BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **CHERYL CASTROGIOVANNI GUZ, Bar No. 029938** Respondent.	**PDJ 2018-9104** **FINAL JUDGMENT AND ORDER** [State Bar No. 17-2000] **FILED FEBRUARY 28, 2019**

The Presiding Disciplinary Judge accepted the Agreement for Discipline by Consent filed by the parties on January 31, 2019.

Accordingly:

IT IS ORDERED Respondent, **CHERYL CASTROGIOVANNI GUZ, Bar No. 029938** is suspended for four (4) months for her 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, Ms. Guz shall be placed on probation for a period of two (2) years.

IT IS FURTHER ORDERED Ms. Guz shall participate in the following programs:

1. Trust Account Ethics Enhancement Program (TAEEP): Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP).

Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this order, to schedule attendance at the next available class. Respondent shall be responsible for the cost of attending the program.

2. 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.

3. Continuing Legal Education (CLE): In addition to annual MCLE requirements, Respondent shall complete the following Continuing Legal Education ("CLE") program(s): (1) *10 Deadly Sins of Conflict*, and (2) *Law Firm Management: Avoiding Risk and Improving Productivity* OR *Practice Management Essentials: Tools for Avoiding Nasty Surprises* within ninety (90) days from the date of this order. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes. Respondent should contact the

Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent shall be responsible for the cost of the CLE.

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.

DATED this 28th day of February, 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed
this 28th day of February, 2019,
and mailed March 1, 2019, to:

Rebecca Nicole Kennelly
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
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Karen Christine Stafford
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Email: kstafford@cavanaghlaw.com
Respondent's Counsel

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **CHERYL CASTROGIOVANNI GUZ,** **Bar No. 029938** Respondent.	**PDJ-2018-9104** **DECISION ACCEPTING DISCIPLINE BY CONSENT** [State Bar No. 17-2000] **FILED FEBRUARY 28, 2019**

Under Rule 57(a), Ariz. R. Sup. Ct.,[1] an Agreement for Discipline by Consent ("Agreement"), was filed on January 31, 2019. A Probable Cause Order issued on June 1, 2018 and the formal complaint was filed on November 15, 2018. Ms. Guz is represented by Karen Stafford, *The Cavanagh Law Firm, PA* and the State Bar of Arizona is represented by Staff Bar Counsel Rebecca Kennelly.

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. Guz 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. Pursuant to Rule 53(b)(3), the complainant was notified of this Agreement by email dated January 9, 2019. No objection has been filed.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Ms. Guz admits violating Rule 42, ER 1.5(b) and (c) (fees), ER 1.7 (conflict of interest/current clients), ER 1.8 (conflict of interest/specific rules), ER 1.15(a), (b)(2), and (d) (safekeeping client property), ER 5.3 (supervising non-lawyer assistants), ER 5.4 (professional independence of a lawyer), ER 5.7 (responsibilities/law related services) and Rule 43 (trust accounts).

Upon acceptance of the Agreement the parties stipulate to a four month suspension followed by two (2) years of probation, the terms of which shall be participation in the Trust Account Ethics Enhancement Program (TAEEP), Law Office Management Assistance Program (LOMAP), continuing legal education (CLE) and the payment of costs of $1,200.00 within thirty (30) days from this order.

The misconduct is briefly summarized. In 2014, Ms. Guz and attorney Charles Bruen formed Guz Bruen Law Group (GBLG) which primarily focused on debt collection. Jimmy Bracy, a non-attorney employee who had experience with the debt collection industry assisted Ms. Guz with accounts, personnel, hardware, software, offices and vendors. Bracy was given the title of Director of Operations. Ms. Guz, Mr. Bruen, and Bracey split profits and they represented Bracy's debt collection business.

Together they purchased debt portfolios, operated a process service in which Ms. Guz and Mr. Brun held a financial interest. Ms. Guz and Mr. Bruen relied on Bracy to inform clients of their personal interests in the process service business. Bracy was also entrusted to maintain client fee agreements, client communications and all aspects of the finances, including GBLG's trust account was delegated to Bracy by Ms. Guz and Mr. Bruen. Thereafter, an insufficient notice funds notice was received by the State Bar regarding the GBLC trust account.

Ms. Guz admits that for over a year, she and Mr. Bruen failed to supervise Bracy's handing of fee agreements, maintenance of the trust account, and the safekeeping of client property in accordance with rules and guidelines governing trust accounts. She and Mr. Bruen further failed to disclose conflicts of interests and his failures related to the trust account resulted in the conversion of client funds.

The parties agree *Standards* 4.12 *Failure to Preserve the Client's Property*, 4.33, *Failure to Avoid Conflicts of Interest* and 7.2, *Violations of other Duties owed As a Professional* are applicable given the facts and circumstances. Ms. Guz's conduct violated her duty to clients and the profession and caused potential harm to clients and the profession.

The parties further agree that factors 9.22(c) pattern of misconduct and 9.22(i) substantial experience in the practice of law are present in the record. In mitigation are

factors 9.32(a), (b), (c),[2] (d) and (e). The parties stipulate suspension is the presumptive sanction and that a short-term suspension is appropriate.

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 28th day of February, 2019

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed
this 28th day of February, 2019,
and mailed March 1, 2019, to:

Rebecca N. Kennelly
Staff Bar Counsel
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Respondent's Counsel

by: AMcQueen

[2] A Protective Order was issued regarding documentation offered in support of this factor.

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

JAN 31 2019

FILED

BY

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **CHERYL CASTROGIOVANNI GUZ** **Bar No. 029938** Respondent.	**PDJ 2018-9104** State Bar File No. **17-2000** **AGREEMENT FOR DISCIPLINE BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Cheryl Castrogiovanni Guz, who is represented in this matter by counsel, Karen Christine Stafford, hereby submit their Agreement for Discipline by Consent,

pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on June 1, 2018, and the formal complaint was filed on November 15, 2018.

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 Complainant by email on January 9, 2019. Complainant has 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. Complainant informed Bar Counsel on January 11, 2019, and verified again through his counsel on January 30, 2019, that he does not object to this agreement.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, Ariz. R. Sup. Ct., ERs 1.5(b), 1.5(c), 1.7, 1.8, 1.15(a), 1.15(b)(2), 1.15(d), 5.3, 5.4, and 5.7; Rule 43(a)(2); Rule 43(b)(1)(A); Rule 43(b)(1)(B); Rule 43(b)(1)(C); Rule 43(b)(2)(A); Rule 43(b)(2)(B); Rule 43(b)(2)(C); Rule 43(b)(2)(D); Rule 43(b)(3)(A); Rule 43(b)(3)(C); Rule 43(b)(5); and Rule 43(c). 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 A.

FACTS

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having first been admitted to practice in Arizona on January 15, 2013.

2. Respondent Charles J. Bruen, III (Respondent Bruen) began working with Respondent Cheryl Castrogiovanni Guz (Respondent Guz) in December 2013, and the two formed CBCG Law, a Phoenix practice primarily focused on estate planning and probate work.

3. In late 2014, Respondents formed Guz Bruen Law Group (GBLG), a Phoenix practice primarily focused on debt collection with the assistance of Jimmy Bracy (Bracy). Bracy, a non-attorney with experience in the debt collection

[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.

business, provided Respondents with accounts, personnel, hardware, software, offices, and vendors. Respondents split their profits with Bracy, represented Bracy's debt collection business (after they had purchased debt portfolios in late 2015) at no additional fee, and purchased debt portfolios with Bracy. Respondents also joined with Bracy in operating a process service business, which Respondents then used at a cost to GBLG clients, and Respondents relied on Bracy to inform the clients of their personal interest in the process service business.

4. During the time that Respondents employed Bracy, Respondents entrusted Bracy to maintain client fee agreements, client communications, and handle all of the finances, including the GBLG trust account.

5. Respondents did not provide specific training to Bracy to ensure that client funds were protected or that records were adequately kept, resulting in client funds being converted and the account being overdrawn.

6. The State Bar of Arizona (SBA) received an insufficient funds notice for Respondents' trust account. The Trust Account Examiner (Examiner) initiated an investigation. Prior to receiving any correspondence from SBA about their trust account, Respondents self-reported the overdraft to SBA in an effort to get guidance as to how to remedy the situation.

COUNT ONE (File No. 17-1863/Trust Account)

Bracy Employment

7. Respondents met Bracy when they assisted attorney Wayne P. Marsh (Marsh) with debt collection lawsuits. Bracy was working with Marsh at the time, but in mid-2014, Bracy approached Respondents and said that because Marsh was retiring, Bracy was searching for a new firm to take his business and clients. Respondents learned later that Marsh was not retiring, but rather, Marsh terminated Bracy's employment. Respondents obtained this information directly from Marsh after they learned about the trust account issue. Bracy held himself out as an expert in the management of debt collection law firms, and he informed Respondents that Marsh's debt collection clients were his clients for whom he worked for years even prior to working with Marsh.

8. Respondents created GBLG on December 31, 2014, in preparation for the new business venture with Bracy. On January 1, 2015, GBLG entered into an employment agreement with Bracy, giving him the title of Director of Operations.

9. The employment agreement with Bracy stipulates: "Any sale of GBLG will be agreed upon by Chuck Bruen, Cheryl Guz and Jimmy Bracy, with the profit split to be determined at the time of sale." The contract states that it "is drafted to

be in compliance with ER 5.4(a)(3). Bracy's compensation is based in whole on a profit sharing agreement." The agreement specifies Bracy's pay was 70% of GBLG profits from February 1, 2015 to March 31, 2015; 60% of GBLG profits from April 1, 2015 to June 30, 2015; and 50% of GBLG profits from July 1, 2015 forward. Bracy was paid through his company, JRB Enterprises, LLC (JRB) as a 1099 independent contractor.

10. Respondents performed legal work and spoke with clients "on an as needed basis regarding the legal issues that presented themselves." Bracy oversaw the financial side of the law firm, including employee management and payroll. Bracy was responsible for calculating compensation amounts for the attorneys, employees, and contractors at GBLG, inclusive of his own pay.

11. Respondents owned their own computers, held their own lease, and were responsible for the utilities and phones for GBLG until the lease expired in August 2016. At that time, Bracy re-negotiated his lease to include additional office space for Respondents, and going forward GBLG's network, computers, and telecommunication systems were owned by Bracy's company and were managed by Bracy.

12. Bracy's employment contract did not directly reference the GBLG client trust account; however, Bracy was responsible for managing Respondents' trust account.

13. Bracy was to change all debtor payments from Marsh's trust account to GBLG trust account; however, Bracy deposited some of the money belonging to GBLG clients into Marsh's trust account from January 2015 to May 2015. Respondents "discovered this misconduct" after finding deposit slips filled out by Bracy in the amount of $203,950.18 among GBLG's accounting records, and some of those funds belonged to their clients. Respondents were able to identify the client for whom each deposit was made based on the name of the client on each deposit slip, and Respondents were able to confirm that the client funds were appropriately deposited into the client's account, as shown by the remit reports to each client. Respondents believe that the purpose of depositing funds in the Marsh account was simply to redirect the fees earned by GBLG to Marsh's operating account without Respondents' knowledge so that only Bracy would have access to those funds.

14. Bracy withdrew $146,338.50 in cash from Respondents' firm trust account between January 2015 and May 2015.

15. Respondents delegated to Bracy the maintenance of Respondents' trust account records and all other office records associated to the business aspect of the firm. Respondents met with Bracy informally to discuss the firm's finances and the trust account. Respondents asked Bracy if their probate clients' funds were present and accounted for, Bracy responded positively, and Respondents did nothing to verify Bracy's claims.

16. In May 2016, Bracy hired and trained Cory Meade as a bookkeeper. Instead of completing the required three-way reconciliations, Meade only completed data entry on QuickBooks for GBLG and Bracy's companies. When asked whether the trust account balanced, Meade responded that it did. Meade was referring to the fact that receipts for checks and deposits maintained by GBLG matched the bank's records.

17. With respect to providing copies of monthly reconciliations: "Respondent Guz and Respondent Bruen were both aware of this requirement. In fact, when Bracy was initially hired, we were surprised that [Bracy] was not performing the required 3-way reconciliation with his prior firm. Respondent Bruen printed out a copy of the form and provided it to Bracy, who assured Respondent Guz and Respondent Bruen that they would be maintained." Despite learning that

Bracy did not perform proper reconciliations with his former employer, Respondents did not ensure that Bracy executed his duties as GBLG's Director of Operations in accordance with the Ethical Rules.

Bracy as Client and Business Partner

18. In addition to employing Bracy, Respondents also represented Bracy's company, JRB. In June 2015, Respondents and Bracy agreed that "GBLG would work JRB accounts at no fee to JRB, meaning GBLG would pay its employees out of its own operating funds to work JRB accounts." This included "preparing pleadings, motions, writs, and other documentation for filing, and follow up on items as necessary." In exchange, Respondents and Bracy "split profits of JRB accounts evenly between each of them."

19. Respondents possess various JRB checks issued payable to Respondents. The memo on these checks identifies them as "ROI" or "return on investment" payments. Bracy and Respondents obtained upwards of $42,000.00 in profit from debtor payments received between January 1, 2016 and October 25, 2016. Compensation was determined on a "rolling basis" and was based on factors such as amounts received and legal costs incurred.

20. Respondents also purchased debt portfolios with Bracy. Between January and December of 2016, Respondents contributed no less than $18,641.77 to JRB by way of three disbursements. The largest contribution consisted of operating account check number 1724, written payable to JRB by Respondent Bruen in the amount of $13,229.45. Respondents assert that this disbursement was issued "for the specific purpose of purchasing debt portfolios." The memo on the copy of the check states "Professional Services." Bracy purchased the debt portfolios through JRB, and the corresponding bills of sale reflect JRB as the sole owner of the accounts purchased. Respondent Bruen and Respondent Guz were misinformed by Bracy that only Bracy was permitted to buy debt portfolios due to specific qualifications that only he possessed.

Lawyer Process Services LLC

21. In August 2015, Respondents became involved in a process services business that Bracy had created in 2013 but was not operational until Respondents joined as members in 2015, called Lawyer's Process Services LLC (LPS). LPS operated out of JRB's existing office space with the use of a computer already owned by JRB.

22. Respondent Bruen's spouse, Michele King[2] (King), performed the day-to-day operations of LPS and initially was paid an hourly wage. In February of 2017, LPS began to distribute the profits by way of a 12/12/12/64 split, with King receiving 64% of the profit based on her increased involvement in running the business. Respondents and King removed themselves as members of LPS on June 26, 2017, following a discussion with Bracy's lawyer.

23. While Respondents claim that LPS provided process serving and case management, LPS outsourced the substantive work of process serving to established process serving entities. LPS charged for the services it performed in addition to those services performed by process services that were contracted to do the actual service of documents. LPS did not maintain an operating budget to pay for these outsourced costs but instead relied on obtaining payment from the GBLG trust account.

24. LPS billing records covering the period of January of 2016 to May of 2017 reflect that during that period, all third-party process serving fees were increased by $75.00 per transaction. An additional $40.00 was added by LPS if the

[2] Also known as Iva Michele King and Michele Bruen.

service was outside of Maricopa County. Therefore, a process service in Pima County for which LPS was charged $65.00 through a third-party, was billed to the client by way of GBLG as $180.00. Meanwhile, the task of recording judgments was inflated by $25.00. JRB accounts were exempt from the inflation, and the services were billed to JRB at cost.

25. Between January 2016 and June 2017, the partners split nearly $80,000 in LPS profits. Respondents held a financial interest in LPS. Respondents relied on Bracy, who had most of the client contact, to inform the clients about Respondents' financial interest in LPS and obtain consent. Respondents believed that those clients for whom LPS was used were informed about Respondents' financial interest in the company and consented to the use of LPS.

26. As noted above, Bracy used Respondents' firm trust account to pay the associated expenses owed to LPS. For example, on June 1, 2017, Bracy wrote a check from GBLG trust account, check number 3480, payable to LPS in the amount of $15,441.00 for processing services purportedly conducted in May of 2017. The disbursement cleared that day, just prior to the checks that were returned unpaid. The same day King issued LPS checks on reliance on those funds to third-party service providers. In addition, Bracy issued an LPS check payable to King in the

amount of $5,888.00, while King issued LPS checks for the benefit of the remaining LPS partners, which consisted of the following disbursements: Respondent Bruen - $1,104.00; Respondent Guz - $1,104.00; and Bracy - $1,104.00.

GBLG Fee Agreements

27. Bracy drafted GBLG fee agreements at Respondents' direction, but not all clients were provided with new fee agreements. For example, client LGB began their debt collection venture with Marsh and subsequently "inherited" GBLG after the debt collection clients were transferred. LBG does not have a signed fee agreement with GBLG.

28. Respondents tasked Bracy with maintaining fee agreements. Bracy only possesses a copy of the fee agreement for client CA. Bracy provided the agreement to Respondent Guz for her to sign and send to CA. The draft exemplar agreement that was provided to the State Bar, which was not the actual fee agreement executed by CA, showed that there might have been inconsistencies between the recitals in the agreement and the actual manner in which the client's funds were handled by GBLG.

29. For example, the draft exemplar fee agreement indicates that legal costs were to be "paid for upfront by [GBLG] and deducted from the following

remittance." GBLG did not advance costs, instead GBLG deducted expenses directly from the trust account, thereby converting client funds to cover expenses GBLG agreed to advance upfront. However, the exemplar agreement provided to the State Bar was not the fee agreement actually executed by CA; therefore, it is unclear whether the provisions in that agreement were included in the finalized CA agreement.

30. Copies of cancelled checks reflect Bracy as the maker for the majority of the disbursements issued during the period of review, but the Examiner identified no less than eleven court fee check disbursements issued by Respondents on behalf of CA during the period of review. Respondent Bruen is reflected as the maker of eight and Respondent Guz is reflected as the maker of the remaining three. The Examiner identified an additional 27 checks issued on behalf of other clients for which Respondents are reflected as the makers of those checks.

31. It is unclear if GBLG was to advance costs upfront for all other GBLG clients, however, the practice of issuing costs directly from the trust account is evident as early as January 2015, during which time no less than 39 trust account starter checks were disbursed by Bracy on behalf of unknown clients. These starter checks were not identified as disbursements from a trust account.

32. When asked for clarification concerning CA's fee agreement discrepancies, Respondents responded that they did not have authority to breach their client's privilege by disclosing privileged documents to third parties.

33. Respondent Guz contacted the SBA's Ethics Hotline, spoke with Rick Palmatier, and told the Examiner that in response to the inquiry she was told that discussion of privileged communications between GBLG and CA "is absolutely off limits." Mr. Palmatier's Ethics Hotline notes reflect that he discussed ER 1.6(d) with Respondent Guz and informed her that the rules allow for the release of information in defense of a Bar charge. Mr. Palmatier also documented that they discussed that the representative from CA was an attorney and should therefore understand the nature of the process and that "fairness to the client suggests communication about the nature of the problem, reassurance of intent to resist deeper disclosure but need to provide limited information." Respondent Guz's recollection of this call is different, as she recalls that Mr. Palmatier initially responded with the general principal that an attorney may sometimes disclose documents to protect themselves, but then clarified when he was provided with more detail that when the client specifically stated that he did not want his documents disclosed, Mr. Palmatier responded that the documents were "absolutely privileged."

Cayan Merchant Fees

34. In February 2015, GBLG contracted credit payment processor Cayan to provide services at a cost of about 3% of each amount processed. The intention was for the merchant fees to be deducted from the operating account; however, Cayan deducted directly from the GBLG trust account. Merchant fees averaged $576.00 per month. Because Respondents did not adequately supervise and maintain their trust account, these fees went unnoticed for approximately two and a half years and caused an increasing shortage and conversion of client funds in the trust account that culminated with the overdraft reported to SBA.

35. Respondents reported to SBA that they were unaware of the fee deductions until on or after June 8, 2017. However, Respondents had prior knowledge of the fee discrepancy. Approximately eight months prior to the overdraft, in October of 2016, Respondents were informed by Bracy of the Cayan deduction of fees. At that time, Bracy assured Respondents that he would contact Cayan and correct the problem. Respondents relied on Bracy's assurances and did not directly contact Cayan to correct the discrepancy themselves. Respondents did not verify with Cayan that the matter was rectified and were unaware that there were continuing fee deductions occurring from the trust account. Bracy had not corrected

the problem, as he had promised, and therefore, the Cayan deductions continued through June 2017.

36. Between March and June of 2017, a total of $2,042.90 of clients' funds were converted by Cayan deductions.

37. On June 1, 2017, prior to the date that Respondents claimed to be made aware of the ongoing Cayan deductions, $1,500.00 was transferred by Bracy from the operating account to the trust account. The check, written by Bracy, describes the transfer as "Reimburse IOLTA for Cayan/Credit Card Fees."

38. Respondents state that Bracy enacted the $1,500.00 transfer and that the handwritten check ledger was maintained by Bracy. The operating account transfers were conducted online by Bracy.

39. An additional $2,000.00 was transferred into the trust account from GBLG's operating account prior to the date Respondents claimed that they became aware of the ongoing Cayan deductions. Those deposits were identified as being associated to cover unspecified "legal costs."

Irreconcilable Trust Account

40. Because Respondents failed to safekeep client property and maintain adequate internal controls, the Examiner could not reconcile the trust account.

Numerous records were not available for review and those that were contained various irregularities that hindered the accurate identification of the corresponding client and amount on whose behalf transactions were conducted. For example, on June 9, 2017, two checks totaling $391.52 were deposited into the trust account. The checks consisted of debtor payments from two distinct entities. The corresponding deposit slip identified the checks as being received on behalf of JRB. Conversely, the reconciliation subsequently conducted by Respondents identified the checks as debtor payments received on behalf of client CA. After Bracy left GBLG, Respondents hired a certified public accountant for the specific purpose of rectifying and correcting discrepancies in the accounting records. The CPA was able to rectify errors and obtain confirmation from GBLG clients that the clients were satisfied with their remittance reimbursements.

41. Because the records are incomplete or in Bracy's possession, there is no way to determine the full extent or amount of the converted funds; however, a deficit of approximately <$45,826.24> was evident at the onset of the period of review. The Examiner determined that amount based on seven cleared disbursements totaling approximately $52,415.87 that were identified as being issued on reliance on debtor payments received during February and March of 2017.

Those funds should have been held on deposit at the onset of April of 2017. The beginning balance, however, was no more than $6,589.63. The seven cleared disbursements consist of the following:

a. Cancelled check number 3179 reflects it was written payable to client CC-Tucson on March 31, 2017, in the amount of $1,300.25 as a remittance from March. The item cleared on May 1, 2017.

b. Cancelled check number 3192 reflects it was written payable to Lawyer's Process Services on April 10, 2017, in the amount of $17,840.25 for process service fees from March. The item cleared the same day.

c. Cancelled check number 3196 reflects it was written payable to client JRB on April 10, 2017, in the amount of $3,266.76 as a remittance from March. The item cleared the same day.

d. Cancelled check number 3215 reflects it was written payable to client CA on April 13, 2017, in the amount of $978.44. The memo on the copy of the check reads: "difference owed for February remit." The check cleared on April 27, 2017.

e. Cancelled check number 3313 reflects it was written payable to client V-USA on May 5, 2017, in the amount of $12,869.84 as a remittance from February and March. The item cleared on May 19, 2017.

f. Cancelled check number 3324 reflects it was written payable to client CA on May 9, 2017, in the amount of $2,277.00. The memo on the copy of the check reads: "owed legal costs March." The check cleared on May 12, 2017.

g. On April 27, 2017, a withdrawal in the amount of $13,883.33 was deposited the same day into client CA's bank account as a remittance from March.

42. Respondents claimed that only four clients were affected by this incident, with the most negatively affected client being CA. However, Respondents remain unable to fully reconcile their trust account due to a lack of information.

43. The Examiner cannot confirm that only four clients were affected. The Examiner identified transactions on behalf of 11 distinct entities. Four of those appeared to be regional subsidiaries of a national company; therefore, trust account activity was transacted on behalf of at least eight distinct clients during the period of review. The extent to which each client was affected remains unclear.

44. Respondents claimed to have reimbursed client CA, and CA confirmed with Respondents that he received the reimbursement. Respondents continue to represent CA on new matters that "overwhelmingly" comprise the majority of the debtor payments still deposited into the GBLG trust account.

45. According to the exemplar fee agreement, it is possible that GBLG agreed to provide client CA remittances and reports specifying all receipts and expenses on the third day of each month. However, it is not certain whether such a provision exists in the actual fee agreement. In any event, actual disbursements from the trust account did not occur on that schedule. For example, $13,883.33 was identified as the remittance amount owed to client CA for debtor payments received in March. The funds were issued April 27, 2017, which is not consistent with the exemplar fee agreement, but is consistent with the client's request that disbursements occur on the 10th of the following month. The disbursement was improperly remitted by way of a cash withdrawal from the trust account and deposited directly into the client's account. CA has not asserted any complaint against GBLG and continues to be a client of GBLG.

46. Five other similar disbursements taken as cash withdrawals were identified during the period of review. The six cash withdrawals totaled

approximately $39,881.30 and were transacted between March and April of 2017. The transactions were conducted at the bank branch by Bracy who instructed the teller to process a deduction from the GBLG trust account and then deposit the funds into the corresponding client's account. The transactions were verified as having been deposited into the aforementioned client's bank accounts.

47. CA remittance reports indicate that a total of $23,885.53 was due to the client for payments received during April and May of 2017. Although these reports were sent to the client, the corresponding remittances were not disbursed. Respondents were made to believe that CA was paid for April and May, and after discovering Bracy's improper transactions, Respondents directed Bracy to stop disbursing monthly remittances. When Respondents learned in mid-June 2017 of the remittance still owing to CA, they contacted CA and worked out a resolution.

48. As of August 2017, Respondents corrected the $23,885.53 deficiency to client CA as follows:

a. "$2,954.82 earned by the firm for June 2017 was instead returned to [CA] as a partial payment." The corresponding remittance check

consisted of trust account[3] check number 8109 written on July 19, 2017. The check was not identified as a disbursement from a trust account.

b. "$1,404.42 in previously unbilled costs were found by GBLG and applied to [CA's] July 2017 remittance report." The corresponding breakdown consists of 185 Turbocourt charges incurred between January of 2015 and July of 2017.[4] The Examiner was unable to verify the legitimacy of the amounts listed.

c. The remaining balance of $19,526.29 was issued to the client by way of GBLG operating check number 1869, written on August 9, 2017.

49. Respondents informed client LBG that a remittance for May 2017 would be delayed for an indeterminate amount of time because Respondents could not provide an accounting for that month's remittances. Respondents ultimately did provide the remittance and confirmed that LBG was satisfied with the payment.

Overdraft of Trust Account

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[3] Trust account ending 3863 established by Respondents after the overdraft incident for the purpose of segregating CA's funds.

[4] The unbilled total was applied to the July 2017 remittance, but inexplicably included three $6.70 entries (total of $20.10) for unbilled entries incurred during that month. The July remittance report also included entries for costs in the amount of $6.70, therefore, it is unclear if these were duplicative.

50. Regarding the overdraft that was reported to SBA, on June 1, 2017, twelve checks totaling $1,416.00 attempted to pay against the trust account when the balance was $2.41. Bracy learned of this on June 8, 2017, when alerted by the Pima County Justice Court about a check returned unpaid. Bracy was then told by the bank that multiple other checks were pending, which caused Bracy to deposit $10,000.00 of his own money into the trust account. Bracy did not inform Respondents of this issue or of his deposit, nor did he obtain their approval or consent. In fact, Bracy withheld this information from Respondents until June 9, 2017.

51. GBLG halted all transactions with the exception of the outstanding checks and paying back Bracy's $10,000.00.

52. Shortly after the discovery of the overdraft, Bracy disabled remote access to his server, terminated his employment and client relationship with Respondents, rekeyed the GBLG office suites, evicted Respondents from the space, and filed the civil lawsuit and injunction against Respondents.

53. Respondents do not have access to all of their records, including fee agreements, several accounting reports, and emails containing documentation to and from clients.

54. Respondents' conduct resulted in the mismanagement of client funds, including funds held on behalf of Bracy as a client of the firm. The exact amount that should have been held on deposit on Bracy's behalf remains unknown.

Respondents' Trust Account Activity Post-Bracy

55. Respondents established separate trust accounts for four of GBLG's clients in June of 2017. Respondents have been using those in combination with the affected trust account ending 3637 to continue to operate. Credit card payments are not directed into the newly created accounts but instead are deposited into the trust account ending 3637 and then transferred into the client trust account. The following four additional trust accounts were established by Respondents at JP Morgan Chase Bank:

a. CA designated trust account ending 3863.

b. JRB designated trust account ending 3871.

c. LBG designated trust account ending 0353.

d. "Probate Clients" trust account ending 3889.

56. The Examiner's review of bank statements for these accounts covering the period of July 2017 to December 2017 revealed five improper disbursements from the CA and LBG trust accounts during that period. These totaled $31,739.20

and were transacted by way of cash withdrawals. The individual amounts transacted by Respondents correspond to amounts identified on the monthly remittance breakdowns.

57. The Examiner requested copies of the reconciliations for all of Respondents' active trust accounts for the period of July 2017 through January of 2018—the period after Bracy departed the firm. The subsequent documents provided for the five trust accounts did not consist of adequate equivalents of proper three-way reconciliations.

58. Respondents hired a CPA to recreate the ledgers and records. The transfer from Bracy's server did not capture all of the information from the account. Respondents do not possess all of the client remit and costs reports despite Bracy's claim that he released all GBLG records to Respondents.

59. Respondents have concluded that Bracy did not maintain the records as he was hired and paid to do. Respondents failed to ensure that Bracy maintained adequate equivalents of:

a. A general ledger.

b. Individual client ledgers.

c. An administrative funds ledger.

d. Duplicate deposit records; those that were maintained do not clearly identify the client on whose behalf the funds were deposited.

e. Monthly three-way reconciliations.

60. Of the items that were available for review, the Examiner discovered that the expense amounts outlined on the remittance reports were not accurately and consistently billed during the period of review, resulting in deductions for expenses that should have been previously billed and deductions for costs which had yet to be advanced.

61. Calculation irregularities exist on the records Respondents have maintained since Bracy's departure. For example, the CA remittance report for June 2017 identifies a total of $13,062.34 as the amount deposited during that month. Conversely, the June reconciliation provided by Respondents identifies the total amount deposited on behalf of the client as $11,749.94, a difference of $1,312.40.

62. The CA remittance report for July 2017 includes four debtor payments totaling $1,035.29, which had been received and included as part of the June 2017 remittance breakdown, resulting in an over disbursement of $258.82 to Respondents and $776.47 to the client in July. The error was corrected in September 2017 by

way of a reduction of the disbursement amounts calculated for the remittance amounts owed to each party from the payments received in August 2017.

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 Guz conditionally admits that her conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.5(b), 1.5(c), 1.7, 1.8, 1.15(a), 1.15(b)(2), 1.15(d), 5.3, 5.4, and 5.7; Rule 43(a)(2); Rule 43(b)(1)(A); Rule 43(b)(1)(B); Rule 43(b)(1)(C); Rule 43(b)(2)(A); Rule 43(b)(2)(B); Rule 43(b)(2)(C); Rule 43(b)(2)(D); Rule 43(b)(3)(A); Rule 43(b)(3)(C); Rule 43(b)(5); and Rule 43(c).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss allegations that Respondent violated Ethical Rule 8.4(c) and Rule 54(d)(2)(A) as part of this negotiated resolution.

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 sanctions are appropriate: four-month suspension and probation for two years upon reinstatement. The probation will include the following:

1. TAEEP: Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). 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 attendance at the next available class. Respondent will be responsible for the cost of attending the program.
2. 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.
3. CLE: In addition to annual MCLE requirements, Respondent shall complete the following Continuing Legal Education ("CLE") program(s): (1) *10 Deadly*

Sins of Conflict, AND (2) *Law Firm Management: Avoiding Risk and Improving Productivity* OR *Practice Management Essentials: Tools for Avoiding Nasty Surprises* within 90 days from the date of service of this Order. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

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

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.

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.

Standard 4.12 - Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

Standard 4.33 - Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.

Standard 7.2 - Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

The duty violated

As described above, Respondent's conduct violated her duty to her clients and the profession.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent acted knowingly in terms of allowing Bracy to oversee the law firm trust account, fee agreements, and financial conduct of GBLG, and that her conduct was 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 potential harm to her clients and the 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:

Standard 9.22(c) a pattern of misconduct: Respondent failed to supervise Bracy for over a year.

Standard 9.22(i) substantial experience in the practice of law: Respondent has been admitted to practice law in Arizona since 2013 and in California since 1995.

In mitigation:

Standard 9.32 (a) absence of a prior disciplinary record.

Standard 9.32 (b) absence of a dishonest or selfish motive.

Standard 9.32 (c) personal or emotional problems. Statement by Respondent will be submitted separately.

Standard 9.32 (d) timely good faith effort to make restitution or to rectify consequences of misconduct: Respondent contacted the State Bar to self-report the issues with Bracy and the overdraft of the law firm trust account and sought guidance on how to best protect the clients moving forward. Respondent then hired a CPA to reconstruct the trust account and worked with clients to reimburse them immediately

upon becoming aware that there were any potential issues. Respondent also attended a course related to managing trust accounts to avoid future errors.

Standard 9.32 (e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings: Respondent has provided Bar Counsel numerous documents over the course of more than 6 months in response to multiple requests and has even engaged the firm CPA to work with the State Bar to ensure that Respondents were producing all requested documents.

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.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. 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.

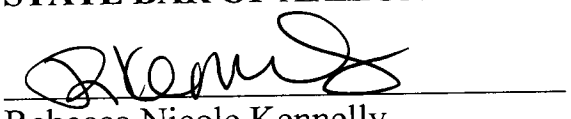
CONCLUSION

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 four-month suspension, probation for two years upon reinstatement, and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this 31st day of January 2019.

STATE BAR OF ARIZONA



Rebecca Nicole Kennelly
Staff 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 January, 2019.

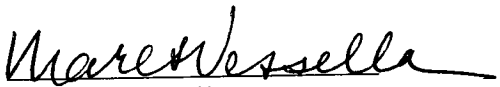
_____
Cheryl Castrogiovanni Guz
Respondent

DATED this _____ day of January, 2019.

The Cavanagh Law Firm PA

_____
Karen Christine Stafford
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 31st day of January, 2019.

Cheryl Castrogiovanni Guz
Respondent

DATED this 31st day of January, 2019.

The Cavanagh Law Firm PA

Karen Christine Stafford
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 31st day of January, 2019.

Copy of the foregoing emailed
this 31st day of January, 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 mailed/emailed
this 31st day of January, 2019, to:

Karen Christine Stafford
The Cavanagh Law Firm PA
1850 N Central Ave Ste 2400
Phoenix, AZ 85004-4559
Email: kstafford@cavanaghlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 31st day of January, 2019, to:

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

by: [signature]
RNK/sab

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Cheryl Castrogiovanni Guz, Bar No. 029938, Respondent

File No. 17-2000

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 B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **CHERYL CASTROGIOVANNI GUZ** **Bar No. 029938** Respondent.	**PDJ 2018-9104** **FINAL JUDGMENT AND ORDER** [State Bar No. 17-2000]

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, **Cheryl Castrogiovanni Guz**, is suspended for four 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 or _____.

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

IT IS FURTHER ORDERED Cheryl Castrogiovanni Guz shall participate in the following programs:

1. TAEEP: Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). 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 attendance at the next available class. Respondent will be responsible for the cost of attending the program.
2. 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.
3. CLE: In addition to annual MCLE requirements, Respondent shall complete the following Continuing Legal Education ("CLE") program(s): (1) *10 Deadly Sins of Conflict*, AND (2) *Law Firm Management: Avoiding Risk and Improving Productivity* OR *Practice Management Essentials: Tools for Avoiding Nasty Surprises* within 90 days from the date of service of this Order. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes.

Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

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 $1,200.00, 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 January, 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 January, 2019.

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

Karen Christine Stafford
The Cavanagh Law Firm PA
1850 N Central Ave Ste 2400
Phoenix, AZ 85004-4559
Email: kstafford@cavanaghlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of January, 2019, to:

Rebecca Nicole Kennelly
Staff Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this ____ day of January, 2019 to:

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

by:_____
RNK/sab