

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**DAVID J. DON,  
Bar No. 016462**

Respondent.

**PDJ 2017-9040**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 16-1493]

**FILED AUGUST 3, 2017**

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on July 18, 2017 pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement. Accordingly:

**IT IS ORDERED** entering an admonition against Respondent, **David J. Don**, for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

**IT IS FURTHER ORDERED** Mr. Don shall be placed on probation for a period of twelve (12) months.

**IT IS FURTHER ORDERED** Mr. Don shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this Order. Mr. Don shall sign terms and conditions of LOMAP participation, including reporting requirements, which shall be incorporated herein. Mr. Don shall be

responsible for any costs associated with LOMAP, except the cost of the initial evaluation which the State Bar has agreed to waive.

**IT IS FURTHER ORDERED** Mr. Don shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,228.65 within thirty (30) days from the date 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 3rd day of August, 2017.

*William J. O'Neil*

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

Copies emailed/mailed this  
3<sup>rd</sup> day of August, 2017, to:

Karen Clark  
Adams & Clark, PC  
520 East Portland Street  
Phoenix, AZ 85004-1843  
Email: [karen@adamsclark.com](mailto:karen@adamsclark.com)  
Respondent's Counsel

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

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**DAVID J. DON,**  
**Bar No. 016462**

Respondent.

**PDJ-2017-9040**

**DECISION ACCEPTING  
AGREEMENT FOR DISCIPLINE  
BY CONSENT**

[State Bar No. 16-1493]

**FILED AUGUST 3, 2017**

An Agreement for Discipline by Consent (Agreement) was filed on July 18, 2017 and submitted under Rule 57(a) Ariz. R. Sup. Ct.<sup>1</sup> A probable cause order issued from the Attorney Discipline Probable Cause Committee, (“ADPCC”), on February 21, 2017, and the formal complaint was filed on March 30, 2017. Upon filing such Agreement, the presiding disciplinary judge, “shall accept, reject, or recommend the agreement be modified.” Rule 57(a)(3)(b).

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

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<sup>1</sup> Unless otherwise stated, all rule references are to the Rules of the Supreme Court of Arizona.

automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

Pursuant to Rule 53(b)(3), notice of this Agreement was provided to the complainant(s) by letter on July 6, 2017. Complainant(s) were 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. No objections have been received.

The Agreement details a factual basis to support the admissions to violations of Rule 42, ERs 1.3 (diligence), 3.2 (expediting litigation), and 8.4(d) (conduct prejudicial to the administration of justice). In 2014, Mr. Don represented a client in a civil matter. Thereafter, Mr. Don failed to respond to the opposing parties' non-uniform interrogatories and failed to timely provide his initial disclosure statement. Court proceedings ensued. The court extended the deadline to file the disclosure statement and Mr. Don met the extended deadline.

Mr. Don agrees to accept the sanctions of admonition, twelve (12) months of probation with the State Bar's Law Office Management Program (LOMAP), and the payment of costs and expenses totaling \$1,228.65, to be paid within thirty (30) days or interest will accrue at the lawful rate.

#### **LEGAL GROUNDS STATED IN SUPPORT FOR ADMONITION**

As required under Rule 57(a)(2)(E), the parties referenced the American Bar Association's *Standards for imposing Lawyer Sanctions*. The parties stipulate

reprimand is the presumptive sanction. *Standard* 4.43 (Lack of Diligence) provides that reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client. The parties further stipulate *Standard* 4.44 applies to Mr. Don's violation of ER 1.3. *Standard* 4.44 also provides admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client. Mr. Don negligently failed to meet deadlines and his misconduct caused little potential harm to clients and no actual harm to clients.

The parties submit there are no factors present in aggravation and that the following factors are present in mitigation: *Standard* 9.32(a) absence of prior disciplinary record, 9.32(b) absence of dishonest or selfish notice, and 9.32(d) timely good faith effort to make restitution or rectify consequences of misconduct, 9.32(e) full and free disclosure to disciplinary board or cooperative attitude to the Bar, 9.32(g) character or reputation (see letters attached to Agreement, Exhibit B), and 9.32(k) imposition of other penalties or sanctions. The parties agree upon application of the mitigating factors, that a reduction in the presumptive sanction of reprimand is justified.

Upon consideration, the Presiding Disciplinary Judge finds the proposed sanctions of admonition, probation, and the payment of costs meets the objectives of attorney discipline. Now therefore,

**IT IS ORDERED** accepting and incorporating the Agreement and any supporting documents by this reference. The agreed upon sanctions are: admonition, twelve (12) months of probation (LOMAP), and costs and expenses of the disciplinary proceeding totaling \$1,228.65, to be paid within thirty (30) days from this date. There are no costs incurred by the office of the presiding disciplinary judge. A final judgment and order is signed this date.

**DATED** this 3<sup>rd</sup> day of August, 2017.

*William J. O'Neil*

---

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

Copies emailed/mailed this  
3<sup>rd</sup> day of August, 2017, to:

Karen Clark  
Adams & Clark, PC  
520 East Portland Street  
Phoenix, AZ 85004-1843  
Email: [karen@adamsclark.com](mailto:karen@adamsclark.com)  
Respondent's Counsel

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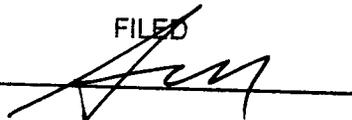
by: AMcQueen

Bradley F. Perry, Bar No. 025682  
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Respondent's Counsel

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

JUL 18 2017

FILED  
BY 

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**DAVID J. DON,  
Bar No. 016462,**

Respondent.

**PDJ 2017-9040**

**AGREEMENT FOR DISCIPLINE  
BY CONSENT**

State Bar File Nos. 16-1493

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, David J. Don, who is represented in this matter by counsel, Karen Clark, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on February 21, 2017, a formal

Complaint was filed on March 30, 2017, and an Answer filed on May 5, 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 July 6, 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 his conduct, as set forth below, violated Rule 42 Ariz. R. Sup. Ct., ERs 1.3, 3.2, and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Admonition and twelve (12) months of probation, the term of which shall be participation in the Law Office Management Assistance Program (LOMAP). The State Bar agrees to waive the initial LOMAP consultation and associated costs and use Respondent's Practice 2.0 evaluation as the basis for Respondent's LOMAP terms. Respondent 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, 26, 1995.

#### **COUNT ONE (File No. 16-1493/ Judicial Referral; Marshall)**

2. Steven Coates retained Respondent to represent him in a suit against Maricopa County Sheriff Joseph M. Arpaio, Maricopa County (MC) and the Maricopa County Special Healthcare District (MCSHD) for failing to provide Mr. Coates necessary medical care while he was incarcerated in the county jail. Respondent filed a complaint on November 15, 2013.

3. On March 5, 2014, the Court entered a Notice of Intent to Dismiss for Lack of Service, setting a service deadline of March 25, 2014. Service was effectuated

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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.

on March 25, 2014, and MCSHD filed an answer on April 2, 2014. MC filed an answer on August 20, 2014.

4. The claims against MCSHD were dismissed by stipulation.

5. On September 2, 2014, MC sent Respondent non-uniform interrogatories. Respondent answered the interrogatories on April 14, 2016.

6. On September 29, 2014, MC disclosed medical records that they had withheld from their pretrial disclosure, which should have been produced much earlier in the case. Respondent's initial disclosure statement was due on or about September 29, 2014. Respondent did not timely provide his initial disclosure statement.

7. Court proceedings ensued wherein the Court extended the deadline for the initial disclosure statement. Respondent met that deadline.

8. On October 7, 13, and 28, 2014, MC sent Respondent correspondence requesting his initial disclosure, a response to the interrogatories, and a phone call to discuss the case. All correspondence went unanswered. MC also made at least one unsuccessful attempt to contact Respondent via phone.

9. On November 4, 2014, MC filed a Motion to Dismiss for Failure to Prosecute, alleging Respondent never responded to MC's non-uniform interrogatories

and failed to submit an initial disclosure statement. Respondent did not timely respond to MC's motion to dismiss

10. On December 1, 2014, MC filed a Motion for Summary Disposition on the grounds that Respondent failed to respond to the November 4, 2014, Motion to Dismiss.

11. On December 15, 2014, Respondent filed an untimely response to the November 4, 2014, motion to dismiss alleging he was initially provided incomplete discovery and received "thousands of additional documents" on September 29, 2014. Respondent states, "Plaintiff simply required additional time to process newly acquired information and consult with experts. Nevertheless, Plaintiff has now produced an initial disclosure statement, and expects to complete any outstanding discovery in the immediate future." The Court denied the motion to dismiss.

12. On January 20, 2015, MC sent Respondent a letter indicating it still had not received Respondent's initial disclosure statement or response to the non-uniform interrogatories. Respondent did not respond to the letter. However, Respondent had mailed his initial disclosure statement to Defendant on December 11, 2014.

13. On January 21, 2015, MC submitted Requests for Admissions to Respondent pursuant to Rule 36(a) Ariz. R. Civ. P.

14. On January 26, 2015, the Court denied the November motion to dismiss and ordered the parties to prepare a scheduling order. The scheduling order required Respondent to provide his initial disclosure statement by March 15, 2015, disclose areas of expert testimony by April 1, 2015, the identity and opinions of experts by June 1, 2015, lay witnesses by September 1, 2015, provide final supplemental disclosure by November 2, 2015, and complete discovery by December 1, 2015.

15. Respondent mailed his initial disclosure statement to Defendants on December 11, 2014. After MC claimed not to have received it, Respondent re-mailed a copy on March 15, 2015. MC received it on March 19, 2015.

16. On March 10, 2015, MC filed a Motion for Summary Judgment alleging Respondent provided late responses to the request for admissions and therefore the requests should be deemed admitted. On March 10, 2015, Respondent contacted counsel for MC by email and informed her the response was timely due to the addition of mailing time. Counsel for MC conceded that she miscalculated the due date and agreed that Respondent's response was timely provided. Respondent requested that counsel for MC withdraw the Motion for Summary Judgment.

17. Respondent did not timely file a response to the Motion for Summary Judgment to inform the Court that the admissions were properly submitted.

18. On April 12, 2015, MC noticed Respondent's client's deposition for April 30, 2015; Defendant failed to consult with Respondent on the date for the deposition. On April 29, 2015, MC emailed Respondent to confirm the deposition scheduled for the following day. Respondent emailed back "we are not available for a deposition tomorrow. If you'd like to schedule a deposition, please propose a few potential dates..."

19. MC responded by asking for available dates in May. Respondent did not reply to the request. On May 4, 2015, MC contacted Respondent by email asking again for proposed dates. Respondent did not reply, because the Court's granting of the Motion For Summary Judgment (set forth in paragraph 19) negated Defendant's right to depose his client. Respondent knew the Motion For Summary Judgment was entered in error but chose to rely on it as a reason to delay his client's deposition.

20. On May 5, 2015, the Court issued an order granting the Motion for Summary Judgment.

21. On May 11, 2015, MC emailed Respondent again. Respondent did not reply, because the Court's granting of the Motion For Summary Judgment negated Defendant's right to depose his client. Respondent knew the Motion For Summary

Judgement was entered in error but chose to rely on it as a reason to delay his client's deposition.

22. On June 9, 2015, Respondent filed his untimely objection to the Motion For Summary Judgment and a Motion For Reconsideration alleging the response to the request for admissions was timely provided, which was true.

23. On June 15, 2015, MC emailed Respondent again about taking his client's deposition. Respondent did not reply because the Court's granting of the Motion For Summary Judgment negated Defendant's right to depose his client. Respondent knew the Motion For Summary Judgment was entered in error but chose to rely on it as a reason to delay his client's deposition.

24. Defendant filed a response to the Motion For Reconsideration, indicating they did not oppose it. At that point, there was a rotation of the assigned judge overseeing the case. The new judge failed to read the unopposed Motion For Reconsideration and signed the Order Of Dismissal.

25. The Court dismissed the case on August 5, 2015.

26. Respondent filed his "Motion for Relief" pursuant to Rule 60(c) Ariz. R. Civ. P. on February 5, 2016, exactly six (6) months after the matter was dismissed. Rule 60(c) allows a lawyer to request relief not more than six (6) months after the

judgment or order was entered or proceeding was taken. Respondent's motion was filed on the last day allowed by the Rule. Respondent did not serve MC with a copy of the motion.

27. The Court granted Respondent's Motion For Reconsideration on March 2, 2016, reinstating the case.

28. On March 8, 2016, MC filed a motion requesting dismissal of the case and sanctions due to Respondent's continued failure to comply with discovery.

29. At a status conference held on March 25, 2016, the Court ordered Respondent to "completely respond to all outstanding discovery within twenty (20) days" and "provide MC with five (5) separate days and times" for the deposition. Respondent timely complied with the Court's order.

30. The Court set oral argument on the Motion For Sanctions for April 28, 2016. At that hearing, the Court found Respondent's conduct violated ERs 1.3, 3.2, 3.4(c), 3.4(d) and ordered Respondent to pay attorney's fees for work done on the Motion For Sanctions and oral argument.

31. The litigation matter was ultimately dismissed by Respondent's client because no medical expert could be found to support the claim.

## **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 1.3, 3.2, and 8.4(d).

## **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: admonition with probation.

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

## **NON-COMPLIANCE LANGUAGE**

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge,

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

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

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

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the

misconduct, and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard 3.0*.

The parties agree that *Standard 4.44* applies here, given the facts and circumstances of this matter. *Standard 4.44* provides that admonition is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes little or no actual or potential injury to a client.

**The duty violated**

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

**The lawyer's mental state**

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

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

For purposes of this agreement, the parties agree that there was little potential harm and no actual harm.

**Aggravating and mitigating circumstances**

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

**In aggravation:**

None.

**In mitigation:**

*Standard 9.32(a)* absence of a prior disciplinary record. Respondent has been licensed since 1995, and has never received any disciplinary sanction.

*Standard 9.32(b)* absence of a dishonest or selfish motive. Respondent's only motivation in this matter was to assist his client, a former law enforcement officer who had fallen on hard times. Respondent's conduct did not involve a dishonest or selfish motive in any respect.

*Standard 9.32(d)* timely good faith effort to make restitution or to rectify consequences of misconduct. On May 4, 2016, defense counsel filed an application for attorney's fees in the amount of \$440.00. On that same date, Respondent agreed to pay the requested amount. He paid it with his own personal funds on May 24, 2016.

*Standard 9.32(e)* full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Respondent fully cooperated with the State Bar in this matter.

*Standard 9.32(g)* character or reputation. Respondent has an excellent reputation in the legal community. Character letters in support of this mitigating factor are attached as Exhibit B.

*Standard 9.32(k)* imposition of other penalties or sanctions. Respondent was sanctioned in the amount of \$440.00, did not appeal the sanction order, and timely paid the amount in full from his own personal funds.

### **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 an admonition with probation.

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 actions in this matter resulted in little potential harm to his client and no actual harm. After receiving supplemental discovery from MC, Respondent was unable to secure a medical expert who would opine that his client's injuries were caused by MC's actions. Respondent focused the majority of his efforts on obtaining an expert and thereby negligently missed deadlines as his attention was consumed by

his search for a way to save the case. Ultimately, no expert could be found and the case was dismissed.

The goals of lawyer discipline can be accomplished with an admonition and probation. The sanction reflects that lawyers have ongoing obligations so long as a case is pending, even when it appears the case will eventually be dismissed.

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

DATED this 17<sup>th</sup> day of July 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.**

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

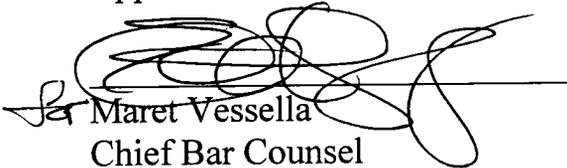
\_\_\_\_\_  
David J. Don  
Respondent

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

Adams & Clark, PC

\_\_\_\_\_  
Karen Clark  
Counsel for Respondent

Approved as to form and content

  
\_\_\_\_\_  
Maret Vessella  
Chief Bar Counsel

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

DATED this 17<sup>th</sup> day of 7/17/2017.



David J. Don  
Respondent

DATED this 18<sup>th</sup> day of July, 2017  
~~7/17/2017~~.

Adams & Clark, PC



Karen Clark  
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 7/17/2017.

Copy of the foregoing emailed  
this \_\_\_\_\_ day of 7/17/2017, to:

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 18<sup>th</sup> day of July, 2017.

Copy of the foregoing emailed  
this 18<sup>th</sup> day of July, 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)

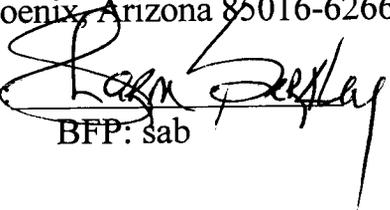
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520 East Portland Street  
Phoenix, Arizona 85004-1843  
Email: [karen@adamsclark.com](mailto:karen@adamsclark.com)  
Respondent's Counsel

Copy of the foregoing hand-delivered  
this 18<sup>th</sup> day of July, 2017, to:

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 North 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,  
David J. Don, Bar No. 016462, Respondent

File No. 16-1493

### 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.

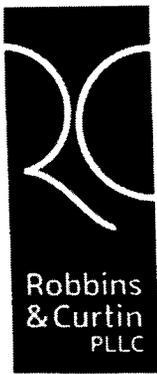
Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative 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.

<b><u>Staff Investigator/Miscellaneous Charges</u></b>		
10/05/16	Computer investigation: PACER	\$ 1.60
08/16/16	Computer Investigation: Lexis Nexis	\$ 20.35
08/15/16	Investigator Mileage to Pick-up Audio Recordings	\$ 6.70
Total for staff investigator charges		\$ 28.65
<b><u>TOTAL COSTS AND EXPENSES INCURRED</u></b>		<b>\$1,228.65</b>

# **EXHIBIT B**



301 E. Bethany Home Rd  
Suite B-100  
Phoenix, AZ 85012  
602/265-0100 phone  
602/265-0267 fax  
www.robbsandcurtin.com

July 17, 2017

To Whom it May Concern:

I have known David Don professionally for ten years. During the last six years, David and I have tried several significant civil cases to a jury. In all of my dealings with David, I have found him to be competent, diligent, and honest in his dealings with clients, opposing counsel, jurors, and judges.

David continually strives to learn and grow as an advocate and trial lawyer. He devotes a significant amount of time to honing his presentation skills and maintaining professional competence in his chosen practice area. Although a sole practitioner, David maintains a robust library of publications on trial practice. He practices regularly with a presentation mentor to ensure that he is able to zealously represent his clients, many of whom might otherwise go unrepresented.

When preparing for trial or working up a case, David is diligent in his preparation. When David takes a deposition, he generally has prepared a multi-tiered examination, anticipating not just the first level of answers, but also the complexities of unexpected responses. His legal analysis is spot-on and well-supported.

David has represented individuals that other attorneys might find challenging. Doing wrongful death litigation in the setting of civil rights, David often has to deal with extended family dynamics. In my experience, David is clear and honest with clients.

David's style with opposing counsel is always respectful and consistent with his clients' legitimate goals. In his area of practice, opposing parties generally have a significant informational advantage. David meets this challenge professionally and appropriately.

David's approach with jurors and judges is likewise open and honest within appropriate professionalism. As trial partners, we share responsibility

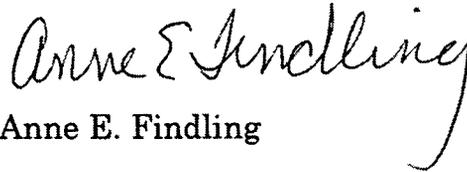
July 17, 2017  
Page 2

for our cases. I trust that he will represent the client in a way that reflects well on all concerned.

In this area of practice, cases often take unexpected turns. Sometimes, despite the best efforts, the situation presented by the client at the beginning of the representation turns out to be incorrect. What may have appeared clear at first becomes murky or unsupportable as the case develops. David's clients can be confident that he will act in their interest when that occurs.

Very truly yours,

**ROBBINS & CURTIN, p.l.l.c.**

A handwritten signature in cursive script that reads "Anne E. Findling". The signature is written in black ink and is positioned above the printed name.

Anne E. Findling

AEF:mjs



301 E. Bethany Home Rd  
Suite B-100  
Phoenix, AZ 85012  
602/285-0100 phone  
602/265-0267 fax  
www.robbinsandcurtin.com

February 8, 2017

Re: David J. Don

To Whom It May Concern:

I have known David Don for approximately 18 years. I have been an attorney in cases where he has represented a co-party. We have tried cases together, and, for the last 10 years, we have shared office space. I consider my foundation to talk about David's character to be excellent.

I can't say strongly enough how much respect I have for David as an attorney, and as a human being. He is very concerned about his clients, and he is meticulously honest—to an extreme. He is a skilled writer and superb at oral argument. He is very devoted to his clients, and very hard-working.

At the time that the complaint came in on this case, David and Anne Findling from my office were deeply involved in a very complicated civil rights trial in Tucson. I know it was very stressful for Anne and for David. I understand what the allegations are in this matter, and I actually believe that David took the heat himself rather than doing anything that could possibly injure the client. For this reason, I wanted you to know what the close observation that I have had has enabled me to notice about David.

I can honestly say that David is one of the two most honest people I know. His integrity is unquestionable, and I hope that if you have any questions you will feel free to contact me so that I can give you further details.

Yours very truly,  
ROBBINS & CURTIN, p.l.l.c.

A handwritten signature in black ink, appearing to read 'Joel B. Robbins'.

JOEL B. ROBBINS

JBR: clb

Law Offices of  
**Ira W. Schiffman**  
11811 North Tatum Blvd., Suite 3031  
Phoenix, Arizona 85028

(602) 953-7644 Phone

(602) 953-7645 Fax

July 17, 2017

*Also Admitted in New York State*

Re: David Don

To whom it may concern:

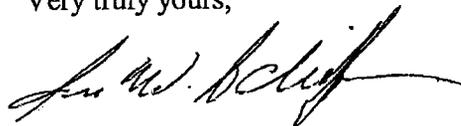
Please be advised I have known David Don for almost 18 years. David and I shared office space for over four years in Scottsdale. Since that time we have maintained both a professional and personal relationship. David and I have worked on cases together and we are working on one right now. As a colleague, I can attest to David's skill and competence. David brings many things to the table. He is very experienced, especially in the areas of personal injury, medical malpractice and civil rights law. He is highly intelligent and thinks very creatively.

As a colleague, I can also attest to David's personal character. He works very hard on the cases he handles and always has the best interest of his clients in mind. He devotes a lot of time to each case and client and achieves great results for them. He is always there to lend a hand and give advice when it is asked for. Personally, he has been very helpful to me on some of the cases I have worked on over the years.

I also know David on a personal level and can say he has been a good friend over the years. We also have several mutual friends. He is married to Rachael and has four young sons (Elijah, Isaac, Levi and Micah). He is a devoted husband and a loving father. They do many fun things together as a family, including traveling to a lot of interesting places. His family has always been of prime importance to him. This also speaks volumes about his personal character.

I hope this has been helpful. Please feel free to contact me if you wish to discuss this further.

Very truly yours,



Ira W. Schiffman

# **EXHIBIT C**

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**DAVID J DON,  
Bar No. 016462,**

Respondent.

**PDJ 2017-9040**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 16-1493]

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, **David J. Don**, is hereby admonished for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

**IT IS FURTHER ORDERED** that Respondent shall be placed on probation for a period of twelve (12) months.

**IT IS FURTHER ORDERED** that Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of service of this Order. Respondent shall sign terms and conditions of LOMAP participation,

including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP, except the cost of the initial evaluation which the State Bar has agreed to waive.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,228.65 within thirty (30) days from the date of service of this Order.

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

**DATED** this \_\_\_\_\_ day of July, 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 July, 2017.

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

Karen Clark  
Adams & Clark, PC  
520 East Portland Street  
Phoenix, Arizona 85004-1843  
Email: [karen@adamsclark.com](mailto:karen@adamsclark.com)  
Respondent's Counsel

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

Bradley F. Perry  
Staff Bar Counsel  
State Bar of Arizona  
4201 North 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 July, 2017 to:

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

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