BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **KRISTOFER E. HALVORSON, Bar No. 016525** Respondent.	**PDJ 2018-9085** **FINAL JUDGMENT AND ORDER** [State Bar No. 18-1097] **FILED JANUARY 11, 2019**

This matter was heard by the Hearing Panel, which rendered its Decision and Order (Decision) on December 20, 2018. The decision of the hearing panel is final under Rule 58(k), Ariz. R. Sup. Ct. No notice of appeal was filed and the time to appeal has expired.

Now Therefore,

IT IS ORDERED Respondent **KRISTOFER E. HALVORSON, Bar No. 016525** is suspended from the practice of law in Arizona for two (2) years effective December 20, 2018, the date of the Decision.

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

IT IS FURTHER ORDERED Mr. Halvorson shall pay the costs and expenses of the State Bar of Arizona totaling $2,000.00 pursuant to Rule 60(b), Ariz. R Sup. Ct. There are no costs or expenses incurred by the disciplinary clerk or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

DATED this 11th day of January 2019.

William J. O'Neil
Presiding Disciplinary Judge

COPY of the foregoing e-mailed
this 11th day of January 2019, and
mailed January 14, 2019, to:

Craig D. Henley
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Respondent

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **KRISTOFER E. HALVORSON, Bar No. 016525** Respondent.	**PDJ 2018-9085** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar No. 18-1097] **FILED DECEMBER 20, 2018**

Kristofer E. Halvorson is an attorney licensed in Arizona since 1995. On February 27, 2015, he was summarily suspended from the practice of law for noncompliance with his mandatory continuing legal education requirements. He was subsequently suspended for ethical misconduct for one year in another matter in 2015, and for a consecutive six months and one day in another matter on May 5, 2016. On October 12, 2016 the United States Patent and Trademark Office ("USPTO") issued a decision and order excluding him from practice before it because the PTO found that he "…engag[ed] in the unauthorized practice of law."

Subsequently, in a case in the United States District Court for the District of Arizona, Arizona case, Mr. Halvorson verified, in a Verification filed on September 14, 2017, and in a declaration filed on April 12, 2018, that he was acting as "General Counsel of the Plaintiff in this matter, FLP, LLC…."

In the instant matter, Mr. Halvorsen continuously failed to respond to the State Bar inquiries regarding this current Bar Charge. We find that his knowing conduct warrants a suspension for two years.

I. PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its Complaint on October 1, 2018. On October 2, 2018, the Complaint was served on Mr. Halvorson by certified, delivery restricted mail, and by regular first-class mail, to the address of record that he provided to the State Bar Membership Records Department pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct.

On October 25, 2018, the Complaint was also served on Mr. Halvorson by certified, delivery restricted mail, and by regular first-class mail, to two other addresses believed to be used by him. He personally accepted service at one of those two addresses and signed a "green" return receipt card evidencing acceptance of service. [Exhibit 8, Bates 051.] Service was therefore proper.

A Notice of Default was properly issued on October 30, 2018. That default properly became effective on November 20, 2018, at which time a notice of aggravation and mitigation hearing was issued and sent to all of the parties

This matter proceeded before the Hearing Panel comprised of Richard L. Brooks, volunteer attorney member, Carol Kemps, volunteer public member, and Presiding Disciplinary Judge William J. O'Neil, ("PDJ") for an aggravation/

mitigating hearing that was held on December 11, 2018. Senior Bar Counsel Craig D. Henley appeared on behalf of the State Bar of Arizona. Mr. Halvorson failed to appear. Exhibits 1-15 were properly admitted. During the hearing, the State Bar sought a long-term suspension for Mr. Halvorson.

II. FINDINGS OF FACT

The facts listed below are those set forth in the SBA's Complaint and were deemed admitted by Respondent's default.[1] They are hereby adopted by the Hearing Panel.

1. On October 21, 1995, Respondent took the oath of admission and was admitted to the State Bar of Arizona under Bar No. 016525. [Complaint ¶ 1.] He is subject to the jurisdiction of the Arizona Supreme Court and the Hearing Panel in this disciplinary proceeding.[2]

2. On February 27, 2015, Respondent was summarily suspended from the practice of law in the State of Arizona for noncompliance with Rule 45, Ariz. R. Sup. Ct. [Exhibit 10-12.] ¶

3. On May 19, 2015, Respondent was suspended for one year in *In the Matter of Kristofer E. Halvorson*, PDJ 2015-9001. [Exhibit 14.]

4. On May 5, 2016, Respondent was suspended for six months and one day in *In the Matter of Kristofer E. Halvorson*, PDJ 2016-9006, consecutive to his

[1] Rule 58(d), Ariz. R. Sup. Ct. All Rule references are to the Supreme Court Rules.
[2] Rule 31(a)(1).

suspension in *In the Matter of Kristofer E. Halvorson*, PDJ 2015-9001. [Exhibit 13.]

5. On October 12, 2016, the USPTO issued a decision and order excluding Respondent from practice before the USPTO for, among other things, "…engaging in the unauthorized practice of law. Respondent filed trademark applications on behalf of a company when Respondent was not licensed to practice law in any state and, in turn, is in violation of 37 C.F.R. § 11.505 of the USPTO Rules of Professional Conduct." [Complaint ¶ 5.]

6. At all times relevant to the allegations below, Respondent was a suspended member of the State Bar of Arizona engaging in the "unauthorized practice of law" as defined by Rule 31(a)(B), Ariz. R. Sup. Ct. [Complaint ¶ 6.]

7. Jay Calhoun is opposing counsel in the United States District Court cases of *FLP, LLC v. Kimberly Wolf*, 2:17-cv-00214-PHX-DGC and *Liv-IT! LLC v. FLP, LLC*, 2:17-cv-00773. [Exhibit 1 & 3.]

8. Mr. Calhoun provided the State Bar with a Verification dated September 14, 2017 which was signed by Mr. Halvorson as "General Counsel of the Plaintiff in [the] matter, FLP, LLC". The Verification was filed with the United States District Court by Gregory Meell, Arizona attorney of record for FLP, LLC. [Exhibit 1, Bates 010.]

9. On or about April 12, 2018, Mr. Calhoun received a copy of an Application for Preliminary Injunction from Mr. Meell which attached a declaration that had been signed by Mr. Halvorson as "General Counsel of the Plaintiff in this matter, FLP, LLC". [Complaint ¶ 9.]

10. On May 10, 2018, the State Bar mailed an initial screening letter to Mr. Halvorson, asking him to submit a response to the allegations within twenty days. The initial screening letter also informed him that his failure to fully and honestly respond to, or cooperate with, the investigation would be grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz. R. Sup. Ct., ER 8.1(b). [Exhibit 2.]

11. To date, Respondent has never provided the State Bar with a written response to this Bar Charge. [Complaint ¶ 12.]

12. By engaging in the above-referenced conduct, Mr. Halvorson violated:

a. Rule 42, Ariz. R. Sup. Ct., ER 5.5 by engaging in the "unauthorized practice of law" as defined by Rule 31, Ariz. R. Sup. Ct., while suspended from the practice of law;

b. Rule 42, Ariz. R. Sup. Ct., ER 8.1 by knowingly failing to respond to a lawful demand for information from the disciplinary authority for the instant investigation; and

c. Rule 54(d)(1) and (2), Ariz. R. Sup. Ct. by refusing to cooperate, furnish information or respond promptly to any inquiry or request from Bar Counsel relevant to the pending charges.

III. CONCLUSIONS OF LAW

The Effective Entry of Default

Respondent failed to file an answer or otherwise defend against the allegations in the SBA's Complaint. Default was properly entered, and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Although the allegations are deemed admitted by default, there has also been an independent determination by the Hearing Panel that the State Bar has proven by clear and convincing evidence that Mr. Halvorson violated the ethical rules.

The Unauthorized Practice of Law-Rule 31(a)(2)

"'Practice of law' means providing legal advice or service to or for another…." Rule 31(a)(2)(A). That definition includes, *inter* alia, "preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;" "preparing or expressing legal opinions;" "negotiating legal rights or responsibilities" or; "representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process…." Id.

Except as provided in Rule 31(d), "no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar." Mr. Halvorsen knew, or should have been aware, of this requirement.

More pointedly, Rule 31(c) is unequivocal. "No member who is currently *suspended*…shall practice law in this state or represent in any way that he or she may practice law in this state." (Italics added.) The exception stated in Rule 31(d) is a series of exemptions from the prohibition declared in Rule 31(b). However, Rule 31(d), is transparent in its exclusionary language and states that it is "subject to the limitations of section (c) unless otherwise stated." No member currently suspended shall practice law or represent "*in any way"* that he or she may practice law in Arizona. None of the exemptions apply to Mr. Halvorsen.

The complainant wrote to the State Bar that he was informed by opposing counsel in the foregoing U.S. District Court case "that it is okay for Mr. Halvorson to practice law for a company although he is suspended." [Exhibit 1.] Even if this was stated, it was clearly erroneous. Mr. Halvorson may not "practice law" in Arizona as a matter of law.

The Unauthorized Practice of Law-Rule 38

On April 12, 2018, Mr. Halvorson most recently verified to the above-mentioned U.S. District Court, under penalty of perjury, that "I am the General

Counsel of the Plaintiff in this matter, FLP, LLC….” [Exhibit 1, Bates SBA000003.] Sup.Ct. Rule 38 addresses delineates certain exceptions to the standard examinations and admission process applicable to counsel for a corporation such as the Plaintiff corporation in that underlying matter. There is no safe harbor for Mr. Halvorson under that Rule.

Rule 38 permits “[a] lawyer who is not a member of the State Bar of Arizona” to act as counsel for such a corporation as FLP, LLC. However, that lawyer must have received a juris doctor degree from an approved law school *and* “is currently a member in good standing of the bar of another state….” At all material times, Mr. Halvorsen has remained a suspended member of the State Bar of Arizona. He has not been a member in good standing of the Bar of any other state. He therefore does not and cannot meet the special exceptions criteria.

It should be noted that a lawyer admitted to practice in a jurisdiction outside the United States may, under certain conditions, apply for a Registration Certificate pursuant to Rule 38(a)(3). We do not address whether Mr. Halvorson could have applied and received that Certificate because he presented no evidence that he was certified under that Rule.

The Power to Regulate the Practice of Law

The power to regulate the practice of law has long been recognized by the United States Supreme Court. See *United Mine Workers of Am. v. Ill. State Bar*

Ass'n, 389 U.S. 217 (1967). The Arizona courts have long held that both the definition of and the regulating of the practice of law in Arizona is a function exclusively held by the judicial branch of Arizona. *See, e.g., Hunt v. Maricopa County Emp. Merit System Comm'n*, 127 Ariz. 259, 261 (1980).

The Rules of our Supreme Court define the practice of law in clear language. The Court previously ruled that the practice of law can be defined as "those acts, whether performed in court or in the law office, which lawyers customarily have carried on from day to day through the centuries." *State Bar of Arizona v. Arizona Land Title & Trust*, 90 Ariz. 76, 95 (1961). Members of the State Bar of Arizona who are suspended or disbarred cannot practice law. Mr. Halvorson should have been aware of this and conducted himself accordingly. He failed to do so. When a suspended or disbarred attorney is charged with violating this rule, our Supreme Court retains jurisdiction to enjoin the unauthorized practice of law. *See In re Creasy*, 198 Ariz. 539 (2000).

Duty to Respond

Compliance with Rule 8.1(b) is mandatory, not optional. It is part of the duties that conjoin with the obligations of being a licensed Arizona attorney. In this matter, multiple letters were sent to Mr. Halvorson and none were returned to the State Bar by the U.S. Postal Service, even though. Mr. Halvorson was required to

timely respond to the State Bar's lawful demand for information. He failed or refused to do so.

An attorney's "[f]ailure to respond to inquiries from the State Bar shows disregard for the Rules of Professional Conduct and borders on contempt for [the] legal system." *In re Davis*, 181 Ariz. 263, 266, 889 P.2d 621, 624 (1995) (citations omitted). "Inaction serves to undermine the profession's efforts at self regulation, damaging both its credibility and reputation." *Matter of Brown*, 184 Ariz. 480, 483, 910 P.2d 631, 634 (1996).

Where "a lawyer violates the terms of a prior disciplinary order or engages in further acts of the same or similar misconduct for which he or she has already been reprimanded," suspension has been found to be an appropriate sanction. *Matter of Brown*, 184 Ariz. at 484, 910 P .2d at 635; *see also*, *In re Redondo*, 176 Ariz. 334, 338, 861 P.2d 619, 623 (1993), cited in *Matter of Brown*.

The failure to cooperate with disciplinary authorities during a disciplinary investigation against a lawyer has, in other states, been considered so serious that disbarment has been found to be the appropriate sanction. *See, e.g.*, *In re Bourcier*, 939 P.2d 604, 606 (Or. 1997); *In re Dickerson*, 905 P.2d 1140 (Or. 1995); *In re Disciplinary Proceeding Against Scannell*, 239 P.3d 332, 342 (Wash. 2010); and *In re Disciplinary Proceeding Against Simmerly*, 285 P.3d 838, 851–52 (Wash. 2012). On this record, however, we do not believe that disbarment is warranted.

Based upon the facts deemed admitted, as well as our independent review, the Panel finds by clear and convincing evidence that Respondent violated: Rule 42, Ariz. R. Sup. Ct. -specifically ERs 5.5 (unauthorized practice of law) and 8.1(b) (failure to respond to disciplinary authority), and Rule 54(d)(1) and (2) (refusal to cooperate and furnish information).

IV. ABA STANDARDS ANALYSIS

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

Duties violated:

Respondent violated his duty to the profession by violating Rule 42, Ariz. R. Sup. Ct., ERs 5.5, 8.1 and Rule 54(d)(1) and (2).

Mental State and Injury:

The Complaint alleges that Mr. Halvorson acted knowingly. He violated the duty he owed as a professional, which implicates *Standard* 7.0. *Standard* 7.2 states, "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."

Respondent engaged in the unauthorized practice of law and failed to substantively respond to the SBA's investigation. Therefore, *Standards* 7.2 applies.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors are present in this matter:

- *Standard* 9.22(a) prior disciplinary offenses [PDJ-2015-9001 and PDJ 2016-9006];
- *Standard* 9.22(c) pattern of misconduct; we give great weight to the finding of the unauthorized practice of law by Mr. Halvorson by the United States Patent and Trademark Office.
- *Standard* 9.22(d) multiple offenses;
- *Standard* 9.22(i) substantial experience in the practice of law [22 years].

The Hearing Panel finds there are no mitigating factors present and that suspension is the appropriate sanction. *Standard* 2.3 provides that, "Generally, suspension should be for a period of time equal to or greater than six months…." We weigh the aggravating factor of prior disciplinary offenses. Mr. Halvorson has been suspended for one year, followed by a suspension of six months and one day. We also consider that he has been administratively suspended prior to those disciplinary suspensions.

Proportionality-Arizona

In Matter of Coburn, 181 Ariz. 250, (1995), a suspension of two years was imposed for the continued practice of law while on suspension. *In Matter of Taylor*, 180 Ariz. 290 (1994), a suspended lawyer who continued to practice law was suspended for an additional three-year period. In *Matter of Tarletz*, 165 Ariz. 243, (1990), a lawyer who continued to practice law while on suspension, was disbarred. (There was also other misconduct that contributed to that attorney.) While the Panel did consider whether Mr. Halvorson's recidivist misconduct warranted disbarment, we feel that such an extreme sanction is not yet warranted, note, however, the propriety of disbarment of attorneys for their continued unauthorized practice of law (see cases from other states cited on pp. 11-12, supra), and caution Mr. Halvorson to govern himself accordingly in the future.

Proportionality-Other Jurisdictions

The Kansas Supreme Court found that disbarment was warranted for a retired lawyer's conduct in continuing to practice law without an active-status license obtained through a prior disciplinary settlement allowing him to retire so as not to face sanctions. *In re Rost*, 211 P.3d 145 (Kan. 2009). The Louisiana Supreme Court ordered the permanent disbarment of a lawyer who engaged in the unauthorized practice of law by appearing in court on behalf of a limited liability company after he was suspended. *In re Petal*, 30 So. 3d 728 (La. 2010). The

Maryland Supreme Court disbarred a suspended lawyer who practiced law during the period of suspension. *Att'y Grievance Comm'n v. James*, 735 A.2d 1027 (Md. 1999).

V. CONCLUSION

Our Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. See *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

While the State Bar has requests a suspension of six months and one day, we weigh unfavorably the continuing misconduct of Mr. Halvorson demonstrating his obvious and knowing disregard for the rules applicable to suspended attorneys The Hearing Panel therefore orders that:

1. Respondent shall be suspended from the practice of law for two (2) years effective immediately.

2. Respondent shall pay all costs and expenses incurred by the SBA in these proceedings.

A final Judgment and Order will follow.

DATED this 20th day of December 2018.

Signature on File
William J. O'Neil, Presiding Disciplinary Judge

Signature on File
Richard L. Brooks, Volunteer Attorney Member

Signature on File
Carole Kemps, Volunteer Public Member

Copy of the foregoing emailed
this 20th day of December 2018, to:

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **KRISTOFER E. HALVORSON, Bar No. 016525,** Respondent.	**PDJ 2018-_____** **COMPLAINT** [State Bar No. 18-1097]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 21, 1995.

2. On February 27, 2015, Respondent was summarily suspended from the practice of law in the State of Arizona for noncompliance with Rule 45, Ariz. R. Sup. Ct.

3. On May 19, 2015, Respondent was suspended for one year in *In the Matter of Kristofer E. Halvorson*, PDJ 2015-9001.

4. On May 5, 2016, Respondent was suspended for six months and one day in *In the Matter of Kristofer E. Halvorson*, PDJ 2016-9006, consecutive to his suspension in *In the Matter of Kristofer E. Halvorson*, PDJ 2015-9001.

5. On October 12, 2016, the United States Patent and Trademark Office issued a decision and order excluding Respondent from practice before the USPTO for, among other things, "...engaging in the unauthorized practice of law. Respondent filed trademark applications on behalf of a company when Respondent was not licensed to practice law in any state and, in turn, is in violation of 37 C.F.R. § 11.505 of the USPTO Rules of Professional Conduct."

6. At all times relevant to the allegations below, Respondent was a suspended member of the State Bar of Arizona engaging in the "unauthorized practice of law" as defined by Rule 31(a)(B), Ariz. R. Sup. Ct.

COUNT ONE (File No. 18-1097/Calhoun)

7. Jay Calhoun is opposing counsel in the United States District Court cases of *FLP, LLC v. Kimberly Wolf*, 2:17-cv-00214-PHX-DGC and *Liv-IT! LLC v. FLP, LLC*, 2:17-cv-00773.

8. Calhoun submitted a separate verification dated September 14, 2017 which was signed by Respondent as "General Counsel of the Plaintiff in this matter, FLP, LLC" and was filed with the Court by Arizona attorney of record for FLP, LLC, Gregory Meell.

9. On or about April 12, 2018, Calhoun received a copy of an Application for Preliminary Injunction from Meell which attached a declaration signed by Respondent as "General Counsel of the Plaintiff in this matter, FLP, LLC".

11. On May 10, 2018, the State Bar mailed Respondent an initial screening letter requesting that a response to the allegations to be provided within twenty days. The initial screening letter also informed Respondent that his failure to fully and honestly respond to, or cooperate with the investigation are grounds for discipline pursuant to Rule 54(d) and Rule 42, Ariz. R. Sup. Ct., ER 8.1(b).

12. To date, Respondent has not provided the State Bar with a written response to this bar charge.

13. By engaging in the above-referenced conduct, Respondent violated:

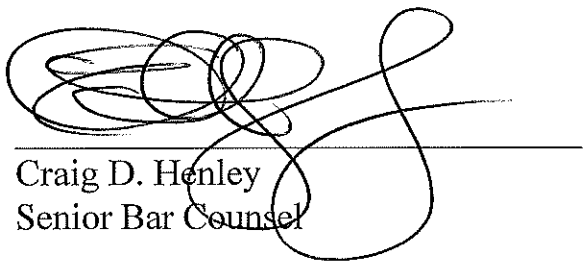
a. Rule 42, Ariz. R. Sup. Ct., ER 5.5 by engaging in the "unauthorized practice of law" as defined by Rule 31, Ariz. R. Sup. Ct. while suspended from the practice of law;

b. Rule 42, Ariz. R. Sup. Ct., ER 8.1 by knowingly failing to respond to a lawful demand for information from the disciplinary authority in connection with the instant investigation; and

c. Rule 54(d), Ariz. R. Sup. Ct. by refusing to cooperate, furnish information or respond promptly to any inquiry or request from bar counsel relevant to the pending charges.

DATED this 1st day of October, 2018.

STATE BAR OF ARIZONA



Craig D. Henley
Senior Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 15th day of October, 2018.

by: Karen E. Calcagno
CDHJ:kec

FILED

SEP 28 2018

BY

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

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

KRISTOFER E. HALVORSON
Bar No. 016525

Respondent.

No. 18-1097

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on September 14, 2018, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 18-1097.

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

Parties may not file motions for reconsideration of this Order.

DATED this 28 day of September, 2018.

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

[1] Committee member JoJene Mills did not participate in this matter.

Original filed this 28th day
of September, 2018, with:

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Copy mailed this 28th day
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