

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

LAURA L. ROUBICEK,
Bar No. 022671

Respondent.

PDJ-2017-9078

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 16-2251]

FILED DECEMBER 14, 2017

The decision of the hearing panel was filed with the disciplinary clerk on November 17, 2017. The time for appeal has passed and no appeal has been filed.

Now therefore,

IT IS ORDERED Respondent, **LAURA L. ROUBICEK** is admonished effective November 17, 2017.

IT IS FURTHER ORDERED Ms. Roubicek shall pay the State Bar's costs and expenses in the amount of \$4,047.24. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

DATED this 14th day of December, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing e-mailed this 14th day of December, 2017,
and mailed December 15, 2017, to:

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

LAURA L. ROUBICEK,
Bar No. 022671

Respondent.

PDJ 2017-9078

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar File No. 16-2251]

FILED NOVEMBER 17, 2017

On October 18, 2017, the Hearing Panel, composed of James M. Marovich, volunteer attorney member, Carole Kemps, volunteer public member, and the Presiding Disciplinary Judge (“PDJ”) William J. O’Neil, held a hearing pursuant to Rule 58(j), Ariz. R. Sup. Ct.¹ Bradley F. Perry appeared on behalf of the State Bar of Arizona. J. Scott Rhodes and Jessica L. Beckwith, *Jennings Strouss & Salmon, P.L.C.* appeared on behalf of Laura L. Roubicek. Exhibits 1-46 and 49 were admitted. Exhibits 1, 2, 3, and 27 were sealed.

At the conclusion of the hearing, the State Bar requested a six (6) months and one (1) day suspension. Ms. Roubicek asserts she made a good faith error in her interpretation of the law and did not possess the requisite mental state to find a violation of the ethical rules and if violations are found, diversion or admonition is appropriate under the facts.

¹ Unless otherwise stated, all Rule references are to the Ariz. R. Sup. Ct.

I. SANCTION IMPOSED

ADMONITION

II. PROCEDURAL HISTORY

A probable cause order issued on May 3, 2017. [Exhibit “Ex.” 5.] The State Bar of Arizona (“SBA”), filed its complaint on June 15, 2017. On June 20, 2017, the complaint was served on Roubicek, via Mr. Rhodes, by certified, delivery-restricted mail, and by regular first-class mail, pursuant to Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct. The PDJ was assigned to the matter on June 22, 2017. On July 17, 2017, Ms. Roubicek filed her Answer.

Orders regarding the initial case management conference were issued July 20, 2017. Joint Pre-Hearing Statements (“JPS”) from the SBA and Roubicek were received on September 22, 2017. Ms. Roubicek and the SBA each filed separate pre-hearing memoranda on October 13, 2017.

III. FINDINGS OF FACT

At all times relevant, Ms. Roubicek was licensed to practice law in Arizona, having been admitted to the State Bar of Arizona on October 24, 2003. [JPS at 2.] Ms. Roubicek began felony prosecution in 2012 when she became employed with the Pima County Attorney’s Office. This matter concerns the State prosecution of Ronald Johnson by Ms. Roubicek. She was not involved in the investigation or in obtaining the indictment.

Mr. Johnson was arrested on May 10, 2013, after the Tucson Police Department responded to reports of gunshots. Mr. Johnson and four other suspects were arrested in connection with the incident. [Ex. 7, Bates 106, 112.] Search warrants for both Mr. Johnson's unit and his neighbor's unit were subsequently issued. 11 marijuana plants, a shotgun, drug paraphernalia, a one-pound bag of light brown powder (believed to be hash), and a smaller container of black hash were found in Mr. Johnson's home. A search of the downstairs apartment yielded eight pounds of marijuana, various firearms, other drugs, cash, and paraphernalia. [JPS at 3.]

The Tucson Police Department utilized a body video camera to record the scene. They prepared an Incident/Investigation Report. The property and evidence was documented by them on a Sheet Report. [Ex. 6, 7, and 11.]

The Pima County Attorney's Office presented the case to a Grand Jury on May 31, 2013, and a true bill was returned that same day. Mr. Johnson was indicted on five counts: production of marijuana; possession of marijuana; possession of a narcotic drug (hash) for sale; possession of a deadly weapon during the commission of a felony; and possession of drug paraphernalia. Mr. Johnson was indicted with other individuals alleged to have participated in the May 10, 2013 incident in a single indictment. Brent Barstow was one of Mr. Johnson's co-defendants. [JPS at 4 and 5, Ex. 8, Bates 119-121; Ex. 9, Bates 122.]

On November 21, 2013, Mr. Barstow engaged in a free talk with the State. Mr. Barstow was present with his lawyer. [Sealed Ex. 1.] Ms. Roubicek, with two Tucson Police detectives also participated in the free talk. At the beginning of the free talk, Ms. Roubicek advised Mr. Barstow that the recording of the free talk may be provided to other defendants in the matter and that any exculpatory information would be disclosed. [JPS at 6.] Mr. Barstow provided information about a different source for at least some of the hashish, which was the basis for one of the charges against Mr. Johnson. Mr. Barstow's free talk also included information showing that Mr. Johnson was not the individual who possessed the firearm which was the basis for another charge.

Mr. Barstow made statements regarding Mr. Johnson during the free talk. Mr. Barstow's statements are accurately reproduced in the free talk transcript. At the time of Mr. Barstow's free talk, Mr. Barstow was still a defendant in the same case as Mr. Johnson. Mr. Barstow made some exculpatory statements concerning Mr. Johnson. [JPS 7-9.]

A pretrial conference in the criminal case of Mr. Johnson and Mr. Barstow was held on December 16, 2013. The free talk was not mentioned at the December 16, 2013, pretrial conference. The case was set for trial on March 11, 2014. Mr. Barstow and Mr. Johnson were initially set to be tried together. On January 10, 2014, Mr. Barstow entered into a plea agreement with the State whereby he agreed to

provide testimony about the events of May 10, 2013. As of January 10, 2014, the trial date set for the remaining defendants remained March 11, 2014. [JPS at 10-11.]

On February 12, 2014, Ms. Roubicek moved to dismiss and/or amend the charges against Mr. Johnson that were impacted by the free talk. Ms. Roubicek moved to dismiss the charges of possession of marijuana, production of marijuana, and possession of a deadly weapon during a felony offense. Ms. Roubicek moved to amend the charge of possession of a narcotic drug for sale to possession of a narcotic drug. The Motion to Dismiss/Amend was granted. That day, Ms. Roubicek advised the court of the State's non-objection to Mr. Johnson's motion to sever his case from the other defendants. Mr. Johnson's case was severed and set for trial on March 18, 2014, on the amended charges. [JPS at 12; Ex. 19, Bates 145-146; Ex. 20, Bates 147-148.]

On March 14, 2014, a hearing was held regarding the State's motion to preclude Mr. Johnson from asserting the Arizona Medical Marijuana Act as a defense at trial. The court granted the State's motion. On the same day, Mr. Johnson's counsel indicated the need to hire an expert because the State intended to assert evidence to establish Mr. Johnson's extraction of hash oil. A status conference was then set for March 31, 2014. During the week of March 14, 2014, the trial was continued to April 1, 2014. [JPS at 13.]

During the evidentiary hearing held October 18, 2017, Ms. Roubicek testified that she had no prior training related free talks, no prior training related to the *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L.Ed.2d 215 (1963) reporting requirements,² and testified that she was unfamiliar with the *Brady* rule. [Hearing Testimony (“HT”) at 1:27:03 p.m.] She did, however, testify that she may have attended CLE courses that discussed the *Brady* rule. [Id. at 2:33:10 p.m.] Ms. Roubicek made a plea offer to Mr. Johnson on September 11, 2013, to a class 4 felony. [Id. at 1:32:09 p.m.; Ex. 12, Bates 132.] At that point, there was no free talk with Mr. Barstow. [Id.]

Mr. Barstow’s attorney offered a free talk to Ms. Roubicek and on November 21, 2013, the free talk took place. [Id. at 1:41:45 p.m.; Sealed Ex. 1.] Ms. Roubicek’s plea offer to Mr. Johnson was technically still open, but on December 16, 2013 Mr. Johnson rejected the plea. [Id. at 1:42:09 p.m.] The *Johnson* case was one of Ms. Roubicek’s first multi-defendant prosecutions, and she had never dealt with a free talk previously. [Id. at 1:33:50 p.m.] Ms. Roubicek’s understanding of the free talk was that, if someone offered useful evidence, that evidence would not need to be disclosed until a plea had been entered because “there could be safety concerns for the cooperator,” as such individuals may be threatened for complying with the prosecutor [Id. at 1:36:03 p.m.]

² Under *Brady*, a prosecutor must disclose all potentially exculpatory evidence

Based on the free talk with Mr. Barstow, Ms. Roubicek learned that the hash involved in the prosecution was not for sale, but was for personal use, and that Mr. Johnson had “nothing to do with the weapon that he had been charged with.” [Id. at 1:44:15 p.m.] Because of the free talk, Ms. Roubicek reduced Mr. Johnson’s charges from sale of marijuana to possession of marijuana, although there was still enough information to proceed with the paraphernalia charge. [Id. at 1:49:55 p.m.] Mr. Barstow’s free talk did not impact all of Mr. Johnson’s charges, i.e., the production of marijuana charge. [Id. at 1:45:49 p.m.] Ms. Roubicek did, however, drop those charges independently of the free talk when she learned that Mr. Johnson had a medical marijuana card. [Id. at 1:46:39 p.m.]

Ms. Roubicek testified that she believed the information she had learned from the Barstow free talk had bolstered the possession charge against Mr. Johnson. We agree. She never thought that the information would be exculpatory as to that charge. [Id. at 1:06:45 p.m.] We find at the time that she believed she was under no obligation to disclose those statements. [Id. at 1:07:42 p.m.] During the hearing, she acknowledged that she should have disclosed those statements. [Id. at 1:08:31 p.m.]

Ms. Roubicek never intended to call Mr. Barstow as a witness against Mr. Johnson, but did regarding the other defendants. This was demonstrated by the list of potential witnesses she filed. [Ex.17 and 18.]

Ms. Roubicek testified that, although she did not exactly recall how she had informed Mr. Johnson's counsel that she was intending to dismiss certain charges, reduce other charges, and sever his case from the multi-defendant case, she had made it clear that the indictment was to be amended to charge only the possession of hash and paraphernalia. [Id. at 1:57:34 p.m.; Id. at 1:58:14 p.m.] This communication was sent to Mr. Johnson's counsel on December 18, 2013. [Id.] Mr. Johnson's counsel responded, saying she was "on board with it" and was in agreement to sever Mr. Johnson's case from the multi-defendant case. [Id. at 1:58:57 p.m.]

On February 6, 2014, Ms. Roubicek extended to Mr. Johnson a second plea offer (plead guilty to solicitation to possess a narcotic drug, a class 6 felony). [Chronology Chart; HT at 2:00:03 p.m.] Mr. Johnson made it clear that he would reject this offer and wished to go to trial. [Id.] On February 12, 2014, Ms. Roubicek moved to dismiss and/or amend the charges against Mr. Johnson, and this motion was granted. [Id.] All of the changes Ms. Roubicek had previously disclosed to Mr. Johnson's counsel were made in the February 12, 2014 motion. [Id.; Ex. 19.] Mr. Johnson's case was also severed that day. [HT at 2:01:50 p.m.; Ex. 20.]

Ms. Roubicek thought dismissing certain charges and amending certain charges on the indictment had cured the issue. [Id. at 2:09:00 p.m.] She never tried to hide anything from Mr. Johnson regarding the free talk, and she was moving

forward with the amended prosecution of Mr. Johnson knowing there would likely be evidence proving he was innocent of the possession charge. [Id. at 2:09:24 p.m.]

On March 31, 2014, Ms. Roubicek disclosed the Barstow free talk. [2:11:30 p.m.] The SBA alleges that Ms. Roubicek disclosed the free talk on the day before the trial, which Ms. Roubicek refutes, showing that the trial was set for April 22, 2014, at the time of the afternoon disclosure rather, than April 1. The minute entry confirms the defense in that morning status conference also needed time to obtain an expert witness and the case was continued to April 22, 2014. [Id. at 2:12:09 p.m.; Ex. 25.]

Ms. Roubicek was unable to try the *Johnson* case due to a conflict with another case, and did not oppose the continuance. She then went back to her office after that status conference. [HT at 2:12:20 p.m.] She then discovered that the free talk documents had not yet been disclosed, and she immediately alerted her paralegal to disclose the free talk that day. [Id. at 2:13:29 p.m.] She was under the impression that once Mr. Barstow was locked into a plea agreement, she was to get the plea agreement, the documents, the audio, and the transcript together in a packet, so that it would all be disclosed together, and she believed that had all taken place. [Id. at 2:12:57 p.m.]

Ms. Roubicek does not blame her paralegal for failing to disclose the free talk and acknowledges it was her responsibility [Id. at 2:13:30 p.m.] Ms. Roubicek also

disclosed the Barstow free talk to the counsel of the remaining defendants, none of which complained of misconduct. [Id. at 2:15:08 p.m.]

On April 21, 2014, a status conference was held. There, defense counsel orally made a Motion to Dismiss due to the disclosure violation. The court then ordered defense counsel to file a formal written motion by April 25, 2014. Defense filed its Motion on April 28, 2014, which was granted. On June 30, 2014, there was a hearing set to consider the Motion to Dismiss. [JPS at 15; HT at 1:15:50 p.m.]

The court dismissed the matter with prejudice and found Ms. Roubicek's conduct was unintentional error. [Sealed Ex. 3.] Ms. Roubicek told the court that she believed she had cured the issue over the exculpatory evidence by dismissing and amending certain charges on the indictment, and that she thought she had handled things correctly. [Id. at 2:16:32 p.m.] The Pima County Attorney's Office did not take disciplinary action against Ms. Roubicek. [Id. at 2:26:50 p.m.]

Ms. Roubicek learned from her experience, testifying that she has invested her time in learning from prosecutors experienced with free talks, and that if there was a close call concerning exculpatory evidence, to quickly disclose. [Id. at 2:27:46 p.m.] She adopted the practice of notifying counsel by informing them that "something has changed" in the case, when she learns of new evidence. [Id. at 2:28:00 p.m.] She also learned not to set trial dates when she is in such a posture, to proceed more slowly under those circumstances, and to seek more guidance. [Id.]

After the issuance of the probable cause order against Ms. Roubicek, she was reassigned to the civil torts division in the Pima County Attorney's Office, and she lost her supervisor status. [Id. at 2:30:45 p.m.] She wishes to be a prosecutor again. [Id.] Ms. Roubicek testified that she has made it a point to use her mistake as a teaching tool for others, so they will avoid the mistake she made.

IV. CONCLUSIONS OF LAW

The Hearing Panel finds by clear and convincing evidence that Ms. Roubicek violated Rule 42, Ariz. R. Sup. Ct.: specifically, ERs 3.4(a) (Fairness to Opposing Party and Counsel); 3.8 (Special Responsibilities of a Prosecutor); and 8.4(d) (Conduct Prejudicial to the Administration of Justice). The Panel does not find a violation of Rule 54(c) because it requires a "knowing" mental state, which the State Bar did not prove by clear and convincing evidence.

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("*Standards*") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0*.

Duties violated:

Ms. Roubicek breached her duty to the legal system by violating ER 3.4(a) and 8.4(d). Ms. Roubicek breached her duty to the public by violating ER 3.8.

Mental State and Injury:

Ms. Roubicek negligently violated ER 3.4(a), implicating *Standard 6.23, Abuse of the Legal System*. Specifically, 6.23 provides that a reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

ER 3.4(a) prohibits an attorney from unlawfully obstructing another party's access to evidence or unlawfully altering, destroying, or concealing a document or other material having potential evidentiary value. It is unlawful for a prosecutor to withhold exculpatory evidence, and a prosecutor must take certain measures to ensure that such evidence is disclosed to opposing parties.

Ms. Roubicek had learned of information exculpating Mr. Johnson of certain charges in a free talk with Mr. Barstow and violated Criminal Rule 15 by withholding the exculpatory evidence. She had this information for months, but had withheld such information because she was under the wrong impression that she did not have to disclose the exculpatory evidence until after a plea agreement was arranged. If Ms. Roubicek had not disclosed the exculpating evidence to Mr.

Johnson's counsel, Mr. Johnson would have faced charges of which there was no probable cause.

Ms. Roubicek also negligently violated ER 3.8, which implicates *Standard 5.23, Failure to Maintain the Public Trust*, which states:

Reprimand is generally appropriate when a lawyer in an official or governmental position negligently fails to follow proper procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.

ER 3.8 proscribes prosecutors from prosecuting a charge that the prosecutor knows is not supported by probable cause, and requires prosecutors to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused. Ms. Roubicek violated ER 3.8(a) when she learned that the firearm, which was the basis for a charge against Mr. Johnson, had not belonged to Mr. Johnson, and did not immediately dismiss that charge. She had also learned that Mr. Johnson was not selling marijuana, the basis for another charge, which she had not immediately dismissed. Similarly, Ms. Roubicek violated ER 3.8(d) when she failed to disclose this information to the defense, because this information was exculpatory of the original charges.

Ms. Johnson negligently misinterpreted the applicable Criminal Procedure rules (Rule 15 and the holdings in *Brady v. Maryland*) and now understands the clear

mandate and that there are no exceptions; specifically, that an impending severance of a case does not change the applicability of the rules.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors are present in this matter: *Standard 9.22*:

- (h) vulnerability of the victim; and
- (i) substantial experience in the practice of law

Ms. Roubicek has been a practicing attorney in Arizona for 30 years. However, she began employment with the County Attorney in 2012, and had no prior experience prosecuting felony cases. Mr. Johnson was a vulnerable victim because he was a criminal defendant and based on the nature of the initial charges was facing mandatory incarceration under those original charges if convicted at trial. [Ex. 10, Bates 124.]

The Hearing Panel finds the following mitigating factors apply: *Standard 9.32*:

- (a) absence of prior disciplinary record;
- (b) absence of selfish or dishonest motive;
- (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (k) imposition of other penalties;
- (g) character or reputation; [Ex. 30, 31, & 49.]
- (l) remorse; and
- (j) delay in disciplinary proceedings; [Misconduct occurred in 2013]

Upon consideration of the aggravating and mitigating factors, the Hearing Panel finds that a reduction in the presumptive sanction of reprimand is justified. Ms. Roubicek acknowledged her mistake in Superior Court in June 2014 and accepted responsibility. In addition, she has taken affirmative steps to ensure this misconduct does not reoccur and, given the mitigation present, the Hearing Panel

determined admonition is the appropriate sanction, meeting the objectives of attorney discipline. Ms. Roubicek testified she now uses her experience as a teaching tool for other attorneys. These affirmative steps and her remorse was also evident in Ms. Roubicek's letters of reference and testimony of her character witnesses. The Hearing Panel concludes that no purpose will be served with imposing a long-term suspension that requires formal reinstatement proceedings and proof of rehabilitation.

V. CONCLUSION

The Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *In re Alcorn*, 202 Ariz. 62, 74, 41 P.3d 600, 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It has also concluded that the purpose of lawyer discipline is to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). A goal of lawyer regulation is to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Hearing Panel has determined the sanction using the facts, application of the *Standards*, including the aggravating and mitigating factors, and the goals of the attorney discipline system. The Hearing Panel orders:

1. Ms. Roubicek is admonished effective the date of this order.
2. Ms. Roubicek shall pay all costs and expenses incurred by the SBA.

There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

A final judgment and order will follow.

DATED this 17th day of November 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Carole Kemps

Carole Kemps, Volunteer Public Member

James M. Marovich

**James M. Marovich, Volunteer Attorney
Member**

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

JUN 15 2017

FILED
BY 

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**LAURA L. ROUBICEK,
Bar No. 022671,**

Respondent.

PDJ 2017-9078

COMPLAINT

[State Bar No. 16-2251]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the State of Arizona having been first admitted to practice in Arizona on October 24, 2003.

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COUNT ONE (File No. 16-2251/Johnson)

2. Ronald Johnson was arrested on May 10, 2013, after Tucson PD responded to reports of shots being fired at his home. It was not readily apparent as to who did what, but by all indications a drug-deal-gone-bad had occurred at the apartment complex where Mr. Johnson lived. Mr. Johnson and four other suspects were arrested.

3. Search warrants for both Mr. Johnson's apartment and his neighbor's apartment were thereafter obtained. 11 Marijuana plants, a shotgun, drug paraphernalia, a one-pound bag of light brown powder (believed to be hash), and a smaller container of black hash were found in Mr. Johnson's home. A search of the downstairs apartment yielded eight pounds of marijuana, various firearms, along with other drugs, cash and paraphernalia.

4. The suspects were charged by Pima County Attorney's Office on May 29, 2013, and indicted by the Grand Jury on May 31, 2013. Mr. Johnson was indicted on five counts: production of marijuana; possession of marijuana; possession of a narcotic drug (hash) for sale; possession of a deadly weapon during the commission of a felony; and possession of drug paraphernalia.

5. Mr. Johnson's case was joined with the other individuals arrested at the May 10, 2013, drug deal. One of the other defendants was Brent Barstow.

6. On November 21, 2013, Mr. Barstow engaged in a "free talk" with the State. Mr. Barstow was present with his lawyer. Respondent, along with a Tucson Police detective thereafter performed the "free talk." At the beginning of the "free talk," Respondent advised Mr. Barstow that the recording of the "free talk" may be provided to other defendants in the matter and that any exculpatory information would indeed be disclosed.

7. During the "free talk," Mr. Barstow made a number of statements that were exculpatory as to Mr. Johnson, namely: a) Mr. Johnson was asleep in his room when the May 10, 2013, deal took place; b) while Mr. Johnson allowed drug deals to happen at his place in the past, he probably would not have permitted this particular drug deal to take place because it involved someone Mr. Johnson did not want at his home; c) one of Mr. Barstow's other associates brought a shotgun to Mr. Johnson's home for the purpose of protection during the drug transaction; d) the 1 pound of hashish found in Mr. Johnson's bedroom was received by Mr. Barstow from a source in California; e) and, that Mr. Barstow did not believe Mr.

Johnson had the requisite skills to correctly extract hashish oil based on prior unsuccessful attempts.

8. The statements were exculpatory in regard to Mr. Johnson for a number of reasons. For one, Mr. Barstow provided information about a different source of at least some of the hashish that was the basis for a charge against Mr. Johnson. Moreover, Mr. Barstow called into question Mr. Johnson's ability to produce hashish as alleged in the complaint by the State. In his statement, Mr. Barstow also made it clear that Mr. Johnson was not the individual who possessed the shotgun that was the basis for a charge against him. Also, Mr. Barstow provided exculpatory information that Mr. Johnson had not taken part in the drug deal, which was the main reason why the Mr. Johnson's case was joined with Mr. Barstow's.

9. The "free talk" was given while Mr. Johnson's case was joined with Mr. Barstow's, and by all indications the State intended to try all of the five defendants at the same time.

10. The State, particularly Respondent, was obligated to disclose Mr. Barstow's "free talk" statement to Mr. Johnson for a number of reasons. First, the statement was of a person who was to be tried with Mr. Johnson, therefore,

disclosure was required under Rule 15.1 (b)(2) (Arizona Rules of Criminal Procedure); Second, the statement contained material or information which tended to mitigate or negate Mr. Johnson's guilt as to the offense charged or which would tend to reduce the Mr. Johnson's punishment under Rule 15.1 (b) (8); and, Finally, the evidence was favorable to Mr. Johnson and should have been disclosed under *Brady v. Maryland*, 373 US 83.

11. Respondent recognized that the statements made during the "free talk" were exculpatory. However, despite the clear mandates of Rule 15 and obligations under *Brady*, the State did not make disclosure of the "free talk" at that time. Instead, a pretrial conference was held on December 16, 2013, some 25 days after the "free talk."

12. Thereafter, the trial was set for March 11, 2014, as to all defendants. No mention of a "free talk" was made at the conference, even though it called into question the propriety of certain charges against Mr. Johnson to be tried. Additionally, by setting Mr. Johnson's trial with Mr. Barstow's, the State reaffirmed its obligation to disclose the "free talk" under Rule 15.1 (b) (2), yet failed to do so.

13. On January 10, 2014, Mr. Barstow entered into a plea agreement with the State whereby he agreed to provide testimony about the events of May 10, 2013. At this time, Mr. Johnson was still set to go to trial with the remaining co-defendants. The entry of Mr. Barstow's plea created an additional duty upon the State to disclose the "free talk" of Mr. Barstow under Rule 15.1 (b) (1) as the statement of a witness that the State intended to call in its case in chief.

14. Even if the plea did not create a disclosure duty, the State was required to disclose the statement on January 22, 2014, when it designated Mr. Barstow as a witness in the trial of Mr. Johnson's co-defendants.

15. Instead of disclosing the "free talk", the State simply omitted Mr. Barstow from the witness list for Mr. Johnson. Nevertheless, Mr. Johnson was set for a joint trial with all the remaining co-defendants for which Mr. Barstow was listed as a witness.

16. The State posited that it absolved itself of the duty to disclose the "free talk" to Mr. Johnson by not including Mr. Barstow as a witness on Mr. Johnson's witness list, even though Mr. Barstow would be testifying in the joint trial for the other defendant's. At that time, the severance had not been requested,

much less granted by the Court. The State was undeniably required to disclose the “free talk” under Rule 15.1 (b)(1) (statement of a witness).

17. At this time, January 22, 2014, four provisions of law required disclosure of the “free talk” to Mr. Johnson, yet the State did not do so. Instead, on February 12, 2014, two and a half months after the “free talk” and one month after Barstow’s change of plea, Respondent moved to dismiss the charges she felt were impacted by the “free talk” (possession of marijuana, production of marijuana, and possession of a deadly weapon during a felony offense). That day, Respondent filed a notice of non-objection to Mr. Johnson’s own motion to sever his case from the other defendants. The Motion to Dismiss was granted. Mr. Johnson’s case was severed and set for trial on March 18, 2014, as to the remaining charges.

18. On March 14, 2014, a hearing was held upon Mr. Johnson’s Motion concerning immunity from prosecution under the medical marijuana act. The court denied the motion. Since the State indicated that it intended to assert evidence to establish Mr. Johnson’s extraction of hash oil, counsel for Mr. Johnson indicated the need to hire an expert. A status conference was then set for March 31, 2014.

19. At the March 31, 2014, Status Conference, defense counsel requested a trial continuance due to expert witness needs. Thereafter, Respondent finally

disclosed the “free talk,” some four months after being obligated to do so and with the trial being set for the next day. As justification, Respondent was confident that the trial would get continued, as defense counsel requested a continuance during the Status Conference due to an ongoing need for expert testimony. The trial was in fact moved to April 22, 2014.

20. On April 21, 2014, a Status Conference was held. There, defense counsel orally made a Motion to Dismiss due to the disclosure violation. The court then ordered defense counsel to file a formal written motion by April 25, 2014, and set the response deadline for May 5, 2014. Defense filed its Motion on April 28, 2014; the State responded on May 5, 2014. Oral argument was held on June 30, 2014.

21. At the oral argument, the judge thought the matter was “very concerning” and asked Respondent to explain why the “free talk” was not disclosed, even though: 1) Mr. Barstow was set to go to trial as a co-defendant with Mr. Johnson and Rule 15.1(b)(2) required disclosure; 2) the State/Respondent recognized the statements from the “free talk” to be exculpatory at the time they were made, as indicated by the State’s dismissal of some of the charges and non-objection to the severance of Mr. Johnson’s matter; and 3) the State’s disclosure

policy had always been to disclose information and “fight about it later” unless some exception, such as endangering someone’s health or welfare would result.

22. In regard to the Rule 15.1(b)(2) disclosure requirement (co-defendant rule), Respondent advised the court that she “immediately” recognized that Mr. Johnson’s case would need to be severed while listening to Mr. Barstow during the “free talk.” Because of this internal recognition, Mr. Johnson was no longer going to be a co-defendant (and thus disclosure was not required). Unless this is a quote?

23. Indeed, Respondent also acknowledged that she knew the “free talk” contained exculpatory statements. Responded stated, “because of what was contained within the “free talk”, there were clearly charges that had been issued that were no longer appropriate. In response, the State amended some charges and dismissed other charges. Once that had occurred, it was the State’s position that the “free talk” was no longer exculpatory as to those particular remaining charges [possession of hash and paraphernalia].”

24. Finally, Respondent suggested to the Court that a communication break down between her and her staff also resulted in a delay in the disclosure.

Respondent stated that she instructed her staff to make disclosure as a packet, meaning the audio of the “free talk,” a transcript, and the plea offer all at once.

25. The court responded by stating, “If you recognized after the statement that Mr. Barstow made that severance was appropriate and that certain charges are no longer appropriate inherent in that recognition is recognition that the statement is exculpatory. There’s no other explanation for it.”

26. The court also noted that disclosure was crucial since Mr. Johnson and his counsel were “being asked to make important decisions about his case without the benefit of knowing things that you know, for example, why you are moving to dismiss, and whether that might entitle them to other relief greater than just a motion to dismiss certain charges or a motion to sever.”

27. Counsel for Mr. Johnson thereafter advised the court that: 1) Mr. Johnson was prejudiced by the disclosure violations due to the delay of the trial past his speedy trial deadline, and that Mr. Johnson had since become progressively more ill and less able to assist in his own defense; and, 2) Defense Counsel spent considerable time and energy on the expert issue regarding hash oil production and the medical marijuana defense that otherwise would have been unnecessary had the disclosure been made.

28. Defense counsel further noted that the matter was set for trial multiple times without the disclosure being made; meaning the State was prepared to go to trial without having ever disclosed the exculpatory evidence.

29. Defense counsel urged that Respondent knowingly withheld the evidence, offering as support: 1) that it was defense counsel who requested Mr. Johnson be severed, Respondent merely non-objected to defense's motion; 2) that Respondent supported her decision to file the partial Motion to Dismiss not premised on the "free talk" information, but rather told defense counsel after reviewing Mr. Johnson's "12.9" (Challenge to Grand Jury Findings) she noticed things would need to be dismissed...not that it was based on the statements by Mr. Barstow. Per defense counsel, this was a "very sneaky, backdoor way to handle [exculpatory] evidence."

30. In closing, defense counsel informed the court that Respondent's arguments presented at the hearing were seemingly disingenuous. As an example, defense counsel noted having emailed Respondent after the statement was finally disclosed to ask why it had not been disclosed sooner. Per defense counsel, Respondent said, "Well, we didn't have to; it wasn't exculpatory." So it was never: 'Whoops, I was waiting for a transcript. I didn't know about the audio. I

wanted to disclose the audio and the transcript at the same time, which is silly because we get audio only all the time from the State. It was just: ‘Umm, we didn’t have to; it’s not exculpatory.’”

31. After considering defense counsel’s Motion to Dismiss and arguments thereto, the court agreed that the statement was exculpatory, that the State did not timely disclose the statement, instead it attempted to cure the problem by dismissing charges and allowing Mr. Johnson to sever his case, which, in turn, required Mr. Johnson to make important case decisions without the benefit of having the exculpatory evidence. As a result, the Judge held that the State/Respondent violated Mr. Johnson’s due process rights and his right to a fair trial.

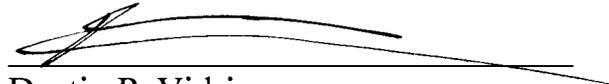
32. In considering the appropriate sanction for the violation, the Court noted that the “only true sanction that is available to the court is to dismiss the charges against the defendant.” The lesser sanctions available would do “nothing to serve as a reprimand for the State’s conduct, albeit unintentional.” All charges were dismissed, with prejudice.

///

33. Respondent's conduct in this count violates Rule 42, Ariz. R. Sup. Ct., ERs 3.4(a), 3.8, 8.4(d), and Rule 54(c), Ariz. R. Sup. Ct.

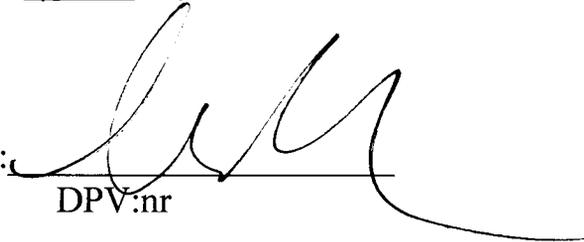
DATED this 15 day of June, 2017.

STATE BAR OF ARIZONA



Dustin P. Vidrine
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 15th day of June, 2017.

by: 
DPV:nr

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

FILED

MAY 04 2017

BY *L. Lehn*

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

No. 16-2251

**LAURA L. ROUBICEK
Bar No. 022671**

PROBABLE CAUSE ORDER

Respondent.

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 7, 2017, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation, Complainant's Response and Respondent's Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2251.

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

Parties may not file motions for reconsideration of this Order.

DATED this 3rd day of May, 2017.

Lawrence F. Winthrop

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

Original filed this 4th day
of May, 2017 with:

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