

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**JAMES ROGER WOOD,**  
**Bar No. 018948**

Respondent.

**PDJ-2016-9132**

**JUDGMENT OF DISBARMENT**

[State Bar Nos. 15-1077, 15-1746, 15-1793, 15-1853, 15-1968, 15-2758, 15-3331, 15-3382, & 16-0216]

**FILED FEBRUARY 24, 2017**

Pursuant to Rule 57, Ariz. R. Sup. Ct., Respondent filed with the disciplinary clerk a consent to disbarment dated February 22, 2017. The consent being compliant with Rule 57(a)(5) and the Presiding Disciplinary Judge having considered it,

Now Therefore,

**IT IS ORDERED** accepting the consent to disbarment and pursuant to Rule 57(a)(5)(C), disbarring **James Roger Wood, Bar No. 018948**, from the State Bar of Arizona effective immediately. His name is stricken from the roll of lawyers and he is no longer entitled to the rights and privileges of a lawyer, but will remain subject to the jurisdiction of the court.

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

**IT IS FURTHER ORDERED** under Rule 57(a)(5)(C), Ariz. R. Sup. Ct., no further disciplinary action shall be taken regarding the matters that are the subject of the charges upon which the consent to disbarment and this judgment of disbarment are based.

**IT IS FURTHER ORDERED** James Roger Wood shall pay the costs and expenses of the State Bar of Arizona in the amount of \$2,299.00. 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 24th day of February, 2017.

*William J. O'Neil*  

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

COPY of the foregoing e-mailed & mailed  
This 24th day of February, 2017 to:

Stacy L. Shuman  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6266  
Email: [lro@staff.azbar.org](mailto:lro@staff.azbar.org)

James Roger Wood  
The Law Firm of J Roger Wood PLLC  
4700 S. Mill Ave., Ste 3  
Tempe, AZ 85282-6736  
Email: [James.Roger.Wood@gmail.com](mailto:James.Roger.Wood@gmail.com)

by: AMcQueen

Stacy L Shuman, Bar No. 018399  
Bar Counsel - Litigation  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
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Telephone (602)340-7386  
Email: LRO@staff.azbar.org

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

FEB 22 2017

FILED  
BY 

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**JAMES ROGER WOOD  
Bar No. 018948**

Respondent.

**PDJ 2016-9132**

**CONSENT TO  
DISBARMENT**

State Bar Nos. 15-1077, 15-1746,  
15-1793, 15-1853, 15-1968, 15-2758,  
15-3331, 15-3382, 16-0216

I, James Roger Wood, residing at 4700 S Mill Ave. Ste. 5, Tempe, AZ 85282-6736, voluntarily consent to disbarment as a member of the State Bar of Arizona and consent to the removal of my name from the roster of those permitted to practice before this court, and from the roster of the State Bar of Arizona.

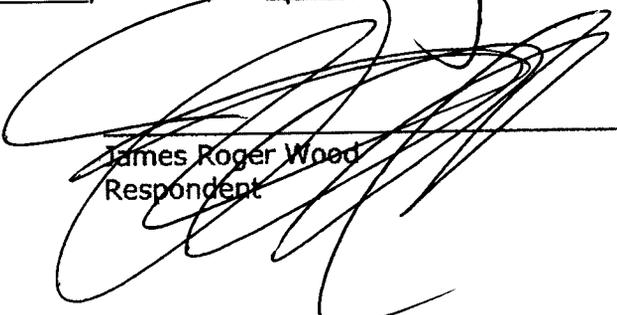
I acknowledge that a formal complaint has been filed against me. I have read the complaint, and the charges there made against me. I further acknowledge that I do not desire to contest or defend the charges, but wish to consent to disbarment. I have been advised of and have had an opportunity to exercise my right to be represented in this matter by a lawyer. I consent to disbarment freely and voluntarily and not under coercion or intimidation. I am aware of the rules of the Supreme Court with respect to discipline, disability, resignation and

reinstatement, and I understand that any future application by me for admission or reinstatement as a member of the State Bar of Arizona will be treated as an application by a member who has been disbarred for professional misconduct, as set forth in the complaint filed against me. The misconduct of which I am accused is described in the complaint bearing the number referenced above, a copy of which is attached hereto as Exhibit "A."

The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "B". I understand that these costs are due and payable by me within thirty (30) days from the date of service of this Order.

A proposed form of Judgment of Disbarment is attached hereto as Exhibit "C."

DONE AT TEMPE, Arizona, on FEBRUARY 16, 2017.

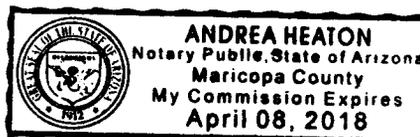
  
James Roger Wood  
Respondent

**SUBSCRIBED AND SWORN TO** before me this 16 day of February 2017, by James Roger Wood, who satisfactorily proved his identity to me.

Andrea Heaton  
Notary Public

My Commission expires:

April 8, 2018



Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 22<sup>nd</sup> day of February, 2017.

Copy of the foregoing emailed  
this 22<sup>nd</sup> day of February, 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)

Copy of the foregoing mailed/emailed  
this 22<sup>nd</sup> day of February, 2017, to:

James Roger Wood  
The Law Firm of J. Roger Wood, PLLC  
4700 S. Mill Avenue, Suite 5  
Tempe, AZ 85282-6736  
Email: [james.roger.wood@gmail.com](mailto:james.roger.wood@gmail.com)  
Respondent

Copy of the foregoing hand-delivered  
this 22<sup>nd</sup> day of February, 2017, to:

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

by: Karen S. Calcagno  
SLS/kec

# EXHIBIT "A"

DEC 30 2016

Stacy L. Shuman, Bar No. 018399  
Staff Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
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FILED  
BY Stacy L. Shuman

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**JAMES ROGER WOOD,  
Bar No. 018948,**

Respondent.

PDJ 2016-9132

**COMPLAINT**

[State Bar Nos. 15-1077, 15-1746,  
15-1793, 15-1853, 15-1968, 15-2758,  
15-3331, 15-3382, and 16-0216]

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 May 16, 1998.
2. On November 6, 2015, Respondent was suspended for sixty (60) days pursuant to the Final Judgment and Order of the Presiding Disciplinary Judge, which was filed on October 7, 2015 in PDJ-2015-9094.
3. On February 17, 2016, Respondent was reinstated to the practice of law by order of the Presiding Disciplinary Judge.

**COUNT ONE (File nos. 15-1077 and 15-1746/Trust Account)**

While this Count references specific examples of misconduct relating to Respondent's maintenance of his trust account, these examples are not an exhaustive list of Respondent's misconduct. The State Bar may offer evidence of additional examples of misconduct at hearing.

4. On April 29, 2015, the State Bar of Arizona (SBA) received an insufficient funds notice on Respondent's IOLTA trust account (IOLTA).

5. On April 23, 2015, check number 1168 in the amount of \$20,000 attempted to pay against the IOLTA when the balance was \$10,022.80. The bank paid the check, and did not charge an overdraft fee leaving the IOLTA with a negative balance of (\$9,977.20).

6. The Trust Account Examiner (Examiner) sent Respondent a copy of the overdraft notice and requested an explanation and copies of the related mandatory records for April 2015. This initial overdraft resulted in the creation of SBA File No. 15-1077. Respondent failed to respond by the May 20, 2015 due date.

7. On May 20, 2015, Respondent requested a six (6) day extension to respond to the screening letter, which was granted up to and including May 26, 2015. Respondent failed to respond by that date.

8. On June 1, 2015, Respondent emailed the Examiner and attached a copy of a response, stating, "Thank you for your patience. Attached is the response to you [sic] inquiry along with the documents. If I am missing something, please let me know." The written response was addressed to: "Trust Account Dude." Respondent failed to provide the following requested documents with the response:

1) copies of the backs of each cancelled check showing endorsements; 2) copies of all items actually deposited; 3) copies the individual client ledgers for all clients who held or should have held funds in the IOLTA; 4) a copy of the administrative funds/bank charges ledger; and 5) a copy of the monthly reconciliation.

9. On June 17, 2015, Respondent emailed the Examiner a revised copy of the written response, stating: "In doing some filing, I noticed that I accidentally sent you a draft of the response. There were some minor formatting issues and I had not finished with some of the address protocols. Here's a better version of that June 1, 2015 letter." The revised copy was now addressed to Examiner Espinoza, but otherwise remained unchanged.

10. In response to the screening letter, Respondent admitted that "in the rare occasions that the firm uses its trust account, we need to be more diligent about such situations." He stated that the firm had since attended an "On Demand" CLE on Trust Accounting and that the firm had "made numerous changes to our [end of sentence]."

11. With respect the overdraft that resulted in the SBA investigation, Respondent stated that he had assumed that a large settlement check had been deposited, but it had not been and that, as a result, the IOLTA was momentarily out of balance.

12. Respondent claimed that the settlement check was deposited the same day that the negative balance occurred; he made personal deposits to remedy the overdraft that day; and he was assured by the bank that the settlement check credited the account that same day. Respondent stated that as of the date of the

response, June 1, 2015, there were no client funds on deposit in the IOLTA and the balance in the account was \$251.65. However, the IOLTA actually had a negative balance as of that date. And, the settlement check deposited to remedy the overdraft was unrelated to the client associated with the overdraft.

13. On July 8, 2015, the SBA received another insufficient funds notice on the IOLTA after check number 1187, in the amount of \$150, attempted to pay against the account on July 1, 2015, when the balance in the account was \$3.65. The bank paid the check, did not charge an overdraft fee and left the IOLTA with a negative balance of (\$146.35).

14. Then on July 13, 2015, the SBA received another insufficient funds notice on the IOLTA after check number 1185, in the amount of \$1,200, attempted to pay against the account on July 7, 2015, when the balance was \$71.65. The bank paid the check, did not charge an overdraft fee and left the IOLTA with a negative balance of (\$1,128.35).

15. Since the reported overdrafts occurred within thirty-one (31) days of each other, they were incorporated into SBA File No. 15-1746. In each instance, the Examiner sent Respondent a copy of the overdraft notice and requested an explanation of the overdraft and copies of the related mandatory records, all of which were due on or before July 30, 2015. Respondent failed to comply by that date.

16. On August 24, 2015, the Examiner sent Respondent a notice of non-response relating to File No. 15-1746, as well as a request for additional information relating to File No. 15-1077.

17. On September 10, 2015, Respondent emailed the Examiner stating that he had sorted out what information was being sought and requested an extension to September 18<sup>th</sup> to respond, which request was granted. Respondent failed to respond until September 21, 2015, at which time he emailed an incomplete response to the Examiner and stated that he intended to submit a supplemental response. The Examiner advised Respondent that the response did not include many of the requested items and asked Respondent to include them in the supplemental response. However, Respondent did not provide a supplemental response or the requested items.

18. Beginning on March 7, 2016, the Examiner tried to contact Respondent to discuss the outstanding request for information. On March 8, 2016, Respondent advised by email that he would be available to speak on March 10<sup>th</sup> at 4:30 PM, however when the Examiner called Respondent at that time, Respondent was unavailable. The Examiner was able to speak with Respondent on March 16, 2016, at which time Respondent claimed that he had sent in a supplemental response, although he could not recall when he did so and explained that several of the requested items were not provided because they were either not maintained or were maintained inaccurately. On March 18, 2016, the Examiner emailed Respondent a request for additional information to be provided no later than March 28, 2016, which Respondent failed to do.

19. The Examiner tried again to reach Respondent by telephone about the outstanding information. On April 7, 2016, the Examiner left Respondent a voicemail message and requested a return call, which Respondent failed to do.

20. In May 2016, the Examiner brought Respondent's failure to comply with the requests for information to the attention of assigned bar counsel, at which time the SBA then secured subpoenas for the IOLTA records directed to Respondent and National Bank of Arizona.

21. In response to the subpoena, Respondent failed to provide adequate records reflecting a full accounting of all client/third-party funds received.

22. Assigned Bar Counsel then initiated contempt proceedings against Respondent, which were resolved after Respondent made a number of avowals regarding the status of mandatory IOLTA records and other IOLTA documents.

23. While the Examiner was unable to perform a complete reconstruction of the activity in the IOLTA, he was able to review of the records for the period of October 17, 2011, the date that Respondent opened the IOLTA, through April 30, 2016 (the Period of Review).

#### **Misappropriation of Funds**

24. During the Period of Review, seventy-four (74) items were identified as being presented for payment in the IOLTA when the balance at the time was insufficient. With the exception of the overdrafts that resulted in the present investigations, National Bank of Arizona failed to report prior instances of insufficient funds. The overdraft instances resulted in a negative daily balance being carried in the IOLTA for a total of twenty-three (23) days. The specific overdraft amounts ranged from (\$28.20) to (\$9,977.20). There is no indication that Respondent took steps to make the account whole after each overdraft occurred. Instead, Respondent engaged in a pattern of depositing just enough

funds to off-set the overdraft amounts, rather than identifying and correcting the circumstances surrounding each overdraft.

25. For example, the first overdraft was caused on February 12, 2013, in the amount of negative (\$496). The following day Respondent deposited funds from his operating account in that exact amount, bringing the account balance to zero (0). However, as of the date of the overdraft, the following two checks written on December 19, 2012 remained outstanding: Number 1015 in the amount of \$350 and Number 1020 in the amount of \$700. Therefore, just prior to the overdraft, the IOLTA held a deficit of at least \$1,546.

26. During the Period of Review, a total of \$183,673.20 was disbursed from the IOLTA to Respondent's operating account, by way of 148 bank transfers. The examination revealed over one hundred (100) overdraft instances in Respondent's operating account during the Period of Review. Forty-seven (47) of the transfers were transacted within five (5) days of an instance of overdraft in Respondent's operating account, while twelve (12) were transacted on the date of an overdraft. Moreover, during the Period of Review, a total of \$112,309.63 was redeposited into the IOLTA by way of fifty-two (52) bank transfers from Respondent's operating account.

27. The transactions relating to the operating account overdrafts are related to payment of Respondent's recurring leisure expenses. Examples of such expenses include, but are not limited to, purchases associated with the following vendors: "AMAZON VIDEO ON DEMAND;" "AMAZON.COM;" "TJ MAXX;" "JO-ANN;" "SAS FABRICS;" "BIG LOTS;" "CARTELL COFFEE LAB" and "ELECTRIC HEAVEN

TATTOO." The IOLTA bank records support the conclusion that Respondent utilized client/third-party funds to pay for personal expenses.

28. Respondent also deposited funds into the operating account when they should have been deposited into the IOLTA, thereby failing to safekeep client property and failing to maintain a complete accounting of client and third-party funds.

29. For example, on January 7, 2015, Respondent deposited checks numbered 332 and 333, each in the amount of \$75, in the operating account. The checks were written by client Leatham and described as being dues for the months of November and December 2014. The funds were disbursed the same day using an operating account check, number 863, but the check was not made payable to anyone. The memo portion of the check states "PCS - Leatham." The endorsement on the copy of the cancelled check reflects that the check was deposited to the operating account of "Brown Law Group, PLLC." A number of similar deposits and disbursements were transacted from the IOLTA in which the disbursements were made payable to PCS and the copies of the cancelled items reflect that the funds were deposited into the IOLTA of "Brown Olcott, PLLC."

30. Respondent utilized a "Square Inc." credit card processing system to accept payments, all of which appear to have been deposited to the operating account. The Examiner was able to identify at least one instance in which the funds should have been deposited into the IOLTA.

31. The Examiner provided Respondent with a copy of the IOLTA reconstruction for April 2015, which included twenty-five (25) transactions that

were unaccounted for in Respondent's IOLTA records. Of those, fifteen (15) were online transfers to Respondent's operating account and five (5) were transfers from Respondent's operating account into the IOLTA. The Examiner asked Respondent to identify the corresponding client(s) for each transaction, but he failed to do so. Instead, by way of his response dated September 20, 2016, Respondent stated that "transfers that remain unknown were for filing fee reimbursements, etc. Additional documents are being supplied/trust reports, etc." Respondent included the caveat that some of the "[trust ledgers] are somewhat inaccurate due to our confusion (my own) about trust accounting." Nonetheless, the Examiner was able to determine that a deficit in the IOLTA began on or before June 2012.

32. Though the exact deficit amount in the IOLTA is unknown, it should have held a minimum balance of \$1,000 as of June 30, 2012. But, the actual balance was \$792.31, for a deficit of (\$207.69). The \$1,000 belonged to clients Oddo and Olds.

33. Beginning in June 2012, Respondent engaged in a pattern of transferring client/third-party funds to his operating account and altering the corresponding trust account records so that it appeared as though the disbursement of funds was remitted to the final recipient of funds.

34. The Examiner verified the following instances of misappropriation and doctoring of records.

35. On February 13, 2015, a \$150 check drafted by Sullens and Associates LLC was deposited in Respondent's operating account. However, the copy of the

deposited item reflects the check contained the following in lieu of a signature endorsement, "For Deposit Only [XXXX]0979," which is the IOLTA.

36. On February 18, 2016, checks numbered 241 and 242 written by client Brewer, each in the amount of \$78.65, were deposited into Respondent's operating account. The copy of the deposited items reflect both checks contained the following in lieu of a signature endorsement: "For Deposit Only [XXXX]0979 [the IOLTA]." The operating account ending balance on the date of the deposits was \$177.54. Therefore, if Respondent had not deposited the client's funds into the operating account, the balance would have been negative (\$49.98). The following day, the operating account ending balance fell to \$107.32, and remained so until February 22, 2016, at which point the ending balance was negative (\$2,349.80). The corresponding client ledger reflects the deposit of those checks in the IOLTA on February 11, 2016. The ledger further reflects that the entirety of the funds were disbursed by way of IOLTA check number 1217 on March 2, 2016. Even though the funds were not deposited in the IOLTA, check number 1217 was disbursed from the IOLTA and posted on March 7, 2016. Therefore, Respondent converted other client funds in the IOLTA and misappropriated the corresponding funds deposited in the operating account.

37. On May 29, 2013, three items totaling \$3,044 were deposited in Respondent's operating account. The first was a money order purchased by client Cwiak in the amount of \$309. The second was a check written by C. Hull, in the amount of \$350. C. Hull is identified as a client on the Bill4Time report provided as part of the SVEO client files, although it does not appear that he was associated

with the SVEO matter. The third was a check written by Maxwell & Morgan, PC, in the amount of \$2,385. The copies of the deposited items reflect Respondent's signature on the endorsement line and the full account number for the IOLTA ending 0979 is hand-written next to each signature, thereby indicating the funds should have been deposited in the IOLTA rather than the operating account.

38. The manual check register reflects a \$16,000 deposit dated June 26, 2015, yet it is recorded among transactions dated June 29, 2015. The subsequent entries reflect that a total of \$1,639.20 was disbursed to Respondent by way of check number 1184, written in the amount of \$439.20 for "Cost Reimburse," and check number 1185, written in the amount of \$1,200, with the notation "To pay Mediator Schneider Onfry." While the transactions are dated June 29<sup>th</sup>, the date on both entries appears to have been altered from an earlier date and both are identified as "Trans." And, on June 26, 2015, two transfers were made to the operating account in those amounts, while the corresponding checks cleared the IOLTA during the Period of Review. Therefore, Respondent failed to safekeep client funds and transacted duplicate disbursements resulting in the misappropriation of other client funds.

#### **SVEO Client Funds**

39. On February 19, 2013, IOLTA check number 1021 posted in the amount of \$1,169.22, when the balance in the IOLTA was negative (\$5), which resulted in a negative balance of (\$1,174.22). The IOLTA deficit was offset the following day, by funds deposited on behalf of client SVEO, thereby converting the client's funds. The copy of the cancelled check indicates that the item was written

on February 15, 2013, made payable to Jessica Salow, a paralegal employed with Respondent's Firm from approximately November 2012 through March 2015. The memo portion of the check identifies the disbursement as "pay." The IOLTA balance on the date the check was written was negative (\$33) and the operating account's beginning balance was \$194.28, while the ending balance was \$243.20. Therefore, Respondent did not hold sufficient funds to cover the disbursement.

40. On February 21, 2013, IOLTA check number 1020 posted in the amount of \$700. On February 25<sup>th</sup>, IOLTA check number 1041 posted in the amount of \$160. At the time the only funds held on deposit in the IOLTA were funds belonging to client SVEO. Yet, check number 1020 was outstanding as of December 29, 2013, on behalf of client NPC. Check 1041 does not appear to have been disbursed on behalf of a client as it was made payable to "[D.] Fields" and the memo portion of the check describes the purpose of the disbursement as "Moving Piano." The item was written on February 18, 2013, yet the balance in the IOLTA between February 14<sup>th</sup> and February 19<sup>th</sup> was negative (\$33). The day after check number 1041 was written, \$33 was transferred from Respondent's operating account into the IOLTA, thus offsetting the negative balance. Therefore, Respondent was aware of the lack of funds in the IOLTA, but failed to deposit additional funds to cover the disbursement of check number 1041, which resulted in the misappropriation of client SVEO's funds.

41. On February 26, 2013, IOLTA check number 1062 posted in the amount of \$1,500. The item was made payable to Mercedes Benz of Chandler and the memo portion of the check stated "Down Payment." The copy of the cancelled

check indicates that the item was written on February 24, 2013. On that date, the balance in the IOLTA was \$9,647, yet client SVEO alone should have held an unexpended balance of \$10,225. Therefore, the posting of check 1062 resulted in further misappropriation of client SVEO's funds.

42. According to Respondent's time records for SVEO, the earliest entry was February 19, 2013, for a meeting with the client "regarding new case, facts, and related information regarding procedure." The entry reflects a cost of \$550 for 2.20 hours of time. There are no further billable hours recorded until February 25, 2013. In February 2013, Respondent began receiving advanced funds from SVEO homeowners relating to a litigation matter. By May 10, 2013, Respondent had received a total of \$20,135 from approximately 101 homeowners. However, Respondent's records reflected an inflated amount of \$20,235. Respondent alleges that he was initially paid \$8,000 and subsequently incurred an additional \$29,000 in fees and costs and that, therefore, he was entitled to retain the entirety of the funds. However, Respondent agreed to issue refunds after a dispute arose with the client and "[t]his caused serious issues with the trust accounting."

43. By letter dated June 27, 2016, addressed to the litigants and supporters involved in the matter, Respondent advised the parties that the case settled and that 5.6% of the contributions received were to be returned as the portion of "unearned and unused legal fees."

44. In January 2015, Respondent began issuing refunds to SVEO. A review of the IOLTA account reflects that at least twenty-one (21) of the checks issued by Respondent were returned unpaid. Subsequently, some of the checks

were presented for payment a second time and cleared the IOLTA. In addition, twelve (12) withdrawals from the IOLTA were converted to cashier's checks made payable to some of the recipients of failed items. One of which was disbursed to SVEO client Austin in amount of \$10, although the withdrawal was in the amount of \$16 and the original returned item, check number 1076, was written in the amount of \$27.80.

45. The Examiner was unable to determine if all parties were made whole. Respondent included MoneyGram terminal receipts dated February 18, 2015, reflecting the purchase of four money orders totaling \$260. The receipts reflect hand written notes purporting to identify the payees as follows: Austin - \$29.80; Eardhal - \$67.60; Hoscheit - \$74.60; and Stockton - \$73.35. However, the money order purchased for client Stockton was subsequently deposited in the IOLTA on February 26, 2015. The copy of the deposited item reflects the original payee name was crossed out and replaced with Respondent's Firm as the payee. Also, on that date, \$16.75 was withdrawn from the IOLTA and converted to a cashier's check payable to client Stockton.

46. The Examiner discovered additional deposited items in the operating account remitted by clients identified as parties involved in the SVEO matter. For example, on April 19, 2013, the following funds were received from parties involved in the SVEO matter: Carlton - \$160; Chumbley - \$50; Hughes - \$50; and Morneau - \$200, none of which were recorded on the SVEO files.

### Misconduct in Other Client Files

47. **Halloum:** The Halloum client ledger reflects that on March 30, 2015, a \$50,000 settlement was deposited in the IOLTA, but the funds were actually deposited in Respondent's operating account. The copy of the April 1, 2015 duplicate deposit receipt reflects that the operating account number was handwritten in as the designated deposit account. The operating account held a negative beginning balance in the amount of (\$822.66) on the date the funds were deposited. The same day, five (5) deductions were made from the operating account totaling \$592.39. The following day, eleven (11) deductions were made from the operating account totaling \$2,392.24. The only funds held on deposit at that time was the Halloum's settlement recovery. Therefore, Respondent misappropriated a total of \$3,558.29 of the client's funds.

48. Beginning on April 3, 2015, additional deposits and deductions were transacted from the operating account. However, the funds deposited were not sufficient to cover all of the disbursements and at one point, Respondent converted a total of \$4,796.81 of the client's funds. It was not until April 9, 2015, that a sufficient balance was held on deposit to replace the converted funds. On that date, a total of \$49,751, the exact settlement amount due to the client and third parties, was transferred into the IOLTA by way of three separate transactions. By that time, IOLTA checks had already been written to disburse the entirety of the settlement funds to the corresponding recipients. The client ledger falsely reflects that \$49,751 was disbursed by way of IOLTA checks numbered 1168, 1169, and 1171 written on March 30, 2015 to the client and third-parties. The \$249 difference

is recorded as a cost reimbursement to Respondent, disbursed by way of check number 1170 on March 30, 2015. Contrary to the client ledger entries, the copies of the cancelled checks reflect that IOLTA checks numbered 1168, 1169, and 1171 were written three (3) days prior to the transfer of funds into the IOLTA on April 6, 2015, when the IOLTA ending balance on that date was \$57.20. Moreover, six (6) days after the \$49,751 deposit, IOLTA funds were transferred back to the operating account, thereby causing a deficit in the IOLTA and resulting in a (\$9,977.20) overdraft when check number 1168 was presented for payment on April 23, 2015.

49. **Eller:** Pursuant to an unsigned "hybrid" fee agreement dated December 30, 2012, Eller retained Respondent and agreed to pay a \$2,000 "earned upon receipt" flat fee and \$500 in advanced costs. If the suit was successful, the client would be reimbursed the full \$2,500, while accrued attorney's fees and costs would be deducted from any settlement obtained. The agreement did not set forth the hourly rate to be charged. The client remitted \$2,500 that day by way of a credit card payment processed through the Firm's "Square Inc." payment system. Respondent deposited the funds into the operating account, despite that \$500 of that amount was unearned advanced costs and should have been deposited in the IOLTA. There is no evidence that Respondent ever transferred those funds to the IOLTA. Therefore, Respondent failed to deposit client funds submitted for advance cost in the IOLTA and keep those funds separate from his personal funds.

50. The Eller client ledger reflects a total of \$368.20 in earned costs, consisting of a \$309 filing fee and a \$59.20 process service fee. The item was disbursed by operating account check number 153, dated January 17, 2013 and

made payable to Maricopa County in the amount of \$301. However, the client ledger recorded the disbursement as coming from the IOLTA on September 17, 2012, approximately four (4) months prior to the actual date the item was written, in the amount of \$309, which was \$8 more than check number 153.

51. On December 31, 2013, Respondent obtained a \$4,000 recovery for Eller, which was deposited in the IOLTA. Therefore, as of that date, Respondent had received a total of \$6,500 on behalf of the client. Pursuant to the fee agreement, the client was entitled to a refund of the initial fees and costs paid to Respondent, while Respondent would retain the remainder as fees. The client ledger reflects that on December 31, 2013, a check was disbursed to the client in the amount of \$2,500. However, the records reflect that the funds were actually transferred to Respondent's operating account on January 6, 2014. On that date, the operating account ending balance was negative (\$276.90), even with the deposit of the Eller's settlement funds. The following day, Respondent deposited additional funds that brought the operating account to a positive balance. However, by January 21, 2014, the operating account again held a negative balance this time in the amount of (\$715.10). Subsequent deposits again offset the deficit and returned the account to a positive balance. On January 31, 2014, an unnumbered operating account check was finally written payable to client Eller in the amount of \$2,500. The check remained outstanding until February 7, 2014. Therefore, sufficient funds should have been held on deposit in the operating account during that time to cover the disbursement. However, on February 4, 2014, the ending

balance in the account was only \$1,727.26, reflecting Respondent's continued failure to safekeep client property.

52. **Oddo:** The Oddo client ledger reflects a \$500 deposit for advanced costs on May 15, 2012, but the funds were actually deposited on May 21, 2012. The first disbursement of client funds is not reflected until January 18, 2013. However, the IOLTA ending balance during the months of July, August, and September 2012 was \$1.81 and the ending balance for October 2012 was zero (0) dollars. The first disbursement reflected on the client ledger corresponds to a filing fee disbursement to the Maricopa County Superior Court for \$301 on January 18, 2013. However, no corresponding disbursement was made from the IOLTA. Instead, the funds were disbursed from the operating account by check number 189, which was written on January 17, 2013, and posted on January 24, 2013. Furthermore, two disbursements totaling \$202.40 are attributed to a process server. The first, in the amount of \$73.60 is dated November 18, 2013, while the second, in the amount of \$128.80, is dated June 6, 2014. There are no corresponding disbursements from the IOLTA during the Period of Review. And, operating account check number 566 was written payable to the third-party in the exact amount of \$202.40 and described as a payment for "Oddo - Costs." The check was not written until June 11, 2104, and posted on June 16, 2014. A fourth disbursement of \$36 is recorded for an electronic filing fee on January 1, 2014. There is no corresponding disbursement from the IOLTA or the operating account. The four disbursements total \$539.40, thereby resulting in a negative unexpended

client balance in the amount of (\$39.40) as of June 6, 2014. The deficit was offset on June 11, 2014 by a deposit of settlement funds.

53. **Olds:** The copy of the Olds fee agreement provides for an earned up receipt flat fee of \$850. The client remitted a personal check in that amount on or about February 27, 2012. The fee agreement does not address payment of costs, but both the general and client ledgers reflect the receipt of \$500 from the client on April 30, 2012, for advanced costs. The client ledger reflects that on May 15, 2012, a filing fee was remitted to the Maricopa County Superior Court in the amount of \$319. However, no such disbursement is reflected from the IOLTA during the Period of Review. Instead, the funds were disbursed from the operating account by way of operating account check number 181, which was drafted on June 29, 2012 in the amount of \$301, approximately forty-five (45) days after the ledger entry, and posted on July 6, 2012. However, a "Cost Spreadsheet" provided for the client reflects the fee disbursement occurred on October 1, 2012, approximately 139 days after the client ledger entry, in that same amount.

54. On June 19, 2014, a settlement recovery in the amount of \$7,500 was deposited on behalf of client, Olds. On June 25, 2014, check number 1146 disbursed \$561.60 to a process server for costs. The same day, check number 1147 disbursed \$7,119.40 to the client for his portion of settlement funds. The figure is comprised of the net settlement balance of \$6,938.40 and the erroneous unexpended cost balance of \$181, which should have been \$199. The client is, therefore, still due \$18 from the initial advance costs deposit.

55. **Powers:** On February 17, 2012, a \$500 check for advanced costs was deposited in the IOLTA account on behalf of client Powers. On March 16, 2012, check number 1038 was disbursed to the Maricopa County Superior Court in the amount of \$301 as a filing fee on behalf of the client. The corresponding client ledger does not reflect any activity prior to April 21, 2012. And, Respondent's Bill4Time report, which tracks billable hours and costs, reflects the \$301 filing fee was disbursed on April 2, 2012. Respondent's records do not reflect how the balance of the advanced costs were utilized.

56. On January 18, 2013, a check remitted by the clients in the amount of \$629 was deposited in the IOLTA account. The memo portion of the check states that the funds were remitted for "Process server and cathy Holt [sic]" costs. Cathy Hoff was entitled to \$326 for court reporting services. A corresponding disbursement was made by operating account check number 469 on February 4, 2014, more than one (1) year after the funds were deposited in the IOLTA account. The unexpended balance of \$303 was due to a process server. The corresponding disbursement was not recorded until May 21, 2014, but the entirety of the \$629 deposit appears to have been transferred to the operating account immediately upon deposit in February 2012.

57. On April 18, 2014, two (2) months after the Hoff disbursement, a settlement in the amount of \$15,000 was deposited in the IOLTA account. A portion of those funds were disbursed to the client as a reimbursement for the \$326 in advanced costs provided on January 18, 2013. Another \$303 was disbursed by IOLTA check number 1137, written on April 28, 2014, to a process service.

Therefore, Respondent misappropriated the \$303 remitted by the client as part of the January 18, 2013 deposit. Furthermore, the general ledger and client ledger reflect the "Agreed upon firm share of legal fees" as \$3,193.80, while the corresponding disbursement was for \$3,194.00.

58. Respondent failed to provide the Examiner with a copy of the fee agreement in this case. Instead, Respondent produced a copy of a fee agreement dated January 23, 2012, which provides for a \$400 flat fee to draft two demand letters regarding barking dogs. Based upon a review of Respondent's incomplete client ledger, it is more likely than not that the client is still due a reimbursement of the initial \$500 in advanced costs, as well as a reimbursement of the additional \$303 in advanced costs.

59. **Rosenfeld:** The Rosenfeld client and general ledgers reflect that on November 17, 2014, Respondent disbursed \$6,081 in settlement funds to the client. The Examiner identified the actual item disbursed as IOLTA check number 1051. However, Respondent wrote that check for \$6,181, thereby converting \$100 of other client funds.

60. **Cwiak:** The Cwiak client ledger reflects that on August 13, 2014, a settlement check in the amount of \$3,500 was deposited in the IOLTA account. Although the copy of the duplicate deposit slip indicates that the funds were not deposited until August 18, 2014. Notwithstanding that the funds had not yet been deposited, on August 14, 2014, Respondent disbursed \$1,197.01 of the settlement funds to a third-party mediation service. The corresponding IOLTA check did not post during the Period of Review.

61. The operating account ending balance on August 14<sup>th</sup> was negative (\$135.29). The next day, Respondent transferred \$1,197.00 to the operating account. Had he not done so, the operating account balance would have been negative (\$476.79).

62. On August 19, 2014, operating account check number 645 was written payable to the corresponding third-party mediation service in the amount of \$1,197.01, which posted on August 25, 2014. The operating account ending balance on that day was negative (\$630.88).

63. Ultimately, Respondent obtained a total recovery of \$51,000 on behalf of client Cwiak, which was comprised of the aforementioned \$3,500 settlement check and an additional check in the amount of \$47,500. However, Respondent reflected the later amount as \$47,000 on the client ledger, for a difference of \$500. There is no evidence that the error was identified or corrected. Instead, the client ledger reflects a total recovery of \$50,500, which was disbursed as follows: Attorney's subpoena cost - \$148; Attorney's "Partial legal fee" - \$15,357.49; Third-Party Mediator Fees - \$1,197.01; Third-Party Arbitration Fees - \$2,630.50; Third-Party Process Service - \$1,167; and Client - \$30,000.

64. The Examiner was unable to verify the distribution of the settlement funds because Respondent failed to provide copies of the client fee agreement or supporting documentation reflecting a complete accounting of the funds received. However, because the IOLTA account carried a deficit balance on multiple occasions after receipt of the settlement funds, the Examiner determined that Respondent had misappropriated the \$500 in unaccounted for settlement funds.

65. **Kahler:** The general and client ledgers reflect two (2) deposit entries on February 23, 2016, both in the amount of \$10,702 and attributed to client Kahler. The source of the first deposit is recorded as "[S.] Kahler," while the source of the second deposit is recorded as "Client." The first entry is described as "bond appeal Pinal County Superior Court," while the second entry is described as "Monies deposited for Supersedes bond in appeal of Pinal County Superior Court Case" (CV 2014-01715). Both entries are further referenced as "276." However, the IOLTA bank account records reflect a single deposit on that date in the amount of \$10,702 by means of check number 276, which was written by the client. Respondent created duplicate deposit entries, which resulted in an inflated client balance.

66. The client ledger reflects that on February 26, 2016, Respondent disbursed \$10,702 to the Pinal County Superior Court relating to the bond. However, no such disbursement posted during the Period of Review. And, included in the client file produced to the State Bar by the Respondent was a copy of IOLTA check number 1227, dated June 20, 2016, and signed by Andrea Heaton in the same amount and made payable to the trial court. Therefore, the IOLTA account should have held a minimum balance of \$10,702 between February 23, 2016 and at least April 30, 2016. Instead, the IOLTA account balance fell below that amount as follows: February 25<sup>th</sup> through February 29, 2016, and March 11<sup>th</sup> through March 31, 2016.

67. **Sawyer:** The Sawyer client ledger reflects that on September 1, 2015, check number 1453 in the amount of \$80 was received on behalf of the client. Respondent did not deposit the funds in the IOLTA account despite that they

were intended to cover the cost of a court reporter. Instead, on or about September 14, 2015, Respondent deposited the check in the operating account. And, even though he did not deposit the funds in the IOLTA account, on or about October 13, 2015, Respondent drafted IOLTA check number 1197 on behalf of the client in the amount of \$80 and made payable to Glennie Reporting. The check posted on October 20, 2015, thereby converting other client funds.

68. And, the Examiner's review of the operating account activity revealed negative daily balances at various times during the months of September and October 2015, during which time Respondent would have been holding the \$80 for the client. Therefore, Respondent misappropriated client funds.

69. **Derringer:** The Derringer client ledger reflects that on December 30, 2015, a settlement check in the amount of \$2,046 was deposited in the IOLTA account. However, the settlement check was actually deposited on January 4, 2016. A transfer of that exact amount from the IOLTA account to the operating account posted on January 6, 2016. The operating account ending balance on January 5, 2016, was negative (\$1,588.90). Had the \$2,046 transfer not posted on January 6<sup>th</sup>, the operating account balance would have been negative (\$353.23). On January 7<sup>th</sup>, the funds were redeposited in the IOLTA account from the operating account, again by way of a bank transfer. Then, on January 12<sup>th</sup>, that exact amount was again transferred to Respondent's operating account when the operating account beginning balance was negative (\$1,479.94). Despite the transfer of those funds, the operating account ending balance on that day was negative (\$1,622.28). If Respondent had not transferred the funds from the IOLTA

account, the ending balance would have been negative (\$3,668.28). Unlike the previous transfer, a corresponding redeposit into the IOLTA account was not identified in the client ledger. Ultimately, IOLTA check number 1208 was written on January 7, 2016, in the amount of \$2,046, and made payable to the client. The check posted without incident on January 15, 2016, even though the IOLTA account held a deficit on that date.

70. **Johnson:** The Johnson client ledger reflects that on July 27, 2015, settlement proceeds totaling \$2,500 were disbursed to the client. However, the funds were actually transferred to Respondent's operating account on July 28, 2015. Subsequently, operating account check number 1180 was written on or about August 10, 2015, and made payable to the client for the "settlement proceeds." The ending balance in the operating account on July 27<sup>th</sup> was negative (\$843.86). The operating account would have been negative (\$3,343.86) if Respondent had not transferred client funds from the IOLTA account on that date. The daily balance of the operating account subsequently fluctuated between \$610.14 and \$6,920.51. Respondent misappropriated client funds.

71. **Stefan:** Respondent obtained a total recovery for client Stefan in the amount of \$40,000. The corresponding client ledger reflects that a total of \$25,050 of those funds was disbursed to the Respondent as attorney's fees and costs. However, \$10,249 was transferred to Respondent's operating account, while \$14,801 was disbursed by way of IOLTA check number 1048, written on August 15, 2014, made payable to the Villas at Squaw Peak. The memo portion of the check describes the disbursement as "Settlement/Legal Fee Remb." And, a total of

\$13,000 of the funds was disbursed to litigants in the matter by way of IOLTA checks numbered 1043, 1044, 1045, and 1047, all of which posted during the Period of Review. According to the client ledger, the remaining \$1,950 was disbursed to "[R.] Schwartz" by a wire transfer described as "\$1950 - \$25 wire fee = 1925 check total." However, no such disbursement was identified during the Period of Review and the final disposition of the funds is unknown. Moreover, though not recorded on the client ledger, IOLTA check number 1150 posted on August 29, 2014, in the amount of \$199.60 and payable to process server Get Smart. The memo portion of the cancelled check associates the disbursement with client "Stefan." Therefore, Respondent disbursed \$199.60 more than was received and misappropriated \$1,950 due to "[R.] Schwartz."

72. **Burgess:** The Burgess client ledger reflects that on October 30, 2013, settlement funds in the amount of \$3,381.62 were disbursed to the client. Although the funds were disbursed on that date, they were disbursed by way of operating account check number 375, which posted on November 6, 2013. The operating account ending balance on the date the check was written was negative (\$380.19). The corresponding funds were then transferred from the IOLTA to the operating account on October 31, 2013. At the time, the operating account still held a deficit, which resulted in the immediate conversion of client funds.

73. **Leatham:** The Leatham client ledger dated September 14, 2015, reflects an unexpended balance in the amount of \$150 as of March 20, 2015. Conversely, the ledger dated September 20<sup>th</sup> reflects the unexpended balance on that date as zero (0). The subsequent entries on both ledgers are the same,

however, due the \$150 difference, a negative unexpended balances is reflected on five (5) occasions on the ledger dated September 20, 2015. The Examiner determined that on August 6, 2014, check number 1148 was written in the amount of \$150 and posted on August 11, 2014. However, Respondent failed to record a proper disbursement entry on the client ledger. Instead, the disbursement of check number 1148 was recorded as a memo on the deposit entry for the corresponding funds, which were also transacted on August 6, 2014. This resulted in an inflated unexpended balance, which lead to the over-disbursement of \$150 on behalf of the client and the conversion of other client funds.

#### **Sustained Deficit in IOLTA**

74. Although a complete reconstruction of the IOLTA was not possible, the Examiner identified unexpended balances on behalf of twenty-eight (28) entities at various times during the Period of Review, five (5) of which were not previously identified by Respondent as being clients. Based solely on the twenty-eight entities, the Examiner determined that a deficit in the IOLTA account began on or before June 2012 and steadily increased throughout the remainder of the Period of Review. The Examiner determined that the deficit in the IOLTA account ranged from negative (\$207.69) to upwards of negative (\$14,312.71). As of the end of the Period of Review, the Examiner calculated that the IOLTA should have held approximately \$33,907.60 comprised of the following amounts for the corresponding clients: Bianco - \$15,000; Cwiak - \$500; HFT - \$5,650; Kahler - \$10,702; Klein - \$50; Stefan - \$1,950; and SVEO - \$55.60. The actual balance in

the IOLTA account was \$31,031.18, not including a \$1.59 interest payment, for a deficit of approximately negative (\$2,876.42).

#### **Fee Agreements/Billing Statements/Settlement Statements**

75. As part of his investigation, the Examiner attempted to verify that client funds were appropriately managed and to account for the activity in the IOLTA account. The Examiner asked Respondent to provide copies of all fee agreements, billing statements, and settlement statements for all clients who held or should have held funds in the IOLTA account during the Period of Review.

76. Respondent provided the Examiner with copies of fee agreements for thirty-three (33) of the forty-three (43) entities identified as clients who held funds on deposit in the IOLTA during the Period of Review.

77. On July 13, 2016, Respondent made an avowal in response to a subpoena duces tecum that there were no other documents responsive to the request.

78. Many of the fee agreements produced in response to the subpoena duces tecum did not set forth the scope of legal representation provided.

79. Respondent failed to maintain copies of fee agreements detailing the scope of legal representation and the basis or rate of the fee and expenses for which the client was responsible.

#### **Reasonableness of Fees/Costs**

80. During the investigation, the Examiner identified anomalies in the records provided by Respondent, which establish that the fees and costs incurred by

the clients were not reasonable. Those anomalies include, but are not limited to, the following.

81. **Rosenfeld:** Respondent produced a copy of the unsigned, January 28, 2014 fee agreement by which the client retained Respondent for payment of a \$6,500 "earned upon receipt" flat fee. The Agreement provides that the client shall pay costs, which may be advanced by Respondent and that if the representation extends beyond a lawsuit in the Superior Court, the client "will be asked to review and sign an additional agreement for the additional services." The Examiner verified that the client remitted payment for the flat fee and that the funds were deposited in the operating account on January 24, 2014. Subsequently, a \$9,000 recovery was obtained on behalf of the client. Despite the flat fee agreement, the funds were disbursed as follows: Attorney Costs - \$419; Attorney Fee - \$2,500; and Client \$6,081. Respondent did not produce any additional fee agreement that provided for payment of an additional \$2,500 in attorney fees.

82. **Campbell:** Respondent obtained a \$40,000 settlement recovery on behalf of client Campbell. The corresponding fee agreement provided that Respondent would represent the client for a flat fee of \$7,500, but that Respondent would track his time and court costs in order to "make a proper application for fees to the court at the proper time." The agreement further provides that should an award be obtained, the client would receive a refund of the fees and costs already paid. Ultimately, the client was reimbursed \$10,875.80, which was disbursed by way of check number 1175, written on April 28, 2015. The breakdown of client funds consisted of the original flat fee and additional fees and costs associated with

appeal work. But, the client ledger dated April 24, 2015, reflects that the client was due a \$296 reimbursement described as "Original Filing Fee - 02/10/2012," while the ledger dated May 15, 2015, reflects the amount as \$279, for a difference of \$17. The report dated April 24, 2015, reflects the client was due \$199 as a "Reimbursement of legal fees for additional JRW services," while the report dated May 15<sup>th</sup>, reflects the amount due as \$250, for a difference of \$51.

83. **NPC:** Respondent obtained \$12,500 recovery on behalf of NPC and the funds were deposited in the IOLTA account on December 18, 2012. Pursuant to an email dated the same day, Respondent informed the litigants that the funds would be disbursed as follows: Boon -\$350; Day - \$700; Fitzgerald - \$250; Fox - \$700; Kuzel - \$950; Mahmood - \$700; Young - \$700; and Attorney's Fees and Costs - \$8,150. The following day, IOLTA checks were drafted payable to each of the litigants in the amounts specified, with the following exceptions: Check number 1009 was written payable to Kuzel in the amount of \$1,050, rather than \$950, for a difference of \$100. Check number 1015 was written payable to Fitzgerald in the amount of \$350, rather than \$250, for a difference of \$100.

84. On December 18, 2012, Respondent disbursed \$7,416 to himself by way of checks numbered 1011 and 1013, but there was no identified check to account for the remaining \$734 earned balance. Nonetheless, several unidentified transfers to the operating account followed the deposit of funds. Therefore, there is no evidence that the \$200 over-disbursement to litigants was offset by Respondent's earned fees.

### Individual Client Ledgers

85. Respondent was asked to provide copies of all individual client ledgers or equivalent documents covering the Period of Review. Respondent provided equivalent documents for forty-three (43) entities identified as clients who held or should have held funds on deposit in the IOLTA account during the Period of Review. On July 13, 2016, Respondent avowed that the forty-three (43) files constituted all of the ledgers in his possession or that he knew existed. However, the examination of those documents revealed transactions that were indicative of an attorney-client relationship with other individuals/entities that Respondent did not identify as clients. Examples include, but are not limited to, the following.

86. **Belo:** On April 5, 2012, check number 1037 posted in the amount of \$500. The copy of the cancelled check reflects the item was written on March 10, 2012, payable to M. Belo. The memo portion of the check indicates the funds were disbursed as a return of trust money. The corresponding funds appear to have been deposited on January 9, 2012.

87. **Carter:** On May 28, 2013, a check written by J. Carter in the amount of \$3,500 was deposited in the IOLTA. The Examiner also discovered a check written by the same entity in the amount of \$650, which was deposited in the operating account on May 13, 2013.

88. **Codell:** On January 10, 2013, a Farmers Insurance Company check in the amount of \$10,500 was deposited in the IOLTA. The deposited item was made payable to Respondent and J. Codell. Coincidentally, the copy of cancelled check number 1018 reflects the item was written on that day payable to J. Codell in the

indicates the funds were disbursed as "Legal Fees Hines." On January 23, 2016, IOLTA checks numbered 1005 in the amount of \$460 and 1007 in the amount of \$720 cleared the account. The copies of the cancelled checks reflect that both checks were written on January 6, 2013, payable to W and A Hines.

93. **Nunez:** On May 29, 2012, a Farmers Truck Insurance Exchange check in the amount of \$8,500 was deposited in the IOLTA. The deposited item was made payable to A and M Nunez, and "Their Attorney. J Roger Wood Pllc." The copy of cancelled check number 1040 reflects the item was written on the same day payable to A and M Nunez in the amount of \$5,253. The memo portion of the check indicates the check constituted a disbursement of settlement proceeds. The check was presented for payment the following day, however, it appears the funds had not yet cleared and the check was returned unpaid on June 5, 2012. Consequently, on June 8<sup>th</sup>, the amount due to the clients was withdrawn from the IOLTA and converted to cashier's check number 424876 payable to M. Nunez.

94. **Palos:** The examination revealed that on February 2, 2015, a check received from The Jamison Group, LLC in the amount of \$1,000 was deposited in the IOLTA. The memo portion of the check partially states the following: "Balance Paid Re 00738 - Palos." The remitting organization was associate with client Palos, who retained Respondent regarding a matter referenced in the corresponding fee agreement dated January 9, 2015 as "00738 - Palos Litigation with Las Sendas." Despite providing a fee agreement in that file, Respondent failed to identify Palos as a client during the trust account examination.

95. **Tomei:** On October 26, 2012, a check drafted by Red Rock Financial Services in the amount of \$3,750 was deposited in the IOLTA account. The copy of the item deposited reflects the funds were remitted to Respondent on behalf of J. Tomei. It appears the entirety of the funds were disbursed by way of IOLTA checks numbered 1001, 1002, and 1004. Check number 1002 was written in the amount of \$1,022.50, payable to Respondent for "Fees Earned." The check posted the same day as the deposit, however, the copy of the cancelled check indicates that it was written the day before, on October 25, 2012. The remainder of the funds were disbursed to the client by way of checks numbered 1001 in the amount of \$1,705 and 1004 in the amount of \$1,022.50. The copies of the cancelled checks reflect both items were written on the day of the deposit and posted on October 29, 2012.

96. In response to the request that he produce copies of the client ledgers, Respondent provided the Examiner with reports generated at various times in 2015 and 2016, which resulted in multiple ledgers for each client. In addition to various bookkeeping discrepancies in the ledgers, the Examiner discovered various inconsistencies in each version of the ledgers. And, not all of the client ledger entries were a true representation of the activity transacted in the IOLTA account on behalf of each client. Instead, some entries corresponded to transactions conducted in the operating account.

97. Not all of the client ledgers reflect the actual name of the payor of funds received and deposited in the IOLTA account. Nor do all of the ledgers reflect the actual name of the payee for funds disbursed from the IOLTA. And, not all of

the named payors and payees are accurate representations of the recipient of funds.

98. Examples of the deficiencies in the client ledgers include, but are not limited to, the following.

99. **Barnett:** The Barnett client ledger reflects that on August 7, 2013, check number 1122 was disbursed in the amount of \$289.10, payable to "Esquire" as a payment of deposition fees. The corresponding funds were deposited and are also recorded on that day. However, the copy of the cancelled check indicates the item was written on August 6, 2013.

100. **BFC:** The BFC client ledger reflects that on February 16, 2015, a settlement check in the amount of \$1,805.60 was deposited in the IOLTA. The next entry reflects that the funds were disbursed to the client on April 9, 2015 by way of check number 1173. However, the corresponding settlement check was actually deposited on April 7, 2015 (nearly two (2) months after the date recorded on the client ledger), while the copy of the cancelled check number 1173 indicates it was actually written on April 10<sup>th</sup> (one (1) day after the client ledger entry).

101. **Cwiak:** The Cwiak client ledger dated June 29, 2015, reflects a beginning balance of \$2,302.99 on February 24, 2015. Conversely, the ledger dated September 20, 2015, reflects the beginning balance as zero (0). The subsequent entries on both ledgers are the same, however, due the \$2,302.99 difference, a negative unexpended balances is reflected on three (3) occasions on the ledger dated September 20, 2015. The examination revealed that \$2,302.99 should have been held on deposit for the client, therefore, the negative balances

reflected on the ledger dated September 20, 2015 were determined to be false negatives. Nonetheless, the examination revealed a deposit entry error on both ledgers thereby yielding both copies inaccurate. Specifically, the Examiner determined that on February 23, 2015, a settlement check in the amount of \$47,500 was received on behalf of the client. However, the item was recorded on the client and general ledgers as \$47,000, for a difference of \$500.

102. **Klissas:** On May 4, 2015, a \$25 check was deposited in the IOLTA account on behalf of client Klissas, which was received from Maricopa County for a filing fee overpayment. However, the client ledger reflects the date of the deposit as May 5, 2015. The next entry on that date reflects that check number 1015 was disbursed payable to the client as a refund for the overpayment. However, the corresponding IOLTA check posted on February 13, 2013, on behalf of an unrelated client. The Examiner determined that client Klissas' funds were disbursed by way of operating account check number 1015, despite the corresponding deposit being held in the IOLTA account. It is unclear if and when the corresponding funds were removed from the IOLTA:

103. **Kulpins:** The first entry on the Kulpins client ledger is dated February 17, 2014, and reflects the disbursement of settlement funds to the client by way of check number 1131 in the amount of \$7,649. The corresponding settlement funds are not reflected as being deposited until the following day, resulting in a negative unexpended balance on February 17<sup>th</sup>. However, the copy of the cancelled check indicates it was written on February 28<sup>th</sup> and posted on March 5, 2014. In addition, the client ledger reflects that on February 25<sup>th</sup>, check number 1128 was written to a

mediation service in the amount of \$1,448, while the copy of the cancelled check indicates the item was written on February 20, 2014, five (5) days prior to the date recorded on the ledgers. Likewise, the ledger reflects that on February 25<sup>th</sup>, check number 1129 was written to a process service provider in the amount of \$201.60, while the copy of the cancelled check indicates the item was written on February 18<sup>th</sup>, seven (7) days prior to the date recorded on the ledgers.

104. The client ledger also reflects that on February 25<sup>th</sup>, checks numbered 1130 in the amount of \$377 and 1132 in the amount of \$5,324.40 were disbursed payable to the Respondent for fees and costs, but those items did not post during the Period of Review. Immediately after the deposit of the corresponding settlement funds, a total of \$5,701 was transferred to Respondent's operating account by way of a transfer on February 18, 2014, in the amount of \$4,000, followed by a transfer of \$1,324 on February 20, 2014 and a transfer of \$377 on that same date.

105. **NSPC:** The NSPC client ledger reflects a \$2,500 disbursement of earned attorney's fees dated August 31, 2014, but the general ledger reflects the funds were transferred to the operating account on August 21<sup>st</sup>. The bank statements reflect the funds were transferred on August 21, 2014.

106. **Simmons:** The final entry on the Simmons client ledger dated May 15, 2015, is hand written and indicates that on October 17, 2013, the unexpended balance of \$62 was disbursed to the "Firm." Subsequently, the disbursement of said funds is incorporated in print on the client ledger dated June 29, 2015.

However, the disbursement of funds is now reflected as occurring on October 17, 2014.

107. **SVEO:** The general ledger reflects that on February 19, 2013, items totaling \$18,325 were deposited in the IOLTA on behalf of client's SVEO. However, the bank statement reflects the deposited amount as \$18,225. Likewise, the duplicate deposit slip also reflects the total deposit as \$18,225, for a difference of \$100, thereby resulting in an inaccurate unexpended balance. Furthermore, the ledger reflects that on February 28, 2013, items totaling \$1,310 were deposited in the IOLTA on behalf of client SVEO. However, the bank statement reflects the deposit posted on March 1, 2013, in the amount of \$1,210, for a difference of \$100. The corresponding duplicate deposit slip also reflects the date of the deposit as occurring on March 1, 2013, rather than on February 28, 2013. Moreover, the itemized breakdown written on the deposit slip indicates that the deposit consisted of eleven (11) checks totaling \$1,200 and cash in the amount of \$110 for a total of \$1,310. However, that amount is inexplicably crossed out and reflected as \$1,210 and initialed "JMS," likely Respondent's employee Jessica Salow. The copies of the actual items deposited on that day only account for cash in the amount of \$110, eight (8) checks totaling \$950, and a bank initiated adjustment of \$150 "due to piggyback items" presumably originating from additional checks in the amounts of \$100 and \$50, for a total deposit amount of \$1,210. An additional check in the amount of \$100 was likely originally intended to be a part of the items deposited on that day, however, the origin and final disposition of said item is unknown and the

deposit amount difference was unaccounted for in the general ledger, which resulted in an inaccurate unexpended balance.

### **General Ledger/Checkbook Register**

108. Respondent failed to maintain a general ledger/checkbook register during the entire Period of Review. Specifically, no records were provided for the period prior to April 30, 2012.

109. On July 13, 2016, Respondent confirmed that he did not maintain a general ledger/checkbook register during the entire Period of Review. The copies of the general ledgers that were provided consisted of an electronic general ledger for the period of April 30, 2012 through June 20, 2016, and a manual checkbook register covering the period of June 1, 2015 through September 11, 2015.

110. The Examiner determined that the two ledger differ greatly with respect to the transactions recorded during the overlapping period, which resulted in different unexpended balances and conflicting dates. Most notably, the electronic ledger reflects the balance on June 1, 2015 as \$150, while the manual ledger reflects the balance as \$251.65. And, on June 25, 2015, the electronic ledger reflects two deposits, one in the amount of \$16,000 and the other in the amount of \$37,000, while the manual ledger only accounts for the \$37,000 on that day. The \$16,000 deposit is dated June 26, 2015 on the manual register, yet it is recorded among transactions dated June 29, 2015.

111. The checkbook register reflects that on August 3, 2015, check number 1189 was disbursed in the amount of \$500 when the balance at the time was reflected as \$101.65, resulting in a negative unexpended balance after the

disbursement of (\$398.35). The subsequent entry reflects that on that day, \$500 was transferred from the operating account to offset the deficit and return the balance to \$101.65. However, the following entry, dated the same day, reflects that check number 1190 was disbursed in the amount of \$242, resulting in a negative unexpended balance in the amount of (\$140.35). The next two entries are dated July 24, 2015 and reflect the deposit of two \$1,250 checks for an unrelated client, resulting in a positive unexpended balance. In actuality, check number 1189 appears to have been voided while the remaining transactions took place on the corresponding dates referenced and not in the order recorded.

112. The copies of the general ledger equivalents provided by Respondent are inadequate in that they are inaccurate and incomplete. For example, the electronic general ledger reflects no activity during the months of June and July 2012. Yet the bank statements reflect three (3) deposits totaling \$1,032 and eight (8) disbursements totaling \$7,825.50, consisting of six (6) online transfers to Respondent's operating account, one (1) returned item bank fee, and one (1) withdrawal converted into a cashier's check. Likewise, the general ledger reflects no activity during the months of October, November, and December 2012. Yet the bank statements reflect six (6) deposits totaling \$22,594.81 and seventeen (17) disbursements totaling \$17,512.62, consisting of checks drafted during said months, online transfers to Respondent's operating account, and three (3) maintenance fee deductions.

113. The Examiner identified numerous instances of missing transactions throughout the Period of Review, which resulted in an inaccurate unexpended

balance on the general ledger. Moreover, the electronic copy of the general ledger contained the same transaction discrepancies noted for the client ledgers. And, not all of the general ledger entries reflect the actual name of the payor of funds received and deposited in the IOLTA account. Nor do all of the ledger entries reflect the actual name of the payee for funds disbursed from the IOLTA account.

#### **Administrative Funds/Bank Charges**

114. Respondent was asked to provide copies of the trust account Administrative Funds/Bank Charges ledger or equivalent document covering the Period of Review, but failed to provide an equivalent document. On July 13, 2016, Respondent confirmed that he did not maintain any such records.

#### **Monthly Reconciliations**

115. Respondent was asked to provide copies of the trust account monthly reconciliations for the Period of Review, but failed to provide any adequate equivalents. On July 13, 2016, Respondent confirmed he did not maintain any such records.

#### **Other Violations**

116. Respondent failed to file with the State Bar of Arizona a certificate certifying compliance with the provisions of Rule 43 and ER 1.15 or that he was otherwise exempt from the requirement to do so.

117. Respondent failed to remit interest or dividends generated on the IOLTA account to the Foundation, as required under Rule 43(f)(6).

118. By engaging in the foregoing conduct, Respondent violated numerous ethical rules including, but not limited to, the following.

119. Rule 42, ER 1.15(a), Ariz. R. Sup. Ct. Failed to safekeep client property. Converted client funds. Misappropriated client funds. Disbursed against uncollected funds. Failed to hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Failed to keep and preserve complete records of such account funds and other property. Failed to preserve complete records of such account funds and other property for a period of five years after termination of the representation.

120. Rule 42, ER 1.15(b)(1), Ariz. R. Sup. Ct. Failed to deposit lawyer's own funds in a client trust account only in an amount reasonably estimated to be necessary to pay service or other charges or fees imposed by the financial institution that are related to the operation of the trust account.

121. Rule 42, ER 1.15(b)(3), Ariz. R. Sup. Ct. Failed to deposit earned fees and funds for reimbursement of costs or expenses that were part of a single credit card transaction that also includes the payment of advance fees, costs, or expenses and the lawyer does not use a credit card processing service that permits the lawyer to direct such funds to the lawyer's separate business account.

122. Rule 42, ER 1.15(c), Ariz. R. Sup. Ct. Failed to deposit legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

123. Rule 42, ER 1.15(d), Ariz. R. Sup. Ct. Upon receiving funds or other property in which a client/third person has an interest, failed to promptly notify the client/third person. Except as stated in this Rule or otherwise permitted by law or by agreement between the client/third person, failed to promptly deliver to the

client/third person any funds or other property that the client/third person is entitled to receive. Upon request by the client/third person, failed to promptly render a full accounting regarding such property.

124. Rule 42, ER 1.15(e), Ariz. R. Sup. Ct. In the course of a representation, lawyer possessed property in which two or more persons (one of whom may be the lawyer) claim interests, but failed to keep the property separate. Failed to promptly distribute any portions of the property as to which there are no competing claims. Any other property shall be kept separate until one of the following occurs: The parties reach an agreement on the distribution of the property; A court order resolves the competing claims; or Distribution is allowed under section (f).

125. Rule 42, ER 1.5(b), Ariz. R. Sup. Ct. Failed to communicate the scope of representation and the basis or rate of the fee and expenses in writing for which the client will be responsible, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing. Failed to communicate any changes in the basis or rate of the fee or expenses in writing.

126. Rule 42, ER 1.5(c), Ariz. R. Sup. Ct. Failed to put a contingent fee in writing signed by the client which states the method by which the fee is to be determined, including the percentage(s) that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from recovery, and whether such expenses are to be deducted before/after the

contingent fee is calculated. Failed to clearly notify the client in the agreement of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon the conclusion of the contingent fee matter, failed to provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination at the conclusion of the contingent fee matter.

127. Rule 42, ER 5.3(b) [Responsibilities Regarding Nonlawyer Assistants]. With respect to a nonlawyer employed by a lawyer: (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

128. Rule 42, ER 8.1(a) and (b). [Disciplinary Matters]. A lawyer in connection with a disciplinary matter shall not (1) knowingly make a false statement of material fact; or (b) knowingly fail to respond to a lawful demand for information from a disciplinary authority.

129. Rule 42, ER 8.4(a) [Misconduct]. It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

130. Rule 42, ER 8.4(b) [Misconduct]. It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

131. Rule 42, ER 8.4(c) [Misconduct]. It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

132. Rule 42, ER 8.4(d) [Misconduct]. It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

133. Rule 43(a), Ariz. R. Sup. Ct. Failed to keep funds belonging in whole or in part to a client/third person in connection with a representation separate and apart from the lawyer's personal and business accounts. Failed to keep funds belonging in whole or in part to a client/third person in connection with a representation in one or more trust accounts that are labeled as such.

134. Rule 43(a)(1), Ariz. R. Sup. Ct. Failed to deposit funds to pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account.

135. Rule 43(a)(3), Ariz. R. Sup. Ct. Failed to deposit fees and funds for reimbursement of costs or expenses when they were part of a single credit card transaction that also included the payment of advance fees, costs, or expenses and the lawyer does not use a credit card processing service that permits the lawyer to direct such funds to the lawyer's separate business account.

136. Rule 43(a)(4), Ariz. R. Sup. Ct. Failed to deposit funds belonging in part to the client/third person and in part presently or potentially to the lawyer or law firm.

137. Rule 43(b)(1)(A), Ariz. R. Sup. Ct. Failed to exercise due professional care in the performance of the lawyer's duties.

138. Rule 43(b)(1)(B), Ariz. R. Sup. Ct. Failed to properly train employees and others assisting the attorney in the performance of his duties. Failed to properly supervise employees and others assisting the attorney in performance of his duties. Employees and others assisting the attorney were not competent.

139. Rule 43(b)(1)(C), Ariz. R. Sup. Ct. Failed to maintain adequate internal controls under the circumstances to safeguard funds or other property held in trust.

140. Rule 43(b)(2)(A), Ariz. R. Sup. Ct. Failed to maintain on a current basis, complete records of the handling, maintenance, and disposition of all funds, securities, and other property belonging in whole or in part to a client/third person in connection with a representation. These records shall include the records required by ER 1.15 and cover the entire time from receipt to the time of final disposition by the lawyer of all such funds, securities, and other property. Failed to preserve these records for a period of five (5) years after termination of the representation.

141. Rule 43(b)(2)(B), Ariz. R. Sup. Ct. Failed to maintain or cause to be maintained an account ledger or the equivalent for each client, person, or entity for which funds have been received in trust, showing: (i) the date, amount, and payor of each receipt of funds; (ii) the date, amount, and payee of each disbursement; and (iii) any unexpended balance.

142. Rule 43(b)(2)(C), Ariz. R. Sup. Ct. Failed to make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement.

143. Rule 43(b)(2)(D), Ariz. R. Sup. Ct. Failed to retain, in accordance with this rule, all account trust statements, cancelled pre-numbered checks (unless recorded on microfilm or stored electronically by a bank or other financial institution that maintains such records for the length of time required by this rule), other evidence of disbursements, duplicate deposit slips or the equivalent (which shall be sufficiently detailed to identify each item), and reports to clients.

144. Rule 43(b)(5), Ariz. R. Sup. Ct. Disbursed funds without using a pre-numbered check or by electronic transfer and did not maintain a record of such disbursements in accordance with the requirements of this rule. Failed to identify all instruments of disbursement as a disbursement from the trust account.

145. Rule 43(c), Ariz. R. Sup. Ct. Failed to file with the board a certificate certifying compliance with the provisions of this rule and ER 1.15 of the Arizona Rules of Professional Conduct or that he or she is exempt from the provisions of this rule and ER 1.15 on or before February 1 of each year.

146. Rule 43(d)(3), Ariz. R. Sup. Ct. Rebuttable Presumption. If a lawyer fails to maintain trust account records required by this rule and ER 1.15, or fails to provide trust account records to the state bar upon request or as ordered by a panelist, a hearing officer, the commission or the court, there is a rebuttable presumption that the lawyer failed to properly safeguard client/third person's funds or property, as required by this rule and ER 1.15.

147. Rule 43(f)(1), Ariz. R. Sup. Ct. Failed to hold funds received that belong in whole or in part to a client or third person in connection with a

representation in a proper (pooled IOLTA or separate trust) interest-bearing or dividend-earning account.

148. Rule 43(f)(6), Ariz. R. Sup. Ct. Failed to remit interest or dividends generated on the account to the Foundation.

149. Rule 43(f)(7), Ariz. R. Sup. Ct. Failed to provide information requested by the State Bar on the annual dues statement regarding any and all client trust accounts they maintain.

150. Rule 54(d)(2) [Grounds for Discipline]. The failure to furnish information or respond promptly to any inquiry or request from bar counsel . . . made pursuant to these rules for information or matters under investigation concerning conduct of a lawyer . . . constitutes grounds for discipline.

**COUNT TWO (File no. 15-1793/Ruozi)**

151. By letter dated March 8, 2015, various homeowners of the Sunsites Unit #7 Homeowners Association (HOA) retained Respondent, with David Ruozi, Sr. and his wife acting as the point of contact (Ruozi). Respondent was retained to 1) provide general counsel work to reform the corporate structure; and 2) file a complaint with the Cochise County Superior Court seeking declaratory judgment and injunctive relief against Cochise County and other Sunsites #7 property owners for certain alleged violations of, among other things, the governing documents (the Fee Agreement).

152. The Fee Agreement provides for a \$12,500 flat fee, earned upon receipt, with an "opportunity" to request fees and costs in excess of the \$12,500, if successful at trial. Included in the flat fee was "the work to reinstate the former

corporate entity and create new Bylaws and perhaps other governing documents.” The Fee Agreement states that the flat fee must be received before Respondent performed any work.

153. On March 9, 2015, Ruozi and Board Member David Thoren signed the Fee Agreement.

154. At Respondent’s direction, Ruozi notified the lot owners to send their dues payments directly to Respondent. Respondent was to deposit the funds into a trust account until the flat fee was collected, at which time he would start work. In the event that he collected more than the flat fee, Respondent was to hold those funds in trust until the HOA had been incorporated and established its own bank account, at which time Respondent would transfer those excess funds to the HOA.

155. Thereafter, Respondent’s assistant, Andrea Heaton, periodically sent the Ruozi a spread sheet reflecting checks received from homeowners (the Check Log).

156. By email dated April 15, 2015, Respondent advised Ruozi that he would move forward with litigation involving a homeowner notwithstanding that he had not been paid the entire flat fee. Respondent assured Ruozi that “[w]e’re working on getting started with the HOA reformation and can start with the litigation simultaneously.”

157. On June 1, 2015, Ms. Heaton sent Ruozi an updated Check Log. That was the last Check Log provided to them by Respondent.

158. By email dated June 11, 2015, Respondent sent Ruozi Articles of Incorporation and related documents "to review, correct and sign" (the Application). Ruozi did so and sent the scanned documents to Respondent to file.

159. According to Respondent's time records, he sent the Application to the ACC for filing on June 22, 2015.

160. By email dated June 30, 2015, Ruozi advised Respondent that he could not find the HOA listed on the ACC website. Respondent replied that "[i]t takes time to appear on the website" and that he would "double check with my runner and see where things are, however, do not be alarmed. The upload to their system and their paperwork is not instantaneous."

161. By email dated July 8, 2015, Ruozi terminated the representation, demanded a refund of \$7,205.00, and asked Respondent to confirm whether he had received any dues payments from any other lot owners after May 16, 2015.

162. On July 9, 2015, Respondent caused the Application to be filed with the ACC even though he had received Ruozi's July 8, 2015 email terminating the representation.

163. Respondent's filing was defective and Ruozi had to work with staff at the ACC to correct various errors. Among other things, they had to change the statutory agent, which had been Respondent. The Articles of Incorporation were filed with the ACC numerous times due to the defects: July 9, July 27, August 6, August 11, and August 14, 2015.

164. When Ruozi learned that Respondent had filed the Application, he told Respondent that he could deduct the \$105 fee paid to the ACC from the refund and remit \$7,205 to Ruozi.

165. By email dated July 10, 2015, Respondent told Ruozi that he would "expedite the full refund as per your email" and agreed that his firm "did not earn its fee."

166. Respondent admitted to the State Bar during its investigation that "this was a case and a client I should not take both because of the type of case, the proximity issue and the complexity of the case."

167. Respondent did not meet Ruozi in person or view the development as part of his investigation into the HOA's allegations against the County and certain lot owners.

168. Respondent later changed his position and determined that Ruozi was due a refund of unearned fees in the amount of \$5,625 and advised the State Bar that he had already refunded \$2,500 of the refund.

169. Respondent did not refund any unearned fees to Ruozi.

170. On July 7, 2015, Respondent cashed a check in the amount of \$150, which he received from a lot owner. Respondent has failed and refused to account for those funds.

171. By engaging in the foregoing conduct, Respondent violated numerous ethical rules including, but to limited to, the following.

172. ER 1.1 [Competence] A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonable necessary for the representation.

173. ER 1.3 [Diligence] A lawyer shall act with reasonable diligence and promptness in representing a client.

174. ER 1.5(a) [Fees] A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.

175. ER 1.16 (d) [Terminating Representation] Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . refunding any advance payment of a fee that has not been earned.

176. ER 8.4(c) [Misconduct] It is professional misconduct for a lawyer to engage in conduct involving dishonesty fraud, deceit or misrepresentation.

177. ER 8.4(d) [Misconduct] It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

**COUNT THREE (File no. 15-1853/Weinberg)**

178. On July 3, 2014, Heritage Village Homeowners Association (the HOA) filed a verified complaint against Richard Weinberg and his wife, Laine, (Weinberg) with the Maricopa County Superior Court, Case No. CV 2014-009229, seeking to enforce the Amended and Restated Declaration of Covenants, Conditions and Restrictions (ACC&R). The complaint is forty-two (42) pages long (excluding exhibits) and sets forth two hundred and eleven (211) paragraphs in support of the HOA's request for Declaratory Relief and allegations of Breach of Contract and

Breach of Covenant of Good Faith. Contemporaneously therewith, the HOA filed an "Application for Order to Show Cause Why Plaintiff is Not Entitled to Declaratory Relief" seeking declaratory relief (the Application) and alleging that certain architectural improvements made by Weinberg to the home were in violation of the ACC&Rs.

179. On or about July 20, 2014, Weinberg retained Respondent and entered into a fee agreement whereby Respondent charged a \$7,500 "flat, non-refundable fee" to defend Weinberg for the "entirety of the litigation" relating to the lawsuit filed by the HOA regarding allegedly unapproved architectural changes.

180. On July 13, 2014, Respondent entered his appearance on behalf of Weinberg and appeared at a return hearing the next day. The trial court set an evidentiary hearing for October 8, 2014.

181. Respondent told Weinberg that he would file a motion to dismiss the complaint to get it "pared down" because the HOA was required by law to plainly state its case. Respondent did not explain what a verified complaint was or that Weinberg could have filed an answer to the complaint. Weinberg repeatedly asked Respondent when he was going to file the motion, to which Respondent replied that it was a "timing issue."

182. On August 12, 2014, Respondent filed "Defendants' Motion to Strike Plaintiff's Verified Complaint," alleging that the complaint did not comply with Arizona Rules of Civil Procedure, Rule 8(a) and (e)(1) because it did not include a "short" and "plain" statement of the HOA's claims; it was "lengthy" and "verbose"; and it was "oppressive" and "unduly burdensome" for Weinberg to respond to it.

The motion did not cite to any statute or case law that supported the requested relief.

183. In its August 25<sup>th</sup> "Response to Defendants' Motion to Strike Plaintiff's Verified Complaint," the HOA asserted, among other things, that 1) a party seeking declaratory relief had an obligation to set forth sufficient facts to support the requested relief; 2) the allegations set forth in the complaint also supported the Application; and 3) the Motion to Strike was not supported by fact or law.

184. Between July 14 and October 8, 2014, Respondent did not conduct any formal discovery and only defended Weinberg's deposition during that time period. The only time entry by Respondent in September 2014 does not appear to relate to the hearing, nor do the records reflect time spent by Respondent preparing any of Weinberg's witnesses for hearing.

185. Respondent failed to prepare Weinberg or the other witnesses to testify before the hearing.

186. Respondent did not interview or secure the testimony of certain other witnesses for the hearing, despite promising that he would do so.

187. On October 8, 2014, the first day of the evidentiary hearing on the Application, Respondent filed "Defendants' Motion for Failure to Join Indispensable Parties" arguing that Weinberg's neighbors were necessary parties because they had a "direct interest" in case. The motion does not cite to any statute or case law in support of its argument.

188. Respondent characterizes the motion as "last minute" due to "factual information coming in only days before the trial" and designed to force compliance

with the Declaratory Judgments Act. However, the motion does not cite to any statute or case law in support of that argument. The motion asserts generally that some of Weinberg's neighbors had submitted affidavits in support of the HOA. However, the affidavits had been filed with the Complaint and Application in July 2014.

189. In its Response to this Motion, the HOA noted that the ACC&R expressly provide that the HOA has the right to enforce the restrictive covenants.

190. The evidentiary hearing resumed on November 5<sup>th</sup> and concluded the next day at which time the trial court ordered that proposed Findings of Fact and Conclusions of Law (Findings/Conclusions) be filed simultaneously by November 26, 2014.

191. During the week before the deadline to file the Findings/Conclusions, Weinberg repeatedly asked Respondent for a status update and was told "it was no problem and would be fine."

192. The morning of November 26, 2014, Respondent sent Weinberg an email at 8:26 am with a draft of the Findings/Conclusions. Respondent's time records reflect that he began working on the Findings/Conclusions on that date, despite the fact that "it was an extensive undertaking." At 10:36 am, Weinberg responded with a "long list of errors." At 5:05 pm, Respondent sent Weinberg an email stating that the draft had been filed.

193. Respondent advised the State Bar during its investigation that the Findings/Conclusions were "filed on its due date. The Findings/Conclusions were due the day before Thanksgiving and Respondent's office closed early on that date.

Respondent claimed that he had completed the task and "filed the document myself." However, the trial court's docket reflects that the Findings/Conclusions were actually filed on December 1, 2014 at 11:00 am.

194. On January 16, 2015, the trial court issued a minute entry wherein it 1) denied Weinberg's Motion to Dismiss for Failure to Join Indispensable Parties; 2) granted the HOA declaratory relief; 3) ordered Weinberg to bring their home into compliance; 4) ordered the parties to try to resolve the issue of remediation; and 5) awarded the HOA its fees and costs upon submission of an affidavit of fees and statement of costs. The minute entry states that in the absence of an agreement of the parties regarding remedial measure, "this Court shall entry [sic] further and final orders in this matter."

195. Weinberg contacted Respondent, who texted that he was at his father's funeral and that he would need a few days. Three days later, Respondent called Weinberg and opined that there was "a great shot" at winning on appeal; he could appeal "right away"; and asked for an additional \$8,500 because "time was of the essence." The parties did not enter into a new or amended fee agreement.

196. On January 28, 2015, Respondent filed a Notice of Appeal from the trial court's order and a motion to stay the issue of attorney fees with the trial court. The minute entry was not a judgment or final order.

197. On February 11, 2015, the HOA filed its application for attorneys' fees and costs with the trial court seeking over \$170,000 in fees.

198. On February 27, 2015, Respondent filed a Motion for Stay of Judgment and Court's Injunctive Relief.

199. On March 6, 2015, Respondent filed a request for additional time to respond to the HOA's fee application, three (3) days after it was due to be filed.

200. On March 18, 2015, the HOA filed a Motion to Dismiss the Appeal on the grounds that, among other things, the trial court's minute entry was not a final appealable order; it had not been certified under Rule 54(b); and the trial court had not issued an injunction.

201. By order filed April 20, 2015, the Court of Appeals, in CA-CV-15-0119, granted the HOA's motion to dismiss the appeal for lack of jurisdiction. The Court found that the Order was not final because claims remained pending and the Order did not include a certification of finality as provided for under Rule 54(b). The Court of Appeals awarded the HOA its attorneys' fees and costs.

202. The deadline to respond to the HOA's application for attorney fees in the trial court matter was May 27, 2015. Weinberg repeatedly asked Respondent about the response the week it was due. Respondent scheduled a teleconference with Weinberg, but then cancelled it and instead sent a draft to Weinberg to review on the date it was due. Weinberg left a work function to review various drafts received from Respondent that evening until it was filed around 11:00 pm that night.

203. By order filed May 28, 2015, the Court of Appeals ordered Weinberg to pay \$4,200 in attorneys' fees and \$176 in costs to the HOA.

204. By minute entry filed June 24, 2015, the trial court ordered Weinberg to pay the HOA's attorneys' fees totaling \$111,711.53, plus costs of \$3,932.22. The next day, the trial court's remedial measures order was filed by which it

retained jurisdiction to determine compliance with same. The Trial court later reduced the award of attorneys' fees to a judgment.

205. On July 2, 2015, Weinberg terminated the representation and secured successor counsel.

206. By engaging in the foregoing conduct, Respondent violated numerous ethical rules including, but not limited to, the following.

207. ER 1.1 [Competence] A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

208. ER 1.3 [Diligence] A lawyer shall act with reasonable diligence and promptness in representing a client.

209. ER 1.4(a)(3) and (4) [Communication] A lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information.

210. ER 1.5(a) [Fees] A lawyer shall not make an agreement for, charge, or collect an unreasonable fee.

211. ER 3.1 [Meritorious Claims and Contentions] A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law.

212. ER 3.2 [Expediting Litigation] A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

213. ER 8.1(a) [Disciplinary Matters] A lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact.

214. ER 8.4(c) [Misconduct] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

215. ER 8.4(d) [Misconduct] It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

**COUNT FOUR (File no. 15-1968/Simmons)**

216. On January 23, 2012, Trudy and Wayne Simmons (Simmons) met with Respondent regarding a dispute with the Torreon Community Association (HOA) and the construction of a driveway by a neighbor. Simmons retained Respondent, who charged a \$550 "flat non-refundable fee" to write two letters and for any subsequent communication that Respondent might have with the HOA. The first letter was a "litigation hold" letter and the second letter was a demand that the HOA comply with the CC&Rs.

217. After Respondent was unable to resolve the matter by agreement, Simmons paid him \$5,000, and agreed to pay an additional 20% contingency fee, to file suit against the HOA and their neighbor. There is no fee agreement or confirmatory writing setting forth the scope of the representation or the basis for the rate or expenses to be incurred by the client.

218. In November 2012, Respondent caused a complaint to be filed with the Maricopa County Superior Court, Case No. CV2012-017059 on behalf of Simmons and against the HOA, Summit Development Company, LLC (Summit), Milton Ferrantelli and renters William and Lisa West (the Wests). The case was later

transferred to the Navajo County Superior Court, Case No. CV 2013-000122 (the Litigation).

219. The Association filed a Motion to Dismiss, later joined by Summit, on the ground that Simmons had not complied with the alternative dispute resolution (ADR) provisions in the CC&Rs and therefore, their claims had been waived.

220. By agreement dated February 28, 2013, Simmons, the HOA and Summit resolved their dispute. The HOA and Summit paid Simmons \$20,000 and agreed to provide information and to cooperate with Simmons in the Litigation.

221. Respondent took a fee from the settlement funds and retained \$1,000 in trust for future litigation costs, e.g., depositions. Respondent did not provide Simmons with a settlement statement reflecting how the settlement funds were disbursed. And, Respondent never deposited the \$1,000 in the trust account.

222. The Motion to Dismiss was still pending when Simmons voluntarily dismissed the Association and Summit from the Litigation. Thereafter, Ferrantelli and the Wests filed a motion to join in the pending motion.

223. After briefing and oral argument, the trial court converted the Motion to Dismiss to a Motion for Summary Judgment and ruled in favor of Ferrantelli and the Wests. Respondent advised Simmons to appeal from the order, which he did. There is no fee agreement or confirmatory writing setting forth the scope of the representation or the basis for the rate or expenses to be incurred by the client.

224. Simmons directed Respondent to settle the Litigation with the "best terms possible but to resolve the matter without extended Appeal Court litigation."

However, Respondent failed to communicate to them, "the final request made by the defendants in order to complete the settlement."

225. Respondent's time records reflects long period of time during which he did not take any action of the case. For example, there are no time entries between June 10 and December 8, 2013.

226. Attorney Nick Patton, attorney for the Wests, recounts that there were periods of time during the pendency of the appeal during which Respondent was nonresponsive, and that on at least two (2) occasions, the parties had an agreement in principle, but then Respondent made additional demands that were unacceptable to the Wests.

227. During the pendency of the appeal, Respondent failed to timely file pleadings with the Court of Appeals and he sought at least one extension of time after the time to file had passed.

228. On October 21, 2014, Respondent filed an Opening Brief with the Arizona Court of Appeals, Case No. CA-CV 13-0687 (the Appeal). He did so "at the last possible minute," After he filed the brief, Respondent "disappear[ed] for long periods of time" and did not respond to Simmons' requests for information.

229. Respondent recommended that Simmons file a new complaint against the defendants for violations of the CC&Rs that occurred after October 2013. Respondent advised Simmons to do so "immediately to protect a possible statutory limit issue." However, Respondent then "disappeared and failed to communicate the status" of the matter. When Respondent finally did provide Simmons with a

copy of the proposed new complaint, it was "incomplete and a rehash" of the original complaint that been previously filed and dismissed by the trial court.

230. Simmons again asked Respondent to settle the case because the defendants were seeking an award of attorney's fees. However, Respondent "just disappeared."

231. Then, by email dated June 24, 2015, Respondent asked Simmons to pay additional attorney fees while at the same time admitting that he had promised Simmons that he would continue the representation without any further expense to the client.

232. Simmons then contacted the Wests directly to negotiate a settlement in advance of the decision by the Court of Appeals and after Respondent continued to be non-responsive.

233. On August 20, 2015, the Court of Appeals issued a memorandum decision by which it vacated the trial court's entry of summary judgment against Simmons and remanded the case to the trial court for further proceedings.

234. Simmons agreed to allow Respondent to help document the settlement of the Litigation that he had negotiated. However, Respondent made substantive errors in drafting the settlement documents, which Simmons had to bring to his attention before the agreement could be finalized.

235. After the settlement had been finalized, Simmons emailed Respondent on December 3, 2015 and asked Respondent's office to return the \$1,000 that was being held in "escrow" for costs.

236. By email dated February 11, 2016, Simmons again asked Respondent's office about the status of the \$1,000.

237. By email dated February 12, 2016, Respondent, who had been suspended by that time due to prior disciplinary action by the State Bar, emailed Simmons about the status of the \$1,000 being held in "escrow."

238. By letter dated March 28, 2016, Respondent advised the State Bar that he had sent Simmons the \$1,000 "that was owed to [him]," and that he had "waited until the final dispensation of the matter and then sent the check." Respondent provided Bar Counsel with a copy of the cancelled check, which was written on Respondent's operating account and cashed on February 24, 2016.

239. By letter dated May 31, 2016, Respondent advised the State bar that he did not believe that he owed Simmons the \$1,000 and that he did not "recall" if the funds were in trust or not. He explained: "I paid them money because they demanded it. Everyone wants money from me. I simply smile and pay it to the best of my ability and to the availability of funds. I do not have any record of whether that amount was held in trust. My only recollection is that there were expenses paid on their behalf." Respondent also admitted that there was no fee agreement or confirmatory writing with Simmons relating to the Litigation or the Appeal.

240. By engaging in the foregoing conduct, Respondent violated numerous ethical rules including, but not limited to, the following.

241. ER 1.2 [Scope of Representation] Subject to certain other provisions of the Rule, a lawyer shall abide by a client's decisions concerning the objectives of

representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued.

242. ER 1.3 [Diligence] A lawyer shall act with reasonable diligence and promptness in representing a client.

243. ER 1.4(a)(3) [Communication] A lawyer shall keep the client reasonably informed about the status of the matter.

244. ER 1.5(b) [Fees] The scope of representation and the basis or rate of the fee or expenses for which the client will be responsible shall be communicated to the client in writing.

245. ER 1.15(c) [Safekeeping Property] A lawyer shall deposit into a client trust account expenses that have been paid in advance, to be withdrawn by the lawyer on as expenses are incurred.

246. ER 1.15(d) [Safekeeping Property] Upon receiving funds or other property in which a client . . . has an interest, a lawyer shall promptly deliver . . . any funds . . . that the client . . . is entitled to receive and, upon request . . . shall promptly render a full accounting regarding such property.

247. ER 1.16(d) [Termination of Representation] Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests such as . . . surrendering property to which the client is entitled.

248. Rule 43(a) [Duty to Deposit Client Funds] Funds belonging in whole or in part to a client or third person in connection with a representation shall be kept

separate and apart from the lawyer's personal and business accounts. All such funds shall be deposited into one or more trust accounts that are labeled as such.

**COUNT FIVE (File no. 15-2758/Palos)**

249. In March 2013, the Las Sendas Community Association (HOA) filed suit against Christopher and Mary Palos (Palos) with the East Mesa Justice Court, Case No. CC 2013-055675R (the Litigation) relating to the alleged failure to pay assessments in 2011.

250. In August 2014, Palos met with Respondent to discuss retaining him to assist with "collections negotiations" and paid him \$500. Palos returned a signed fee agreement and paid the fee on September 5, 2014. Respondent did not make a settlement proposal to the HOA until December 2014, by which Palos offered a "walk away," which was promptly rejected.

251. By order dated December 9, 2014, the Justice Court set a default hearing for January 12, 2015, regarding service by publication, which was allegedly accomplished in the summer of 2014.

252. On January 9, 2015, Palos executed a new fee agreement by which they agreed to pay a \$2,000 flat, non-refundable fee for Respondent to defend them in the Litigation. It was a hybrid fee agreement by which Palos was to be reimbursed the \$2,000 if the case settled for more than that amount and Respondent would be paid incurred attorney fees from any excess settlement proceeds.

253. On that day, Respondent filed an Answer and Counter-claim on behalf of Palos, along with a Motion to Set Aside Default Judgment.

254. On February 2, 2015, the Justice Court denied the Motion to Set Aside, which order was sent to Respondent the next day. Thereafter, the HOA's insurance defense counsel filed a Motion to Strike the Answer and Counterclaim.

255. In March 2015, the Justice Court conducted a pretrial conference. Respondent did not appear at the hearing, as promised. Instead, he sent an associate, Erin Iungerich, to cover the hearing. Ms. Iungerich was unfamiliar with the case and Respondent's failure to appear for the hearing caused Palos and his wife great distress.

256. On June 4, 2015, the trial court denied the Motion to Strike; vacated the Default Judgment and set the matter for trial.

257. On June 11, 2015, Respondent called Palos and apologized for the lack of communication during the representation to date.

258. During the summer of 2015, Respondent claims to have engaged in settlement negotiations. However, Respondent did not conduct any discovery. During that time, Palos was unable to secure a return call from Respondent when he sought an update on the case, including the status of discovery and trial preparation.

259. After at least one continuance, the Justice Court set the case for trial on September 14, 2015 at 1:30 pm.

260. On the day of trial, starting at about 8:55 am, Respondent began emailing Palos regarding settlement negotiations. Palos felt that Respondent was trying to "scare" them into a settlement, especially since he had not conducted any discovery or taken any depositions.

261. Respondent called Palos between 9 and 10:36 am during which time he communicated the most recent settlement offer, which Palos ultimately agreed to accept. Respondent emailed opposing counsel regarding same at 10:36 am, but did not include Palos on the email.

262. Later that day, Respondent signed a Stipulation and Motion to Vacate Trial (the Partial Stipulation) on behalf of Palos, which was filed with the trial court that day at 1:35 pm. The Partial Stipulation set forth the time frames for the parties to file documents relating to the HOA's request for attorney's fees. Respondent did not provide Palos with a copy of the Partial Stipulation before he signed it. Nor did he provide Palos with a copy of the Partial Stipulation until November 5, 2015.

263. The Partial Stipulation recites that the parties agreed that the principal amount plead in the complaint was due and owing; Palos would dismiss the Counterclaim in exchange for payment of \$1,183.89 by the HOA's insurance company; and the issue of attorney's fees would be submitted to the trial court.

264. Palos denies that they agreed to dismiss the Counterclaim. Respondent's emails to Palos do not reflect that Respondent ever advised Palos that the agreement included the dismissal of the counterclaim.

265. The day after the Partial Stipulation was filed, Palos emailed Respondent about a term that he wanted to include in any settlement. The following day, Respondent's assistant responded to the email and assured Palos that Respondent would "ultimately make that part of the agreement."

was entitled to their financial information. He advised that the HOA was willing to continue the June 25<sup>th</sup> hearing if Ballesteros produced some basic information. He advised Ballesteros that providing the HOA with some documents might "buy some time as we move forward to overturn the Judgment." The hearing was continued to July 15, 2015.

320. On July 15, 2015, Respondent and Ballesteros failed to appear at hearing, which was continued to July 21, 2015, at which time Ballesteros were subjected to a judgment debtor examination. At that time, Ballesteros still had not produced any of the requested financial documents.

321. After Ballesteros continued to resist producing the documents, the HOA initiated contempt proceedings, which were set for hearing on August 24, 2015. Respondent advised Ballesteros that the only way to avoid a hearing was to produce the requested documents.

322. At the August 24, 2015, the parties agreed that by September 7, 2015, either Respondent would file a motion to set aside the judgment or the Ballesteros would produce the requested documents. And, the trial court set an evidentiary hearing for September 21, 2015 on the issue of contempt.

323. A review of Respondent's time records reflects that an affidavit in support of the motion to set aside was not drafted until September 12, 2015, and the motion itself was not drafted until September 20<sup>th</sup> and 21<sup>st</sup>.

324. On September 14, 2015, Ballesteros executed an Affidavit in support of a motion to set aside. The Affidavit stated, among other things, that Ballesteros felt threatened by the HOA attorney's assertion that there would be "many legal

fees and expenses" if he did not resolve the matter with the HOA and that there was an "unequal bargaining power" in dealing with an attorney during settlement negotiations. The Affidavit acknowledges that Ballesteros advised the trial court that he wanted to resolve the dispute because he did not want "to be exposed to thousands of dollars in legal fees." The Affidavit implies that the HOA did not send Ballesteros a copy of the Application for Attorney's fees and Ballesteros asserts that he would not have entered into an agreement if he had understood that all of the HOA's legal fees would be awarded and that [he] wouldn't have had a chance to object." The Affidavit generally asserts that Ballesteros was under "duress"; that the Judgment did not give Ballesteros "sufficient time to respond" to the Application; that he has learned that "federal law doesn't allow a debt collector to collect additional legal fees and costs for collection when they haven't been awarded by the Court," and that he "thinks this means the language of the agreement/Judgement allows the Association and its attorneys to collect monies in violation of federal law." The affidavit does not include factual support of a number of arguments made in the motion to set aside, including the assertion that Ballesteros had not been properly served with the complaint and that the HOA had failed to properly account for all payments made by Ballesteros.

325. On or about September 21, 2015, Respondent attempted to e-file the motion to set aside and served it on opposing counsel. According to his emails, Respondent was aware that the motion had not been filed due to difficulties with the e-file system. However, Respondent did not cause it to be filed with the trial court until October 19, 2015.

326. By order dated October 20, 2015, the trial court ordered Ballesteros to produce financial records and denied the motion to set aside as untimely under Rule 60(c)(1); failing to argue the factors under Rule 60(c)(6); and failing on the merits.

327. Upon receipt of the trial court's order, Respondent advised the Ballesteros that "we did our best to delay," but that they now needed to produce the financial records.

328. On November 3, 2015, the HOA filed its application for an additional \$6,368.50 in post-judgment attorney fees.

329. On November 6, 2015, Respondent was suspended from the practice of law for sixty (60) days.

330. On November 17, 2015, Respondent revised and finalized a response to the HOA's application for attorney fees for filing with the trial court. A review of Respondent's time records do not reflect that any other attorney in good standing with the State Bar either reviewed Respondent's work product or otherwise supervised his work.

331. By email dated December 11, 2015, Ballesteros terminated the representation and demanded a full refund.

332. On December 9, 2015 and December 17, 2015, Respondent and an associate in his firm spoke with Ballesteros about their request for a refund; their concerns about his lack of diligence; and possible resolutions of the dispute with the HOA.

333. By letter dated December 22, 2015, Respondent advised Ballesteros that they were not entitled to a refund.

334. On January 12, 2016, the trial court entered a final judgment against Ballesteros, which they satisfied the next month.

335. By engaging in the foregoing conduct, Respondent violated numerous ethical rules including, but not limited to, the following.

336. ER 1.1 [Competence] A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

337. ER 1.3 [Diligence] A lawyer shall act with reasonable diligence and promptness in representing a client.

338. ER 1.4(a)(3) and (4) [Communication] A lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information.

339. ER 1.5(a) [Fees] A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses.

340. ER 3.1 [Meritorious Claims and Contentions] A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law.

341. ER 3.2 [Expediting Litigation] A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

342. ER 3.3(a)(1) [Candor Toward the Tribunal] A lawyer shall not knowingly make a false statement of fact to a tribunal.

343. ER 5.5 [Unauthorized Practice of Law]/Rule 31(b) [Regulation of the Practice of Law] A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. No person shall practice law in this state or represent in any way the he or she may practice law in this state unless that person is an active member of the state bar.

344. ER 8.4(d) [Misconduct] It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

345. Rule 54 [Grounds for Discipline] Grounds for discipline of members includes knowing violation of any rule or any order of the court.

**COUNT EIGHT (File no. 16-0216/State Bar of Arizona)**

346. Respondent and his firm represented Plaintiff Daniel Jellum in *Jellum v. Canyon Reserve Homeowners Association*, in the Maricopa County Superior Court, Case No. CV2015-091671.

347. Attorney Greg Stein, with Carpenter, Hazlewood, Delgado & Bolen, PLC, represented Canyon Reserve Homeowners Association (HOA).

348. On June 24, 2015, Attorney Erin S. Iungerich, an attorney with Respondent's firm, filed a "Notice of Substitution of Counsel of Record (Within Firm)" in the *Jellum* case.

349. On October 7, 2015, Respondent was suspended for sixty (60) days effective November 6, 2015.

350. On December 29, 2015, the HOA filed a motion for summary judgment (the Motion).

351. On January 14, 2016, while still suspended, Respondent called Greg Stein, counsel for the HOA. Respondent's associate, James Sweeney, was also on the call. According to Stein, Attorney Sweeney did not "meaningfully" participate in the discussion. Stein recalls that the telephone conference lasted approximately twenty (20) minutes.

352. During the telephone conference, Respondent stated that he would seek Rule 56(f) relief for the plaintiff. According to Stein, he was surprised because the facts that not been in dispute and the issues appeared to be purely legal. He told Respondent that he was unsure what additional facts would be necessary to respond to the Motion. Stein asked Respondent to put together a detailed email to explain the additional facts he believed necessary, along with his intended depositions and discovery requests. Respondent wanted to explore the possibility of settlement and presented several options including to allow Jellum to continue engaging in short-term rentals for a specific period of time while Jellum continued to try to sell the real property. Stein told Respondent that he had not spoken to the HOA about that issue, but that the only way he could see that it would be acceptable would be if there was a specific end date by which Jellum would stop renting the property regardless of whether he had sold it or not. Respondent told Stein that he would put together an email detailing his requested Rule 56(f) relief. Stein believes that the proposed email was to include the settlement proposal, too.

353. After the telephone conference, someone in Stein's office told him that Respondent was, in fact, suspended at that time.

354. On February 17, 2016, Respondent was reinstated to the practice of law by order of the Presiding Disciplinary Judge.

~~355.~~ By letter dated February 29, 2016, Bar Counsel sent Respondent a screening letter asking him to respond to the allegations set forth in the bar charge on or before March 21, 2016. The letter was mailed to Respondent's address of record with the State Bar of Arizona, as well as emailed to him. Respondent did not comply with Bar Counsel's request.

356. By letter dated March 30, 2016, Bar Counsel sent Respondent a letter asking that he respond to the allegations set forth in the bar charge within ten (10) days of the date of the letter. The letter was mailed to Respondent's address of record with the State Bar of Arizona, as well as emailed to him. Respondent did not comply with Bar Counsel's request.

357. By engaging in the foregoing conduct, Respondent violated numerous ethical rules including, but not limited to, the following.

358. ER 3.4(c) A lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

359. ER 5.5(a) [Unauthorized Practice of Law] A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.

360. ER 8.1(b) [Disciplinary Matters] A lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for

information from a disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by ER 1.6.

361. Rule 54(c) [Grounds for Discipline] Grounds for discipline of members includes knowing violation of any rule or any order of the court.

362. Rule 54(d)(2) [Grounds for Discipline] Grounds for discipline for members includes the failure to furnish information or respond promptly to any inquiry or request from bar counsel made pursuant to these rules for information relevant to pending charges, complaints or matters under investigation concerning conduct of a lawyer, or failure to assert the ground for refusing to do so.

DATED this 30<sup>th</sup> day of December, 2016.

**STATE BAR OF ARIZONA**

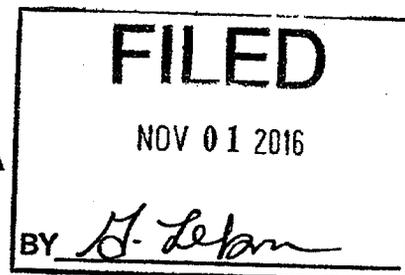


Stacy L Shuman  
Staff Bar Counsel

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 30<sup>th</sup> day of December, 2016.

by:   
SLS:kec

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



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

No. 15-1077

**JAMES ROGER WOOD**  
Bar No. 018948

**PROBABLE CAUSE ORDER**

Respondent.

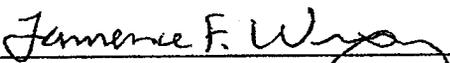
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 14, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-1077.

**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 28 day of October, 2016.

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

<sup>1</sup> Committee member Ella G. Johnson did not participate in this matter.

Original filed this 1<sup>st</sup> day  
of November, 2016, with:

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

Copy mailed this 2<sup>nd</sup> day  
of November, 2016, to:

James Roger Wood  
The Law Firm of J. Roger Wood, PLLC  
4700 S. Mill Avenue, Suite 3  
Tempe, AZ 85282-6736  
Respondent

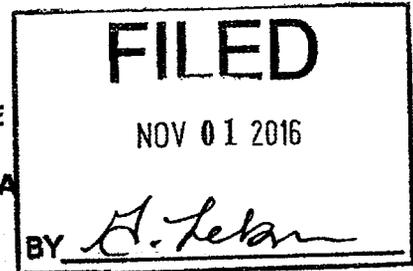
Copy emailed this 2<sup>nd</sup> day  
of November, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Karen E. Calceper

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



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

No. 15-1746

**JAMES ROGER WOOD**  
**Bar No. 018948**

**PROBABLE CAUSE ORDER**

Respondent.

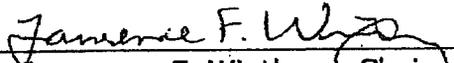
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 14, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-1746.

**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 28 day of October, 2016.

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

<sup>1</sup> Committee member Ella G. Johnson did not participate in this matter.

Original filed this 1<sup>st</sup> day  
Of November, 2016, with:

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

Copy mailed this 2<sup>nd</sup> day  
of November, 2016, to:

James Roger Wood  
The Law Firm of J. Roger Wood, PLLC  
4700 S. Mill Avenue, Suite 3  
Tempe, AZ 85282-6736  
Respondent

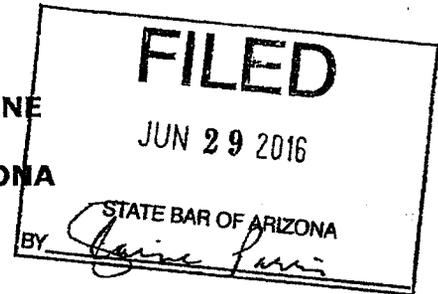
Copy emailed this 2<sup>nd</sup> day  
of November, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Karen E. Calcejo

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



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

No. 15-1793

JAMES ROGER WOOD  
Bar No. 018948

PROBABLE CAUSE ORDER

Respondent.

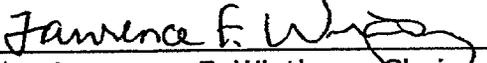
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 10, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 7-0-2<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-1793.

**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 29 day of June, 2016.

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

<sup>1</sup> Committee member Daisy Flores and Ella G. Johnson did not participate in this matter.

Original filed this 30<sup>th</sup> day  
of June, 2016 with:

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

Copy mailed this 30<sup>th</sup> day  
of June, 2016, to:

James Roger Wood  
The Law Firm of J. Roger Wood, PLLC  
4700 S. Mill Avenue, Suite 3  
Tempe, AZ 85282-6736  
Respondent

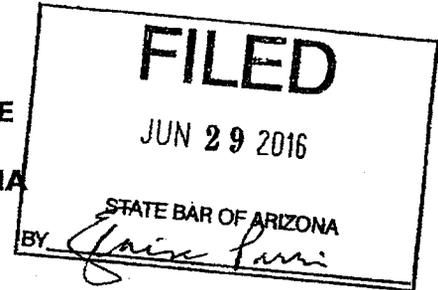
Copy emailed this 30<sup>th</sup> day  
of June, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> St., Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Karen E. Calcegne

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



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

No. 15-1853

**JAMES ROGER WOOD**  
Bar No. 018948

**PROBABLE CAUSE ORDER**

Respondent.

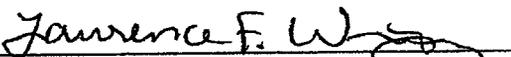
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 10, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 7-0-2<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-1853.

**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 29 day of June, 2016.

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

<sup>1</sup> Committee member Daisy Flores and Ella G. Johnson did not participate in this matter.

Original filed this 30<sup>th</sup> day  
of June, 2016 with:

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

Copy mailed this 30<sup>th</sup> day  
of June, 2016, to:

James Roger Wood  
The Law Firm of J Roger Wood PLLC  
4700 S. Mill Avenue, Suite 3  
Tempe, AZ 85282-6736  
Respondent

Copy emailed this 30<sup>th</sup> day  
of June, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Karen E. Colcaro

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

**FILED**  
AUG 31 2016  
BY *[Signature]*

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

No. 15-1968

**JAMES ROGER. WOOD,**  
Bar No. 018948,

**PROBABLE CAUSE ORDER**

Respondent.

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on August 12, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 7-0-2<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-1968.

**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 30 day of August, 2016.

*Lawrence F. Winthrop*

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

<sup>1</sup> Committee members Jeffrey B. Messing and Ben Harrison did not participate in this matter.

Original filed this 31<sup>st</sup> day  
of August, 2016, with:

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

Copy mailed this 15<sup>th</sup> day  
of September, 2016, to:

James Roger Wood  
The Law Firm of J. Roger Wood, PLLC  
4700 S. Mill Avenue, Suite 3  
Tempe, AZ 85282-6736  
Respondent

Copy emailed this 15<sup>th</sup> day  
of September, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Karen E. Calagna

**FILED**

DEC 09 2016

BY *H. Lelton*

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

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

**JAMES ROGER WOOD,  
Bar No. 018948,**

Respondent.

No. 15-2758

**PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 9, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-2758.

**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 9 day of December, 2016.

*Lawrence F. Winthrop*

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

<sup>1</sup> Committee member Daisy Flores did not participate in this matter.

Original filed this 9<sup>th</sup> day  
of December, 2016, with:

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

Copy mailed this 12<sup>th</sup> day  
of December, 2016, to:

James Roger Wood  
The Law Firm of J. Roger Wood, PLLC  
4700 S. Mill Avenue, Suite 3  
Tempe, AZ 85282-6736  
Respondent

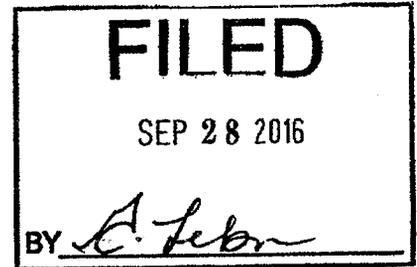
Copy emailed this 12<sup>th</sup> day  
of December, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Karen E. Calcagno

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



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

**JAMES ROGER WOOD  
Bar No. 018948**

Respondent.

No. 15-3331

**PROBABLE CAUSE ORDER**

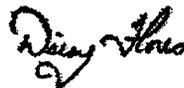
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on September 9, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 6-0-3<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-3331.

**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 28 day of September, 2016.



\_\_\_\_\_  
Daisy Flores, Vice Chair  
Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona

<sup>1</sup> Committee members Judge Lawrence F. Winthrop, Charles J. Muchmore and Karen E. Osborne did not participate in this matter.

Original filed this 20<sup>th</sup> day

of September, 2016, with:

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

Copy mailed this 29<sup>th</sup> day  
of September, 2016, to:

James Roger Wood  
The Law Firm of J. Roger Wood, PLLC  
4700 S. Mill Avenue, Suite 3  
Tempe, AZ 85282-6736  
Respondent

Copy emailed this 29<sup>th</sup> day  
of September, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Karen E. Calcasio  
SLS/Rec

**FILED**  
DEC 09 2016  
BY *H. Lebon*

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

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

**JAMES ROGER WOOD,  
Bar No. 018948,**

Respondent.

No. 15-3382

**PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 9, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-3382.

**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 9 day of December, 2016.

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

<sup>1</sup> Committee member Daisy Flores did not participate in this matter.

Original filed this 9<sup>th</sup> day  
of December, 2016, with:

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

Copy mailed this 12<sup>th</sup> day  
of December, 2016, to:

James Roger Wood  
The Law Firm of J. Roger Wood, PLLC  
4700 S. Mill Avenue, Suite 3  
Tempe, AZ 85282-6736  
Respondent

Copy emailed this 12<sup>th</sup> day  
of December, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: James E. Calcano

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

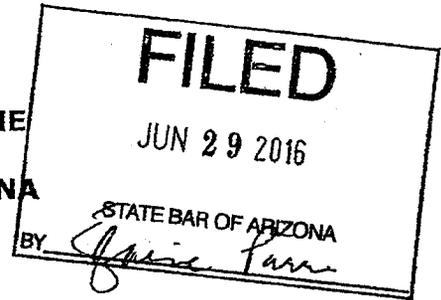
IN THE MATTER OF A MEMBER OF  
THE STATE BAR OF ARIZONA,

**JAMES ROGER WOOD**  
Bar No. 018948

Respondent.

No. 16-0216

**PROBABLE CAUSE ORDER**



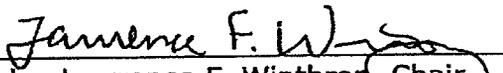
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on June 10, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 7-0-2<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-0216.

**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 29 day of June, 2016.

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

<sup>1</sup> Committee member Daisy Flores and Ella G. Johnson did not participate in this matter.

Original filed this <sup>th</sup> 30 day  
of June, 2016 with:

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

Copy mailed this <sup>th</sup> 30 day  
of June, 2016, to:

James Roger Wood  
The Law Firm of J. Roger Wood, PLLC  
4700 S. Mill Avenue, Suite 3  
Tempe, AZ 85282-6736  
Respondent

Copy emailed this <sup>th</sup> 30 day  
of June, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Karen E. Calcagno

**EXHIBIT "B"**

## Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,  
James Roger Wood, Bar No. 018948, Respondent

File Nos. 15-1077, 15-1746, 15-1793, 15-1853, 15-1968, 15-2758, 15-3331,  
15-3382, 16-0216

### **Administrative Expenses**

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

### ***General Administrative Expenses for above-numbered proceedings***

**\$1,200.00**

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

### **Staff Investigator/Miscellaneous Charges**

06/07/16 Subpoena Research Invoice \$ 139.00

Total for staff investigator charges \$ 139.00

Total Costs and Expenses for each matter over 5 cases where a violation is admitted or proven.

(4 over 5 x (20% x 1,200.00)): \$ 960.00

**TOTAL COSTS AND EXPENSES INCURRED** **\$2,299.00**

EXHIBIT "C"

IN THE  
**SUPREME COURT OF THE STATE OF ARIZONA**  
BEFORE THE PRESIDING DISCIPLINARY JUDGE  
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**JAMES ROGER WOOD  
Bar No. 018948**

Respondent.

**PDJ 2016-9132**

**JUDGMENT OF DISBARMENT**

State Bar No. 15-1077, 15-1746,  
15-1793, 15-1853, 15-1968, 15-2758,  
15-3331, 15-3382, 16-0216.

Pursuant to Rule 57, Ariz. R. Sup. Ct., the undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona has considered Respondent's Consent to Disbarment dated January \_\_\_\_, 2017, and filed herein. Accordingly:

**IT IS HEREBY ORDERED** accepting the consent to disbarment. Respondent, James Roger Wood, is hereby disbarred from the State Bar of Arizona and his name is hereby stricken from James Roger Wood the roll of lawyers **effective**

\_\_\_\_\_.

Respondent is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the court. Respondent shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

**IT IS FURTHER ORDERED** that no further disciplinary action shall be taken in reference to the matters that are the subject of the charges upon which the consent to disbarment and this judgment of disbarment are based.

**IT IS FURTHER ORDERED** that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ \_\_\_\_\_.

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

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

James Roger Wood  
The Law Firm of J. Roger Wood, PLLC  
4700 S. Mill Avenue, Suite 5  
Tempe, AZ 85282-6736  
roger@jrogerwoodlaw.com  
Respondent

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

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

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

By: \_\_\_\_\_  
SLS/kec