

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**ANDREA ELIZABETH MOUSER,  
Bar No. 023967**

Respondent.

**PDJ-2016-9055**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. 15-2353, 15-2418, 15-  
2632, 15-2356, 15-2505, 15-2529]

**FILED JUNE 16, 2016**

The Presiding Disciplinary Judge having reviewed the Agreement for Discipline by Consent filed on June 7, 2016, accepted the parties' proposed agreement under Rule 57(a), Ariz. R. Sup. Ct.

Accordingly:

**IT IS ORDERED** Respondent, **Andrea Elizabeth Mouser, Bar No. 023967** is suspended for a period of three (3) years for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this Order.

**IT IS FURTHER ORDERED** Ms. Mouser shall participate in fee arbitration with the following complainants:

Veronica Howard (File No. 15-2356)

Richard Barraza, Jr. (File No. 15-2529)

**IT IS FURTHER ORDERED** Ms. Mouser shall initiate fee arbitration with the above listed complainants within ninety (90) days from entry of this final judgment

and order by contacting the fee arbitration coordinator at (602) 340-7379, shall provide proof that she timely initiated the fee arbitration process to the State Bar, and shall pay any fee arbitration award within thirty (30) days from the date the fee arbitrator issues the award.

**IT IS FURTHER ORDERED** upon reinstatement, Ms. Mouser shall be placed on probation for two (2) years, under terms and conditions to be determined during reinstatement.

**IT IS FURTHER ORDERED** Ms. Mouser shall be subject to any additional terms imposed by the Presiding Disciplinary Judge because of reinstatement hearings held.

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

**IT IS FURTHER ORDERED** Ms. Mouser shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,247.24, within thirty (30) days from the date of this Order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

**DATED** this 16<sup>th</sup> day of June, 2016.

*William J. O'Neil*

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

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Copies of the foregoing were mailed/emailed  
this 16th day of June, 2016, to:

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10645 N. Tatum Boulevard, Suite 200-579  
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by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**ANDREA ELIZABETH MOUSER,  
Bar No. 023967**

Respondent.

**PDJ-2016-9055**

**DECISION AND ORDER ACCEPTING  
DISCIPLINE BY CONSENT**

[State Bar Nos. 15-2353, 15-2418, 15-  
2632, 15-2356, 15-2505, 15-2529]

**FILED JUNE 16, 2016**

An Agreement for Discipline by Consent (Agreement) was filed on June 7, 2016 and submitted under Rule 57(a)(3) Ariz. R. Sup. Ct.<sup>1</sup> prior to filing a complaint. Probable Cause Orders were entered on April 26, 2016. Upon filing such Agreement, the Presiding Disciplinary Judge (PDJ), "shall accept, reject or recommend modification of the agreement as appropriate".

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.

Under Rule 53(b)(3), no notice of this Agreement is necessary as the State Bar is the complainant.

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<sup>1</sup> Unless otherwise stated, all rule references are to the Rules of the Supreme Court of Arizona.

The Agreement details a factual basis to support the admissions to the charges in the Agreement, incorporating six distinct counts of misconduct. In File Nos. 15-2353 and 15-2505, Ms. Mouser engaged in settlement negotiations after being suspended from the practice of law by the PDJ on July 29, 2015. In File No. 15-2632, Ms. Mouser failed to timely respond to discovery requests, failed to comply with the court's May 18, 2015 order, and failed to timely comply with the court's August 5, 2015 order. In File No. 15-2353, Ms. Mouser failed to attend her client's deposition and failed to submit a settlement conference memorandum. In File No. 15-2356, Ms. Mouser failed to serve the complaint. In File No. 15-2529, Ms. Mouser failed to take action on a legal issue in her client's case.

Ms. Mouser conditionally admits she violated Rules 42, 31, 54(c), 54(d), and 72. In addition, Ms. Mouser conditionally admits that she violated ERs 1.2(a), 1.3, 1.5(a), 1.5(b), 1.16(d), 3.2, 3.4(c), 5.5, 8.1(b), 8.4(c), 8.4(d). The parties stipulate to: (1) a sanction of suspension from the practice of law in Arizona for three years; (2) mandatory fee arbitration for File Nos. 15-2356 and 15-2529 and; (3) probation for two years upon reinstatement.

The parties agree that *Standard 7.2*, violation of a duty owed as a professional, of the American Bar Association's *Standards for Imposing Lawyer Sanctions* (*Standards*) is most applicable to Ms. Mouser's unauthorized practice of law in File Nos. 15-2353 and 15-2505. *Standard 7.2* provides:

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 parties agree that *Standard 6.22*, violation of a court order or rule, is most applicable to Ms. Mouser's violation of several court orders or rules in File No. 15-2632. *Standard 6.22* provides:

Suspension is generally appropriate when a lawyer knows that he or she is violating a court order or rule, and causes injury or potential injury to a client or a party, or causes interference or potential interference with a legal proceeding.

The parties agree that *Standard 4.42*, failing to perform services for a client, is most applicable to Ms. Mouser's failure to perform services in File Nos. 15-2353, 15-2356, and 15-2529. *Standard 4.42* provides:

Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or (b) a lawyer engages in a pattern of neglect causes injury or potential injury to a client.

Ms. Mouser conditionally admits she violated a duty to her clients, the profession, and the legal system by (1) knowingly engaging in the unauthorized practice of law, (2) knowingly violating court orders or rules, and (3) knowingly failing to complete services for her clients. The parties agree that the violations caused actual harm to at least one of Ms. Mouser's clients, actual harm to the legal system, and potential harm to the profession.

The parties agree that the following aggravating factors are present in the record: 9.22(a) prior disciplinary offenses; 9.22(b) dishonest or selfish motive; 9.22(c) a pattern of misconduct; 9.22(d) multiple offenses. In mitigation are factors: 9.32(c) personal or emotional problems; 9.32(k) imposition of other penalties or sanctions.

The PDJ finds that the proposed sanctions of a three (3) year suspension, mandatory fee arbitration, and two (2) year probation upon reinstatement collectively

meet the objectives of attorney discipline. The Agreement also falls within the presumptive sanctions outlined in the *Standards*. In addition, sufficient evidence has been provided to support factor 9.32(c) regarding personal or emotional problems, including Exhibit C, for which a Protective Order has been granted. The magnitude and frequency of Ms. Mouser's misconduct, in conjunction with the extent of actual and potential harm to Ms. Mouser's clients and to the public, support the sanctions in the Agreement. The Agreement is therefore accepted.

**IT IS ORDERED** Respondent, **Andrea Elizabeth Mouser, Bar No. 023967** is suspended for three (3) years for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this Order. A period of suspension of over six (6) months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona.

**IT IS FURTHER ORDERED** Ms. Mouser shall participate in fee arbitration with the following complainants:

Veronica Howard (File No. 15-2356)

Richard Barraza, Jr. (File No. 15-2529)

**IT IS FURTHER ORDERED** Ms. Mouser shall initiate fee arbitration with the above listed complainants within ninety (90) days from the date of this final judgment and order by contacting the fee arbitration coordinator at (602) 340-7379, shall provide proof she timely initiated the fee arbitration process to the State Bar, and shall pay any fee arbitration award within thirty (30) days from the date the fee arbitrator issues the award.

**IT IS FURTHER ORDERED** upon reinstatement, Ms. Mouser shall be placed on probation for two (2) years, under terms and conditions to be determined during reinstatement.

**IT IS FURTHER ORDERED** Ms. Mouser shall be subject to any additional terms imposed by the Presiding Disciplinary Judge because of reinstatement hearings held.

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

**IT IS FURTHER ORDERED** Ms. Mouser shall pay the costs and expenses of the State Bar of Arizona for \$1,247.24, within thirty (30) days from this Order. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

**DATED** this 16<sup>th</sup> day of June, 2016.

*William J. O'Neil*

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

Copies of the foregoing were mailed/emailed this 16th day of June, 2016, to:

Andrea Elizabeth Mouser  
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Respondent

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**ANDREA ELIZABETH MOUSER,  
Bar No. 023967,**

Respondent.

**PDJ 2016**

State Bar File Nos. **15-2353, 15-2418, 15-2632, 15-2356, 15-2505, 15-2529**

**AGREEMENT FOR DISCIPLINE BY  
CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Andrea Elizabeth Mouser, 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. Probable cause orders were entered on April 26, 2016 in File Nos. 15-2353, 15-2148, 15-2632. As of the date of Respondent executing this Consent Agreement, probable cause orders were not yet entered in File Nos. 15-2356, 15-2505, and 15-2529. However, the State Bar expects to receive probable cause orders in File Nos. 15-2356, 15-2505, and 15-2529 shortly. No formal complaint has been filed in this matter. Respondent voluntarily waives the right to an

adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainants by letter on May 26, 2016. 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 bar counsel's notice.

On June 3, 2016, the State Bar received a letter from the complainant in File No. 15-2505 objecting to this Consent Agreement because it does not provide restitution to her father. This letter is attached as Exhibit A. The State Bar and Respondent, however, do not believe that restitution is appropriate because Respondent performed services in File No. 15-2505 including by filing a motion for change of venue, answering a petition for dissolution of marriage, filing a motion to set a resolution management conference, participating in a status conference, and engaging in discovery.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, Ariz. R. Sup. Ct., ERs 1.2(a), 1.3, 1.5(a), 1.5(b), 1.16(d), 3.2, 3.4(c), 5.5, 8.1(b), 8.4(c), 8.4(d) and Rules 31, 54(c), 54(d), and 72, Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline:

- A. Respondent shall be suspended from the practice of law in Arizona for a period of three years;
- B. Respondent agrees to participate in mandatory fee arbitration during her three year suspension in the following file nos.: 15-2356 (Howard) and 15-

2529 (Barazza). Respondent will initiate fee arbitration within ninety (90) days from entry of the final judgment and order in this matter. Respondent shall provide proof that she timely initiated the fee arbitration process to the State Bar. If the client fails to participate in the fee arbitration, Respondent shall have no further responsibility. Respondent shall pay any fee arbitration award within thirty (30) days from the date the fee arbitrator issues the award;

C. Upon reinstatement, Respondent shall be placed on probation for a period of two years, under terms and conditions to be determined at the time of reinstatement;

D. 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.<sup>1</sup> The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit B.

## **FACTS**

### **GENERAL ALLEGATIONS**

1. Respondent was licensed to practice law in Arizona on October, 20, 2005.

2. On June 29, 2015, a hearing panel issued a decision and order that suspended Respondent from the practice of law for six months and one day effective thirty days from the decision and order.

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<sup>1</sup> 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.

3. On July 24, 2015, the Presiding Disciplinary Judge entered an amended final judgment and order suspending Respondent from the practice of law for six months and one day effective 30 days from the date of the decision and order imposing sanctions and directing Respondent to immediately comply with Rule 72.

4. On July 29, 2015, Respondent was suspended from the practice of law.

**COUNT ONE (File No. 15-2353/ Chasson)**

5. Attorney Jill Chasson ("Chasson") represented the defendant in a case pending in federal district court that Respondent filed on behalf of the plaintiff.

6. On August 22, 2014, Chasson served discovery requests on Respondent.

7. Respondent did not timely respond to the discovery requests.

8. Between late September and late November, Respondent or her staff repeatedly promised Chasson that the discovery responses were nearly complete and would be sent out shortly.

9. Respondent, however, did not respond to the discovery requests until December 3, 2014 or until after Chasson informed Respondent that she would seek court intervention if Respondent did not respond to the discovery requests.

10. In February of 2015, Chasson contacted Respondent about scheduling the plaintiff's deposition. Specifically, on February 10, 2015, Chasson emailed Respondent and asked her if she was able to confirm plaintiff's availability for a March 17, 2015 deposition.

11. On the same date, Respondent's assistant informed Chasson that Respondent "was able to speak to" plaintiff and "was able to confirm March 17 for his deposition date."

12. On March 3, 2015, Chasson emailed Respondent about a joint status report, reminded Respondent about the March 17, 2015 deposition, and wrote: "If [plaintiff] is truly serious about making a settlement offer and trying to resolve this case before he is deposed on March 17, please get me his offer ASAP."

13. Respondent replied on the same day and informed Chasson that she was out off the office, should be back the next day, and "should have a draft [of the joint status report] to you then."

14. On February 10, 2015, Chasson filed and served a notice of deposition of the plaintiff on Respondent which scheduled the plaintiff's deposition for March 17, 2015.

15. The ECF notification confirms that Respondent was served with the deposition notice at the email address [andrea@mouserlawaz.com](mailto:andrea@mouserlawaz.com).

16. On March 9, 2015, Chasson emailed Respondent and informed her that she planned on proceeding with plaintiff's deposition on March 17, 2015.

17. Neither Respondent nor her client attended the March 17, 2015 deposition.

18. On April 3, 2015, Chasson filed a joint status report with the court.

19. In the joint status report, Respondent wrote: "The parties have experienced some challenges with regard to deposition scheduling due to an e-mail issue that Plaintiff's counsel was just recently made aware of, and has since corrected."

20. On April 10, 2015, the court entered an order addressing Respondent and her client's failure to attend his deposition. The court noted that Respondent stated that she did not receive the notice of deposition because of a changed email

address. The court stated that "this explanation is dubious given that the notice was sent to Plaintiff's new email address." The court further stated that Chasson was likely entitled to sanctions based on "plaintiff's failure to attend the deposition."

21. On the same date, the court referred the matter to a magistrate judge for a settlement conference.

22. The settlement conference was scheduled for July 8, 2015 with written settlement conference memorandums due by July 1, 2015.

23. Chasson timely submitted her settlement conference memorandum but did not receive a settlement conference memorandum from Respondent.

24. Chasson states that she contacted the court regarding the same and that the court informed her that Respondent reported that her daughter was hospitalized.

25. On July 2, 2015, a Thursday, Chasson emailed Respondent about her settlement conference memorandum.

26. Respondent responded: "I have been communicating with the magistrate's office today. I had a medical emergency with my daughter yesterday which landed us in urgent care at about 12 and I am still at the hospital with her. . . . I truly anticipate that I can get this done by Saturday, but this will depend on when she is discharged. Right now they are saying Saturday for release. . . . She has severe food allergies and was exposed at school. . . ."

27. Chasson agreed to extend the due date for Respondent's settlement conference memorandum until July 6, 2015.

28. The magistrate judge subsequently vacated the settlement conference and directed the parties to contact her office to reschedule the settlement conference.

29. Respondent never did so and never submitted her settlement conference memorandum to Chasson or the magistrate judge.

30. On July 10, 2015, Respondent informed Chasson that "I am still not out of the hospital with my daughter . . . ."

31. On July 20, 2015, Chasson emailed Respondent and asked her if she was ready to contact the magistrate judge and reschedule the settlement conference.

32. Respondent did not respond to this email.

33. On July 28, 2015, the court emailed the parties about rescheduling the settlement conference.

34. Chasson's assistant attempted to contact Respondent on the same day but received no response to her phone or email messages.

35. On July 30, 2015, Chasson again emailed Respondent about resetting the settlement conference.

36. Respondent replied on the same date and wrote: "In addition to the condition that my daughter was dealing with, I just found out that I have thyroid cancer and another yet to be diagnosed lymphatic issue. Needless to say, with all of this going on, I am closing the practice. This workload is more than I can handle professionally or personally."

37. Respondent did not disclose to Chasson that she was suspended from the practice of law effective one day earlier.

38. Respondent emailed Chasson again on the same date stating that she spoke with her client and asking Chasson if she was available to talk that afternoon.

39. Chasson spoke with Respondent that afternoon. Respondent conveyed to Chasson a settlement demand and cited a settlement figure that plaintiff would not go below to settle the case.

40. Chasson states that she spoke with her client, the defendant, on July 31, 2015 and then conveyed to Respondent a counter-offer.

41. Respondent responded to this counter-offer by making a reduced settlement demand and then Chasson conveyed another counter-offer to Respondent.

42. In a text message dated July 31, 2015, Respondent wrote to Chasson: "Was hoping we would be submitting a stipulated agreed order and be able to vacate [the magistrate judge] entirely."

43. On August 1, 2015, Respondent conveyed to Chasson a further reduced settlement demand and informed Chasson that if her client would agree to within several thousand dollars of a certain figure then Respondent believed that they could settle the case. Respondent also informed Chasson that she intended to file a motion to withdraw if the case did not settle.

44. In a text message dated the same date, Respondent wrote to Chasson: "I have a response from [plaintiff] if you want to talk."

45. On August 3, 2015, Chasson spoke with Respondent and informed Respondent that her client would not increase its last settlement offer.

46. On August 4, 2015, the court emailed Chasson and Respondent about rescheduling the settlement conference.

47. Chasson then emailed Respondent the following: "Do you want to make a joint call to [the magistrate judge], or are you otherwise planning to notify [the magistrate judge's] office today of the closure of your law practice and your intent to withdraw as . . . counsel? I am planning to file a status report and motion to extend deadlines later today, and it's necessarily going to include that information as background, but I wanted to give you the chance to tell the court first, before I file. Please let me know how you'd like to proceed."

48. While waiting for a response from Respondent, Chasson states that she discovered that Respondent was suspended from the practice of law effective July 29, 2015.

49. Chasson emailed Respondent about her suspension and wrote: "As I am sure you can imagine, this raises a host of concerns for me. So that I can determine how I should (and perhaps must) proceed. . . , please tell me ASAP the actual effective date of your suspension, and whether the suspension order gives you a wind-down period that extends beyond July 29."

50. Respondent responded on the same day as follows: "I have legal counsel on this matter and it is my understanding that I am not suspended until I receive the order in the mail, and I have not received it yet. The bar is aware that I am closing the practice and the status of the suspension. I do not believe that there is any conflict in corresponding with me on this matter, or in me appearing on behalf of [my client] for the purpose of coming off of the case formally. However, if they are to enter into any formal settlement agreement with you, I would not be a signing party due to this issue. In fact, they would have to accept the offer formally through speaking with you directly, which I have informed them of in detail. I e-

mailed them again last night regarding your last offer, but I have not received a response.”

51. Chasson states that she subsequently obtained a copy of the hearing panel’s decision and order imposing sanctions and the amended final judgment and order suspending Respondent.

52. On August 5, 2015, Chasson sent Respondent an email stating that the aforementioned documents “indicate that you were suspended by the June 29 decision, with an effective date 30 days later, or July 29.” Chasson further stated in this email: “. . . based on the documents and the timing of events between late June and today, I believe you lied to me yesterday regarding the effective date of your suspension and your allegedly non-receipt of the suspension order; I believe you lied to me on July 30 regarding the reason for closure of your law practice; and now I doubt the reasons you gave to me and the Court last month for not preparing the settlement conference memo on time and needing to postpone the conference.”

53. On August 6, 2015, Respondent filed a notice of her suspension with the federal district court.

54. On the same date, Chasson filed a status report and motion to vacate an August 7, 2015 deadline for filing proposed findings of fact and conclusions of law because the settlement conference had not yet occurred.

55. During the screening investigation, the State Bar requested that Respondent produce documentation substantiating her claim that she was “dealing with significant health issues” with her daughter and her own health issues from July 1 to July 22, 2015.

56. In response, Respondent only produced a single redacted medical record that does not suggest that she has thyroid cancer. Regarding her daughter, Respondent states that her daughter was exposed to dairy or gluten products at school, that she is allergic to these products, and that this "required me to be home with her for several days in July. . . ." Respondent failed to produce any documentation demonstrating this or that she was in the hospital with her daughter.

**COUNT TWO (File No. 15-2418/Henrich)**

57. On November 26, 2014, Jennifer Henrich ("Henrich") filed a petition for dissolution of marriage with children.

58. Henrich's then husband ("husband") retained Respondent and, on December 23, 2014, Respondent filed an answer to the petition.

59. On February 10, 2015, the court entered an order scheduling a resolution management conference for April 10, 2015.

60. On April 10, 2015, the court entered a minute entry observing that the parties reached a settlement on certain issues. The court scheduled trial on the remaining issues for July 17, 2015.

61. However, on July 14, 2015, Henrich informed the court that the parties settled the remaining issues. Henrich requested that the court provide the parties thirty days to finalize the settlement documents.

62. The court subsequently vacated the trial date and ordered the parties to file a consent decree by August 14, 2015.

63. On August 6, 2015, approximately nine days after the effective date of her suspension, attorney Aaron Blase substituted in for Respondent as counsel for husband.

64. Respondent executed the substitution of counsel but identified herself as suspended from the practice of law.

65. Respondent never sent a letter pursuant to Rule 72, Ariz. R. Sup. Ct., to husband or Henrich's counsel.

**COUNT THREE (File No. 15-2632/White)**

66. Respondent represented Timothy White's ("White") ex-partner ("defendant") after White filed a complaint against defendant alleging a domestic partnership agreement.

67. On October 9, 2014, White's counsel served a request for production of documents on Respondent. Respondent did not timely respond to this request for production.

68. On January 21, 2015, Respondent emailed White's attorney and informed him that she would "have an updated rule 26.1 disclosure provided to you by the close of the business week."

69. On February 9, 2015, the court entered a scheduling order stating that written discovery shall be completed by April 16, 2015.

70. On February 27, 2015, White's attorney propounded interrogatories and requests for admission on Respondent.

71. On April 9, 2015, Respondent emailed White's counsel and asked for a four week extension to submit certain discovery responses. In the email, Respondent also wrote: "Please consider all Request for Admissions denied as drafted. The formal responses to same, in pleading format, will be provided in response to the Non-Uniform Interrogatories—as they are related and cannot be done without the other by way of providing a complete response. However, the

content of the responses will not change—they are all denied. Please consider the request for deadline extension to include these responses along with the Non-Uniform Interrogatory responses.”

72. On April 15, 2015, Respondent filed a motion to extend the discovery response deadline. Respondent wrote that White served her with a request for production of documents in October of 2014 that required Respondent “to formally request and issue numerous subpoenas in an effort to respond.” Respondent further wrote that all of the entities requested a 2-3 month extension to respond to the subpoenas “[d]ue to the four year timeframe requested.”

73. Respondent explained that the requested extension was necessary because she needed the subpoenaed documents in order to complete the other discovery requests and that these documents might not be produced for three more weeks. Respondent further stated that “[a]ll answers to Request for Admission have been provided, as these did not require documents for purposes of providing responses.”

74. On April 27, 2015, White’s attorney opposed the motion, stating: “What Defendant fails to inform the Court, however, is that on October 9, 2014, approximately six . . . months ago, Plaintiff mailed to Defendant a Request for Production of Documents. Pursuant to the discovery rules, a formal Response would have been required by November 23, 2014. To date, however, no formal Response to that Request for Production has been forthcoming from Defendant.” Regarding the February 27, 2015 discovery requests, White’s attorney wrote that these are the requests for admission, that the deadline for responding to these requests was April 15, 2015, and that Respondent failed to respond to these requests. White’s

attorney further argued that Respondent failed to provide any disclosure detailing the factual basis for a counterclaim and cross-claim despite White's attorney requesting such a disclosure.

75. On May 18, 2015, the court held a hearing regarding Respondent's motion to extend the discovery response deadline.

76. During the hearing, the court asked Respondent for an update on the subpoena responses and discovery/disclosure issues. Respondent stated "we did receive the rest of what we were waiting for last week so I now have everything with regard to my outstanding subpoenas. . ." with the exception of certain tax return documents. Respondent further stated that she would produce this documentation to Complainant no later than Thursday."

77. During the hearing, the court asked about the responses to the interrogatories and requests for admission and Respondent stated that the requests for admissions were already responded to and that she would respond to the request for production and interrogatories "on Thursday."

78. During the hearing, the court noted that White wrote in his response that there had not been a disclosure of facts and legal theories. Respondent responded that White is seeking an amended initial disclosure and that she has an amendment "that is going out."

79. White's attorney then informed the court that he never received responses to the requests for admission. Respondent stated that she responded to the requests for admissions in full and that she has the email where she sent White's attorney her responses.

80. The court responded "I understand that you just denied them all." Respondent replied that she went through and she gave answers to them and "said what I needed to supplement . . . but I responded to everything."

81. White's attorney then demanded that Respondent provide him this purported email with the answers to the requests for admission because he never received it.

82. The court ordered that Respondent immediately provide White's attorney a copy of this alleged email. The court stated that the only email it saw was an email attached to her motion stating that all the requests for admission are denied.

83. Respondent then stated that this is the only email that she is aware of but that she would double check because she thought she put the responses in a pleading format.

84. The court noted that an email response to the requests for admission is not proper under the rules.

85. In a written order, the court granted Respondent's motion to extend and ordered that "the responses to [White's] outstanding discovery and amended Rule 26.1 disclosure statement are due to the plaintiff by May 22, 2015." The court further ordered that Respondent immediately provide White's attorney "with a copy of the e-mail where she responded to the requests for admissions."

86. On May 22, 2015, Respondent filed a notice of providing plaintiff's counsel defendant's response to request for production of documents, answers to requests for admissions and answers to non-uniform interrogatories and answers to

uniform contract interrogatories 9, 10, and 11, and notice of providing second rule 26.1 disclosure ("Notice").

87. In this Notice, Respondent states: "Defendant provides the answers to all discovery, via mailed CD file with documents burned onto same as his Response to Request for Production of Documents."

88. Respondent produced a copy of her responses to the interrogatories and requests for admission to the State Bar. They are dated May 22, 2015 but indicate that they were not served on White's counsel until June 22, 2015, approximately one month after the court ordered them to be served.

89. On the same date as Respondent filed the Notice, Respondent emailed White's attorney and wrote: "The formal pleadings associated with the discovery is attached. We have burned the responses (pleadings and documents) to all of the pending discovery onto a CD and this will probably reach you next week (I would guess on Wednesday with the holiday). Please let me know if you do not receive the same and we can run a copy to you."

90. Despite stating that the written discovery responses were attached, Respondent only attached to this email the Notice that she filed and not actual discovery responses.

91. On June 1, 2015, White's counsel emailed Respondent the following: "Andrea, you sent me an email on May 22, 2015 at 4:43 p.m. in which you provided the formal pleading to requested discovery. You indicated that you had put the responses (pleadings and documents) to all pending discovery onto a CD and sent it to us. It has been 10 days and we still do not have the CD you said you mailed.

Please have the formal documents (and CD) hand-delivered to us by noon tomorrow.”

92. In response, White’s attorney received an out-of-the-office reply from Respondent stating that her office is closed until June 3, 2015 but, if the matter was an emergency, to indicate the same in the subject line.

93. On the same date, White’s counsel resent his earlier email to Respondent again and included “EMERGENCY” in the subject line.

94. On June 3, 2015, Respondent responded and stated she would have a runner bring the disc to White’s attorney “by noon tomorrow.”

95. Respondent failed to do so.

96. On June 4, 2015, White’s attorney filed a motion to compel discovery responses and request for sanctions, stating that “[n]o formal pleadings or the CD containing the documents allegedly to have been sent on May 22, 2015 by Defendant’s counsel, have been received.” Complainant’s attorney further argued: “It has now been eight (8) months since the first discovery requests were sent to Defendant and despite the Court ordering Defendant to produce the requested documentation by May 22, 2015, Plaintiff has received nothing.”

97. On the same date, Respondent’s assistant emailed White’s attorney and wrote: “I was wondering if your office is in receipt of [defendant’s] discovery responses yet? I have re-burned everything onto a new disc, but the admissions and notes that [Respondent] included in the original responses we sent in the mail, are not accessible at this time. If you would like, I can stop by your office and bring the disc of RFPD responses today . . . , and have [Respondent] provide you with

everything else tomorrow. Otherwise, I will assume that you are in receipt of what was already sent in the mail.”

98. Respondent’s assistant delivered the disc the same day, which contained only the documents responsive to the requests to produce, and no formal responses to the discovery requests.

99. In contrast to the assistant’s email, however, Respondent did not deliver the discovery responses the next day

100. On June 18, 2015, White’s attorney sent Respondent a letter stating that the CD she provided him did not contain the actual responses to the discovery requests. He wrote: “No pleadings have been received from you either via mail or delivery.”

101. On June 25, 2015, Respondent filed a response to the motion to compel and attached an affidavit from her assistant. The affidavit states that the assistant burned a copy of the responses to discovery onto a CD, placed the CD in a stamped envelope, and then provided the envelope to Respondent to mail. After learning that Complainant’s attorney did not receive the CD, the assistant states that she hand-delivered a new copy of the CD to Complainant’s attorney on June 5, 2015.

102. On July 10, 2015, White’s attorney filed a reply brief stating that the disk that Respondent’s assistant delivered to him only had on it the documents responsive to the requests for production and “nothing else.”

103. White’s attorney further stated that the reason that Respondent’s assistant did not have access to the remaining documents is because “they did not exist.”

104. On July 30, 2015, a day after her suspension took effect, attorney Greg Davis substituted in as counsel for the defendant. Respondent, however, did not inform the court of her suspension until August 8, 2015, approximately ten days after her suspension became effective.

105. On August 5, 2015, the court heard oral argument on White's motion to compel.

106. During the hearing, the court asked whether Respondent ever responded to the requests for admissions or interrogatories. White's attorney responded "and the amended" initial disclosure statement.

107. Mr. Davis stated that he was told that on May 22, 2015 a notice of filing discovery responses was filed and included on a disk was a response to the request for production of documents, a response to the interrogatories, a response to the requests for admissions, and an amended disclosure statement.

108. Mr. Davis further stated that he has seen these documents, they are in the file, but he has not provided them to White's attorney because he just entered his appearance in this case.

109. Mr. Davis stated that he cannot explain why what he was told was provided to White's attorney is different from what White's attorney received because "I didn't do any of that."

110. The court ordered that Mr. Davis provide the discovery responses by August 10, 2015. It found that the April 9, 2015 email was an answer to the requests for admissions that did not comply with Rule 36 and that Mr. Davis shall submit an amended response that complies with Rule 36.

111. Regarding the request for sanctions, the court stated that it would set an evidentiary hearing regarding whether Complainant received the responses.

112. White's attorney stated that he was seeking \$1,500 in fees.

113. Respondent was in the courtroom and informed the court that she would pay the fees. Respondent requested that the sanction be directed against her and not her client.

114. On the same date, the court entered a written order stating the following: "IT IS ORDERED that by August 10, 2015, defendant . . . is to serve on the counsel for plaintiff White by hand delivery a formal response to request for production of documents, answers to requests for admissions and answers to non-uniform interrogatories and answers to uniform contract interrogatories 9, 10 and 11 and a supplemental or additional Rule 26.1 disclosure statement as previously ordered by the Court. . . . The court finds that the April 9, 2015 email from defendant's counsel to plaintiff's counsel is an answer to the request for admissions that did not comply with the requirements of Rule 36. IT IS ORDERED that the remedy for the non-compliant answer will be the service of an amended answer and not that the requested admissions are deemed admitted. Let the record reflect that Ms. Mouser, who is present in Court today, has consented to a finding that the non-compliance with the Court's prior discovery orders was her responsibility and not that of her client, which makes it appropriate for the sanction to be directed against her and not her client. . . . The Court finds that the amount of fees incurred by [White] is \$1,500. IT IS ORDERED that Andrea Mouser shall pay that amount to [White], through [his counsel], within thirty days of the date of this order."

115. Respondent failed to pay the \$1,500 within thirty days of the date of the order.

116. On August 31, 2015, Respondent emailed White's counsel and wrote: "The order states that payment is due today, but I am waiting to be paid (next week) before I can pay this order, due to numerous medical bills that I have had over the last month. Please let me know if your client will agree to wait until next week, or if I should file a motion with the Court requesting an extension for the needed 10 days—I will be able to make payment by September 10<sup>th</sup>."

117. White's counsel responded: "The requested extension to the 10<sup>th</sup> of September is fine."

118. Respondent did not pay the \$1,500 by September 10, 2015.

119. Instead, on September 11, 2015, she emailed White's counsel: "I just wanted to follow up with you on this payment and let you know that I haven't forgotten this. I did not have funds come in as I anticipated last week (as I am waiting for payments on previous invoices), but I am resolving this over the weekend and will send out payment to your office on Monday. I apologize again for the delay, and appreciate the extension."

120. On September 17, 2015, Cathy Sherill ("Cathy") from White's attorney's office informed Respondent that they had "not received your check yet" and "[c]an you please let me know when we can expect it?"

121. Respondent replied: "That's not good at all. I set it up as a bill pay through my bank and it said that it debited on Monday. Maybe it just hasn't reached you guys because of the bill pay system? Let me check with the bank and make

sure that it went out as directed. I will get back with you as soon as I have an answer.”

122. On September 23, 2015, Respondent followed up with Cathy and wrote: “I just wanted to follow up with you . . . to make sure that you have received the bill pay check. If you do not have it with today’s mail drop, would you please email and let me know? I want to be sure that your office gets this payment this week, and if I have to dispute the bill pay and reverse it, I want to get that ball rolling this afternoon. This is ridiculous and your office has been very kind in allowing me the extension on the payment and I do not want to abuse that consideration in any way. Please let me know and I will get this addressed today.”

123. On September 29, 2015, Cathy emailed Respondent: “We still have not received the original check that you stopped payment on in the mail. I was under the impression that you were going to get a cashier’s check and hand deliver it as the replacement check to us yesterday. Please advise.”

124. Respondent replied on the same day: “I had to wait for the funds to re-deposit into my account based on the disputed check being voided. I checked and the funds were just ‘re-deposited’ into my account today. I will plan to go tomorrow and pick up a cashier’s check and deliver same to you.”

125. The next day, Cathy informed Respondent that they were closing early and Respondent advised that she would “be in there on Friday [October 2] if that works.”

126. Respondent did not deliver the cashier’s check on October 2, 2015. Respondent delivered it six days later on October 8, 2015.

127. The emails that Respondent sent Cathy are from the email address andrea@mouserlawaz.com even though Respondent was suspended from the practice of law when she sent these emails.

128. When this matter was in screening, the State Bar requested that Respondent produce documentation substantiating her allegation that she scheduled the bill pay.

129. In response, Respondent informed the State Bar that she did not have any documentation that she scheduled the payment as a bill pay.

130. When this matter was in screening, the State Bar asked Respondent about the affidavit executed by her assistant in which her assistant states that she burned a CD with the discovery responses at issue and provided it to Respondent to mail. The State Bar asked Respondent if she mailed this CD to White's counsel, when, and to produce documents demonstrating that she mailed it.

131. Respondent failed to respond to this request for information and documentation.

#### **COUNT FOUR (File No. 15-2356/Howard)**

132. Veronica Howard ("Howard") and a co-worker of Howard's, Jim Phillips ("Phillips"), retained Respondent to assist them in civil rights case against their former employer.

133. Howard alleges that Mr. Phillips made two payments of \$10,000 to Respondent, that Mr. Phillips made one of these payments on her behalf, and that she intended to repay Mr. Phillips for the \$10,000 payment to Respondent.

134. Howard states that she re-paid Mr. Phillips \$4,500 of the \$10,000.

135. In contrast, Respondent contends that Mr. Phillips only made one payment of \$10,000.

136. Respondent further states that Howard and Phillips' claims against the former employer were interrelated, that Phillips' fee would be used for research and investigation of both cases, and that Howard agreed to pay her costs.

137. On May 23, 2014, Respondent emailed Mr. Phillips stating "[w]e received your signed retainer agreement and check in today's mail."

138. On August 22, 2014, Respondent provided Howard a retainer agreement which provides for a \$10,000 flat fee and which further provides "a payment of 20% contingency will be made at the end of your case, from any funds [that] are recovered on your behalf."

139. On August 26, 2014, Respondent's assistant emailed Howard and wrote: "I also wanted to let you know that the firm received your retention check."

140. On February 27, 2015, Phillips died.

141. By the time of his death, Respondent had not yet filed a complaint on behalf of Phillips.

142. Respondent did not reimburse Phillips' estate any of the \$10,000 that Phillips paid her because Respondent states that the time that she spent on Phillips' matter exceeded the \$10,000. Specifically, Respondent contends that she performed extensive research, had meetings and telephone calls with Phillips, reviewed recordings and video logs, and reviewed other documentation.

143. The copy of her file that Respondent produced to the State Bar, however, did not contain the aforementioned research.

144. On April 29, 2015, Respondent filed a complaint on behalf of Howard naming Howard's former employer as the defendant.

145. On July 23, 2015, Respondent emailed Howard and wrote: "As an aside, ou[r] next step is to serve the newly listed parties. I know you were concerned about your financial resources. Do you have the ability to move forward now with things like process server costs, depositions and the like."

146. Howard responded to this email as follows: "I would really like to go forward as soon as possible. Yes I'm a financial miss [sic]. But i [sic] know once this is over it [sic] will not be. Can you add it to my bill."

147. Respondent never attempted to serve the complaint on the defendant.

148. On July 24, 2015, Respondent emailed Howard that "I am having some major health issues and I am in the midst of closing the practice."

149. At this time, Respondent did not disclose to Howard her suspension from the practice of the law.

150. On August 6, 2015, approximately a week after her suspension took effect, Respondent filed a notice of suspension with the federal district court.

151. On August 10, 2015, Respondent filed a motion to withdraw from representing Howard citing her suspension from the practice of law.

152. On the same date, Respondent's assistant emailed Howard the motion to withdraw.

153. The next day, Respondent emailed Howard that she has "new counsel to transition you to . . . ."

154. On August 26, 2015, Howard emailed Respondent and received the following automated reply: "The firm is closed and not accepting new clients."

155. On September 8, 2015, the court entered an order stating that the matter would be dismissed within 14 days for failure to serve the summons and complaint on the defendant.

156. On September 16, 2015, Respondent emailed Howard: "Please let me know if you are available to speak this week at all regarding service of the complaint, and the next steps for file transfer."

157. Howard responded that she needed her files.

158. Respondent replied as follows: "I can arrange to assist you with service before dismissal. There are several entities that I work with in the valley. I just need to know your next steps with representation."

159. On September 18, 2015, Howard filed in pro per a motion to extend the time to serve the complaint. The court granted the motion, providing Howard with 45 more days to serve the summons and complaint.

160. On October 6, 2015, Respondent informed Howard that she sent Howard most of her file and would send the remainder of it that week. Howard responded "[r]eceived package."

161. Howard subsequently filed a second motion to extend the time to serve the complaint and the court granted it.

162. Howard never served the complaint on the defendant and the court dismissed the complaint on January 7, 2016.

**COUNT FIVE (File no. 15-2505/Washburn)**

163. Roy Gardillas ("Roy") retained Respondent to assist him with dissolving his marriage from Carol Gardillas ("Carol").

164. On November 17, 2014, Respondent provided Roy an engagement agreement titled "Dissolution of Marriage without Children."

165. The engagement agreement defines the scope of representation as "drafting all required filings, filing same with the Court, drafting the required Resolution Management Conference Statement but not to include any Court appearances."

166. The engagement agreement further states that "[s]hould your case settle before the need for any Court appearances, this scope includes the drafting of all final dissolution documents limited to the consent Decree and Property Settlement Agreement."

167. The engagement agreement provides for a "flat fee retainer" in the amount of \$2,000 but then also states: "Hourly Fees. By engaging the firm to represent you, you are agreeing to pay for time spent on your matter by any of the Firms' attorneys and/or legal support staff. . . ."

168. Regarding billing statements, the engagement agreement provides that "[t]he Firm will only send monthly billing statements to you in the event that there are specific charges for that month which are not covered by your flat fee (unless specifically requested)."

169. Roy paid Respondent a total of \$3,440.

170. On November 17, 2014, Roy signed a "consent and waiver of attorney client privilege" as to his daughter, Theresa Washburn ("Washburn"). The consent and waiver permitted Respondent to "discuss all aspects of my matter . . . and share any documents associated with my dissolution" with Washburn.

171. Respondent understood that she would communicate with Roy through Washburn.

172. On November 20, 2014, Carol filed a petition for dissolution of marriage from Roy.

173. On December 7, 2014, Respondent filed a notice of appearance on behalf of Roy. The notice of appearance states: "Counsel's appearance in this matter shall include the preparation of all attendant documents, filing same with the Court, drafting the required resolution Management Conference Statement but not to include any Court appearance. Should this matter settle before the need for any Court appearances, this scope includes the drafting of all final dissolution documents limited to the consent Decree and Property Settlement Agreement. Should the matter lead to any Court appearances, counsel for [Roy] will be effectively withdrawn unless otherwise noticed by counsel via formal pleading."

174. On December 17, 2014, Respondent filed a motion for change of venue. The court granted this motion on January 26, 2015.

175. On December 20, 2014, Respondent filed an answer to Carol's petition for divorce.

176. On January 14, 2015, Respondent filed an expedited motion to set resolution management conference.

177. On January 20, 2015, attorney Maya Milovic ("Maya") filed a notice of appearance on behalf of Carol.

178. On April 15, 2015, Respondent appeared telephonically for a status conference.

179. The court scheduled a settlement conference for September 1, 2015.

180. On July 23, 2015, Respondent contends that she communicated with Maya about settlement.

181. On the same date, Respondent also contends that she communicated with Washburn and informed Washburn that "she had a significant balance owed on her account, past the flat fee \$2,000 she had paid . . . ."

182. On July 30, 2015, a day after the effective date of her suspension, Respondent filed a notice of withdrawal as attorney of record for Roy. The notice provides that withdrawal is necessary because Roy did not pay his full retainer amount and does not have the resources to continue with the representation.

183. In the notice, Respondent failed to inform the court of her suspension from the practice of law.

184. Respondent signed the Notice as "Attorney for Respondent."

185. On the same date, Respondent sent a letter to Maya outlining certain proposed settlement terms. The letter also states: "Please also find enclosed my Notice of Withdrawal. Per my conversation, and as I informed you during our last conversation on July 23<sup>rd</sup>, Roy does not have the resources to continue forward with representation and I will no longer be representing him as it pertains to this matter."

186. On August 11, 2015, the court entered an order rejecting notice of withdrawal of counsel because Respondent did not satisfy the requirements of Local Rule 6.2(e).

187. On August 12, 2015, Maya sent Respondent a letter rejecting her settlement offer.

188. On August 13, 2015, Washburn emailed Respondent's assistant and wrote: "I have been trying to call your office beginning with Monday. I was calling

to see if there was any response to the settlement offer we sent to Carol. Your phone rings five times and then gives me a message that I have reached a non working number. Yesterday I spoke briefly with Maya. She informed me that she legally could not hold a call with me as I am still being represented by [Respondent] as the judge declined her request to cease our professional relationship. WHAT IS GOING ON? I need someone to speak to. . . . . What is going on? . . . Are we still in a business relationship? I don't know where the money is going to come from to continue this proceeding. . . . Please call me." (emphasis in original).

189. On August 14, 2015, Respondent responded: "I did receive a response to the last offer via email and will forward same to you via email tomorrow. I'm not sure what happened with the judge because I have not seen any orders but I will be in touch. . . . My practice is closed, which is why the phones are doing that (I am having major health problems so I elected to completely close the firm rather than just closing for the ordered period) and I am not permitted to give any legal advice, so we'll need to discuss next steps if the judge did deny the withdrawal. Once you review the response, shoot me an email or call my cell . . . ."

190. On the same date, Respondent mailed to the court a notice of withdrawal as attorney of record for respondent [Roy] with consent which lists Respondent as suspended.

191. On the same date, Respondent sent Complainant an email attaching a settlement counter-offer from Carol's attorney. Respondent wrote: "If you can execute the attached withdrawal with consent . . . , this will resolve the counsel issue with the Court, and then you will be free to discuss the case with [opposing counsel] directly. . . . Please review and then we can set a time to speak in more detail."

192. On August 17, 2015, the court entered an order "withdrawing [Respondent] as counsel of record" for Roy because the court was informed that Respondent "has been suspended from the practice of law in Arizona effective August 23, 3015 [sic], for a period of 6 months and one day."

193. On September 2, 2015, a new attorney filed a notice of appearance on behalf of Roy. The parties subsequently settled the matter but Carol died before they filed the consent decree.

194. On September 2, 2015, Washburn emailed Respondent requesting all the legal fees that she paid Respondent totaling \$3,440. Washburn wrote: "Your email of August 14, 2015 stated that you were closing your office due to an illness which may be true but you failed to mention that you were suspended also. When I received mail from the court informing me of such[,] I was surprised but then again, a lot of things fell into place. I now understand your urgency to have my father sign release papers removing you from counsel. You can imagine my confusion and panic when I couldn't reach you at your phone. You could have been honest and told me what was happening so I could begin seeking new counsel at such a critical time in this case. I never received . . . any accountability of billing. You were VERY difficult to reach by phone and failed to call in specified telephone appointments." (emphasis in original).

195. On the same date, Respondent provided Washburn billing statements and wrote: "[W]e have billed more than the legal fees that you have paid, which was why you were asked to make a payment. Your account is in an owing status with a balance of \$3,665.80. I had not intended on pursuing this entire balance, but was waiting to hear from you regarding your file transfer. I told you why I closed

my office (which was my health, as I could have left it open and hired new counsel but I did not), and I filed a motion for removal from the case appropriately, as well as sending you certified mail about my suspension, as I was required to per the Supreme Court guidelines. . . . Billing invoices are never sent unless requested (unless a fee is paid for you), and your retainer agreement speaks to this issue. . . . You are essentially asking me to have worked for your father's case for free when the firm spent a total of 24.1 billable hours on tasks specifically directed at moving your case to completion, and I cannot and will not do that."

196. The entries on the billing statements include correspondence with Washburn and opposing counsel, drafting a motion to set a resolution management conference, drafting discovery requests, review of Carol's discovery, drafting a disclosure letter, and review of Carol's disclosure statement.

197. Respondent states that Roy paid her in excess of the \$2,000 flat fee because Roy exceeded the scope of the representation, including because Respondent had to engage in discovery.

**COUNT SIX (File no. 15-2529/Barraza)**

198. On August 30, 2010, Richard E. Barraza Jr.'s ("Richard") now ex-wife Valerie Barraza ("Valerie") filed a petition for dissolution of marriage with minor children.

199. On February 28, 2011, Richard and Valerie filed a consent decree dissolving their marriage, agreeing to joint custody of their children with the Valerie being designated the primary residential parent and Richard receiving parenting time, agreeing that Richard shall pay child support, and agreeing that the Valerie has a fifty percent interest in Richard's retirement account.

200. On March 31, 2014, Richard filed a petition to modify child support.

201. On April 7, 2014, Valerie filed a motion for a qualified domestic relations order ("QDRO"). The QDRO motion states that the "QDRO has been prepared and has been pre-approved as to form and content by the Plan" but that Richard "has refused to sign the QDRO after numerous mailings and discussions."

202. Valerie provided Richard with a copy of the QDRO and he refused to sign it.

203. Richard retained Respondent to assist him with the QDRO.

204. On April 1, 2014, Respondent provided Richard with a retainer agreement.

205. The retainer agreement defines the scope of the representation as follows: "*Post-Decree Modification of Retirement Benefits Awards and Drafting of Qualified Domestic Relations Order*, not yet to include any Court appearances, but in contemplation of the same." (emphasis in original).

206. The retainer agreement further states "[o]ur current representation will include drafting a Demand letter, and a follow up of the same, in order to amend and define the terms of your original decree of dissolution pertaining to any existing retirement accounts. If you require additional services, a retainer will be set at that time."

207. The retainer agreement provides for a flat fee of \$1,000 "to secure the representation. . . ."

208. Richard paid Respondent the \$1,000 flat fee.

209. After he retained Respondent, Richard contends that he provided Respondent a copy of the QDRO motion. Richard, however, could not identify when he provided the QDRO motion to Respondent.

210. Respondent states that she did not receive a copy of the QDRO motion until May of 2014 and, therefore, that she did not respond to such motion.

211. On April 30, 2014, not having received a response to the QDRO motion, the court entered the QDRO that Valerie proposed to the court.

212. When she learned of the court's April 30, 2014 order, Respondent states that she contacted Richard and informed him that "what I was embarking on was far more complicated and detailed than drafting a QDRO, as this work would require contact with the judicial division about the content of the order, contact with the opposing party about the order being in error, and contact with The Divorce Store [who drafted the proposed order] as to how and when the Order was submitted to the judge and to the plan. . . ."

213. On May 20, 2014, Valerie filed an expedited request to enforce child support. The court scheduled a hearing for June 19, 2014 relating to this request.

214. On or about May 21, 2014, Richard contacted Respondent about retaining her to assist him with parenting time matter and the child support enforcement matter.

215. Richard states that Respondent also agreed to assist him in obtaining full custody of his two children.

216. On May 21, 2014, Respondent provided Richard a fee agreement for \$3,000 which defines the scope of the representation as follows: "Our current representation will including drafting a Petition to Modify Child Support, Response to

Motion to Enforce, Motion to Set Aside QDRO order, Motion to Modify Decree Re: Retirement Assets.”

217. The fee agreement further states: “This retainer does not include any Court appearances at this time, other than attendance at the currently set Order to Show Cause hearing set for June 19, 2014.”

218. The fee agreement has handwriting on it that states “P/T [parenting time] issues pending 6/19 hearing (wait).”

219. Richard paid Respondent the \$3,000 referenced in this fee agreement.

220. On June 10, 2014, Respondent filed a notice of appearance and a response to the request to enforce child support.

221. On June 19, 2014, Respondent attended the child support enforcement hearing. The parties stipulated to an order at this hearing.

222. On July 22, 2014, Valerie requested a hearing that “the child support be modified to an amount different from the amount requested by the other party.” The court scheduled an evidentiary hearing on the child support issues for September 11, 2014.

223. On September 11, 2014, Respondent attended the evidentiary hearing for Valerie.

224. At the hearing, the parties resolved the child support modification issue. However, parenting time and custody issues remained outstanding at this time.

225. On September 11, 2014, Richard paid Respondent an additional \$5,000.

226. Respondent did not provide Richard a writing complying with ER 1.5(b) relating to this \$5,000.

227. Respondent states that this \$5,000 was for services that she already provided to Richard while Richard contends that he paid Respondent the \$5,000 to assist him with the parenting time issue.

228. Respondent contends that Richard decided not to proceed with the parenting time issue and that he informed her that he would contact her if he decided to proceed with the parenting time issue.

229. Richard denies this and states that he paid Respondent the \$5,000 on September 11, 2014 to address parenting time.

230. A September 11, 2014 entry on an accounting that Respondent produced states as follows: "[T]eleconference with client re: details of parenting time modification and cost of same. Client will be making additional payment for Petition and possible temporary orders."

231. Respondent never filed a petition for Richard relating to parenting time.

232. Richard states that he repeatedly requested an accounting from Respondent but that Respondent never provided him this account.

233. Respondent denies this and, in response to a request for supplemental information, Respondent informed the State Bar that she sent Richard "billing invoices."

234. In response to the bar charge, however, Respondent informed the State Bar that "[t]he fee agreement clearly stated that in flat fee cases, no billing statements are sent, unless fees are incurred by the firm directly, which are then billed to the client."

235. Respondent did not file a notice with the court informing the court of her suspension and did not inform Richard of her suspension.

### **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 in count one (File No. 15-2353/Chasson) violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 3.2, 5.5, 8.4(c), and 8.4(d), and Rules 31 and 72, Ariz. R. Sup. Ct.

Respondent conditionally admits that her conduct in count two (File No. 15-2418/Henrich) violated Rule 72, Ariz. R. Sup. Ct.

Respondent conditionally admits that her conduct in count three (File No. 15-2632/White) violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 3.2, 3.4(c), 8.1(b), 8.4(c), and 8.4(d), and Rules 31, 54(c), 54(d), and Rule 72, Ariz. R. Sup. Ct.

Respondent conditionally admits that her conduct in count four (File No. 15-2356/Howard) violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3 and 1.16(d), and Rule 72, Ariz. R. Sup. Ct.

Respondent conditionally admits that her conduct in count five (File No. 15-2505/Washburn) violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.5(b), 8.4(c), and 5.5, and Rules 31 and 72, Ariz. R. Sup. Ct.

Respondent conditionally admits that her conduct in count six (File No. 15-2529/Barraza) violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2(a), 1.3, 1.5(a), 1.5(b), 1.16(d), 8.4(c), and Rule 72, Ariz. R. Sup. Ct.

## **RESTITUTION**

Restitution is not an issue in this matter. However, as stated above, Respondent agrees to participate in fee arbitration in File Nos. 15-2356 and 15-2529.

## **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:

- A. Respondent shall be suspended from the practice of law in Arizona for a period of three years. The three year period of suspension shall commence upon entry of the final judgment and order;
- B. As stated above, Respondent agrees to participate in mandatory fee arbitration during her three year suspension in the following file numbers: 15-2356 (Howard) and 15-2529 (Barazza); and
- C. Upon reinstatement, Respondent shall be placed on probation for a period of two years, under terms and conditions to be determined at the time of reinstatement.

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

## **LEGAL GROUNDS IN SUPPORT OF SANCTION**

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider

and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

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

The parties agree that *Standard* 7.2 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 7.2 provides: "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 parties agree that Respondent knowingly engaged in conduct that is a violation of her duty owed as a professional, including by knowingly engaging in the practice law after the July 29, 2015 effective date of her suspension. Specifically, in File Nos. 15-2353 and 15-2505, Respondent knowingly engaged in settlement negotiations after she became suspended from the practice of law in Arizona. The parties agree that Respondent's unauthorized practice of law caused potential injury to her clients and the legal system.

The parties further agree that *Standard* 6.22 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 6.22 provides: "Suspension is appropriate when a lawyer knowingly violates a court order or rule,

and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.” The parties agree that Respondent knowingly violated court orders and rules. In File No. 15-2632, Respondent failed to timely respond to discovery requests, failed to comply with the court’s May 18, 2015 order regarding discovery, and failed to timely comply with the court’s August 5, 2015 order. The parties agree that Respondent’s above failures caused actual interference with a legal proceeding, including because Respondent’s actions delayed the proceedings and caused the court to hold two hearings related to the discovery issues.

The parties further agree that *Standard* 4.42 is the appropriate Standard given the facts and circumstances of this matter. *Standard* 4.42 provides: “Suspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client.” The parties agree that Respondent knowingly failed to perform services for a client, including by: (1) failing to attend her client’s deposition and failing to submit a settlement conference memorandum in File No. 15-2353; (2) failing to serve the complaint in File No. 15-2356; and (3) failing to take any action on the parenting time issue in File No. 15-2529. Respondent caused actual injury to her client in file no. 15-2356 because the court eventually dismissed such client’s complaint. Respondent caused potential injury to her clients in File Nos. 15-2353 and 15-2529.

### **The duty violated**

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

### **The lawyer's mental state**

For purposes of this agreement, the parties agree that Respondent knowingly engaged in the unauthorized practice of law, knowingly violated court orders or rules, knowingly failed to complete services for her clients, 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 actual harm to at least one of Respondent's clients as stated above, actual harm to the legal system as stated above, and potential harm to 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(a):* Prior disciplinary history. In File Nos. 14-2355 and 14-2765, Respondent was suspended for six months and one day effective September 3, 2015 for violating ERs 3.3, 8.4(c), and 8.4(d). In File No. 14-0644, Respondent was suspended for six months and one day effective July 29, 2015 for violating ERs 3.3(a), 8.4(c), 8.4(d), and Rule 54(c). In File Nos. 10-1301, 10-1978, and 11-1589, Respondent was reprimanded on January 9, 2012 and placed on probation for two years (MAP, LOMAP, fee arbitration, TAEEP) for violating ERs 1.3, 1.4, 1.5, 1.9, 1.15, 1.16, 8.4(d) and Rule 43, Ariz. R. Sup. Ct.

*Standard 9.22(b):* Dishonest or selfish motive. Respondent engaged in the unauthorized practice of law despite knowing that she was suspended effective July

29, 2015 and, as stated above, failed to timely inform the court or her clients of her suspension.

*Standard 9.22(c) and (d):* A pattern of misconduct and multiple offenses. The instant matter involves six counts.

**In mitigation:**

*Standard 9.32(c):* Personal or emotional problems. Respondent provided the State Bar with an email summarizing certain medical issues and the impact of those medical issues. (Exhibit C). Attached to this email is one medical record showing that Respondent sought treatment for certain medical issues. (*Id.*).

*Standard 9.32(k):* Imposition of other penalties or sanctions. In File No. 15-2632, the court sanctioned Respondent in the amount of \$1,500.

**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. This agreement was based on the following: Although Respondent has a prior disciplinary history and this matter involves six counts, Respondent has been suspended since July 29, 2015. Moreover, Respondent produced documentation demonstrating that she encountered certain medical issues in 2015.

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 a three year suspension, fee arbitration in File Nos. 15-2356 and 15-2529, and two years of probation upon reinstatement with terms and conditions of this probation to be determined upon reinstatement. A period of suspension of more than six months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit D.

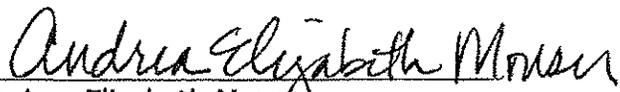
**DATED** this  day of June, 2016

### STATE BAR OF ARIZONA

  
\_\_\_\_\_  
Nicole S. Kasetta  
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 10<sup>th</sup> day of June, 2016.

  
Andrea Elizabeth Mouser  
Respondent

DATED this 7<sup>th</sup> day of June, 2016.

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 17<sup>th</sup> day of June, 2016.

Copy of the foregoing emailed  
this 17<sup>th</sup> day of June, 2016, 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](mailto:officepdj@courts.az.gov)

Copy of the foregoing mailed/emailed  
this 17<sup>th</sup> day of June, 2016, to:

Andrea Elizabeth Mouser  
10645 N. Tatum Boulevard, Suite 200-579  
Phoenix, AZ 85028-3068  
Email: [andreamouser@hotmail.com](mailto:andreamouser@hotmail.com)  
Respondent

Copy of the foregoing hand-delivered  
this 17<sup>th</sup> day of June, 2016, to:

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

by: Karen E. Calcarone  
NSK/kec

# **EXHIBIT A**

May 28, 2016

STATE BAR OF AZ  
4201 N. 24th Street  
SUITE 100  
PHOENIX, AZ 85016-6266

RECEIVED

JUN 03 2016

STATE BAR OF ARIZONA  
LAWYER REGULATION

MS. KASETA,

THE SUSPENSION OF MS. MOUSER IS CLEAR BUT THERE IS NO MENTION IN YOUR LETTER REGARDING THE FINANCIAL RESTITUTION THAT WAS INCLUDED, IF NOT THE FOCAL POINT IN MY ORIGINAL COMPLAINT, IN THE AMOUNT OF \$3,440.00 AFTER MY PHONE INTERVIEW, I ALSO SUPPLIED TO YOUR OFFICE DOCUMENTATION SUPPORTING THE PAYMENTS.

MY FATHER LIVES ON A VERY LIMITED INCOME HE COULD BARELY AFFORD TO EMPLOY ONE ATTORNEY MUCH LESS TWO WHICH IS THE POSITION MS. MOUSER PLACED HIM. THE LOSS OF THESE FUNDS PLACES HIM IN A PRECARIOUS FINANCIAL POSITION THAT GOES BEYOND PARAMOUNT. HE LITERALLY PUT HIS TRUST AND FINANCIAL FUTURE IN WHAT HE BELIEVED WAS IN THE CAPABLE AND PROFESSIONAL EXPERTISE OF MS. MOUSER. WHEN IN FACT SHE ABANDONDED HIM AT A VERY CRITICAL JUNCTION IN HIS LITIGATION.

THE FINANCIAL TOLL OF HAVING TO BEGIN, ONCE AGAIN, WITH NEW COUNSEL WAS NOT ONLY CATASTROPHIC FINANCIALLY BUT IT CREATED UNTOLD AND IMMENSURABLE STRESS ON HIS HEAVILY GUARDED HEALTH. HIS BLOOD PRESSURE IS MONITORED AND CONTROLLED WITH DAILY MEDICATION DUE TO AN ABDOMINAL ANEURYSM THE VERY MENTION OF THIS SUBJECT BRINGS AN IRRITATION AT THE FINANCIAL PREDICAMENT THIS HAS PLACED HIM. IT RENDERS HIM IN A STATE OF UPSET THAT IS WITH HIM FOR DAYS THIS SUM OF MONEY MAY NOT BE MUCH TO SOME BUT ITS A GREAT DEAL TO MY DAD.

THE BOTTOM LINE MY DAD PAID FOR HONESTY AND PROFESSIONALISM. HE DID NOT RECEIVE WHAT HE PAID FOR.

THE SUSPENSION AND RESTITUTION WALK HAND IN HAND. ONE IS NOT COMPLETE WITHOUT THE OTHER.

I AWAIT YOUR DECISION.

M. THERESA WASHBURN  
6958 THOMAS RANCH RD  
SHOW LOW, AZ 85901 (573) 789-7362

# EXHIBIT B

## Statement of Costs and Expenses

In the Matter of a suspended Member of the State Bar of Arizona,  
ANDREA ELIZABETH MOUSER Bar No. 023967, Respondent

File No(s). 15-2353, 15-2418, 15-2632, 15-2356, 15-2505, 15-2529

### **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**

02/03/16 Retrieve FTR's from Law Library \$ 7.24

Total for staff investigator charges \$ 7.24

Total Costs and Expenses for each matter over 5 cases where a violation is admitted or proven.

(1 over 5 x (20% x Gen. Admin cost): \$ 240.00

**TOTAL COSTS AND EXPENSES INCURRED** **\$1,247.24**

# EXHIBIT C

# EXHIBIT D

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

---

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

**ANDREA ELIZABETH MOUSER,**  
**Bar No. 023967,**

Respondent.

**PDJ-2016-**

**FINAL JUDGMENT AND ORDER**

[State Bar Nos. **15-2353, 15-2418,**  
**15-2632, 15-2356, 15-2505, 15-**  
**2529]**

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on June\_\_\_, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

**IT IS HEREBY ORDERED** that Respondent, **Andrea Elizabeth Mouser**, is hereby suspended for a period of three years for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective upon entry of this Final Judgment and Order. A period of suspension of more than six months will require proof of rehabilitation and compliance with other requirements prior to being reinstated to the practice of law in Arizona.

**IT IS FURTHER ORDERED** that Respondent shall participate in fee arbitration with the following complainants:

Veronica Howard (File No. 15-2356)

Richard Barraza, Jr. (File No. 15-2529)

**IT IS FURTHER ORDERED** that Respondent will initiate fee arbitration with the above listed complainants within ninety (90) days from entry of this final judgment and order by contacting the fee arbitration coordinator at (602) 340-7379, shall provide proof that she timely initiated the fee arbitration process to the State Bar, and shall pay any fee arbitration award within thirty (30) days from the date the fee arbitrator issues the award.

**IT IS FURTHER ORDERED** that, upon reinstatement, Respondent shall be placed on probation for a period of two year, under terms and conditions to be determined at the time of reinstatement.

**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.

**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 \$1,247.24, within 30 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 30 days from the date of service of this Order.

**DATED** this \_\_\_\_\_ day of June, 2016

**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 June, 2016.

Copies of the foregoing mailed/emailed  
this \_\_\_\_\_ day of June, 2016, to:

Andrea Elizabeth Mouser  
10645 N. Tatum Boulevard, Suite 200-579  
Phoenix, AZ 85028-3068  
Email: andreamouser@hotmail.com]  
Respondent

Copy of the foregoing emailed/hand-delivered  
this \_\_\_\_ day of June, 2016, to:

Nicole S. Kasetta  
Bar Counsel - Litigation  
State Bar of Arizona  
4201 N 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

Copy of the foregoing hand-delivered  
this \_\_\_\_ day of June, 2016 to:

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

by: \_\_\_\_\_