

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

ANDY JOLLEY,
Bar No. 025560

Respondent.

PDJ 2018 -9112

[State Bar No. 17-2079]

**FINAL JUDGMENT AND
ORDER**

FILED DECEMBER 21, 2018

The Presiding Disciplinary Judge accepted the Agreement for Discipline by Consent filed by the parties on November 26, 2018.

Accordingly:

IT IS ORDERED Respondent, **ANDY JOLLEY, Bar No. 025560**, is suspended from the practice of law for six (6) months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective thirty (30) days from the date of this order.

IT IS FURTHER ORDERED upon reinstatement, Mr. Jolley shall be placed on probation for a period of two (2) years.

IT IS FURTHER ORDERED Mr. Jolley shall participate in the following programs:

- 1) Law Office Management Assistance Program (LOMAP): Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this order. Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent shall be responsible for any costs associated with LOMAP.
- 2) LRO Member Assistance Program (MAP): Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within (10) days from the date of this order to schedule an assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Respondent shall be responsible for any costs associated with participation with compliance.

NON-COMPLIANCE LANGUAGE

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

been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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

IT IS FURTHER ORDERED Respondent shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00, within thirty (30) days from the date of this order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

DATED this 21st day of December, 2018.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/mailed
this 21st day of December, 2018, to:

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Adams & Clark PC
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Phoenix, AZ 85004-1843
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Respondent's Counsel

Shauna R Miller
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by: [MSmith](#)

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

ANDY JOLLEY,
Bar No. 025560

Respondent.

PDJ 2018-9112

**DECISION ACCEPTING
DISCIPLINE BY CONSENT**

[State Bar No. 17-2079]

FILED DECEMBER 21, 2018

Under Rule 57(a), Ariz. R. Sup. Ct.,¹ an Agreement for Discipline by Consent (“Agreement”), was filed on November 26, 2018. A Probable Cause Order issued on November 20, 2018, however, no formal complaint has been filed. Mr. Jolley is representing by Karen Clark, *Adams & Clark, PC*, and the State Bar of Arizona is represented by Senior Bar Counsel Shauna R. Miller.

Rule 57 requires admissions be tendered solely “...in exchange for the stated form of discipline...” Under that rule, the right to an adjudicatory hearing is waived only if the “...conditional admission and proposed form of discipline is approved...” If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding. Mr. Jolley has voluntarily waived the right to an adjudicatory hearing, and waived all

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

motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. Notice of the Agreement and an opportunity to object within five (5) days pursuant to Rule 53(b)(3), was sent to the complainant by letter on November 5, 2018. No objections have been filed.

The Agreement details a factual basis to support the conditional admissions and are briefly summarized. It is incorporated by this reference. Mr. Jolley admits to violating Rule 42, specifically, ERs 1.15(a) (safekeeping client property), 3.3(a) (candor before tribunal), 8.1(a) (knowingly make a false statement of material fact), 8.4(c) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and 8.4(d) (conduct prejudicial to the administration of justice). The parties stipulate to a 6-month suspension and upon reinstatement, two years of probation with the State Bar's Law Office Management Assistance Program (LOMAP) and Member Assistance Program (MAP). Mr. Jolley also agrees to pay costs in the amount of \$1,200.00 within 30 days from the date of this order.

For purposes of the Agreement, the parties stipulate that Mr. Jolley was hired by the clients as successor counsel in a law suit in which they were being sued by the trustee of a family trust for fraud. It was alleged the clients had wrongfully caused trust assets of the vulnerable adult beneficiary to be transferred to them and their children. The prior counsel had provided a summary accounting that listed \$75,000 which the clients had received from the beneficiary prior to her death and was at issue.

In November 2011, the clients took \$5,000 of those monies and paid that to Respondent as an advanced fee leaving \$70,000. Those monies were later transferred to Respondent in 2013 and deposited into his trust account. Another \$5,000 was taken and paid to Respondent, and another \$2,000 was taken to hire an attorney to assist Respondent, leaving \$63,000.

During a court hearing in May 2013, the Judge directed “that \$75,000 be paid to [Respondent’s] account.” Respondent told the court, “That’s not a problem, Your Honor.” Respondent knew there was only \$63,000 remaining and that \$75,000 were never in his trust account. In June 2013, Respondent was directed to pay himself another \$5,000 reducing the funds to \$58,000.

In a June 2013 court hearing, opposing counsel stated they had still not received notice that the \$75,000 had in fact been deposited into Respondent’s trust account. Respondent told the court, “You told me to do something, and I did it.” The Judge clarified stating, “Then the court interprets that as the \$75,000 being currently in [Respondent’s] trust account. That was reached effectively by agreement of the parties that would be done.” Respondent again misled the court stating, “Yes Your Honor.”

This misconduct was compounded when Respondent in an February 2016 asked a leading question of his client, “So \$75,000 went into my trust account to your knowledge?” His client answered “Yes.” He then again led his client by asking if \$10,000 was used as an initial retainer when he was first hired. Mr. Jolley withheld

material information to the court by failing to disclose the correct amount of funds held on behalf of the clients in his trust account and was knowingly if not intentionally misleading. It was not until an April 2016 hearing that Respondent finally clarified for the first time that the \$75,000 had not been in his trust account since May 2013. The Judge asked him, “You mean, you knew at the time that Judge Jones was talking about the \$75,000 that you really only had \$58,000 in your trust account?” Respondent answered, “Yes, Your Honor.” Mr. Jolley further made misstatements in his response to the State Bar’s investigation of this matter. In 2016, the Plaintiffs were granted partial summary judgment, which was subsequently vacated on appeal in 2018. The parties settled the matter in May 2018.

The parties agree Mr. Jolley knowingly violated his duties to the profession, the legal system and the public by withholding information from the court and making false statements to the State Bar. His misconduct caused potential harm to the profession, the legal system and the public.

The parties further agree aggravating factors 9.22(b) (selfish or dishonest motive), (c) (pattern of misconduct), and (f) (submission of false evidence, false statements, or other deceptive practices) are present, and in mitigation are factors

9.32(a) (absence of prior disciplinary offenses), (c) (personal or emotional problems),² (f) (inexperience in the practice of law), (g) character or reputation)³ and (l) (remorse).

IT IS ORDERED accepting the Agreement and incorporating it with any supporting documents by this reference. A final judgment and order is signed this date.

DATED this 21st day of December, 2018.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed on this 21st day of December, 2018, to:

Shauna R. Miller
Senior Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
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Karen Clark
Adams & Clark, PC
520 E. Portland Street
Phoenix, AZ 85004-1843
Email: karen@adamsclark.com
Respondent

by: MSmith

² Agreement, Exhibit C is ordered sealed.

³ Character letters were submitted in support of this factor.

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

NOV 26 2018

FILED
BY 

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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

ANDY JOLLEY
Bar No. 025560

Respondent.

PDJ 2018- 9112
[State Bar File Nos. 17-2079]

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent Andy Jolley, who is represented in this matter by counsel Karen Clark, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on November 20, 2018, but no formal

complaint has been filed in this matter. [Exhibit A] Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant by letter on November 5, 2018. Complainant(s) have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.15(a), 3.3(a), 8.1(a), 8.4(c), and 8.4(d), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Six-month Suspension and a two-year probation upon reinstatement. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are

not paid within the 30 days, interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit B.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on November 9, 2007.

COUNT ONE

History of underlying litigation

2. In April 2007, Tracy Rosens mother Joyce Loesch ("Ms. Loesch") created the Joyce Clara Loesch Living Trust. At that time, the Trust held approximately \$500,000 in assets. Beginning in August 2007, Tracy and Jeff Rosen ("the Rosens") are alleged to have wrongfully caused Trust assets to be transferred to them and their children.

3. In 2011, Ms. Loesch individually and as Trustee, filed a fraud action ("the civil action") against the Rosens; Rick Mabery ("Mr. Mabery") represented

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

Ms. Loesch. The verified complaint was amended in September 2011, to allege that Ms. Loesch was a vulnerable adult, and to add other statutory common law claims.

4. The Rosens hired Respondent in November 2011, and he substituted into the case as successor counsel.

5. Ms. Loesch died in March 2013 and Bradley M. Stromberg (“Mr. Stromberg”), as successor Trustee and Ms. Loesch’s Personal Representative, was substituted as plaintiff. Stromberg was Ms. Loesch’s much younger boyfriend.

6. In March 2013, the Rosens hired Respondent to file a petition for formal probate (“the probate case”) of an earlier will and to challenge the estate documents Ms. Loesch signed in 2011. The probate and civil cases were eventually consolidated.

7. In September 2016, Mr. Stromberg moved for partial summary judgment, which was granted; but the ruling was vacated by the court of appeals on January 11, 2018. The parties settled the case on May 7, 2018.

Allegations related to Respondent’s trust account

8. Ms. Loesch’s counsel in the civil action asked the Rosens for an accounting after he filed the complaint. The Rosens were initially represented by

Eric English (“Mr. English”), who provided a summary accounting that listed \$75,000 in cash, among other things, that the Rosens had received from Ms. Loesch.

9. In November 2011, when the Rosens hired Respondent to replace Mr. English, they decided to use \$5,000 of the \$75,000 as Respondent’s advanced fee. At that time there was no court order regarding the \$75,000.

10. In January 2013, the Rosens transferred the remaining \$70,000 to Respondent’s trust account hoping to resolve the case; however, if the matter did not settle, the funds would be used to fight the lawsuit filed against them.

11. The Rosens believed Plaintiff would rather fight than settle with them, so they told Respondent to set aside an additional \$5,000 for his attorney’s fees. This reduced the balance in the trust account to \$65,000.

12. After Ms. Loesch passed away in March 2013, the Rosens hired Respondent to file the probate action regarding an earlier will Ms. Loesch had executed, and to challenge the estate documents created for Ms. Loesch in 2011, which appointed Mr. Stromberg the personal representative of her estate.

13. The Rosens also decided to hire Taylor Nelson (“Mr. Nelson”) to serve as co-counsel with Respondent on the probate case. They directed Respondent to

pay the Holdsworth Law firm for Mr. Nelson's advanced fee of \$2,000 from the \$65,000 in the trust account, thus lowering the trust balance to \$63,000.

14. On May 23, 2013, there was a hearing before Judge Jones on outstanding motions filed by both sides. It was at this hearing the civil and probate cases were informally consolidated.

15. During the May 23, 2013 hearing, Judge Jones directed "that the \$75,000 be paid to [Respondent's] account." To which Respondent said, "That's not a problem, Your Honor." Respondent believed this was a temporary agreement on issues that all involved knew would otherwise not be ruled on by the court until much further down the road.

16. During the hearing it was also determined that the question of Ms. Loesch's competency needed to be addressed before going forward with a decision on whether Respondent had to provide Mr. Stromberg an accounting. Respondent argued the Rosens did not have to provide an accounting because they were contesting the validity of the documents appointing Mr. Stromberg as the personal representative; if Mr. Stromberg was not the personal representative, then he could not step into Ms. Loesch's shoes in the civil matter. If he could not step into Ms. Loesch's shoes, he could not demand an accounting.

17. Respondent believed that at the time of the May 23, 2013 hearing, he was precluded from revealing “confidential, attorney-client privileged information.” Respondent “truly believed that until the 2011 will issue was ruled on by the court he could not ethically disclose the particulars about what his clients had done with the \$75,000 without the consent of the Rosens, who were adamantly opposed to him doing so.”

18. At the end of the May 23, 2013 hearing, Judge Jones repeated that the June 20, 2013 hearing was set as an evidentiary hearing to establish whether Ms. Loesch had capacity in 2011 to change her estate documents in favor of Mr. Stromberg.

19. In preparation for the June 20, 2013 hearing, Respondent spent significant time coordinating with the clients and the witnesses so they could attend the May 23rd and June 20th hearings, including time spent helping them make travel arrangements. The Rosens therefore directed that an additional \$5,000 of the \$63,000 in his trust account be used to help cover his time and the parties/witnesses’ travel costs associated with these two hearings. This lowered the amount in trust to \$58,000.

20. At the beginning of the June 20, 2013 hearing, the agreement reached during the May 23, 2013 hearing, to hold the \$75,000 in Respondent's trust account, was mentioned:

MR. MABERY: And, Your Honor, we have not received actual notice that the \$75,000 has been deposited to [Respondent's] trust account.

[RESPONDENT]: There was no indication from the judge that any notice needed to be filed. You told me to do something, and I did it.

THE COURT: And that was handled about as informally and by agreement as we could have done. [Respondent], everything is as was anticipated following the last hearing?

[RESPONDENT]: Yes, Your Honor.

THE COURT: Okay. Then the court interprets that as the \$75,000 being currently in [Respondent's] trust account. That was reached effectively by agreement of the parties that would be done.

[RESPONDENT] Yes, Your Honor.

THE COURT: So with that, anything further?

21. After the court's last question, Respondent did not say anything to correct the court's incorrect assumption that Respondent had \$75,000 in his trust account. Looking back, Respondent now realizes that despite his belief that he had an ethical duty not to reveal privileged and/or confidential client information about these funds, he could have handled the situation better.

22. Due to other problems that came to light at the start of the June 20, 2013 hearing, the hearing to determine capacity was vacated. Respondent anticipated that the probate matter would be settled within a matter of months, but it did not.

23. The validity of the probate documents was not ruled upon until August 2016. Therefore, the issue of the \$75,000 was not addressed again until a hearing held in the civil case on February 22, 2016. Respondent questioned Mrs. Rosen as follows:

[RESPONDENT]: So \$75,000 went into my trust account to your knowledge?

[MRS ROSEN]: Yes.

[RESPONDENT]: And then \$10,000 of that was used as a retainer?

[MRS ROSEN]: Yes.

[RESPONDENT]: So that's when you first hired me?

[MRS ROSEN]: Correct.

[RESPONDENT]: And that was before the hearing with Judge Jones?

[MRS ROSEN]: Yes.

[RESPONDENT]: And then the \$5,000 and the \$2,000 were used for travel expenses ---

[MRS ROSEN]: Yes.

24. During an April 5, 2016 hearing, questions about an accounting of the \$75,000 were brought up again. Opposing counsel was not only asking the court to order Respondent to provide an accounting, but also to order the Rosens to disgorge the \$75,000.

25. During the April 5, 2016 hearing, Respondent clarified for the first time on the record that the \$75,000 had not been in his trust account since May 23, 2013. Respondent knew at that time there was only \$58,000 of the Rosens' money in his trust account. The following exchange took place during the hearing:

[RESPONDENT]: If Mr. Mabery wants that, send me over a discovery request and we'll comply. We have complied with everything that Mr. Mabery has sent us. The only thing that he could possibly be in dispute about us not complying with is the accounting this court ordered. However, I still don't know what that would be. And my clients were here and testified, and I don't know that we've gotten any new information out of their testimony except that the 75,000 was actually 58,000. And I can address that if the Court wants. I can clarify that. But that's the only piece of information that could possibly have been different that Mr. Mabery didn't already know.

THE COURT: Wait a minute though. I'm quoting Judge Jones: "Okay. Then the Court interprets that as the \$75,000 being currently in [Respondent's] trust account. That was reached effectively by agreement of the parties that would be done. [Respondent], yes, Your Honor."

[RESPONDENT]:

[...]

That was not what I felt Judge Jones was asking me about. The \$75,000 was the number that was floated out there by Eric English. It was the number. And after that hearing Judge Jones - - or in that hearing Judge Jones told me to remain status quo. That \$58,000 that was in my trust account at the time is still there, so - -

THE COURT: You mean, [Respondent], you knew at the time that Judge Jones was talking about the \$75,000 that you really only had 58,000 in your trust account?

[RESPONDENT]: Yes, Your Honor.

THE COURT: And yet you didn't tell him that?

[RESPONDENT]: Judge, I was at that hearing. It was a very stressful, crazy day. That's the June 23rd [sic] hearing.

THE COURT: Right.

RESPONDENT]: Correct?

THE COURT: Right.

26. Respondent's initial response to the State Bar stated that the issue of the \$75,000 versus \$58,000 was fully argued by both sides, and then Judge Butner

ruled that “[t]he Court does not believe it was good that counsel did not clarify the amount of funds in the account, but does not feel it was a violation of ethical rules, and no further funds have been removed.”

27. Respondent and his counsel met with Bar Counsel on October 5, 2018. At that meeting, Respondent admitted that his representation to the court at the hearing on April 5, 2016 that the \$58,000 was “still there” in his trust account was untruthful.

28. From August 2013 to June 2015, Respondent, at the direction of his clients, had used the money for legal fees such that by June 2015 the funds were fully depleted and there was nothing left in trust.

29. In early 2016, when the funds again became the subject of concern for the court, Respondent refunded the Rosen’s \$58,000 in attorney’s fees, and deposited that amount in his (National Bank) trust account on March 1, 2016, in hopes of facilitating a settlement to resolve the case.

30. The court ordered that the money remain in Respondent’s trust account. The funds remained in his trust account until the case settled in May 2018, when the funds were transferred by agreement to opposing counsel’s trust account.

Respondent's misstatements to the State Bar

36 In his October 1, 2018 response to the State Bar, Respondent told the State Bar that “[f]rom the June 20, 2013 hearing through the present [he] has maintained \$58,000 in trust for the Rosens.”

Respondent was asked by the State Bar to identify each trust account, by bank name and account number, where he held the Rosen funds, and he identified Chase, Wells Fargo, and National Bank. However, a review of his trust account records contradicts these statements.

31. At the October 5, 2018 meeting with Bar counsel, Respondent admitted that the information he gave the State Bar in his October 1, 2017 response, was not truthful.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.15(a), 3.3(a), 8.1(a), 8.4(c), and 8.4(d).

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanction is appropriate: Six-month suspension and two years of probation upon reinstatement.

The probation will include the following:

1. LOMAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of the Order. Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated into the final Order. Respondent will be responsible for any costs associated with LOMAP.
2. LRO MAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of the Order, to schedule an assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated into the final

Order. Respondent will be responsible for any costs associated with participation with compliance.

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

LEGAL GROUNDS IN SUPPORT OF SANCTION

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

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The parties agree that *Standards 6.12 and 7.2* are the appropriate *Standard* given the facts and circumstances of this matter.

Standard 6.12

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

Respondent knew that he was withholding material information from the court when he failed to inform the court at the May 23, 2013 hearing that he did not have \$75,000 in his trust account, and when he failed to clarify for the court at the April 5, 2016 hearing that the \$58,000 in his trust account hadn't continuously remained there.

Standard 7.2

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system.

Respondent made false statements to the State Bar during its investigation in this matter.

The duty violated

Respondent's conduct violated his duty to the profession, the legal system, and the public.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent, knowingly withheld information from the court and knowingly made false statements to the State Bar.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential harm to the profession, the legal system, and the public.

Aggravating and mitigating circumstances

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

In aggravation:

(b) dishonest or selfish motive: Respondent did not initially take responsibility for his behavior because he did not want to have to deal with opposing counsel.

(c) a pattern of misconduct: Respondent repeated the misinformation regarding the amount of money he had in the client trust account to the court on at least three occasions.

(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process: Respondent lied to the State Bar.

In mitigation:

(a) absence of a prior disciplinary record;

(c) personal or emotional problems; Respondent was experiencing serious personal problems throughout the time period at issue in this matter. These issues are fully discussed in his mitigation letter to the State Bar attached as Exhibit C², at pages 4-8.

(f) inexperience in the practice of law; Respondent opened his own firm in 2010, when he had only been practicing law for three years. He took on the Rosen case just one year later in 2011: at that time he had no prior experience handling probate cases. What's more, Respondent brought to this situation his own personal issues, which made it even harder for him to deal with the issues and opposing counsel in this hard-

² This document will be filed separately under seal.

fought case. *See* discussion at Exhibit C, pages 4-9. Respondent was too inexperienced to know how to deal with this situation.

(g) character or reputation; character references are attached as Exhibit D.

(l) remorse; Respondent is extremely remorseful for his conduct in this matter.

He has expressed his remorse to the State Bar in his own words. *See* Exhibit C at pages 11-12. He knows and greatly respects the two judges involved in this matter; he fully realizes that he betrayed them and words cannot express how seriously he takes this. He offers his apology to them, and the State Bar, for his conduct in this matter.

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, a suspension is warranted, but because the mitigating factors outweigh the aggravating factors, Respondent does not need to go through a formal reinstatement hearing.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based on the following: Respondent believed that his clients would prevail on their claim that Plaintiff was not entitled to an accounting, and therefore that the

\$75,000 they deposited into his trust account could be used for attorney fees to defend the claims against them. During the seven years Respondent represented the Rosens, he billed a total of approximately \$188,800 in attorney fees. But when the funds Respondent received from them became “at issue” again with the court in March-April 2016, he refunded the clients \$58,000 – from his own funds – so that the money would be available to settle the case, which is what ultimately occurred. There was no self-dealing involved here, as Respondent only withdrew fees from trust as they were earned, as authorized by the clients, and after the refund he ultimately only collected a total of approximately \$15,000.00 for his seven years of work on the case.

Respondent’s misstatements to the court and the State Bar were extremely serious; they harmed both the legal system and the profession. But Respondent’s conduct did not involve self-dealing, nor did it harm his clients or the opposing party in the case.

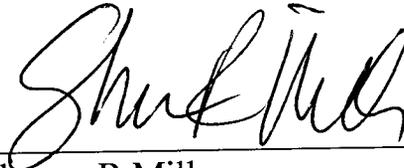
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Short-Term Suspension and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit E.

DATED this 26th day of November 2018

STATE BAR OF ARIZONA



Shauna R Miller
Senior Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. [I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.]

DATED this 12 day of November, 2018.



Andy Jolley
Respondent

DATED this 20th day of November, 2018.

Adams & Clark PC



Karen Clark
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. [I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.]

DATED this _____ day of November, 2018.

Andy Jolley
Respondent

DATED this _____ day of November, 2018.

Adams & Clark PC

Karen Clark
Counsel for Respondent

Approved as to form and content


Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 26th day of November, 2018.

Copy of the foregoing emailed
this 26th day of November, 2018, to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 26th day of November, 2018, to:

Karen Clark
Adams & Clark PC
520 E Portland St
Phoenix, AZ 85004-1843
Email: karen@adamsclark.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 26th day of November, 2018, to:

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

by: 
SRM/kec

EXHIBIT A

FILED

NOV 20 2018

BY 

**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,**

**ANDY JOLLEY
Bar No. 025560**

Respondent.

No. 17-2079

PROBABLE CAUSE ORDER

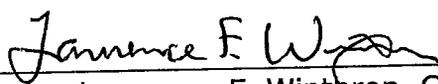
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on November 9, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 17-2079.

IT IS THEREFORE ORDERED pursuant to Rule 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 20 day of November, 2018.



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

Original filed this 20th day
of November, 2018, with:

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

Copy mailed this 21st day
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Karen Clark
Adams & Clark PC
520 E. Portland St.
Phoenix, Arizona 85004-1843
Respondent's Counsel

Copy mailed this 21st day
of November, 2018, 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

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266
E-mail: 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,
Andy Jolley, Bar No. 025560, Respondent

File No. 17-2079

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

Total for staff investigator charges \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED \$ 1,200.00

Exhibit C consists of Respondent's mitigation letter to the State Bar dated October 30, 2018. This document is the subject of a Protective Order and will be filed separately.

EXHIBIT C

EXHIBIT D

17-3728

PENNIE J. WAMBOLDT, ESQ. (#023525)
116 N. Summit Ave.
Prescott, AZ 86301
928-445-1909
pennie@plgnaz.com

November 7, 2018

RE: J. Andrew Jolley, Esq.

To Whom It May Concern:

I have been a member in good standing with the Arizona State Bar since 2004. In 2012, I met Andy Jolley when he was the President and I was the Treasurer of the Yavapai County Bar Association. During our time on the County bar, I came to know Andy as an affable, intelligent, funny, and ambitious man.

Knowing Andy as an attorney, I have seen him in the courtroom and in the office meeting with his clients. He is always professional and courteous to his clients, the bench, and opposing counsel. He is the only attorney I know who is effective as both a town prosecutor and defense attorney. He has done numerous jury trials—civil and criminal. I have been working for Andy since June 2017. Together, we represent parents who have lost custody of their children in juvenile dependency cases. Even representing that difficult population, I have always known Andy to be respectful towards his clients and a passionate advocate for them. Just being in the same office with Andy, I have learned so much from him about areas of the law other than the juvenile and family law that I practice.

When I came to work for Andy back in June 2017, he asked me to observe his interview for a Yavapai County Judge Pro-Tem position. After all of the interviews were complete, the panel asked for public comment—something I was not expecting. Several members of the community respectfully addressed the panel and gave their opinions regarding the various applicants. Then an attorney named Hans Clugston approached. I had heard of Mr. Clugston, but had never met him. I knew that Andy was embroiled in a difficult case against Mr. Clugston, but did not know the details or the intensity of the situation. I was stunned—the only word I can think of to even come close to describing how I felt—when Mr. Clugston approached the panel and began to literally rant and rave against Andy. He was clearly infuriated, waving his hands and arms about, barely able to contain himself. When he finished, he did not thank the panel, but stormed away from the podium. It was obvious that the tirade against Andy was personal.

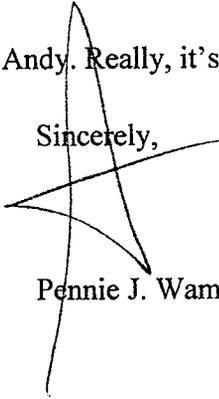
Since that time, I have attended court hearings with Andy on the case that brought about this bar charge. It is clear that Mr. Clugston has a personal vendetta against Andy. I have never known another attorney to be so driven to take down a colleague. The stress that this has put on Andy is

immense. Even so, he continues to be professional and diligent with his clients, treats all of us in the office with respect and generosity, and continues to be an amazing father to his three young children. As long as I have known him, Andy has been involved in his children's school activities and sports, as well as being involved in the community. I have always wondered how one person can do so many things so well and with such enthusiasm when there are only 24 hours in a day.

Andy is also an amazing friend. In 2014, my elderly father had a stroke here in Prescott. He had exercise equipment loaded on his truck that was too heavy for me and my mother to handle. The very next day, Andy came to my parents' home with two friends to unload the truck. He has rescued me when I've had flat tires on the road. He has moved furniture for me more than once. I always know that I can call him for anything I or my parents may need.

It is difficult to express my admiration of and respect for Andy. Really, it's impossible.

Sincerely,



Pennie J. Wamboldt

TOWN OF TUSAYAN

at the entrance to Grand Canyon National Park



To whom it may concern:

November 5, 2018

My name is Eric Duthie and I am the town manager in the Town of Tusayan, Arizona at the south rim of the Grand Canyon and I write this letter of support on behalf of Andy Jolley.

Mr. Jolley serves as the contract Town Prosecutor for the Town and has been the contract prosecutor since 2012. During all these many years of service Mr. Jolley has served the best interests of justice as a fair, reasonable, and measured officer of the Court. Mr. Jolley recognizes the importance of taking responsibility for actions, as well as the acceptance of reasonable consequences for those actions. Above all else, I am impressed with Mr. Jolley's determination to effect real change in defendants in order to avoid recidivism. I am aware of several such successful outcomes. Our community is comprised mainly of educationally and experiential disparate transient residents. Mr. Jolley's judgement and attention to community needs, while considering pleas, agreements, or diversion have been an uplifting experience for those who faced prosecution in our court.

As such, I implore the Committee to consider imposing the minimum penalty upon Mr. Jolley, as his continued service to justice within our community is critical and unparalleled.

I am available for further inquiry or discussion at 928-637-4297.

Thank you for your attention

A handwritten signature in black ink, appearing to read "Eric Duthie", is written over a horizontal line.

Eric Duthie

Town Manager

To whom it may concern:

November 5th, 2018

RE: J Andrew Jolley (Andy)

I have known Andy Jolley and his family for over 10 years. I first met him through my brother in law, and then in my professional world as his banker. I have been his banker for almost 10 years now. In addition, I have coached youth sports with and against him, and we have served together on the Prescott Little League Board for three years. There aren't many youth sports in Prescott that Andy hasn't coached. We have played in rec league softball together for many years. I have also used Andy as my attorney in a few minor issues that I have had. Over the years I have witnessed Andy interact with his family, adults and youth alike in our community. I have witnessed him volunteer many hours of his time and even his own financial resources to help those in need. I personally have volunteered with him on several occasions to help people move or clean up their homes as well as deliver a message of comfort and hope. I have seen him minister to those in need. I know many of his current and previous employees. Most of them, would tell you of countless times when he helped them and comforted them during times of need, financially professionally and emotionally. I too have witnessed and have been a recipient of his unconditional kindness. There are many in our community who have benefited from the donation of his professional and financial resources.

I know Andy as a man of integrity and kindness, both in his personal and his professional life. He has a great reputation in our community and in his profession. He is a friend, mentor and advisor to all that come in contact with him. He is very loved in his community and within his personal relationships. I have watched him win and earn many awards. I have seen him rise and lift others during times of great tragedy. I have watched him stand with those in need of comfort and mourn with those who mourn.

When Andy asked me to write this letter, and told me the reason, I was very surprised. This is very out of character for Andy. To be honest, I couldn't believe it. Through every aspect of life that I have interacted with him, Andy has always acted with honor and integrity. I have sent many clients, friends and family to Andy because I knew they would be treated fairly, honestly, and pay a reasonable rate. I sent them to Andy because I know that he will continue to treat them with respect, honesty and genuine concern. With the irony of who this letter is going to, having an attorney who bills reasonably, and who isn't out for just the money, is a rare commodity. I know Andy to be a very good attorney, father, community member, volunteer and friend. He is an asset to our community, not only as an attorney, but as a leader. He is well respected by his peers and by the many people in our community who know him. I have to say, Prescott is a smaller community, but it is no longer a small town. I would venture to say there aren't many in Town who don't know Andy. Those who know him, like him. Those who don't like him, haven't taken the time really know him, or they just haven't been lucky enough to witness his selfless service to others.

If there is anything I can do to help in this situation, please let me know. I would hope this one lapse in judgment, or one error, would not keep Andy from being the asset to the Prescott community he has proven to be.

Sincerely, Michael Naylor

A handwritten signature in black ink, appearing to read "M Naylor", with a long horizontal flourish extending to the right.

CHARLOTTE JOHNSON, CP
HC 01 Box 3055
Bagdad, AZ 86321
928-830-6856

November 8, 2018

To Whom It May Concern,

I began working with Andy Jolley in January, 2010 after 20 years with a former attorney who was appointed to the bench, now a Court of Appeals Judge. Thereafter, I interviewed with several attorneys that I thought I might want to work for. None of them measured up to Andy. His heart was clearly in the right place and his enthusiasm and love for his profession was refreshing. It was hard for me to go work with a young kid, but there was just something about him. I knew this was the right place, even if it was less money. He fights and works hard for "our" clients. I have never regretted my decision.

When we started his sole practice, things were very tight financially, therefore, stressful. We plugged along and made it work. Andy had two babies and then a third after we began working together. Carol, Andy's wife, did not work outside the home in those beginning years. As a result, there were no cases we turned away. I was amazed and very proud how hard he worked to serve his clients and create a successful business. In working with other attorneys in the Prescott area for over thirty years, I have seen it all. I can tell you that Andy is a much better person than this mess he is in reflects. I have seen first-hand that his ethics and conduct as a lawyer is on a much higher level than other attorneys, based on my over 30 years of experience in the legal field.

The problems all began when Hans Clugston came into the picture. Andy had a prior case with Hans that was acrimonious – and then Hans' client committed suicide. I believe Hans felt so guilty that he had to blame someone and Andy was the target. The deceased client's sister then filed a bar complaint against Andy, which appeared to have been written by Hans, and which the State Bar dismissed. Hans definitely has a personal vendetta against Andy because of this case.

Andy has conducted many jury trials and bench trials, but only after all other avenues are exhausted. He has represented hundreds of clients – some of which could not pay, but he fought and worked just as hard for those clients as paying clients. Andy takes pride in his work and has earned the respect of the Prescott community. I know the money in the trust is an issue, Andy was working so hard for free, and his clients approved of him being paid for his work. They continue to support Andy one hundred percent.

It is sad that Joyce, a woman with dementia, changed her beneficiary from her daughter to a new, much younger boyfriend and the Court sides with the boyfriend. An important point to make about the Rosen case, is that if Hans had not been brought into the litigation, it would have

been settled years ago. Also of note, Andy desperately tried to get help with the issues he faced with this case and the vengeful opposing counsel, but could not find any meaningful assistance.

Hans is an angry attorney whose ONLY goal was to bring Andy down, not to resolve the case. For your information which may be of interest, the two opposing counsels regarding the Rosen case, continue, to this day, to fight over attorney's fees through the Court.

Should you have any questions or concerns, please do not hesitate to contact me either at the office 928-445-1909 or my cell number listed above.

Thank you.

Respectfully,

A handwritten signature in black ink, appearing to read "Charlotte Johnson", with a long horizontal flourish extending to the right.

Charlotte Johnson, CP
Paralegal to J. Andrew Jolley
PRESCOTT LAW GROUP, PLC

MICHAEL R. MURPHY, P.L.L.C.

MICHAEL R. MURPHY
Certified Specialist, State Bar of Arizona,
Personal Injury and Wrongful Death

P. O. BOX 591
PRESCOTT, ARIZONA 86302-0591
928/445-6860
FAX 928/445-6488
mmurphy@mshwlaw.com

OF COUNSEL:
Murphy, Schmitt,
Hathaway, Wilson & Becke, P.L.L.C.
325 W. Gurley Street, Suite 102
Prescott, AZ 86301

November 19, 2018

Hon. William J. O'Neil
Presiding Disciplinary Judge
ARIZONA SUPREME COURT
1501 West Washington, Suite 102
Phoenix, AZ 85007-3231

Re: J. Andrew Jolley, Esq.

Dear Judge O'Neil:

I understand that the State Bar has brought a disciplinary action against Prescott Attorney J. Andrew Jolley and that the matter is now before you for a decision on discipline. I know little about the merits of the action and offer no opinion in that regard.

Assuming Mr. Jolley is to be disciplined, I would urge you to consider his overall record as an attorney and a member of the Prescott/Yavapai County legal community in determining appropriate discipline.

I know Andy Jolley well and have known him for several years. He is an involved member of our legal community, who has provided countless service to the poor and near poor of Northern Arizona. He is a former President of the Yavapai County Bar Association and two of my grandsons have been coached by Andy in youth football and baseball.

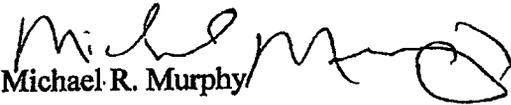
As a lawyer, I know your practice was in a town about the size of Prescott. Lawyers in these small communities know one another well and I am sure in Casa Grande, like Prescott, there were a few names that most of the legal community would agree should not be practicing law. If you polled the Prescott/Yavapai County community, Andy Jolley would likely never be mentioned in that context, except for, perhaps, one lawyer. If there was a way to poll the lawyers in this community, you would hear "good guy - good lawyer" by almost everyone up here.

I understand being a "good guy" does not give anyone a free pass when it comes to our ethical obligations, but I would hope that you will consider it in determining appropriate discipline for whatever Andy did or did not do.

Thank you for your consideration.

Very truly,

MICHAEL R. MURPHY, P.L.L.C.


Michael R. Murphy

MRM:dmm

MSHWLB MURPHY, SCHMITT,
HATHAWAY, WILSON & BECKE P.L.L.C.
A T T O R N E Y S A T L A W

ROBERT E. SCHMITT**
MILTON W. HATHAWAY, JR.
DAN A. WILSON
ANDREW J. BECKE
KRISTYNE M. SCHAAF-OLSON***

* Certified Specialist, State Bar of Arizona,
Personal Injury and Wrongful Death
** Also Admitted in California
*** Also Admitted in Nevada & Navajo Nation

OF COUNSEL:
MICHAEL R. MURPHY*

325 W. GURLEY STREET, SUITE 102
PRESCOTT, ARIZONA 86301
Telephone (928) 445-6860
Fax (928) 445-6488
WWW.MSHWLAW.COM
Email: info@mshwlaw.com

OTHER OFFICE LOCATIONS:

101 E. Second Street
Yuma, Arizona 85364
(928) 782-5354

2601 Stookton Hill Road, Suite H-8
Kingman, Arizona 86402
(928) 718-0888

PLEASE REPLY TO:
POST OFFICE BOX 591
PRESCOTT, ARIZONA 86302-0591

November 17, 2018

Hon. William J. O'Neil
Presiding Disciplinary Judge
ARIZONA SUPREME COURT
1501 West Washington, Suite 102
Phoenix, AZ 85007-3231

Re: J. Andrew Jolley, Esq.

Dear Judge O'Neil:

Unfortunately, it is my understanding that Andy Jolley is involved in a disciplinary matter and I am writing you to provide my input.

I have known Andy since he came to Prescott and began practicing law in 2007. I have worked cases with Andy and I have also defended one or more cases in which Andy was on the other side. In addition, I am familiar with Andy's activities in both the community and local Bar Association.

Although Andy, like all of us, is certainly not "perfect", he is a very caring person, who I have found to be both honorable and forthright. As a result, I have referred a number of clients to him and I would certainly would not have done so, if there were any concerns.

Andy has been active in the Yavapai County Bar Association, as evidenced by the fact that he has served on the Board, including a year as the President. In addition, he has been very active in community activities, and has been especially involved in youth sports. Three of our sixteen grandchildren live in the Prescott area and I can tell you without hesitation that I would be more than happy to have Andy coach any or all of their teams.

Although a problem has obviously arisen involving the Bar, in light of his past performance, I would certainly hope that this problem can be resolved without jeopardizing his career as an attorney. As indicated above, Andy has been an important part of the local Bar, as well as the community. I would hope that his positive attributes and contributions will be taken into consideration in determining an appropriate punishment.

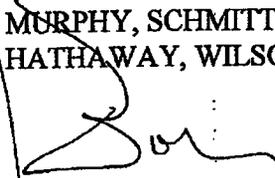
MURPHY, SCHMITT,
HATHAWAY, WILSON & BECKE, P.L.L.C.

Hon. William J. O'Neil
Presiding Disciplinary Judge
ARIZONA SUPREME COURT
November 17, 2018
Page 2

Thank you for your efforts on behalf of the disciplinary program in our State. If you have any questions or if there is any additional information that I might be able to provide, please do not hesitate to contact me. Best regards.

Sincerely,

MURPHY, SCHMITT,
HATHAWAY, WILSON & BECKE, P.L.L.C.



Robert E. Schmitt

RES:dmm

November 8, 2018

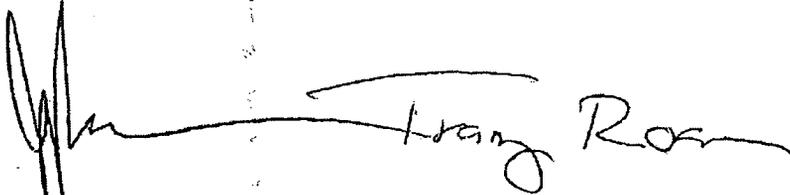
To whom it may concern:

We retained Andy Jolley to represent us in 2011. He was our attorney in a civil case and a probate case involving Tracy's mother. In our opinion Andy handled himself very professionally and with integrity from day one until the very end.

Our case should never have taken as long as it did, but in our opinion the attorneys on the other side were very unreasonable and caused delays to incur more billable hours incurred by us and their client. The odd obsession Mr. Clugston had with Andy was a problem throughout the case. We discussed it many times, but there just didn't seem like a resolution. There were many times when Mr. Jolley could have abandoned us with no representation against the attacks the other side were making. He stuck by us through it all, and we appreciated the way he handled the unprofessionalism that was being thrown at him. . We wanted a resolution and we were not getting any options. We wanted more than anything from day one to get this settled and Mr. Jolley did all he could to help us.

Ironically, we had requested a settlement conference with Judge Klein back in 2016, the other side filed an objection. When the Court of Appeals ruled against them, and the case began to turn, they requested one. At the Settlement Conference in front of Judge Klein, in 2018, we finally reached a settlement. We feel that we had offered more, and would have paid the amount settled for many times early in the case, but our attempts to settle were always rebuffed.

Mr. Jolley was always looking out for our best interests. Even though our case did not go the way we wanted we believe Andy did all he could to protect us and get a resolution.



Jeff Rosen and Tracy Rosen

EXHIBIT E

17-3728

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

ANDY JOLLEY
Bar No. 025560

Respondent.

PDJ 2018 - _____
[State Bar No. 17-2079]

**FINAL JUDGMENT AND
ORDER**

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

IT IS ORDERED that Respondent, **Andy Jolley**, is suspended for six months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order or _____.

IT IS FURTHER ORDERED upon reinstatement, Respondent shall be placed on probation for a period of two (2) years.

IT IS FURTHER ORDERED Andy Jolley shall participate in the following programs:

3. LOMAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order. Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.
4. LRO MAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to schedule an assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Respondent will be responsible for any costs associated with participation with compliance.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge

may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200, within thirty (30) days from the date of this Order.

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

DATED this _____ day of November, 2018

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 November, 2018.

Copies of the foregoing mailed/mailed
this _____ day of November, 2018, to:

Karen Clark
Adams & Clark PC
520 E Portland St
Phoenix, AZ 85004-1843
Email: karen@adamsclark.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of November, 2018, to:

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

17-3728

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

by: _____
SRM/kec

FILED

NOV 20 2018

BY 

**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,**

**ANDY JOLLEY
Bar No. 025560**

Respondent.

No. 17-2079

PROBABLE CAUSE ORDER

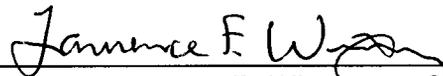
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on November 9, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 17-2079.

IT IS THEREFORE ORDERED pursuant to Rule 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 20 day of November, 2018.



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

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By: Karen E. Calcagno