BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **ROBERT C. BILLAR,** **Bar No. 006662** Respondent.	**PDJ-2018-9051** **FINAL JUDGMENT AND ORDER OF DISBARMENT** [State Bar No. 17-0431] **FILED NOVEMBER 29, 2018**

This matter came for hearing before the hearing panel which rendered its decision on November 9, 2018 and ordered the immediate disbarment of Robert C. Billar. The decision of the hearing panel is final under Rule 58(k), Ariz. R. Sup. Ct. A Notice of Appeal was filed under Rule 59(a), Ariz. R. Sup. Ct., however, no request for stay was filed under Rule 59(c) and the time to file a request having expired,

IT IS ORDERED Respondent, **ROBERT C. BILLAR, Bar No. 006662,** is disbarred from the State Bar of Arizona and his name is stricken from the roll of lawyers, effective November 9, 2018, as set forth in the Decision and Order Imposing Sanctions. Mr. Billar is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court.

IT IS FURTHER ORDERED Mr. Billar 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 Mr. Billar shall pay restitution in the amount of $40,000.00 to Geoffrey J. Codd with interest as provided by law until paid.

IT IS FURTHER ORDERED Mr. Billar shall pay all costs and expenses of the State Bar of Arizona pursuant to Rule 60(b), Ariz. R. Sup. Ct. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

IT IS FURTHER ORDERED the State Bar shall forward this matter to the appropriate county attorney's office for criminal prosecution for theft.

DATED this 29th day of November 2018.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 29th day of November 2018, to:

David L. Sandweiss
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Email: lro@staff.azbar.org

Robert C. Billar
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Respondent

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **ROBERT C. BILLAR,** **Bar No. 006662** Respondent.	**PDJ-2018-9051** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar No. 17-0431] **FILED NOVEMBER 9, 2018**

This matter proceeded to a one-day hearing before the hearing panel in which the presiding disciplinary judge ("PDJ") was joined by Howard M. Weiske, volunteer public member and Stanley R. Lerner, volunteer attorney member. David L. Sandweiss, Senior Bar Counsel, appeared on behalf of the State Bar of Arizona. Robert C. Billar telephoned the disciplinary clerk immediately before the hearing requesting permission to appear telephonically.[1]

Outside the presence of the volunteer members, the PDJ held a telephonic conference with Mr. Billar and Mr. Sandweiss. The prior day, Mr. Sandweiss contacted Mr. Billar to determine how he intended to proceed because he had failed to participate in the preparing of the Joint Prehearing Statement. Mr. Billar informed Mr. Sandweiss he might have car trouble. He also informed Mr. Sandweiss for the first time that he

[1] The hearing panel considered the testimony of Jamie Sochor, State Bar trust account examiner and Mr. Billar. Exhibits 1-41 were admitted. Exhibits 31 & 37 are sealed.

would invoke his Fifth Amendment right not to incriminate himself because as a long time criminal defense lawyer that was the advice he would recommend be followed. Mr. Sandweiss listed his efforts to have Mr. Billar assist in the joint prehearing statement. Mr. Billar did nothing. He requested his answer be stricken.

The initial prehearing conference orders stated,

> Counsel who will try the case shall confer, prepare and file a Joint Prehearing Statement not later than this date. Each party shall prepare their individual portion of the written joint pretrial statement, to be signed by each counsel or unrepresented party. Civil Rule 16(a), 16(g)(2)(A-E) and (J) and 16(i) applies to these proceedings by Supreme Court Rule 48(b). The Joint Pretrial Statement shall be jointly prepared by the parties as a single document in adherence to those Civil Rules provisions. **The Parties are cautioned that except on a showing of good cause, the court-on motion or on its own-must enter such orders as are just including, among others, any of the sanctions in Civil Rule 37(b)(2)(A)(ii through (vii), if a party or attorney does any of the items described in 16(h)(1)(A-E).** (Emboldened print in original).

When asked why he had not participated in the preparing of the Joint Prehearing Statement, Mr. Billar said he didn't need to because he had denied all the allegations in the complaint.[2] This is patently untrue. When told that would mean he had denied he was a lawyer licensed in Arizona, he stated that he wasn't licensed

[2] In his response to the complaint Mr. Billar admitted allegations 1 through 19, 21, 23, 25-27, 33,34,36, 38-41, 43-52, 55, and 57-60. He denied allegations 32 and 61 only as to the form and they are deemed admitted.

because he was on interim suspension.[3] His decision to invoke the Fifth Amendment came well after the joint prehearing statement was due. Mr. Billar had every right to invoke the Fifth Amendment but that was not his stated basis for his non-participation. Because Mr. Billar non-willfully, under Rule 58(f)(3)(B), failed to participate in good faith in the preparation of the Joint Prehearing Statement, the denials in his answer were stricken and default judgment entered against him. Regardless, the evidence is clear and convincing that the allegations in the complaint are true. The evidence proves his ethical failings and his invocation was merely an added inference.

Mr. Billar was offered the opportunity to testify. He could have presented evidence but offered none. He did not cross-examine witnesses. Mr. Billar participated telephonically but offered no mitigating circumstances and invoked his Fifth Amendment rights. When a party invokes the Fifth Amendment to avoid testifying, the finder of fact may draw negative inference from such invocation in support of other evidence. *Montoya v. Superior Court*, 173 Ariz. 129 at 132. (1992), *Buzard v. Griffin*, 89 Ariz. 42, 48 (1960).

[3] Mr. Billar was placed on interim suspension in PDJ 2018-9017 on March 13, 2018 after being held in contempt for his failure to comply with a subpoena served upon him in this proceeding. He was given an opportunity to purge his contempt by the delivery of the requested documents. Mr. Billar has refused to do so and has disclosed no exhibits in this proceeding.

FINDINGS OF FACT[4]

At all times relevant, Billar was a lawyer licensed to practice law in Arizona and has been licensed since May 16, 1981. Mr. Billar was suspended effective March 13, 2018 in PDJ-2018-9017 for contempt for his failure to comply with the State Bar's subpoena.

In 2013, Mr. Billar was hired and paid a flat fee of $7,000 to represent a client through trial indicted on multiple felonies. [Complaint, ¶¶ 1-4; Ex.1]

The Missing $54,079.55

That client sold his house and received $54,079.55. Because the client was in jail, he endorsed the check to his attorney, Mr. Billar, who was instructed by the client to hold it in trust and Billar deposited the check in his IOLTA account on January 15, 2014. The client remained in jail until sent to prison for ten years under a plea agreement. The client wanted to hire private counsel to file a Rule 32 petition for post-conviction relief and asked Billar for an accounting of his funds. [Complaint, ¶¶ 5-17; Ex.1.]

In response to the State Bar's later screening investigation, Mr. Billar provided a copy of a letter he purportedly wrote on March 16, 2015, to Complainant at the Alhambra Unit of the Arizona State Prison Complex on E. Van Buren St., in

[4] The Court adopts and incorporates by reference the allegations in the complaint deemed admitted by default and is presented herein in a condensed form.

Phoenix regarding the disbursement of Mr. Codd's funds. [Ex. 4, Bates SBA000021-22.] In that letter, Mr. Billar purportedly wrote:

> Enclosed please find all documentation and instruction regarding the Bank of America account that contains the remainder of your funds. I would suggest you execute a power of attorney with an individual you trust to monitor these funds while you serve your prison sentence.

There was no "documentation and instruction" enclosed with that letter and the letter contains no enclosure notation. [Id.]

Mr. Billar failed to produce the "documentation and instruction" to the State Bar during its later screening investigation and claimed that he put Complainant's money beyond Complainant's reach out of concern that the state would seize the money to cover fines and restitution obligations. Complainant however, did not authorize Mr. Billar to handle his money in that fashion and, from prison, demanded an accounting and his remaining money. [Complaint, ¶¶ 21-25; Ex. 1.]

The Potential Injury to Client

In May 2015, pursuant to Rule 32, Ariz. R. Crim. P., Complainant filed a Petition for Post-Conviction Relief *in pro per* and requested the appointment of counsel. The court appointed Nicole Farnum to represent Complainant in his Rule 32 petition who obtained police reports and court transcripts from Mr. Billar. In December 2015 she filed a notice that she was unable to discern a colorable claim. [Complaint, ¶¶ 26-27; Ex. 33.]

Complainant briefed his Rule 32 Petition *in pro per* and, after a response and reply, the court dismissed it in September 2016. Complainant then filed a Petition for Review to the Court of Appeals. By Memorandum Decision filed April 26, 2018, in 1 CA-CR 16-0632 PRPC, the Court of Appeals granted review of Complainant's Petition for Review, but denied relief specifically ruling:

> Finally, Codd asserts that counsel did not return unused funds to him after the conclusion of the trial. But this claim is not cognizable under Rule 32 of the Arizona Rules of Criminal Procedure, so the superior court did not abuse its discretion by summarily dismissing it. [Complaint, ¶¶ 28-31; Ex. 33.]

In his July 6, 2017 response to the State Bar's screening investigation letter, Mr. Billar states that he disbursed Complainant's money ($54,079.55) "to others and his account for commissary purchases" and deposited the remainder in an unidentified bank. [Ex. 8, Bates SBA000030.]

Intentional Misconduct and Refusal to Cooperate

In a separate discipline case against Mr. Billar, PDJ 2017-9074, a settlement conference was scheduled for August 31, 2017 and bar counsel asked Mr. Billar to bring with him to the settlement conference in the Kurti case "copies of any and all records you have that account for the $54,079.55" in Complainant Codd's case. Mr. Billar failed to comply with the State Bar's request. [Complaint, ¶¶ 33-35; Ex. 23, Bates 314 & Ex. 27, Bates 397.]

Through an email exchange from September 12, 2017 - October 3, 2017, Mr. Billar told bar counsel that he furnished Complainant and the State Bar with copies of Complainant's case file, financial records, and an accounting of Complainant's money. However, the materials Mr. Billar provided did not include the requested items and Mr. Billar was informed of that fact. [Complaint, ¶¶ 36-37; Ex. 13-14 & 16-17.]

On December 28, 2017, the State Bar sent Mr. Billar a Notice of Deposition, Subpoena Duces Tecum, and Acceptance of Service form by which Mr. Billar's investigative deposition was set for January 18, 2018. The subpoena compelled production of the following items:

> 1. Any and all files related to the representation of Geoffrey J. Codd, in all matters related to 2013-419083-001 including but not limited to:
>
> a. Records of all written and/or electronic communications, including phone logs; telephone service invoices; emails; file backer notes, etc.;
> b. Fee agreement(s);
> c. Timekeeping/accounting records;
> d. Billing/fee statements;
> e. Power of Attorney from Mr. Codd;
> f. All records pertaining to the sale of Mr. Codd's property; and
> g. All records related to the $54,079.55 dollars received from Mr. Codd.
> [Complaint ¶¶ 38-39; Ex. 21.]

The day before the deposition, Mr. Billar notified bar counsel that he would not attend because his former employer at his address of record did not timely

forward the deposition notice and subpoena to him. Bar counsel agreed to postpone Mr. Billar's deposition to Monday, January 29, 2018. [Complaint, ¶¶ 40-41; Ex. 22 & 25.]

Mr. Billar refused to sign the Acceptance of Service and, on Friday, January 26, 2018, objecting to service by mail, informed bar counsel that he would not appear. On January 31, 2018, the State Bar personally served Mr. Billar with the Subpoena Duces Tecum and to Appear at Deposition, by which his deposition was set for February 16, 2018. During the morning of February 16, 2018, Mr. Billar advised bar counsel that he was ill and would not attend. [Complaint, ¶¶ 42-44; Ex. 23.]

The Hiding of Records

The deposition was reset to March 5, 2018. Mr. Billar appeared for his deposition on March 5, 2018 but did not bring with him to the deposition any of the subpoenaed items. Mr. Billar explained that he lost his box of U.S. Bank IOLTA records that contained all financial records relevant to Complainant, including ledgers, canceled checks, deposit slips, bank statements, and reconciliations. [Complaint, ¶¶ 45-4; Ex. 26 & 27.]

At his March 5, 2018 deposition, Mr. Billar claimed that after paying himself $7,000 in fees and expending another $7,000 in commissary disbursements and costs, he deposited an IOLTA check for the remaining balance of Complainant's

money (approximating $40,000) in Bank of America for Complainant's benefit. Mr. Billar however, produced no record of the supposed transaction and declined to obtain copies of relevant financial documents from his IOLTA bank because, he claimed, an unidentified bank employee quoted him an unspecified copying charge that, to Mr. Billar, was prohibitive. Mr. Billar further claimed that he explained all of the case-related and bank transactions to Complainant several times, a claim which Complainant denies. [Complaint, ¶¶ 49-53; Ex. 27.]

On March 14, 2018, bar counsel subpoenaed Mr. Billar's IOLTA records at a cost of $60.00. [Sealed Ex. 31.] Bar counsel requested an Order to Show Cause (OSC) hearing to determine why Mr. Billar should not be held in contempt and sanctioned over his failure to comply with the subpoena. [Complaint, ¶¶ 54-55.]

Contempt and Interim Suspension

At the OSC hearing on March 13, 2018, Mr. Billar falsely told the court that he deposited Complainant's $40,000 in some Bank of America branch somewhere in downtown Phoenix. Presiding Disciplinary Judge (PDJ) O'Neil advised Mr. Billar of his Miranda rights. By Order of the PDJ filed March 13, 2018, Mr. Billar was found in contempt and placed on interim suspension. [Complaint, ¶¶ 56-58; Ex. 38 & 41.]

The Hiding of the Funds

At his deposition, Mr. Billar testified that he closed his IOLTA in July 2015 over a suspected theft and transferred the $26,000 balance to a new IOLTA and confirmed that all Complainant-related transactions were completed before closing his first IOLTA account. [Ex. 27.] A review of the records subpoenaed from Mr. Billar's IOLTA in which he administered all of Complainant's funds show that he deposited Complainant's $54,079.55 on January 15, 2014 and issued a $400.00 check in June 2014 to an out-of-state witness for travel expenses to attend trial. It cannot determine from the $400.00 check that it related to Complainant's case -- there is nothing on it or most of the other IOLTA canceled checks that identifies the matters to which they relate – but Complainant confirmed that the payee was his witness. There are however, no checks payable to Mr. Billar, Complainant, or other payees identified in Complainant's case. Mr. Billar wrote no check to Bank of America for approximately $40,000 of Complainant's funds, or otherwise deposit approximately $40,000 of Complainant's funds in Bank of America, in or near March 2015, during the representation, or after the representation ended. [Complaint, ¶¶ 59-64; Sealed Ex. 31.]

Jamie Sochor, the State Bar's trust account examiner testified regarding Mr. Billar's trust account records that she reviewed. [Sealed Ex. 31, Bates 0000419 – 698.] Ms. Sochor stated Sealed Ex. 37 reflects her reconstruction of Mr. Billar's trust

account from January 2014 – July 2015. [Schor Hearing Testimony, 10:00 a.m.][5] Mr. Billar failed to provide trust account documents as requested. No client ledgers, general ledgers or 3-way reconciliation documents were provided by Mr. Billar and he did not try to purge himself from the contempt order regarding these trust account documents.

Ms. Sochor stated her reconstruction reflects that no disbursements were made to Mr. Billar's client, Mr. Codd or to a Bank of America account. Specifically, no disbursement for $40,000.00 was made. Frequently the balance of the trust account was well below $40,000. [Sealed Ex. 31; Hearing Testimony, 10:05.] She stated several disbursements were made directly to Mr. Billar totaling $82,981.61. [Sealed Ex. 37, Bates 725.] She arrived at that amount by reviewing trust account statements and copies of checks made payable to Mr. Billar.

At the hearing, Mr. Billar invoked his Fifth Amendment right to self-incrimination. In related proceedings, Mr. Billar made contradictory statements and was not credible regarding the whereabouts of the client's funds and file.

CONCLUSIONS OF LAW

The evidence is clear and convincing that Mr. Billar violated the following ethical rules:

[5] Denotes hearing audio time reference.

Rule 42, Ariz. R. Sup. Ct., ERs 1.4(a)(3), (4) and 1.4(a)(4) (communication), 1.5(b) (fees), 1.15(a) (safekeeping property), 1.15(d) (handling and accounting for trust account funds, 1.16(d) (terminating representation), 3.3(a)(1) and (3) (candor to court), 8.1(a) (false statements in disciplinary proceedings), 8.1(b) (failure to furnish information), 8.4(b) (commission of a crime), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), 8.4(d) (conduct prejudicial to the administration of justice), Rule 43 (trust accounts), and Rule 54(d) (failure to cooperate with the State Bar's investigation). We also note that under Rule 43(d)(3) there is a rebuttable presumption that Mr. Billar failed to properly safeguard client funds as required by Rule 43 and ER 1.15. More pointedly, we find he converted (stole) the funds.

ABA *STANDARDS* ANALYSIS

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

Standard 4.11, *Failure to Preserve the Client's Property* applies to Mr. Billar's violation of ER 1.15(a) and (d) and provides that disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.

Standard 5.11, *Failure to Maintain Personal Integrity* applies to Mr. Billar's violations of ERs 8.4(b), (c), and 8.1(a) and provides that disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft: or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Standard 6.11, *False Statements, Fraud and Misrepresentations* applies to Mr. Billar's violation of ERs 3.3(a)(1) and (3) and provides that disbarment is generally appropriate when a lawyer, intending to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes serious or potentially serious adverse effect on the legal proceeding.

Standard 4.61, *Lack of Candor* also applies to Mr. Billar's violation of ERs 1.5 and 8.4(c) and provides disbarment is generally appropriate when a lawyer

knowingly deceives a client intending to benefit the lawyer or another and causes serious or potentially serious injury to a client.

Here, Mr. Billar violated his duties to his client, the profession, legal system and the public by intentionally embezzling and absconding with Mr. Codd's monies. He further intentionally failed to cooperate with and intentionally obstructed the State Bar's investigation and these disciplinary proceedings. His criminal conduct in absconding with the client's funds caused actual and serious injury to his client, the legal profession, the legal system and the public. The hearing panel determined disbarment is the presumptive sanction. Sealed Exhibit 37, Bates 725 reflects payments made by Mr. Billar to himself. His statements regarding the whereabouts of the client's funds in these disciplinary proceedings have been contradictory, not credible and self-serving. He did not try to comply with the subpoena and purge his contempt that resulted in his interim suspension in March 2018. He made false statements in his effort to reinstate from his 60-day suspension.

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose. *Standard* 9.1.

The hearing panel finds the following aggravating factors are present in the record: 9.22(a) prior disciplinary offenses, 9.22(b) selfish or dishonest motive, 9.22(c) pattern of misconduct, 9.22(d) multiple offenses, 9.22(e) bad faith

obstruction of disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary proceedings, 9.22(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process, 9.22(g) refusal to acknowledge wrongful nature of conduct, 9.22(h) vulnerability of victim, 9.22(i) substantial experience in the practice of law, 9.22(j) indifference to making restitution, and 9.22(k) illegal conduct.

Mr. Billar's misconduct encompasses virtually all of the aggravating factors listed in the *Standards*. His prior offenses include a 60-day suspension effective November 15, 2017, restitution and two years of probation (LOMAP) in PDJ-2017-9074 for violating ERs 1.1, 1.2, 1.3, 1.4, 1.16, 3.1, 3.2, 3.4(c), 8.4(d) and Rule 54(c).[6] In PDJ-2013-9085, Mr. Billar was reprimanded effective December 20, 2013 for violating ERs 1.3, 1.4 and 8.4(d). In February 2010, Mr. Billar was informally reprimanded and placed on one year of probation (LOMAP) by ADPCC in File No. 09-1146 for violating ERs 1.3, 3.2 and 8.4(d). [Ex. 39-41.]

Mr. Billar intentionally engaged in criminal conduct when he stole his client's funds. He intentionally misled the PDJ during the disciplinary proceedings and made false statements and failed to respond to the State Bar's subpoena His client was

[6] Mr. Billar attempted to reinstate from this suspension in January and March 2018 in PDJ-2018-9005-R and PDJ-2018-9013-R. His applications were denied as he submitted false affidavits and he was found in contempt in PDJ-2018-9017 in March 2018 and placed on interim suspension.

incarcerated and vulnerable. He has been admitted to practice law in Arizona since 1981. He refused to admit his misconduct and instead invoked his Fifth Amendment right to self-incrimination during the evidentiary hearing. He has engaged in similar prior misconduct and has repeatedly lied regarding the whereabouts of his client's money and has not offered to make his client whole.

At the evidentiary hearing, Mr. Billar offered no mitigating factors or evidence to mitigate the presumptive sanction of disbarment. The hearing panel therefore finds no mitigating circumstances present in the record and determined that disbarment is warranted for a lawyer that intentionally embezzles client funds and absconds with those funds for the benefit of himself.

CONCLUSION

The primary objective of lawyer regulation and discipline is to protect the public, the profession and the administration of justice, and not to punish the offending lawyer. *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966). Other purposes and objectives of lawyer discipline are to deter future misconduct, *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993); protect and instill public confidence in the integrity of individual members of the SBA, *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994); and, to foster confidence in the self-regulatory process, *In re Hoover*, 161 Ariz. 529, 779 P.2d 1268 (1989).

Accordingly,

IT IS ORDERED Mr. Billar is disbarred from the practice of law effective immediately.

IT IS FURTHER ORDERED Mr. Billar shall pay all costs and expenses incurred by the State Bar in this proceeding.

IT IS FURTHER ORDERED Mr. Billar shall pay restitution to the Geoffrey J. Codd for $40,000.00 with interest at the legal rate until paid.

IT IS FURTHER ORDERED the State Bar shall forward this matter to the appropriate county attorney's office for criminal prosecution for the theft of his client's funds.

A final judgment and order shall follow.

DATED this 9th day of November 2018.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Stanley R. Lerner

Stanley R. Lerner, Volunteer Attorney Member

Howard M. Weiske

Howard M. Weiske, Volunteer Public Member

COPY of the foregoing e-mailed
on this 9th day of November 2018
and mailed November 13, 2018, to:

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

JUN 29 2018

FILED

BY

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA,	**PDJ 2018-9051**
ROBERT C. BILLAR, Bar No. 006662,	**COMPLAINT**
Respondent.	State Bar No. 17-0431

For its complaint against Respondent the State Bar of Arizona alleges:

COUNT ONE (File no. 17-0431/Geoffrey Codd)

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, 1981.

2. In 2013, Geoffrey Codd was indicted on four counts of aggravated assault, class three dangerous felonies, all domestic violence offenses.

3. Mr. Codd hired Respondent to defend him.

4. Respondent charged Mr. Codd a $7,000 flat fee to cover all stages of the case through one trial, plus expenses.

5. Mr. Codd was a real estate investor.

6. Mr. Codd sold a house to finance his defense.

7. Great American Title issued a check to Mr. Codd's company, 123 ABC LC, for $54,079.55, representing the net proceeds of sale of the house Mr. Codd sold.

8. Mr. Codd endorsed the check to Respondent who deposited it into his U.S. Bank Interest on Lawyers' Trust Account (IOLTA) on January 15, 2014.

9. Mr. Codd remained in jail while his case proceeded.

10. The state's evidence included Mr. Codd's mother as an eye witness to the alleged crimes.

11. Mr. Codd's mother rebutted Mr. Codd's claim that he acted in self-defense or to defend his father against an attack from his brother-in-law.

12. Respondent determined that Mr. Codd's best "defense" was to assert mental illness (bipolar disorder) in mitigation.

13. In December 2014, after a settlement conference, Mr. Codd agreed to plead guilty to two felony counts.

14. Mr. Codd also agreed to accept a 5-10 year range of imprisonment as the principal sentencing term.

15. The court accepted the plea and, in February 2015, sentenced Mr. Codd to ten years in prison with credit for 679 days already served, and probation for five years upon release from prison on various terms including payment of fines and restitution. The court kept restitution claims open.

16. Mr. Codd wanted to hire private counsel to file a Rule 32 Petition for Post-Conviction Relief.

17. Mr. Codd asked Respondent for an accounting of his funds and for the balance of funds not used in his defense.

18. In response to the State Bar's later screening investigation, Respondent provided a copy of a letter he purportedly wrote on March 16, 2015, to Mr. Codd at the Alhambra Unit of the Arizona State Prison Complex on E. Van Buren St., in Phoenix.

19. In that letter, Respondent purportedly wrote:

> Enclosed please find all documentation and instruction regarding the Bank of America account that contains the remainder of your funds. I would suggest you execute a power of attorney with an individual you trust to monitor these funds while you serve your prison sentence.

20. There was no "documentation and instruction" enclosed with that letter.

21. Respondent did not produce the supposed "documentation and instruction" to the State Bar during its later screening investigation.

22. Respondent's purported letter to Mr. Codd dated March 16, 2015, does not contain "Enclosures" in the enclosure notation.

23. Respondent claimed during the State Bar's screening investigation that he put Mr. Codd's money beyond Mr. Codd's reach out of concern that the state would seize the money to cover fines and restitution obligations.

24. Mr. Codd did not authorize Respondent to handle his money in that fashion and, from prison, demanded an accounting and his remaining money.

25. In May 2015, pursuant to Rule 32, Ariz. R. Crim. P., Mr. Codd filed a Petition for Post-Conviction Relief *in pro per* and requested the appointment of counsel.

26. The court appointed Nicole Farnum to represent Mr. Codd in his Rule 32 petition.

27. Ms. Farnum obtained police reports from Respondent and also obtained court transcripts. In December 2015 she filed a notice that she was unable to discern a colorable claim.

28. With extensions, Mr. Codd briefed his Rule 32 Petition *in pro per* and, after a response and reply, the court dismissed it in September 2016.

29. Mr. Codd filed a Petition for Review to the Court of Appeals.

30. By its Memorandum Decision filed April 26, 2018, in 1 CA-CR 16-0632 PRPC, the Court of Appeals granted review of Mr. Codd's Petition for Review, but denied relief.

31. Specifically, the Court of Appeals ruled:

> Finally, Codd asserts that counsel did not return unused funds to him after the conclusion of the trial. But this claim is not cognizable under Rule 32 of the Arizona Rules of Criminal Procedure, so the superior court did not abuse its discretion by summarily dismissing it.

32. With respect to Mr. Codd's $54,000, Respondent explained in his July 6, 2017 response to the State Bar's screening investigation letter that he disbursed Mr. Codd's money "to others and his account for commissary purchases" and deposited the remainder in an unidentified bank.

33. In a different discipline case involving Respondent, State Bar file no. 16-1978, PDJ 2017-9074 (Nicholas Kurti), a settlement conference was scheduled for August 31, 2017.

34. Bar counsel asked Respondent to bring with him to the settlement conference in the Kurti case "copies of any and all records you have that account for the $54,079.55" in Mr. Codd's case.

35. Respondent did not comply with that request.

36. Through an email exchange from September 12, 2017- October 3, 2017, Respondent told bar counsel that he furnished Mr. Codd and the State Bar with copies of Mr. Codd's case file, financial records, and an accounting of Mr. Codd's money.

37. The materials Respondent provided did not include those items and he was so advised.

38. On December 28, 2017, the State Bar sent Respondent a Notice of Deposition, Subpoena Duces Tecum, and Acceptance of Service form by which Respondent's investigative deposition was set for January 18, 2018.

39. The subpoena compelled production of the following items:

1. Any and all files related to the representation of Geoffrey J. Codd, in all matters related to 2013-419083-001 including but not limited to:

a. Records of all written and/or electronic communications, including phone logs; telephone service invoices; emails; file backer notes, etc.;

b. Fee agreement(s);

c. Timekeeping/accounting records;

d. Billing/fee statements;

e. Power of Attorney from Mr. Codd;

f. All records pertaining to the sale of Mr. Codd's property;

g. All records related to the $54,079.55 dollars received from Mr. Codd.

40. The day before the deposition, Respondent notified bar counsel that he would not attend because his former employer at his address of record did not timely forward the deposition notice and subpoena to him.

41. Bar counsel agreed to postpone Respondent's deposition to Monday, January 29, 2018.

42. Respondent refused to sign the Acceptance of Service and, on Friday, January 26, 2018, objecting to service by mail, informed bar counsel that he would not appear.

43. On January 31, 2018, the State Bar personally served Respondent with the Subpoena Duces Tecum and to Appear at Deposition, by which his deposition was set for February 16, 2018.

44. During the morning of February 16, 2018, Respondent advised bar counsel that he was ill and would not attend.

45. The deposition was reset to March 5, 2018.

46. Respondent appeared for his deposition on March 5, 2018.

47. Respondent did not bring with him to the deposition any of the subpoenaed items.

48. Respondent explained that he lost his box of U.S. Bank IOLTA records that contained all financial records relevant to Mr. Codd, including ledgers, canceled checks, deposit slips, bank statements, and reconciliations.

49. At his deposition Respondent claimed that after paying himself $7,000 in fees and expending another $7,000 in commissary disbursements and costs, he

deposited an IOLTA check for the remaining balance of Mr. Codd's money approximating $40,000 in Bank of America for Mr. Codd's benefit.

50. Respondent failed to produce any record of the supposed transaction whereby he purportedly deposited the remaining balance of Mr. Codd's money approximating $40,000 in Bank of America for Mr. Codd's benefit.

51. Respondent declined to obtain copies of relevant financial documents from his IOLTA bank because, he claimed, an unidentified bank employee quoted him an unspecified copying charge that, to Respondent, was prohibitive.

52. Respondent claimed that he explained all of the case-related expenses and bank transactions to Mr. Codd several times.

53. Mr. Codd denied and denies that Respondent explained all of the case-related expenses and bank transactions to Mr. Codd.

54. On March 14, 2018, bar counsel subpoenaed Respondent's IOLTA records at a cost of $60.00.

55. Bar counsel scheduled an Order to Show Cause (OSC) why Respondent ought not to be held in contempt and sanctioned over his failure to comply with the subpoena.

56. At the OSC hearing on March 13, 2018, Respondent falsely told the court that he deposited Mr. Codd's $40,000 sometime in some Bank of America branch somewhere in downtown Phoenix.

57. Presiding Disciplinary Judge (PDJ) O'Neil advised Respondent of his Miranda rights.

58. On March 13, 2018, PDJ O'Neil issued an order holding Respondent in contempt and placing him on interim suspension.

59. At his deposition, Respondent testified that he closed his IOLTA in July 2015 over a suspected theft and transferred the $26,000 balance to a new IOLTA.

60. Respondent confirmed at his deposition that all transactions related to Mr. Codd were completed before closing his first IOLTA account.

61. The records subpoenaed from Respondent's IOLTA, in which he administered all of Mr. Codd's funds, show that he deposited Mr. Codd's $54,079.55 on January 15, 2014, and issued a $400.00 check in June 2014 to an out-of-state witness for travel expenses to attend trial.

62. One cannot determine from the $400.00 check that it related to Mr. Codd's case -- there is nothing on it or most of the other IOLTA canceled checks

that identifies the matters to which they relate – but Mr. Codd confirmed that the payee was his witness.

63. There are no checks payable to Respondent, Mr. Codd, or other payees identified in Mr. Codd's case.

64. Respondent did not write a check to Bank of America for approximately $40,000 of Mr. Codd's funds, or otherwise deposit approximately $40,000 of Mr. Codd's funds in Bank of America, in or near March 2015, during the representation, or after the representation ended.

65. By engaging in the above-referenced conduct, Respondent violated the following ethical rules:

a. Rule 42, Ariz. R. Sup. Ct., ERs 1.4(a)(3), 1.4(a)(4), 1.5(b), 1.15(a), 1.15(d), 1.16(d), 3.3(a)(1), 3.3(a)(3), 8.1(a), 8.1(b), 8.4(b), 8.4(c), and 8.4(d);

b. Rule 43, Ariz. R. Sup. Ct.; and

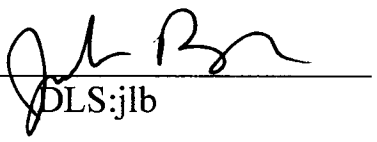
c. Rule 54(d), Ariz. R. Sup. Ct.

DATED this 20th day of June, 2018.

STATE BAR OF ARIZONA

David L. Sandweiss
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 20th day of June, 2018.

by: 
DLS:jlb

FILED

JUN 01 2018

BY H. Lebon

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

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **ROBERT C. BILLAR, Bar No. 006662,** Respondent.	No. 17-0431 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on May 11, 2018, 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 6-0-3[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 17-0431.

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 1 day of June, 2018.

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

[1] Committee members Judge Lawrence F. Winthrop, Charles Muchmore and Jeffrey Pollitt did not participate in this matter.

Original filed this 1st day
of June, 2018, with:

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

Copy mailed this 4th day
of June, 2018, to:

Robert C. Billar
Yuma County Public Defender
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Yuma, AZ 85364-2363
Respondent

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Alternate Address for Respondent

Copy emailed this 4th day
of June, 2018, to:

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by: _____