, 2017.

\_\_\_\_\_  
Barbara K. Berrett  
Respondent

DATED this 27 day of October, 2017.

Broening Oberg Woods & Wilson PC

  
\_\_\_\_\_  
Donald Wilson, Jr.  
Counsel for Respondent

P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this \_\_\_\_\_ day of October 2017

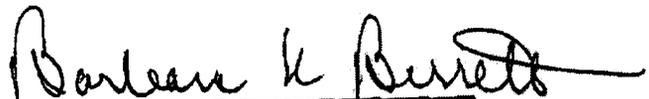
**STATE BAR OF ARIZONA**

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Bradley F. Perry  
Staff Bar Counsel

**This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.**

DATED this 26<sup>th</sup> day of October, 2017.

  
Barbara K. Berrett  
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 27<sup>th</sup> day of October, 2017.

Copy of the foregoing emailed  
this 27<sup>th</sup> day of October, 2017, to:

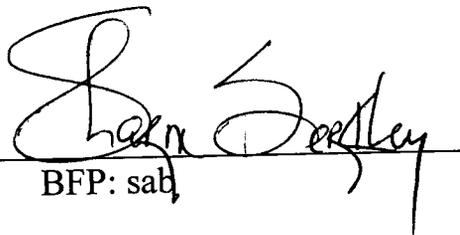
The Honorable William J. O'Neil  
Presiding Disciplinary Judge  
Supreme Court of Arizona  
1501 West Washington Street, Suite 102  
Phoenix, Arizona 85007  
E-mail: [officepdj@courts.az.gov](mailto:officepdj@courts.az.gov)

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this 27<sup>th</sup> day of October, 2017, to:

Donald Wilson, Jr.  
Broening, Oberg, Woods & Wilson, P.C.  
P.O. Box 20527  
1122 East Jefferson Street  
Phoenix, Arizona 85036-0527  
Email: [dwj@bowwlaw.com](mailto:dwj@bowwlaw.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 27<sup>th</sup> day of October, 2017, to:

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

by:   
BFP: sab

# **EXHIBIT A**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
BARBARA K. BERRETT, Bar No. 020994, Respondent

File No. 15-1289

### **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**

Total for staff investigator charges	\$ 0.00
<b><u>TOTAL COSTS AND EXPENSES INCURRED</u></b>	<b><u>\$ 1,200.00</u></b>

# **EXHIBIT B**

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**BARBARA K. BERRETT,  
Bar No. 020994,**

Respondent.

**PDJ 2017-9082**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 15-1289]

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, **Barbara K. Berrett**, is hereby suspended from the practice of law for ninety (90) days, effective thirty (30) days from the date of this order or \_\_\_\_\_.

**IT IS FURTHER ORDERED** that, upon reinstatement, Respondent shall be placed on probation for a period of two (2) years.

**IT IS FURTHER ORDERED** that: Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of

service of this Order, to schedule attendance at the next available class. Respondent will be responsible for the cost of attending the program.

**IT IS FURTHER ORDERED** that Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order. Respondent shall submit to a LOMAP examination of his office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.

**IT IS FURTHER ORDERED** that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

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

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ \_\_\_\_\_, within thirty (30) days from the date of service of this Order.

**IT IS FURTHER ORDERED** that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of \_\_\_\_\_, within thirty (30) days from the date of service of this Order.

**DATED** this \_\_\_\_\_ day of October, 2017

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

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this \_\_\_\_\_ day of October, 2017.

Copies of the foregoing mailed/mailed  
this \_\_\_\_\_ day of October, 2017, to:

Donald Wilson, Jr.  
Broening, Oberg, Woods & Wilson, P.C.  
P.O. Box 20527  
1122 East Jefferson Street  
Phoenix, Arizona 85036-0527  
Email: [dwj@bowwlaw.com](mailto:dwj@bowwlaw.com)  
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_\_ day of October, 2017, to:

Bradley F. Perry  
Staff Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Copy of the foregoing hand-delivered  
this \_\_\_\_\_ day of October, 2017 to:

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

by: \_\_\_\_\_