

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

MELANIE G. MCBRIDE GABLE,
Bar No. 023348,

Respondent.

PDJ-2018-9121

**FINAL JUDGMENT AND
ORDER**

[State Bar Nos. 15-2327, 17-1533,
17-2462 & 17-3461]

FILED MARCH 11, 2019

The Presiding Disciplinary Judge accepted the Agreement for Discipline Consent filed by the parties on February 25, 2019.

Accordingly:

IT IS ORDERED Respondent, **MELANIE G. MCBRIDE GABLE, Bar No. 023348**, is suspended for a period of eighteen (18 months) for her 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.

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

IT IS FURTHER ORDERED Respondent shall participate in the following programs:

1. State Bar's Member Assistance Program (MAP). MAP assessment shall be performed by Philip D. Lett, Ph.D., or by another doctor upon agreement of the parties;
2. State Bar's Law Office Management Assistance Program (LOMAP). After reinstatement, Respondent shall contact the State Bar Compliance Monitor and to submit to a LOMAP examination of office procedures. Respondent shall sign terms and conditions of participation and shall be responsible for any costs associated with LOMAP; and
3. Respondent shall provide proof that she is current on payments due to Palumbo Wolfe Palumbo as required by the parties' Stipulated Judgment in PB2014-002889, dated March 26, 2018 or as otherwise agreed to by the parties to the Stipulated Judgment.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

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 \$3,392.12 within sixty (60) 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 11th day of March, 2019.

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

Copies of the foregoing mailed/emailed
this 11th day of March, 2019 to:

Meredith Vivona
Independent Bar Counsel
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Melanie G. McBride Gable
14534 W. Jenan Dr.
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Respondent

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

MELANIE G. MCBRIDE GABLE,
Bar No. 023348

Respondent.

PDJ-2018-9121

**DECISION ACCEPTING
DISCIPLINE BY CONSENT**

[State Bar Nos. 15-2327, 17-1533,
17-2462 & 17-3461]

FILED MARCH 11, 2019

Under Rule 57(a), Ariz. R. Sup. Ct.,¹ an Agreement for Discipline by Consent (“Agreement”), was filed on February 25, 2019. Probable Cause Orders issued on October 31, 2018, and the formal complaint was filed on December 4, 2018. Ms. Gable is self-represented, and the State Bar of Arizona is represented by Independent Bar Counsel Meredith Vivona.

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. Ms. Gable 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. Under Rule 53(b)(3), notice and an opportunity to object was emailed to the complainant(s) on February 22, 2019. An objection was filed on March 4, 2019 requesting restitution. Complainant(s) state restitution is appropriate in this matter as they and their minor son has experienced irreparable harm including an unreasonable contingency fee, poor work by Respondent, and at times during the representation, client abandonment.

In considering this agreement the PDJ has noted, considered, and not ignored the objection. It has merit. Case law is clear on this point. Consequences such as monetary damages and restitution are best left to civil courts. Restitution through the attorney discipline system should not be a substitute for a malpractice action. *Matter of Murphy*, 188 Ariz. 375, 936 P.2d 1269 (1997). Nothing within this ruling is a comment on whether monetary damages should be awarded to Complainant. Such award is simply not available in a disciplinary proceeding.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Ms. Gable admits violating Rule 42, ER 1.3 (diligence), ER 1.5(c) (fees), ER 1.15(d) and 1.15(e) (safekeeping property), ER 1.16(c) and 1.16(d) (declining or terminating representation), ER 3.2 (expediting litigation), ER 3.3(a)(1) and 3.3(a)(3) (candor toward tribunal), ER 4.1 (truthfulness in statements to others), ER 8.4(a) (misconduct), ER 8.4(c) conduct involving dishonesty,

deceit, fraud or misrepresentations), and ER 8.4(d) (conduct prejudicial to the administration to the administration of justice). Upon acceptance of the agreement the parties stipulate to an eighteen (18) month suspension, two (2) years of probation upon reinstatement, and the payment of costs of \$3,392.12 within sixty (60) days from the date of this order.

The misconduct is briefly summarized. Ms. Gable represented clients in a civil action in federal court on behalf of their minor child. Thereafter, Ms. Gable failed to diligently represent the clients, knowingly made false statements and/or omissions to the court on multiple occasions, failed to inform the court of a discovery error, and dealt improperly with client property.

The conduct of Respondent is troubling. However, such agreements bring certainty where there is seen and unforeseen uncertainty in aspects of evidence, testimony, and persuasive force. This Agreement brings certainty, assures an independent evaluation, and requires Respondent to prove to a hearing panel clearly and convincingly that Respondent should be permitted to return to the practice of law.

The parties agree *Standard 4.12, Failure to Preserve the Client's Property* and *Standard 6.12, False Statement, Fraud, and Misrepresentation* are applicable to Ms. Gable's violations of ER 1.15, ER 3.3 and ER 4.1 and provide that suspension the presumptive sanction for her knowing misconduct. The parties further agree Ms. Gable's conduct violated her duty to clients, the legal system, and the profession. It

caused actual harm to the PWP law firm, and the legal system and potential harm to Ms. Gable clients, and the legal profession.

In aggravation, the parties stipulate factor 9.22(b) selfish or dishonest motive, 9.22(d) multiple offenses, 9.22(h) vulnerability of victim and 9.22(i) substantial experience in the practice of law are present. In mitigation, factors 9.32(a) (absence of prior disciplinary offenses, (c) (personal or emotional problems),² (g) (character or reputation),³ and (l) (remorse) are present.⁴ A long-term suspension is in accordance with the *Standards*.

Now Therefore,

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 11th of March 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

² No evidence was offered in support of this factor; however, the absence of this factor does not affect the outcome.

³ See Agreement, Exhibit B, in support of this factor.

⁴ No evidence was offered in support of this factor. Those seeking mitigation relief based upon remorse must present a showing of more than having said they are sorry. Rather, the best evidence of genuine remorse is affirmative efforts to make the injured client whole. *Matter of Augenstein*, 178 Ariz. at 137, 871 P.2d at 258. (1994).

COPY of the foregoing e-mailed/mailed
on this 11th day of March 2019, to:

Meredith Vivona
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Respondent

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by: AMcQueen

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

FEB 25 2019

Melanie G. Gable
14534 W. Jenan Dr.
Surprise, Arizona 85379
Respondent

FILED
BY 

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,
MELANIE G. MCBRIDE GABLE,
Bar No. 023348,**

PDJ -2018-9121

State Bar Nos. 15-2327, 17-1533,
17-2462 & 17-3461

Respondent.

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through Independent Bar Counsel ("IBC"), and Respondent, who has chosen not to seek the assistance of counsel, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on October 31, 2018 and a formal complaint was filed on December 4, 2018. Respondent filed her Answer on December 28, 2018¹ and on January 2, 2019, the Presiding Disciplinary Judge ("PDJ") held an initial case management conference, requiring the parties to attend a settlement conference on or before March 8, 2019. On February 15, 2019, the parties appeared in good faith at

¹ On January 7, 2019, Respondent filed an Amended Answer.

the settlement conference and as a result of that meeting, reached this agreement for discipline by consent.

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. If this agreement is not accepted, the conditional admissions that follow are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

Respondent conditionally admits that she made false statements to the court and that she failed to remediate a false statement, and committed other violations as set forth herein. Her conduct violated Ariz. R. Sup. Ct., Rule 42, ERs 1.3, 1.5(c), 1.15(d), 1.15(e), 1.16(c), 1.16(d), 3.2, 3.3(a)(1), 3.3(a)(3), 4.1, 8.4(a), 8.4(c) and 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: 18-month suspension and two years of probation upon reinstatement. Respondent also agrees to pay the costs and expenses of this disciplinary proceeding, within 60 days from the date of this order, and if costs are not paid within 60 days, interest will begin to accrue at the legal rate.² The State Bar's Statement of Costs and Expenses is attached hereto as **Exhibit A**.

² 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.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the Complainants by email on February 22, 2019. Complainants have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of IBC's notice. Copies of Complainants' objections, if any, have been or will be provided to the presiding disciplinary judge.

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a member of the State Bar of Arizona, having been admitted on January 11, 2005.
2. Respondent was an attorney at Gust Rosenfeld ("Gust") from October 2005 to December 2012.
3. During this time, Mrs. and Mr. Monje became clients of Gust; they were pursuing a civil action in federal court on behalf of their minor son.
4. When Respondent left the firm in December 2012, Gust was about to file a motion. Mrs. and Mr. Monje stayed with Gust until the motion was filed, but then moved their representation to Respondent.
5. Gust transferred the Monje file to Respondent in January 2013. On January 30, 2013, Gust also sent Mrs. and Mr. Monje a bill for \$871,980.82. Of that amount, \$80,499.82 was for costs.
6. Respondent was aware that Mrs. and Mr. Monje owed Gust for work performed on their case.

7. From January 2, 2013 through February 22, 2013, Respondent was an associate at Hymson, Goldstein & Pantiliat, PLLC (“HGP”).

8. HGP did not have a signed fee agreement with Mrs. and Mr. Monje, but it filed a Notice of Appearance in *Monje v. Spin Master et al.*, CV-09-01713.

9. From February 23, 2013 through May 15, 2013, Respondent practiced on her own and office-shared with Beauchamp Law Office (“BLO”).

10. On March 12, 2013, Respondent filed an Ex Parte Application for Substitution of Counsel. The motion stated in part, “Plaintiffs Mark Monje and Beth Monje . . . hereby apply to the Court for entry of an Order substituting Melanie G. McBride of Beauchamp Law Office, PC, in the place of Eddie Pantiliat of Hymson, Goldstein & Pantiliat, PLLC.” It was signed by Respondent on behalf of BLO.

11. On May 15, 2013, Respondent entered into an employment agreement with BLO where she remained as an associate attorney until July 2013.

12. The Monjes signed a fee agreement with BLO making them responsible for costs, in addition to other things; Respondent was aware of BLO’s fee agreement with the Monjes.

13. From July 2013 through March 2015, Respondent was a solo practitioner at The McBride Law Firm. The Monjes moved their file to stay with Respondent.

14. In July of 2013, Respondent emailed the Monjes a contingency fee agreement with her firm. But Respondent continued to represent the Monejs without

obtaining a signed fee agreement until October 28, 2013, at which time, Mrs. and Mr. Monje executed the Contingency Fee Contract with Respondent.

15. At the end of January 2014, Respondent began communicating with Complainant in SB 17-1533, Attorney Scott Palumbo, about having his firm serve as co-counsel in *Monje v. Spin Master et al.*, CV-09-01713.

16. On January 27, 2014, Respondent emailed Mr. Palumbo asking his firm to pay \$37,400 in expenses related to the Monje case and stating, "could I possibly get an advance of \$50,000? If that's too much no worries, I just want to get some of the vendors paid."

17. Respondent emailed Mr. Palumbo again on January 29, 2014, explaining:

For instance, I have personally been paying for client lunches, mileage/gas expenses for driving to court and depositions, and I have also personally advanced expert fees, mailing costs, delivery service, filing fees, etc. from my personal funds as my firm has not had the financial ability to cover these expenses. Again, these expenses will be reimbursed to your firm at the conclusion of the case, but I am needing to reimburse myself personally given my current financial needs.

18. On February 11, 2014, Mr. Palumbo, Respondent, and Mrs. and Mr. Monje entered into an Agreement to Associate Additional Counsel. The agreement provided that the contingency fee Respondent previously agreed to with the Monjes would be divided with Palumbo Wolfe Palumbo ("PWP") at the close of the case; that PWP may advance costs; and that the October 28, 2013 fee agreement governed PWP's involvement in the case as well.

19. Pursuant to the parties' agreement, PWP claims it expended \$101,770.89 in costs on the Monje case.

20. On January 7, 2015, Mr. Palumbo withdrew as counsel for the Monjes with their permission. He agreed to waive his attorney fees, but expressly demanded reimbursement of \$101,770.89 in costs if the Monjes obtained a recovery.

21. On January 12, 2015, Mr. Palumbo wrote Respondent stating, "Please be advised that my firm expended \$101,770.89 in processing the case while we were engaged. In the event of a successful outcome, please reimburse that amount from the recovery."

22. Respondent received Mr. Palumbo's January 12, 2015 letter.

23. From March 2015 through June 2015, Respondent became an attorney employed by the Andante Law Group ("Andante").

24. Andante entered into a fee agreement with the Monjes in May 2015.

25. Respondent was aware of the fee agreement, which obligated the Monjes to be responsible for costs incurred by Andante.

26. The Monjes' case went to trial in June 2015. Although the court had sua sponte dismissed the permanent brain injury claim, Respondent tried the case to a jury and the Monjes' minor child was awarded \$435,000.00, which was adjusted down to \$314,550.00 due to a finding of comparative fault.

27. Andante terminated Respondent at the conclusion of the trial.

28. Respondent was a solo practitioner at The McBride Law Firm from June 2015 through December 2015.

29. The Monjes decided to appeal the case.

30. After the trial ended, Mr. Palumbo contacted Respondent, who told him that because the Monjes were planning an appeal, “they were going to hold off paying the various law firms’ costs and fees until after the conclusion of the appeal.”

31. Around July 15, 2015, Respondent received funds from the defendants in the underlying Monje case representing the judgment awarded. Respondent did not notify Gust, BLO, PWP, or Andante of the receipt of the judgment award funds at this time.

32. Respondent had a verbal conversation with Mr. Wirken of Gust regarding the “disappointing” result in the Monje case. Mr. Wirken and Respondent verbally agreed that Gust would wait to pursue any costs and fees owed pending appeal.

33. On July 31, 2015, Respondent filed a Notice of Judgment and Application for Distribution of Funds in *In the Matter of the Conservatorship of Ryan Monje*, PB2014-002889.

34. Respondent prepared this motion.

35. Respondent’s motion stated, “Petitioners . . . hereby notify this Court and all interested Parties that a jury verdict has been entered in favor of Ryan Monje. . . .” Respondent did not provide notice of her Application to PWP or other interested parties, including Gust, BLO and Andante.

36. Respondent’s motion also stated, “The proceeds [of the subject judgment] are subject to a contingency fee agreement (“Agreement”) executed by

Mark and Elizabeth Monje on behalf of R. Monje with The McBride Law Firm, PC on October 28, 2013.” Respondent did not advise the Court the proceeds were also subject to contingency fee agreements with Gust, PWP, BLO and Andante.

37. In her motion, Respondent asked the court to award her law firm its full 33.3% contingency fee (\$104,756.15) and for, “[C]osts incurred by The McBride Law Firm, PC in the amount of \$68,734.24.”

38. Respondent did not include a cost breakdown with the motion justifying the \$68,734.24 in costs allegedly incurred by her firm.

39. Respondent’s motion did not advise the court of PWP’s costs, the existence of the agreement that required the Monjes to repay PWP’s costs, or Mr. Palumbo’s written demand for repayment of PWP’s costs.

40. On September 22, 2015, Respondent emailed an assistant at PWP seeking PWP’s billing records.

41. That same day, the assistant emailed Respondent attaching PWP’s cost report and asking if that is what Respondent needed. Respondent did not seek additional documents from PWP.

42. Respondent did not go back through PWP’s billing records and cross-check what she claimed were her expenses against those reimbursed or paid by PWP.

43. On October 20, 2015, Respondent filed a Supplemental Application for Distribution of Funds. In this motion, Respondent sought a 33.3% fee (\$104,745.15), but the amount of costs Respondent sought increased from \$68,734.24 to \$93,015.04.

44. Respondent's October 20, 2015 motion again noted the judgment proceeds were subject to her contingency fee agreement with the Monjes, but did not mention Gust's, BLO's, PWP's or Andante's contingency fees with the Monjes.

45. Respondent's October 20, 2015 motion also purported to give notice to all interested parties by stating "Petitioners . . . hereby notify this Court and all interested Parties. . .", but did not provide notice to Gust, BLO, PWP or Andante.

46. On October 20, 2015, the court held a hearing in PB2014-002889 regarding Respondent's application for distribution of funds. After Commissioner LaBianca advised she would not rule on the application at this time, Respondent stated, "Also, I have been paying the costs of expert witnesses from the trial that are still waiting to be paid." Respondent further added, "There are some experts who are waiting to be paid and I've told them once the court approves the costs, I will pay you. Some of these are fairly significant like Dr. Wu, Dr. Parent and Dr. Beljan that are trial witnesses that are waiting to be paid."

47. No experts testified on behalf of the Monjes at trial; but both Dr. Wu and Dr. Beljan sent Respondent invoices for work related to the case in June 2014.

48. At the conclusion of the hearing, Commissioner LaBianca approved the distribution, awarding Respondent's attorney fees in the amount of 33.3%, or \$104,745.15 and costs incurred by the McBride Law Firm in the amount of \$93,015.04.

49. After talking with a defense lawyer involved in the underlying lawsuit on May 1, 2017, Mr. Palumbo became aware of Respondent's July 31, 2015 Notice of Judgment and Application for Distribution of Funds.

50. On May 3, 2017, PWP filed its Motion and Application for Payment of Costs.

51. On May 11, 2017, PWP filed an Amended Motion and Application for Payment of Costs and Motion for Order to Show Cause.

52. PWP's motions asserted that Respondent sought compensation for costs that PWP paid.

53. At some point after reviewing PWP's motions, Respondent determined that an error occurred she had improperly included \$37,240.85 in her request for costs to the court.

54. Respondent did not submit any filing or notice to the court advising the court of her error in claiming \$37,240.85 in costs as her own that her firm had not actually paid.

55. In her August 14, 2017 Order regarding the pending dispute between PWP and Respondent, Commissioner LaBianca stated, "The Court notes that due to the issues raised in the Motion for Order to Show Cause and the record, the Court will be referring the matter to the State Bar of Arizona."

56. An evidentiary hearing was not held in *In the Matter of the Conservatorship of R.M.*, PB2014-002889.

57. On March 26, 2018, the Court accepted and approved PWP and Respondent's Stipulated Judgment, granting PWP judgment against Respondent for \$53,035.98 plus interest in the amount of 5.5% per annum until paid in full.

58. The Monjes lost their appeal at the Ninth Circuit and the Supreme Court declined review.

COUNT ONE (File no. 17-1533 / Scott Palumbo)

59. Complainant also brought to the State Bar's attention two unrelated, separate, Superior Court decisions that, "raise additional concerns regarding [Respondent's] fitness to practice law."

Separate Case One, *Beauchamp v. Bialobok*, CV2013-009661, Lack of Diligence

60. The *Beauchamp v. Bialobok* matter was a fee dispute, primarily between BLO and Gust.

61. The Bialoboks, like the Monjes, had been clients of Gust during the time Respondent was employed at Gust.

62. The Bialoboks also elected to follow Respondent when she left Gust and they ultimately signed a fee agreement with BLO.

63. The Bialoboks' case settled at a mediation while BLO represented the clients.

64. BLO and Gust, in addition to Respondent, disputed the distribution of attorney fees.

65. The matter proceeded to a trial on the fee issues.

66. In apportioning fees between Gust and BLO, the Court needed to determine the value of Gust's legal services and BLO's legal services. The Court declined to value certain specific instances of Respondent's time while at Gust, although awarding Gust more fees than BLO.

Separate Case Two, *Monje v. Corey*, CV2013-014102, Misrepresentations to the Court and Lack of Diligence

67. Respondent represented Elizabeth Monje in her medical malpractice claim.

68. On November 15, 2013, Respondent filed the lawsuit and certified that expert testimony was necessary to prove the defendant doctor breached the standard of care and caused Mrs. Monje's alleged damages.

69. By May 6, 2014, Respondent had not filed her statutorily required³ preliminary expert affidavit and Defendant filed a motion to dismiss for that reason.

70. On June 30, 2014, over seven months after filing the lawsuit, Respondent provided a preliminary expert affidavit.

71. On January 6, 2015, after failing to meet the December 30, 2014 deadline to disclose substantive expert opinions, Respondent withdrew her expert.

72. On March 3, 2015, Defendant filed a Motion for Summary Judgment regarding the lack of expert evidence.

73. In response, Respondent filed a Rule 56(f) motion seeking an extension of the expert deadline.

³ See A.R.S. §§ 12-2603 and 2604.

74. The Court granted Respondent's Rule 56(f) motion and gave plaintiff until September 30, 2015 to provide plaintiff's expert opinions.

75. Respondent failed to meet this new extended deadline and on October 20, 2015, Defendant renewed his Motion for Summary Judgment regarding the lack of expert evidence in a medical malpractice action filed in November 2013.

76. Respondent thereafter provided a new preliminary expert affidavit and Defendant withdrew his motion.

77. On December 6, 2015, Respondent requested a Rule 16 conference seeking further extensions and to reschedule deadlines.

78. The Court set a January 28, 2016 Rule 16 Conference, for which Respondent failed to appear.

79. On January 28, 2016, the Court issued a Minute Entry ("ME") stating:

This is the time set for Status Conference. Plaintiff is neither present nor represented by counsel. . . .The Court finds that Plaintiffs' Counsel, Melanie G. McBride has failed to appear this date. Let The Record Reflect that Plaintiffs' Counsel, Melanie G. McBride has also failed to appear at hearing set in August 2015. Court Staff has not received any information of counsel's unavailability this date. It is Ordered setting an Evidentiary Contempt Hearing on February 22, 2016 at 9:30a.m. at which time Counsel, Melanie G. McBride shall personally appear and show cause why she should not be held in contempt of Court or have other sanctions imposed against her for failing to appear.

80. That same date, upon realizing her failure to appear, Respondent attempted to resolve the issue.

81. On February 22, 2016, the Court issued a ME reflecting an 11-minute hearing. During the hearing, Judge Gama noted on the record that Plaintiff was “unrepresented and essentially abandoned for purpose of this [January 28, 2016] hearing.”

82. During the February 22, 2016 Order to Show Cause Hearing, Respondent represented to the Court that, “My clients have suffered greatly as a result.” She also stated that she, “contacted my clients that day and it was a horrible phone call to have to make.”

83. Although Mrs. Monje hired new counsel after January 2016, the Court issued a minute entry after Respondent was no longer counsel, critical of Respondent.

In its April 20, 2016 Minute Entry, the Court stated:

The Court previously denied Plaintiffs’ request to extend the discovery deadlines on expert witnesses. Those discovery deadlines had been previously extended a number of times and Plaintiffs’ previous counsel [Respondent] had historically missed these extensions. This case was filed in 2013 and the original deadline prescribed by our discovery rules was December 30, 2013. This Court’s last extension of time provided Plaintiffs through October 10, 2015. Plaintiffs’ counsel [Respondent] failed at that time to provide a preliminary expert affidavit and disclose a standard of care and causation expert. The Court finds that Plaintiff’s previous counsel [Respondent] was dilatory in compliance with applicable deadlines.

...

The delays caused to date have been the result of the failure of Plaintiffs’ counsel to actively engage in timely trial preparation.

...

The delay caused by Plaintiffs’ counsel has not been harmless. It has significantly delayed the discovery of this claim and has forced long delays in this litigation to the detriment of all parties. However, the Court concurs with Plaintiffs’ [new] counsel that the clients should not

be punished for the dilatory actions, mistakes and negligence of their attorneys. . . .

Separate Case Three⁴: *McBride v. Francisco Rodriguez, MD*, CV2014-003949, Lack of Diligence

84. On July 16, 2014, Respondent filed a medical malpractice claim against one of her own former treating physicians.

85. On July 10, 2015, the court dismissed Respondent's complaint for failure to produce an expert report supporting the malpractice allegations. Although the court reinstated the complaint after reconsideration, it admonished Respondent that it would be less indulgent with deadlines.

86. The new stipulated scheduling order was set on November 2, 2015. The new deadline for final expert witness evidence was June 30, 2016.

87. Respondent timely disclosed a preliminary expert affidavit, but on June 29, 2016, Respondent requested an extension of time. Respondent failed to produce final expert witness evidence before the new June 30, 2016 deadline.

88. On August 5, 2016, the Court issued a ME denying Respondent's motion, stating:

The Court has carefully reviewed the history of the proceedings in this matter, and agrees with the Rodriguez Defendants that as to the instant request for relief, Plaintiff has failed to demonstrate due diligence in complying with the Court's scheduling order, and that sanctions are therefore appropriate under Ariz. R. Civ. P. 37(b)(2). The Court is particularly concerned that although the Court's April 13, 2016 Order set June 30, 2016 as the deadline for Plaintiff to disclose expert reports

⁴ Although included here for organization, this case was discovered and reviewed as part of the State Bar's investigation; it was not a case brought to the Bar's attention by Complainant, Mr. Palumbo.

and opinions, Plaintiff appears not to have taken any action as to her primary testifying expert (Dr. Way) until June 29, 2016, when Plaintiff learned that Dr. Way “has a serious medical condition that is forcing him to withdraw immediately and permanently from this case.” Affidavit of Melanie McBride, at ¶ 5.

The Court acknowledges that as a result of the order herein, Plaintiff may suffer significant prejudice. By the same token, this matter has been pending for a significant period of time, and it is incumbent on Plaintiff to diligently prosecute her case or face the consequences set forth in the civil rules of procedure.

89. On August 22, 2016, Defendant filed a motion to dismiss for failure to prosecute the case and on August 30, 2016, the parties filed a Stipulated Dismissal with Prejudice.

COUNT TWO (File no. 17-3461 / Elizabeth & Mark Monje)

90. As set forth above, the Monjes retained Respondent, through various firms and individually at various times, to represent their minor child. These were separate decisions made at different junctures as set forth above.

91. Respondent had a duty to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” See ER 1.4(b).

92. Prior to the date Respondent left Gust, Gust had been paying the costs of pursuing the case, incurring over \$80,000.00 in costs.

93. At the time, the case was being pursued as a permanent brain injury case necessitating numerous experts, consultations, life care plans and depositions.

94. Respondent did seek the help, both financially and otherwise, from other law firms at various times.

95. As set forth above, Respondent first sought to associate herself with BLO, then asked PWP to serve as co-counsel on the case and later became employed by Andante, in part, because her firm alone was unable to bear the cost of the Monjes' case.

96. In July 2013, Respondent left her employ at BLO and began working as a solo practitioner at The McBride Law Group.

97. The Monjes moved their case with Respondent.

98. Respondent and the Monjes did not have a signed fee agreement from July 2013 through October 28, 2013.

99. On October 28, 2013, Respondent and the Monjes executed a Contingency Fee Contract, ("Fee Agreement").

COUNT THREE (File no. 17-2462 / Commissioner LaBianca)

100. Commissioner LaBianca presided over PB2014-002889.

101. Respondent's misconduct injured the legal system by, at a minimum, forcing the Maricopa County Superior Court to expend time and resources to dispose of PWP's Motion and Application for Payment of Costs.

102. Also, by deceiving the Court, Respondent deprived the Court of the ability to properly provide its oversight function when ruling on applications for fees and costs.

COUNT FOUR (File no. 15-2327 / Joseph Wu, M.D.)

103. Respondent had an agreement with Dr. Wu to serve as an expert in *Monje v. Spin Master et al.*, CV-09-01713. Respondent verbally agreed to pay his professional service fees.

104. On April 22, 2014, Dr. Wu sent Respondent an invoice in the amount of \$24,940.00.

105. Dr. Wu resent his invoice to Respondent again on June 22, 2015, July 16, 2015, July 24, 2015, August 8, 2015 and August 27, 2015.

106. On July 31, 2015, Respondent filed a Notice of Judgment and Application for Distribution of Funds in *In the Matter of the Conservatorship of Ryan Monje*, PB2014-002889. Respondent sought \$68,734.24. Respondent did not specifically seek permission of the Probate Court to pay experts, including Dr. Wu.

107. On September 14, 2015, Dr. Wu called the State Bar regarding his unpaid invoice. The State Bar communicated with Respondent who was aware Dr. Wu was seeking payment of his invoice.

108. On October 20, 2015, less than one month after being contacted by the State Bar, Respondent filed a Supplemental Application for Distribution of Funds. In this motion, she sought costs of \$93,015.04 – a cost increase of almost \$25,000.00. Respondent included an entry reading “8/20/15 Expert witness fess; Dr. Wu. . . \$21,900.00 Pending Billing”.

109. During the October 20, 2015 hearing, Commissioner LaBianca stated, “I’m not going to rule on the application at this time” (11:49:09). Thereafter, Respondent attempted to persuade her, stating in part, “Also, I have been paying the

costs of expert witnesses from the trial that are still waiting to be paid.” (11:49:24).
“There are some experts who are waiting to be paid and I’ve told them once the court approves the costs, I will pay you. Some of these are fairly significant like Dr. Wu, Dr. Parent and Dr. Beljan that are trial witnesses that are waiting to be paid.” (11:50:37).

110. Dr. Wu, however, was not a trial witness as he did not testify at trial. He was intended to be an expert, however, the brain injury claim was dismissed.

111. Respondent did not pay Dr. Wu shortly after the Court awarded the fees sought on October 20, 2015.

112. On December 17, 2015, Respondent emailed Dr. Wu stating, “the amount permitted by the probate court to pay your bill is \$21,000. If you want more, we will need to ask probate for more, but doubt we will get more. In fact, court may require proof of permission to incur that \$21,000 to begin with, let alone another \$4000-\$5000. Let me know if you will accept \$21,000 as full and final payment. Or if you want me to go back to the probate court and ask for more.”

113. On December 21, 2015, Dr. Wu emailed that he accepted \$21,000.00 if it could be paid “expeditiously.” He sent Respondent a prepaid FedEx label.

114. On January 13, 2016, Dr. Wu emailed Respondent asking when he could expect to receive his payment.

115. On January 27, 2016, Respondent emailed Dr. Wu that, “I am in process of transferring the funds so I can get a cashier’s check. If you want I can send by 2 separate checks as I have access to \$12,000 right now but there is a hold on the

remaining funds which should be lifted in next 14 days. But I am happy to send the first wave of payment as evidence of good faith.” (Emphasis original).

116. On February 1, 2016, Respondent wrote a check in the amount of \$12,000.00 from her personal account to U.C. Regents (Dr. Wu).

117. On February 23, 2016, Dr. Wu emailed Respondent regarding the \$9,000.00 balance and when he might receive it.

118. Thereafter, Respondent paid Dr. Wu the remaining balance.

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 her conduct violated Rule 42, Ariz. R. Sup. Ct., specifically:

1. ER 1.3 [Diligence].⁵ Respondent conditionally admits that she negligently violated this rule in representing Elizabeth Monje in CV2013-014102 as set forth in paragraphs 67-83 above.
2. ER 1.5(c) [Fees].⁶ Respondent conditionally admits that she violated this rule where she started working as a solo practitioner in July 2013, and

⁵ “A lawyer shall act with reasonable diligence and promptness in representing a client.”

⁶ “A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined. . . .”

continued to represent the Monjes' minor son, but failed to obtain a signed fee agreement with the Monjes until October 28, 2013.

3. ER 1.15(d) [Safekeeping Property].⁷ Respondent conditionally admits that she knew, or should have known, that she violated this rule where she failed to notify PWP or other firms of the receipt of judgment proceeds.
4. ER 1.15(e) [Safekeeping Property].⁸ Respondent conditionally admits that she knew, or should have known, she violated this rule where Respondent failed to set aside the judgment proceeds and protect the funds until either there was an agreement between competing claimholders, a court order or until she followed the requirements of subsection (f). Respondent enriched herself to the detriment of the client, the court and the others including Gust, PWP, BLO and Andante.
5. ER 1.16(c - d) [Declining or Terminating Representation].⁹ Respondent conditionally admits that she negligently violated both of these rules where

⁷ "Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person."

⁸ "When in the course of representation a lawyer possesses property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer. The lawyer shall promptly distribute any portions of the property as to which there are no competing claims. Any other property shall be kept separate until one of the following occurs: (1) the parties reach an agreement on the distribution of the property; (2) a court order resolves the competing claims; or (3) distribution is allowed under section (f) below."

⁹ "A lawyer shall comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. . . . (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to

Respondent failed to properly withdraw in *Monje v. Corey*, CV2013-014102 and effectively abandoned the client during a hearing on January 28, 2016. By abandoning Mrs. Monje, Respondent did not take steps “reasonably practicable” to protect her client’s interest.

6. ER 3.2 [Expediting Litigation].¹⁰ Respondent conditionally admits that she negligently violated this rule where her conduct caused delay, inconsistent with the requirement of this rule that she make reasonable efforts to expedite litigation, in her representation of Elizabeth Monje in CV2013-014102 as set forth in paragraphs 67-83 above.
7. ER 3.3(a)(1) [Candor Toward the Tribunal].¹¹ Respondent conditionally admits that she knowingly violated this rule by the following:
 - a. Failing to notify all interested parties, including Gust, PWP, BLO and Andante of her July 2015 and October 2015 Applications for Distribution of Funds. Despite this, Respondent filed a motion with

protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned.”

¹⁰ “A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.”

¹¹ “A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”

the court wherein she claimed she had informed all interested parties.

- b. Making a misrepresentation by omission where Respondent's July 2015 and October 2015 Applications for Distribution of Funds advised the court that Respondent had a fee agreement with the client, but failed to mention her knowledge that the clients also had fee agreements with Gust, PWP, BLO and Andate for legal services arising out of the same matter.
- c. Making a misrepresentation by omission where Respondent's Applications failed to inform the court of Respondent's knowledge of Gust's bill for costs and fees in the amount of \$871,980.82, previously sent to the client.
- d. Making a misrepresentation by omission where Respondent's Applications failed to inform the court of Respondent's knowledge of PWP's demand for repayment of its costs in the amount of \$101,770.89.
- e. Misrepresenting why Respondent needed to have her costs awarded during the October 20, 2015 oral argument on her Application. After Commissioner LaBianca advised she would not rule on the matter of fees and costs at that time, Respondent sought to persuade the court to rule claiming that "trial witnesses" and "expert witnesses from the

trial” are still waiting to be paid, even though no experts testified at trial.

8. ER 3.3(a)(3) [Candor to the Tribunal].¹² Respondent conditionally admits that she knowingly violated this rule where, Respondent admitted to IBC that she reviewed PWP’s claim upon its receipt during the summer of 2017 and compared it to her accounting records and discovered that she negligently erred in including \$37,240.85 of costs in her request for costs that PWP had actually paid. Thus, although she represented to the court that the \$37,240.85 were costs her law firm incurred in representing the Monjes, she later learned PWP paid such costs. Despite providing IBC detailed information regarding the specified date, the amount and a description of the costs Respondent negligently misrepresented were her own, Respondent failed to provide this detailed update to the court.

9. ER 4.1 [Truthfulness in Statements to Others].¹³

a. Respondent conditionally admits that she knowingly violated this rule when she made a misrepresentation by omission to Complainant Palumbo when she told him, “they were going to hold off paying

¹² “A lawyer shall not knowingly offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.”

¹³ “In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.”

various law firms' costs and fees until after the conclusion of the appeal." Respondent implied that she, along with all relevant law firms, had agreed to hold off seeking costs and fees until after the conclusion of the appeal when Respondent knew she would be filing an application for her own fees and costs in the immediate future.

- b. Respondent conditionally admits that she knowingly violated this rule where she misrepresented to Dr. Wu why he should take less than his total billed amount, in an effort to persuade him to accept a reduced payment. Respondent misrepresented the "amount permitted" by the court and that she would "need" Court permission to pay him a sum greater than \$21,000.00 when Respondent's firm could have paid him pursuant to the parties' contract without court involvement.

10. ER 8.4(a) [Misconduct].¹⁴ Respondent conditionally admits that by violating the rules set forth above, she violated this rule.

11. ER 8.4(c) [Misconduct].¹⁵ Respondent conditionally admits that by violating rules 3.3(a)(1) and 3.3(a)(3) as set forth above, she "engaged in conduct

¹⁴ "It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another".

¹⁵ "It is professional misconduct for a lawyer to: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation".

involving dishonestly, fraud, deceit or misrepresentation” in violation of this rule.

12. ER 8.4(d) [Misconduct].¹⁶ Respondent conditionally admits that by violating the rules above, she engaged in misconduct that was prejudicial to the administration of justice and put the profession in a negative light.

CONDITIONAL DISMISSALS

IBC has conditionally agreed to dismiss the following alleged violations of Ariz.

R. Sup. Ct. Rule 42, ERs 1.3, 1.4(b), 1.5(b), 3.2, 3.3(a)(1) and 8.4(c).

1. ER 1.3 [Diligence]. IBC conditionally agrees to dismiss the allegation that Respondent failed to act diligently and to expedite litigation regarding her representation of the Bialoboks (as set forth in paragraphs 60-66) and regarding Respondent’s representation of herself against Dr. Rodriguez in CV2014-003949 (as set forth in paragraphs 84-89).
2. 1.4(b) [Communication].¹⁷ IBC conditionally agrees to dismiss the allegation that Respondent failed to advise the Monjes of all necessary information to permit them to make an informed decision regarding the separate times they decided to keep the representation of their minor son

¹⁶ “It is professional misconduct for a lawyer to: (d) engage in conduct that is prejudicial to the administration of justice.”

¹⁷ “A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

with Respondent. IBC understands there are contested issues of fact surrounding this allegation.

3. 1.5(b) [Fees]. IBC conditionally agrees not to pursue this allegation recognizing that there is a factual dispute regarding this issue.
4. ER 3.2 [Expediting Litigation]. IBC conditionally agrees to dismiss the allegation that Respondent failed to expedite litigation regarding her representation of the Bialoboks (as set forth in paragraphs 60-66) and regarding Respondent's representation of herself against Dr. Rodriguez in CV2014-003949 (as set forth in paragraphs 84-89).
5. ER 3.3(a)(1) [Candor to the Tribunal].
 - a. IBC conditionally agrees to dismiss the allegation that Respondent improperly filed an Ex Parte Application for Substitution of Counsel, dated March 12, 2013, as "by Melanie McBride of BLO". IBC understands there is a fact dispute regarding Respondent's employment at the time and whether she was authorized to sign a pleading on behalf of BLO.
 - b. IBC also agrees to conditionally dismiss the allegation that Respondent violated this rule by falsely representing to the court in *Monje v. Corey*, CV2013-014102 that she "contacted my clients that day and it was a horrible phone call to have to make" [advising that she abandoned them at the January 28, 2016 hearing]. IBC recognizes that this is a she said/she said fact dispute.

- c. IBC conditionally agrees to dismiss the allegation that Respondent violated this rule by falsely represented to the Court during the October 20, 2015 on her Application for Distribution of Funds that, "I've told them [trial experts] once the court approves the costs, I will pay you. Some of these are fairly significant like Dr. Wu. . . . that are trial witnesses that are waiting to be paid." IBC acknowledges there are contested fact issues surrounding this allegation.
- d. IBC conditionally acknowledges that although Respondent will conditionally admit that she *negligently* misrepresented that \$37,240.85 in costs were her costs in her Application for Distribution of funds, due to contested issues of fact, it will be difficult to prove by clear and convincing evidence that Respondent *knowingly* misrepresented her total costs in her Application for fees and costs made with the court.

RESTITUTION

Restitution is not an issue in this matter. PWP has entered into a separate civil stipulated judgment with Respondent.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: 18-month suspension and two years of probation upon reinstatement. The terms of the probation will be determined by the PDJ/Hearing Panel based on the evidence submitted during the reinstatement hearing. However, IBC suggests

that probation include: (1) a MAP evaluation by Dr. Lett; (2) LOMAP; and (3) a showing that Respondent is current on making payments to PWP pursuant to the parties' stipulated judgment in PB2014-002889, or as otherwise agreed by the parties to the stipulated judgment.

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. Respondent conditionally admits that she knowingly made false statements and/or omissions to the court as set forth above, and that she knowingly failed to inform the court of the discovery of the error even though she had informed IBC of the error. Respondent also knew or should have

known she dealt improperly with client property and Respondent admits other negligent violations that occurred during the representation of her client.

Generally, the most severe sanction guides the analysis. The parties agree that *Standards* 4.12 and 6.12 are the appropriate *Standards* given the facts and circumstances of this matter. *Standard* 4.12 provides that “suspension is generally appropriate when a lawyer knows or should know that she is dealing improperly with client property and causes injury or potential injury to a client. *Standard* 6.12 states, “Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding or causes an adverse or potentially adverse effect on the legal proceeding.” Here, Respondent conditionally admitted knowingly making misrepresentations and/or omissions to the court in an effort to obtain her fees and costs to the detriment of the client, other known lien-holding law firms and to the administration of justice. Similarly, Respondent should have known she improperly failed to comply with ER 1.15 and thereby dealt improperly with client property, causing potential injury to the client.

The duty violated

As described above, Respondent’s conduct violated her duty to her client, the legal system and the profession.

The lawyer’s mental state

For purposes of this agreement the parties agree that Respondent knowingly made misrepresentations and/or omissions to the court, knowingly failed to correct a negligent misrepresentation, knew or should have known she dealt improperly with client property, and made other negligent violations while representing the Monjes in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual harm to PWP, potential harm to Respondent's client, actual harm to the legal system and potential harm to the legal profession.

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:

1. *Standard 9.22(b)* (dishonest or selfish motive). Respondent's financial condition at the time of her July and October 2015 Applications for Distribution of Funds created the appearance of a selfish motive that Respondent seek her fees and costs at the exclusion, and to the detriment of other known law firm lienholders. Respondent had a personal belief was that she was entitled to payment prior to the other known law firm lienholders, which she deliberately effectuated, in part by telling PWP, she and the client

would “hold off” seeking attorney fees and costs when she knew she intended to seek her fees and costs.

2. *Standard 9.22(d)* (multiple offenses). As set forth above, Respondent caused harmful, unnecessary delay in *Monje v. Corey*, CV2013-014102; made misrepresentations to the court in *In the Matter of the Conservatorship of Ryan Monje*, PB2014-002889, and Respondent made untruthful statements to both Mr. Palumbo and Dr. Wu.
3. *Standard 9.22(h)* (vulnerability of victim). The underlying lawsuit was brought for the benefit of what Respondent called a permanently brain-injured child. Yet, Respondent’s conduct exposed the client and his parents to the potential claims of four other law firms.
4. *Standard 9.22(i)* (substantial experience in the practice of law). Respondent, who has been practicing since 2005, has substantial experience in the practice of law.

In mitigation:

1. *Standard 9.32(a)* (absence of a prior disciplinary record). Respondent has no history of disciplinary violations.
2. *Standard 9.32(c)* (personal or emotional problems). During the fall of 2014 and throughout 2015, Respondent had several significant personal issues. Specifically, a previously adjudicated violent sex offender who committed acts against Respondent and was known to stalk Respondent was released from prison in January of 2015 causing Respondent heightened anxiety and fear.

Further, in August 2015 Respondent, who at that time lacked health insurance, was no longer able to pay for prescribed medication necessary to control her anxiety, depression, ADHD and PTSD. Being off the medication and suffering heightened fear contributed to Respondent's negligent mathematical errors related to her representations to the court about her law firm's costs related to the underlying matter, and otherwise clouded her judgment contributing to the negligent delay violations admitted herein. Had her judgment not been clouded by her personal and emotional problems, Respondent does not believe she would have made the misrepresentations and/or omissions to the court conditionally admitted herein.

3. *Standard 9.32(e)* (full and free disclosure to disciplinary board or cooperative attitude toward proceedings). Respondent cooperated with IBC during this process.
4. *Standard 9.32(g)* (character or reputation). Respondent enjoyed a good reputation. See the attached letter from Keith Evans supporting Respondent's reputation which is attached hereto as **Exhibit B**.
5. *Standard 9.32(l)* (remorse). Respondent has remorse for the admitted misconduct herein. Respondent strongly asserts she would never intentionally hurt anyone, especially a child, and she is sorry for any harm caused as a result of her admitted misconduct. Had her judgment not been clouded by her personal and emotional problems, Respondent does not believe she would have

made the misrepresentations and/or omissions to the court conditionally admitted herein.

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate. The parties have conditionally agreed that the aggravating and mitigating factors were considered when agreeing that an 18-month suspension is appropriate. This agreement was based on evaluation of the factors listed in greater detail above.

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, IBC and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of 18-months suspension and two-years of probation upon reinstatement, plus the imposition of costs and expenses. A proposed form order is attached hereto as **Exhibit C**.

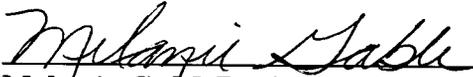
DATED this 25th day of February, 2019.

STATE BAR OF ARIZONA

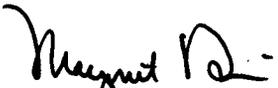

Meredith Vivona
Independent Bar Counsel

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 25th day of February, 2019.


Melanie G. McBride Gable
Respondent

Approved as to form and content


Margaret Downie
Executive Director, Commission on Judicial Conduct

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 25th day of February 2019.

Copy of the foregoing emailed
this 25th day of February, 2019 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 emailed
this 25th day of February, 2019, to:

Melanie G. McBride Gable
14534 W. Jenan Dr.
Surprise, Arizona 85379
melanieggable@gmail.com

Copy of the foregoing emailed
this 25th day of February, 2019, to:

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

by: 

FILED
OCT 31 2018
BY *[Signature]*

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

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

No. 15-2327

**MELANIE MCBRIDE GABLE
Bar No. 023348**

PROBABLE CAUSE ORDER

Respondent.

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 12, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of Independent Bar Counsel's Report of Investigation.

By a vote of 6-0-3¹, the Committee finds probable cause exists to file a complaint against Respondent in 15-2327.

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

Parties may not file motions for reconsideration of this Order.

DATED this 30 day of October.

Lawrence F. Winthrop

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

¹ Committee members Ben Harrison, Charles Muchmore and Walt Davis did not participate in this matter.

Original filed this 5th day
Of November with:

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

Copy emailed this 5th day
Of November, to:

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Schill Law Group
8700 East Via De Ventura
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Scottsdale, AZ 85258
mcbriidelawaz@gmail.com

Copy emailed this 5th day
Of November, to:

Attorney Discipline Probable Cause Committee
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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:

A handwritten signature in black ink, appearing to be the initials 'LRO' followed by a stylized flourish.

FILED

OCT 31 2018

BY *H. Lebrun*

**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,**

**MELANIE MCBRIDE GABLE
Bar No. 023348**

Respondent.

No. 17-1533

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 12, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the Independent Bar Counsel's Report of Investigation.

By a vote of 6-0-3¹, the Committee finds probable cause exists to file a complaint against Respondent in 17-1533.

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

Parties may not file motions for reconsideration of this Order.

DATED this 30 day of October.

Lawrence F. Winthrop

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

¹ Committee members Ben Harrison, Charles Muchmore and Walt Davis did not participate in this matter.

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Of November, to:

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mcbridelawaz@gmail.com

Copy emailed this 5th day
Of November, to:

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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: 

FILED

OCT 31 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,**

**MELANIE MCBRIDE GABLE
Bar No. 023348**

Respondent.

No. 17-2462

PROBABLE CAUSE ORDER

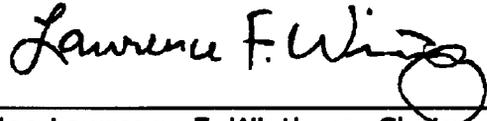
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 12, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the Independent Bar Counsel's Report of Investigation.

By a vote of 6-0-3¹, the Committee finds probable cause exists to file a complaint against Respondent in 17-2462.

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

Parties may not file motions for reconsideration of this Order.

DATED this 30 day of October.



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

¹ Committee members Ben Harrison, Charles Muchmore and Walt Davis did not participate in this matter.

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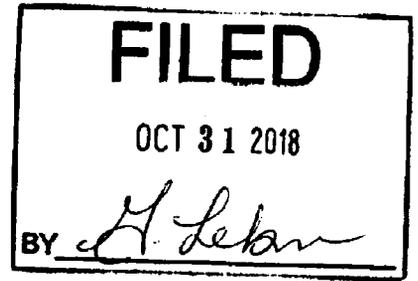
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mcbriidelawaz@gmail.com

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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: 



**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,**

**MELANIE MCBRIDE GABLE
Bar No. 023348**

Respondent.

No. 17-3461

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on October 12, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the Independent Bar Counsel's Report of Investigation.

By a vote of 6-0-3¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 17-3461.

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

Parties may not file motions for reconsideration of this Order.

DATED this 30 day of October, 2018.

A handwritten signature in cursive script that reads "Lawrence F. Winthrop".

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

¹ Committee members Ben Harrison, Charles Muchmore and Walt Davis did not participate in this matter.

Original filed this 5th day
Of November with:

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

Copy emailed this 5th day
Of November, to:

Melanie McBride Gable
Schill Law Group
8700 East Via De Ventura
Suite 210
Scottsdale, AZ 85258
mcbridelawaz@gmail.com

Copy emailed this 5th day
Of November, 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:

A handwritten signature in black ink, appearing to be a stylized name, possibly "LRO" or similar, written over a horizontal line.

Exhibit A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Melanie G. Gable Bar No. 023348, Respondent

File Nos. 15-2327, 17-1533, 17-2462, and 17-3461

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

| | | |
|----------|--|-------------|
| 02/23/18 | Transcription of Interview of Respondent | \$ 1,192.50 |
| 04/18/18 | Investigator mileage – File review for conflict counsel | \$ 6.54 |
| 04/18/18 | Investigator mileage – File review for conflict counsel | \$ 6.54 |
| 01/24/19 | Investigator mileage – Attempted Service of Subpoena | \$ 25.52 |
| 01/25/19 | Investigator mileage – Service of Subpoena | \$ 25.52 |
| 02/06/19 | Transcription of Interviews of Keith and Melissa Gernant | \$ 935.50 |

| | |
|--|-------------|
| Total for staff investigator/miscellaneous charges | \$ 2,192.12 |
|--|-------------|

| | |
|---|---------------------------|
| <u>TOTAL COSTS AND EXPENSES INCURRED</u> | <u>\$ 3,392.12</u> |
|---|---------------------------|

Exhibit B

February 25, 2019

TO WHOM IT MAY CONCERN:

I have known Melanie Gable for over one year.

In the time I have known Ms. Gable we have conferred on several family law matters. I have known Ms. Gable to be professional and insightful in all our legal discussions. In one very difficult family law matter Ms. Gable assisted me greatly with a difficult opposing counsel. Ms. Gable came highly recommended to her current position with the Schill Law Group. The managing attorney, John Schill speaks very highly of Ms. Gable and has discussed her experience in federal as well as state courts with me.

Ms. Gable cares about her work and constantly shows that passion by taking the extra step in her work. Ms. Gable does not just mail it in but goes above and beyond when representing her clients. Ms. Gable is an excellent attorney and I do not know all the facts of her present dealings with the Arizona State Bar, but I know that her dedication, motivation and willingness to assist fellow attorneys will be sorely missed should the Bar suspend her from practicing law. I would ask for any kind of lesser punishment for Ms. Gable.

Should you have any questions regarding this letter or my knowledge and interactions with Ms. Gable, please do not hesitate to call me at (602) 545-1883.

Sincerely,

A handwritten signature in cursive script that reads "Keith Evans". The signature is written in black ink and is positioned above the typed name and title.

Keith J. Evans
Attorney at law

Exhibit C

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,
MELANIE G. MCBRIDE GABLE,
Bar No. 023348,**

Respondent.

PDJ-2018-9121

FINAL JUDGMENT AND ORDER

[State Bar No. 15-2327, 17-1533,
17-2462 & 17-3461]

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on February 25, 2019, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, Melanie G. McBride, is hereby sanctioned for her 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 that, upon reinstatement, Respondent shall be placed on probation for a period of two years.

IT IS FURTHER ORDERED that Respondent shall participate in the following programs:

1. Member Assistance Program (MAP). MAP assessment to be performed by Philip D. Lett, Ph.D., or by another doctor upon agreement of the parties;
2. Law Office Management Assistance Program (LOMAP). After reinstatement, Respondent shall be required to contact the State Bar

Compliance Monitor and to submit to a LOMAP examination of office procedures. Respondent shall sign terms and conditions of participation and shall be responsible for any costs associated with LOMAP; and

3. Proof that Respondent is current on payments due to Palumbo Wolfe Palumbo as required by the parties' Stipulated Judgment in PB2014-002889, dated March 26, 2018 or as otherwise agreed to by the parties to the Stipulated Judgment.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

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 \$3,392.12 within 60 days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within 60 days from the date of service of this Order.

DATED this _____ day of March, 2019.

**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 March, 2019.

Copies of the foregoing mailed/mailed
this _____ day of March, 2019 to:

Melanie G. McBride Gable
14534 W. Jenan Dr.
Surprise, Arizona 85379
melanieggable@gmail.com
Respondent

Copy of the foregoing emailed
this ____ day of March, 2019, to:

Meredith Vivona
Independent Bar Counsel
Office of the Commission on Judicial Conduct
1501 W. Washington St. Ste. 229
Phoenix, Arizona 85007
mvivona@courts.az.gov

Copy of the foregoing emailed
this ____ day of March, 2019 to:

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

by: _____