

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

JEFFREY A. HEINRICK,
Bar No. 028605

Respondent.

PDJ 2017-9084

[State Bar File No. 17-0408]

**FINAL JUDGMENT AND
ORDER**

FILED OCTOBER 30, 2017

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on October 24, 2017, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts and incorporates the parties' proposed agreement. Accordingly:

IT IS ORDERED Respondent, **Jeffrey A Heinrick Bar No. 028605**, is suspended for sixty (60) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective November 6, 2017.

IT IS FURTHER ORDERED upon reinstatement, Mr. Heinrick shall be placed on probation for a period of eighteen (18) months.

IT IS FURTHER ORDERED the terms of probation are as follows:

Mr. Heinrick shall contact the State Bar's Compliance Monitor, Yvette Penar, within seven (7) days of reinstatement and shall follow Ms. Penar's instructions concerning his probation.

1. Mr. Heinrick shall make an appointment with Dr. Phillip Lett within fourteen (14) days of his reinstatement for a mental health evaluation. Based on Dr. Lett's evaluation, the State Bar will prepare the terms of probation.

2. Mr. Heinrick shall sign and return the terms of probation within seven (7) days of receiving same, to Ms. Penar. The terms of probation are incorporated herein.

NON-COMPLIANCE LANGUAGE

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

burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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

IT IS FURTHER ORDERED Mr. Heinrick shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,217.46, within thirty (30) days from the date of this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings

DATED this 30th day of October, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed
this 30th day of October, 2017, to:

Terrence P Woods
Broening Oberg Woods & Wilson PC
PO Box 20527
Phoenix, AZ 85036-0527
Email: tpw@bowwlaw.com
Respondent's Counsel

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

by: MSmith

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

JEFFREY A. HEINRICK,
Bar No. 028605

Respondent.

PDJ-2017-9084

**DECISION AND ORDER
ACCEPTING DISCIPLINE BY
CONSENT**

[State Bar No. 17-0408]

FILED OCTOBER 30, 2017

Probable Cause issued on May 31, 2017 and the formal complaint was filed on June 29, 2017. The parties filed their Agreement for Discipline by Consent filed on October 24, 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. Mr. Heinrick has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. The State Bar is the complainant,

therefore, notice of this agreement and an opportunity to object as required by Rule 53(b)(3), Ariz. R. Sup. Ct. is unnecessary.

The Agreement details a factual basis to support the conditional admissions. Mr. Heinrick conditionally admits he violated Rule 42, ERs 1.4 (communication), 4.1 (truthfulness in statements to others), 8.4(c) (engage in conduct involving dishonesty, fraud deceit or misrepresentation), and (d) (conduct prejudicial to the administration of justice.) The agreed upon sanctions include a sixty (60) day suspension, eighteen (18) months of probation, and costs totaling 1,217.46 within thirty (30) days from this order. The conditional admissions are briefly summarized.

On August 15, 2016, Mr. Heinrick emailed his secretary and supervisor stating he was covering Casa Grande Justice Court on August 17, 2016 for another public defender who had a trial. Five pre-trial conferences were set on the court docket for August 17, 2017. Thereafter, Mr. Heinrick failed to appear at the scheduled court appearances and instead, emailed/texted the prosecutor and clients to reschedule the court appearances. Mr. Heinrick misrepresented his reasons for his failed appearance, made false entries in the case notes, and misrepresented in the emails stating that he was the assigned prosecutor when communicating with the clients about rescheduling their cases. This misrepresentation is troubling. Mr. Heinrick further failed to inform the court why he failed to appear is also troubling and calls into question his truthfulness and character.

Rule 58(k) provides sanctions shall be determined under the *American Bar Association Standards for Imposing Lawyer Sanctions*, (“Standards”). The parties agree *Standard 6.1, False Statements, Fraud and Misrepresentation* applies to Mr. Henricks’s violation of his duties to the legal system by violating ERs 4.1, 8.4(c) and 8.4(d). *Standard 6.12* specifically provides that suspension is appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Mr. Heinrick did not notify the court he would not be appearing for scheduled court proceedings. He was untruthful in his representations. Mr. Heinrick misrepresented to the clients that the prosecutor had an emergency hearing in another court and their matters needed to be continued. His misrepresentations caused potential injury to clients and to the legal proceedings and the assigned attorney.

Standard 4.6, Lack of Candor also applies to Mr. Heinrick’s violation of duties owed to his clients by violating ERs 4.1 and 8.4(c) and provides that suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Mr. Heinrick misrepresented to the clients that the text messages they received originated from their assigned public defender and that their matters were continued because of the Prosecutor, not because Mr. Heinrick was sick. Mr. Heinrick also made false entries regarding the reasons for the continuances into the Public Defender records causing potential injury to the clients. Such conduct requires an evaluation by a mental health expert to assure the public is protected. The terms of the agreement provide for that.

The parties agree aggravating factors 9.22(b) dishonest or selfish motive, 9.22(g) refusal to acknowledge wrongful nature of conduct, and 9.22(i) substantial experience in the practice of law are present. The sole factor present in mitigation is 9.32(a) absence of prior disciplinary record.

The parties agree to a sixty (60) day suspension effective November 6, 2017, and upon reinstatement, eighteen (18) months of probation (MAP evaluation), and payment of the State Bar's costs and expenses totaling \$1,217.46 within thirty (30) days.

Now therefore,

IT IS ORDERED accepting and incorporating the Agreement and any supporting documents by this reference. There are no costs incurred by the Office

of the Presiding Disciplinary Judge. A final judgment and order is signed this date.

DATED this 30th day of October, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
on this 30th day of October 2017, to:

Terrence P Woods
Broening Oberg Woods & Wilson PC
PO Box 20527
Phoenix, AZ 85036-0527
Email: tpw@bowwlaw.com
Respondent's Counsel

Shauna R. Miller
Senior Bar Counsel
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Email: LRO@staff.azbar.org
Respondent's Counsel

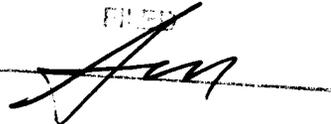
by: MSmith

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

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

OCT 24 2017

BY

FILED


Terrence P Woods, Bar No. 003490
Broening Oberg Woods & Wilson PC
PO Box 20527
1122 E. Jefferson
Phoenix, AZ 85036-0527
Telephone 602-271-7705
Email: tpw@bowwlaw.com
Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

JEFFREY A. HEINRICK
Bar No. 028605

Respondent.

PDJ 2017-9084
[State Bar File Nos. 17-0408]

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Jeffrey A. Heinrick, who is represented in this matter by counsel, Terrence P. Woods, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on

May 31, 2017, and a formal complaint was filed on June 29, 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.

The State Bar is the complainant in this matter, therefore no notice of this agreement is required pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.4, 4.1, 8.4(c) and (d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: sixty (60) day suspension; eighteen (18) months' probation upon reinstatement. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached as Exhibit A.

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

FACTS
GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on June, 07, 2011.

COUNT ONE
(File no. 17-0408/ State Bar of Arizona)

2. Respondent was employed by Pinal County Public Defender's Office (PCPD) from May 2013 until September 2016 when he resigned in anticipation of being fired based on the misconduct described below.

3. On August 15, 2016, Respondent sent an email to his secretary and his supervisor advising that he was going to cover Casa Grande Justice Court (CGJC) cases for public defender Joshua Gooday on August 17, 2016, since Mr. Gooday would be in trial. There were five pre-trial conferences Respondent was going to appear at for Mr. Gooday, all DUI's.

4. Respondent failed to appear at court on August 17, 2016. Respondent emailed/texted the prosecutor and the clients to reschedule the court appearances.

5. The PCPD's office became aware of discrepancies in what Respondent had told his supervisors, his secretary, the legal assistant, and the client's about the reason he missed court that day. In September 2016, the Human

Resources Director for Pinal County hired Investigative Research, Inc., to conduct an independent administrative investigation into Respondent's conduct.

6. The report provided to Pinal County after the investigation made findings such as:

Based on information provided by witnesses, his own admission and evidence obtained from [Respondent's] cell phone, on August 17, 2016, [Respondent] sent three text messages to three different clients representing himself as [Joshua Gooday] and provided false information as to the reason their cases were going to be continued. [...] Based on overwhelming evidence, [Respondent's] conduct, which included sending text messages to two clients containing five false statements, and text messages to another client containing [eight] false statements, was found to be in violation of several Pinal County policies.

7. On August 17, 2016, Respondent sent three text messages to three defendants, stating in part:

This is [Josh Gooday] the public defender. The prosecutor is away on an emergency hearing. Your case will be continued, so you don't have to come to court today. I just got here and they told me no court today."

8. The text messages contained false information about who sent the message and about what was transpiring at the court that day.

9. Respondent also "entered inaccurate case notes for ... clients he was assigned to represent at [Casa Grande Justice Court] on 8/17/16." For example:

- a. Case notes for client [B]: "Called on 8-16-18(sic). Told her no discovery yet. MTC 30 days."
- b. Case notes for client [C]: "Called on 8-16. Explained what was going on in case. Wanted to continue, needs money for DUI fines, fees."
- c. Case notes for client [D]: "Got Labs back. Wants continuance. Needs money to pay fines."

10. Respondent did not talk to any of the clients, and made up the information that was put in the file case notes.

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 1.4, 4.1, 8.4(c) and (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: Sixty (60) day suspension and eighteen (18) months' probation upon reinstatement. The terms of probation are as follows:

1. Respondent shall contact the State Bar's Compliance Monitor, Yvette Penar, within seven (7) days of reinstatement and shall follow Ms. Penar's instructions concerning his probation.
2. Respondent shall make an appointment with Dr. Phillip Lett within fourteen (14) days of his reinstatement for a mental health evaluation. Based on Dr. Lett's evaluation, the State Bar will prepare the terms of probation.
3. Respondent shall sign and return the terms of probation within seven (7) days of receiving same, to Ms. Penar.

LEGAL GROUNDS IN SUPPORT OF SANCTION

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, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should consider: (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.

Respondent violated his duty to the legal system by violating ERs 4.1, 8.4(c) and (d), which implicates *Standard* 6.12.

Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

In this matter, Respondent did not notify the court that he would not be appearing on his client's behalf, and instead informed the prosecutor he was sick, and told the clients that the prosecutor had an emergency hearing in another court. One client did not get Respondent's message, and called in for his scheduled court appearance. The court was unaware of why Respondent did not show up. There was the potential of injury to the clients and to the legal proceedings.

Respondent also violated his duty to his clients by violating ERs 4.1 and 8.4(c), which implicates *Standard* 4.62.

Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to a client.

Respondent knowingly misinformed the clients he texted that the message was coming from their assigned public defender, Josh Gooday, and that their matters were continued because of the Prosecutor, and not because he was sick.

He then knowingly falsified the public defenders records to make it look like the clients had requested the continuances, which could have caused injury to the clients.

AGGRAVATING AND MITIGATING FACTORS

After misconduct has been established, aggravating or mitigating circumstances may be considered in deciding what sanction to impose. *Standard*

9.1

Standard 9.22 Aggravation factors:

- (b) dishonest or selfish motive;
- (g) refusal to acknowledge wrongful nature of conduct;
- (i) substantial experience in the practice of law.

Standard 9.3 Mitigating factors:

- (a) absence of a prior disciplinary record;

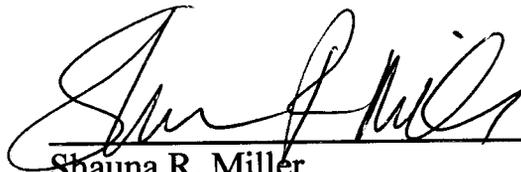
The aggravating factors outweigh the mitigating factors, indicating that a suspension is appropriate. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and 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 sixty (60) suspension commencing on November 6, 2017, or the date of the signing of the Order Approving Discipline by Consent, whichever is later, eighteen months' probation, and the imposition of costs and expenses. A proposed form order is attached as Exhibit B.

DATED this 24th day of October 2017

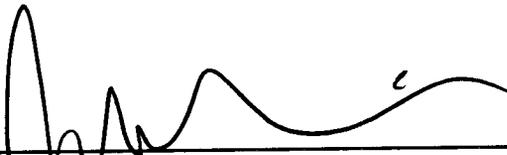
STATE BAR OF ARIZONA



Shauna R. Miller
Senior Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. 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 20 day of October, 2017.



Jeffrey A. Heinrick
Respondent

DATED this 20 day of October, 2017.

Broening Oberg Woods & Wilson PC



Terrence P. Woods
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. 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.

Jeffrey A. Heinrick
Respondent

DATED this _____ day of October, 2017.

Broening Oberg Woods & Wilson PC

Terrence P. Woods
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 24th day of October, 2017.

Copy of the foregoing emailed
this 24th 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

Copy of the foregoing mailed/emailed
this 24th day of October, 2017, to:

Terrence P. Woods
Broening Oberg Woods & Wilson PC
1122 E. Jefferson
Phoenix, AZ 85036-0527
Email: tpw@bowwlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 24th day of October, 2017, to:

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

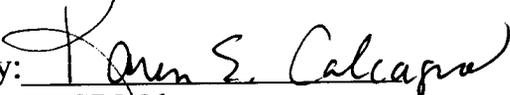
by: 
SRM:kec

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Jeffrey A. Heinrick, Bar No. 028605, Respondent

File No. 17-0408

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.

<u>Staff Investigator/Miscellaneous Charges</u>	
09/06/17 LexisNexis Invoice	\$ 17.46
Total for staff investigator charges	\$ 17.46
<u>TOTAL COSTS AND EXPENSES INCURRED</u>	<u>\$1,217.46</u>

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

JEFFREY A. HEINRICK,
Bar No. 028605,

Respondent.

PDJ 2017-9084

[State Bar File No. 17-0408]

**FINAL JUDGMENT AND
ORDER**

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

IT IS HEREBY ORDERED that Respondent, **Jeffrey A. Heinrick**, is hereby suspended for sixty (60) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective November 6, 2017, or the date of the signing of the Order Approving Discipline by Consent, whichever is later.

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be placed on probation for a period of eighteen months.

IT IS FURTHER ORDERED that the terms of probation are as follows:

1. Respondent shall contact the State Bar's Compliance Monitor, Yvette Penar, within seven (7) days of reinstatement and shall follow Ms. Penar's instructions concerning his probation.

2. Respondent shall make an appointment with Dr. Phillip Lett within fourteen (14) days of his reinstatement for a mental health evaluation. Based on Dr. Lett's evaluation, the State Bar will prepare the terms of probation.

3. Respondent shall sign and return the terms of probation within seven (7) days of receiving same, to Ms. Penar. The terms of probation are incorporated herein.

NON-COMPLIANCE LANGUAGE

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

terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that, 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 \$1,200.00, within 30 days from the date of service of this Order.

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

DATED this _____ day of October, 2017

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

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

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

Terrence P Woods
Broening Oberg Woods & Wilson PC
PO Box 20527
1122 E Jefferson
Phoenix, AZ 85036-0527
Email: tpw@bowwlaw.com
Respondent's Counsel

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this ____ day of October, 2017, to:

Shauna R. Miller
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Phoenix, Arizona 85016-6266

by: _____