

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

T. ANTHONY GUAJARDO,
Bar No. 021500

Respondent.

PDJ-2016-9049

[State Bar Nos. 15-0525, 15-2659]

FINAL JUDGMENT AND ORDER

FILED NOVEMBER 1, 2016

This matter having come before the Hearing Panel, it having duly rendered its decision; and no appeal having been filed and the time for appeal having passed, accordingly:

IT IS ORDERED Respondent, **T. ANTHONY GUAJARDO**, is suspended from the practice of law for one (1) year effective October 31, 2016, for misconduct as set forth in the Hearing Panel's Decision and Order filed September 30, 2016.

IT IS FURTHER ORDERED Mr. Guajardo 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 as a condition to reinstatement, Mr. Guajardo shall obtain an independent medical examination (IME) by Dr. Phillip Lett. Mr. Guajardo shall be responsible for the costs associated with the IME.

IT IS FURTHER ORDERED Mr. Guajardo shall pay the costs and expenses of the State Bar of Arizona pursuant to Rule 60, Ariz. R. Sup. Ct. There are no

costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 1st day of November, 2016.

William J. O'Neil

William J. O'Neil
Presiding Disciplinary Judge

COPY of the foregoing e-mailed this 1st day of November, 2016, and mailed November 2, 2016, to:

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**DECISION AND ORDER IMPOSING
SANCTIONS**

[State Bar Nos 15-0525 & 15-2659]

FILED SEPTEMBER 30, 2016

On August 24, 2016 the Hearing Panel ("Panel"), composed of Marsha Morgan Sitterley, volunteer public member, David W. Garbarino, volunteer attorney member, and Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a hearing under Rule 58(j), Ariz. R. Sup. Ct. Shauna R. Miller appeared on behalf of the State Bar of Arizona ("State Bar"). Mr. Guajardo appeared *pro per*. The State Bar seeks a long term suspension for dishonesty to the court and the State Bar.

The Panel carefully considered the Complaint, Answer, Joint Pre-Hearing Statement, individual prehearing memorandum, admitted Exhibits 1-37, and testimony.¹ The Panel now issues the following "Decisions and Order Imposing Sanctions," under Rule 58(k), Ariz. R. Sup. Ct.

I. PROCEDURAL HISTORY

Probable Cause Orders issued on July 27, 2016 and April 26, 2016. The formal complaint was filed on May 12, 2016. Mr. Guajardo filed his answer on July 6, 2016.

¹ Exhibits 6-17 are documents originally sealed by the Juvenile Court and likewise, are sealed in this proceeding. The Panel considered the testimony of Arianne Burchett, Alan Ortega, Esq., and Emi Koyama, Esq.

On June 14, 2016, an initial case management conference was held and a hearing date was set. The parties filed a Joint Pre-Hearing Statement on July 27, 2016. The parties filed individual prehearing memorandums on August 17, 2016.

On August 16, 2016, Mr. Guajardo filed an expedited motion to add an additional exhibit. The State Bar objected and the motion was denied at hearing. On August 22, 2016, the State Bar filed a Motion to Strike Mr. Guajardo's prehearing memorandum, which was denied at hearing. On August 24, 2016, Mr. Guajardo moved to dismiss Count Two for lack of jurisdiction, which was denied.

II. SANCTION IMPOSED:

**ONE YEAR SUSPENSION, INDEPENDENT MEDICAL EXAMINATION AS A
CONDITION OF REINSTATEMENT AND COSTS.**

III. FINDINGS OF FACT

Count One

Mr. Guajardo was admitted to practice law in Arizona on May 24, 2002. In Count One, client ("Mother") hired Mr. Guajardo and paid him \$1,500. He represented mother in a juvenile court dependency matter. No fee agreement was introduced as an exhibit and we are unaware if any written formal fee agreement was entered into. Mr. Guajardo presented an invoice describing "Custody of Child" and "Revocation of Guardianship." It lists an extended price of \$4,500 of which \$1,500 in cash was paid and credited. [Exhibit 21, Bates No. SBA057.] Mr. Guajardo filed a formal notice of appearance on June 20, 2014 stating he represented the child. He certified he had served that notice on June 19, 2014 by mail. On August 29, 2014 Mr. Guajardo filed an amended notice stating he represented the Mother. His

certificate of service states he served that amended notice by mail on June 19, 2014. [Sealed Exhibit 6; and 8.]

Mr. Guajardo did not attend the Pretrial conference hearing on August 13, 2014 and the court proceeded in his absence. [Sealed Exhibit 7.] At that hearing, the child was found dependent as to the Father. Counsel for the Father moved to withdraw. The motion was denied. A dependency adjudication hearing as to Mother was set for November 13, 2014. [Sealed Exhibit 7.] Mr. Guajardo received a copy of the minute entry and had personal knowledge that the judge had denied the motion to withdraw of counsel for Father and knew the adjudication date for Mother.

Mother was arrested for Aggravated DUI and shoplifting. Mr. Guajardo agreed to also represent her and appeared of record in those cases. [Exhibit 18; and 19.] Mother was charged with assault and hired Mr. Guajardo for \$1,500. No written fee agreements for these criminal cases were submitted. However, an invoice was submitted from Mr. Guajardo charging a fee of \$1,500, with a description of services as "Criminal Assault" and dated August 18, 2014. [Exhibit 21, Bates No. SB0056.] Mother was incarcerated on September 27, 2015 and was to confer with Mr. Guajardo after an October 14, 2014 hearing.

Mr. Guajardo signed a Motion to Withdraw on October 20, 2014, which he filed in the dependency case on October 22, 2015. [Sealed Exhibit 9.] The factual basis given by Mr. Guajardo for filing his motion to withdraw were inconsistent and varied widely. We found his testimony unreliable. In her testimony, Mother was steadfast regarding this issue and not refuted by any testimony given.

The *first* explanation of Mr. Guajardo is in his motion. There, Mr. Guajardo stated its' basis was there were "irreconcilable and/or conflicting interests" between

he and Mother. The unrefuted testimony of Mother was that Mr. Guajardo had no contact with her regarding the dependency from the time of his filing his notice of appearance in June, 2014 until October 22, 2014. When he met with her on that date, there was no discussion between them regarding his intent to withdraw, nor that he had signed a motion to withdraw on October 20 and filed it that day. The certificate of service is dispositive and signed by Mr. Guajardo. It does not list Mother as having been sent a copy. Further, Mr. Guajardo offered no testimony he mailed the motion to Mother at that time.

In his March 19, 2015 response to the State Bar, Mr. Guajardo submitted under oath and gave varying accounts for why he filed the motion. [Exhibit 2.] His *second* account he stated on October 19, 2014, he was advised Mother was incarcerated and “was advised by *family* members that our services were no longer needed.” (Emphasis added.) Later, in the same letter, he asserted a *third* account when he swore that on October 20, 2014, “After receiving information from CPS, not being able to get ahold of Mother, and receiving knowledge that Mrs. Burchett was now incarcerated, submitted a Motion to Withdraw from the Court.” [Id., Bates No. SBA0005.]

Mr. Guajardo then stated a *fourth* account that he “advised the family of my intent to withdraw and they were not happy about the decision and promptly fired me as counsel.” [Id., Bates No. SBA0005-6.] A *fifth* account was “[I]t became apparent I would not be able to represent her after I lost contact with her and after her family (that was authorized by Mother) fired me and refused to provide me with any more information. This led to me not being able to be prepared to litigate this case.” The *sixth* account was Mother “also discharged me.” [Id., Bates No.

SBA0008.] A *seventh* account was “It wasn’t until (Mother) and her representatives severed our communication that I no longer had communication: however, this was based on their actions and not my lack of communication with them.” [Id., Bates No. SBA0009.]

Mr. Guajardo stated in his letter to the State Bar that it was three days after moving to withdraw, that he informed Mother by letter to tell her “that we were withdrawing as attorney for her case.” [Id., Bates No. SBA0005.] He offered no such testimony at the hearing before us. Mother testified the letter was not sent to her until after the November 13, 2014 adjudication hearing date.

In his answer, Mr. Guajardo certified a conflicting *eighth* account for the motion by affirmatively stating he did not appear at the adjudication hearing, due to his own “terminating representation with the client.” He emphasized, “Respondent terminated his representation of the client....” [Answer, p. 2:25-27.]

In the Joint Prehearing Statement, Mr. Guajardo gave a conflicting *ninth* factual basis by affirmatively stating he “filed his motion to withdraw, at the *request* of the client.” [Joint Prehearing Statement, p. 4, ¶ 16.] In the Joint Prehearing Statement, Mr. Guajardo again asserted he intentionally did not appear at the adjudication hearing because, “Respondent had nothing to report as Miss Burchett had released him and refused to continue to speak with him regarding representation.” [Joint Prehearing Statement, p. 4, ¶ 15.]

Before us, Mr. Guajardo gave a conflicting *tenth and eleventh* account stating first that he fired the boyfriend of Mother who was paying his bill. He then swore his conflicting *eleventh* account for his motion to withdraw was the boyfriend of Mother

said he would no longer pay the bill and he and Mr. Guajardo mutually decided he would withdraw.

Added to these conflicting accounts, and despite his statements that it was not until October 19, 2014 that he was advised Mother was incarcerated and had lost contact with her until that time. Mr. Guajardo, in his prehearing memorandum stated about September 27, 2014, while Mother “was incarcerated in the Madison Jail a second time, that he had a “face to face meeting” with her and terminated his relationship with her then “and also confirmed it in writing” to her. [Respondent’s Prehearing Memorandum, pp. 17-18.]

Regardless of the reason for his motion, the court informed the office of Mr. Guajardo that his motion to withdraw would be heard at the adjudication hearing. Court staff twice notified Mr. Guajardo's office his motion to withdraw had not been ruled upon and that his appearance was required at the adjudication hearing. [Sealed Exhibit 9; and 10.] Mother testified a court appointed attorney (Alane Ortega) in October, 2014, told her he had heard Mr. Guajardo had “quit” his representation of her. However, she assumed that was related to his representation of her in criminal court. It was the first time Mother had any indication Mr. Guajardo might not be her lawyer but only regarding the criminal matter.

Mr. Guajardo was previously sanctioned for violating his obligation to continue representation of a client until the court terminated that representation. We find he knew of his ethical duty to continue his representation and knew that Rule 39(B) of the Rules of Procedure for the Juvenile Court mandated, “Counsel shall represent a party until: (3) the court orders the termination of representation.” Mr. Guajardo failed to appear for the dependency adjudication hearing. He had missed prior hearings

as well. As cited below, under Aggravating and Mitigating Factors, *Standard 9.22(c)* (pattern of misconduct), Mr. Guajardo has received discipline for violating a substantially identical rule in Immigration Court. We find Mr. Guajardo knew of his obligation to continue his representation of Mother until his representation was terminated by the court and intentionally ignored that obligation.

Before us, Mr. Guajardo blame shifted to the Judge. Prior to the hearing in his prehearing memorandum, he attached his judicial complaint against the judge. He swore that under the rules of law that the judge removing him as counsel for Mother *during the hearing* meant he had no obligation to appear *for* the hearing. Mr. Guajardo also argued because Mother had not been transported to the hearing, there never was a hearing and as a result he had no obligation to appear.

Before us, he was angry the judge had not given him an accommodation he felt should be freely granted upon request. Yet he knew the same judge had, during a prior hearing, denied the motion to withdraw of counsel for the Father. While Mr. Guajardo claimed the judge always accommodated everyone else, no such evidence was presented other than his unsupported conclusory accusation.

In his prior discipline, Mr. Guajardo made the same arguments, claiming disparate treatment by the immigration judges. But as the hearing officer stated in issuing discipline against him, two wrongs do not make a right nor relieve him of his ethical responsibilities. Mr. Guajardo knew this, yet ignored his ethical responsibilities.

Mr. Guajardo in his testimony also blame-shifted to Mother. He asked her on cross-examination if it was true she had never filed an objection to the motion, ignoring that he had not sent a copy of the motion to her until much later. When

Mother pointed this out, he then asked why she did not object to his withdrawing representation when she received his letter. When she testified he did not send her the letter until much later, he changed his line of questions.

Because of the non-appearance of Mr. Guajardo, the court set a show cause hearing for him to appear on Monday, December 8, 2014, at 10:30 A.M. and explain his failure to appear. [Sealed Exhibit 10.] The Court relieved him as counsel for Mother and ultimately appointed Alane (Roby) Ortega as counsel for Mother. She moved for substitution of counsel and asked Mr. Guajardo for his file. [Exhibit 13; and Ortega Testimony]. The motion was granted on December 18, 2014. [Exhibit 14.] Ms. Ortega testified that Mr. Guajardo did not timely provide her with the Mother's file and she was forced to send someone to the court for a copy of the record. When she received his file, its contents were minimal, comprising 2 minute entries.

On December 5, 2014, at 9:42 AM, the Friday before the O.S.C., Mr. Guajardo filed a "Motion for "Telephonic Hearing" stating,

Comes now, T. Anthony Guajardo, Attorney at law and enters his Motion for Telephonic Hearing for **ARIANNE BURCETT**, (Emphasis in the original) in the above numbered cause and asks that he be GRANTED a Telephonic Hearing due to a scheduling conflict. The attorney has an immigration case in San Francisco, CA (See attaching hearing schedule).

[Sealed Exhibit 11.]

The Immigration Court hearing schedule attached to his motion was dated June 3, 2014. The notice stated, "You can request an earlier hearing." It also stated, "If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed." The notice also cautions that if the proper address for contact is not listed that a correct address for the Court to send hearing

notices must be filed with the Court. Mr. Guajardo's address is not on the form. Mr. Guajardo offered no testimony of when he was hired for the representation. There is no objective evidence he appeared for the hearing in San Francisco or that he attempted to find coverage or that he even represented the immigrant. We assume for our ruling he did, but there is no substantive evidence to support that assumption.

Absent explanatory testimony, we conclude from the evidence Mr. Guajardo knew well before of his calendar conflict and made no effort to timely notify the court. In his prehearing memorandum, Mr. Guajardo accuses the judge of misrepresentation when she stated he filed the motion the night before and he underscored "Respondent filed a motion to appear telephonically 3 days before the hearing." [Prehearing Memorandum, p. 19.] But the objective fact is Mr. Guajardo filed his motion on the last workday of the week prior to the hearing. He knowingly precluded any time for response. We find such argument knowingly misleading. On December 8, 2014, Mr. Guajardo again failed to appear. The Court denied his untimely motion to appear telephonically. Mr. Guajardo testified he attempted to call in. We find no objective proof of that effort and considering the inconsistency of his testimony we reject that testimony as untrue. Even if it were true, it was at a minimum presumptuous of Mr. Guajardo to expect his motion as stated to have been granted. [Sealed Exhibit 12.]

The Court at the hearing on December 8, 2014, reset the order to show cause hearing and ordered Mr. Guajardo to appear on February 23, 2015 at 9:00 A.M. and show cause why he should not be held in contempt for repeatedly failing to appear. It is clear Mr. Guajardo received the notice, knew of his duty to appear but decided not to appear. On February 23, 2015, Mr. Guajardo again failed to appear for the

O.S.C. regarding his prior absences. [Sealed Exhibit 15.] We find Mr. Guajardo received the notice, knew of his duty to appear but decided not to appear.

In his March 19, 2015, responsive letter to the State Bar, Mr. Guajardo initially blame-shifts to his staff stating "I was not aware that I still needed to attend any other hearing." He then asserted, "My staff also was not aware and removed any further hearings from my calendar. I heard nothing regarding this case until I received the complaint from your office." [Exhibit 2, Bates No. SBA0007.]

He then made his medical condition an issue. He avowed, "I was in surgery due to my disability" from military service requiring an accommodation due to the surgery on the day of the hearing. He stated, "Judge Pineda treated me disparately" and she "and her staff treated me discriminatorily by their "no accommodation" stance towards me. [Exhibit 2, Bates No. SBA007.] "Additionally, I was highly sedated with medication and anesthesia on 02/23/2015. I was not able to comply [due] to physical incapacity." [Id., Bates No. SBA008.] The State Bar requested additional medical records however, Mr. Guajardo refused, stating his medical condition was not at issue. [Exhibits 4; and 5.]

In his prehearing memorandum, Mr. Guajardo told a different account. He asserted, "The court was advised in advance of Respondent's incapacitation." He added,

The court was notified the Respondent was scheduled in surgery at the Phoenix VA Hospital which could not be rescheduled. The court was advised of Respondent's incapacitation and Judge Pineda refused to accommodate him by simply rescheduling the hearing. It's as if the judge were deliberately making it impossible for respondent.

As with his varying factual accounts for his motion to withdraw, we find such inconsistent accounts intentionally misleading. He claims he did not know of the

hearing until contacted by the State Bar after the hearing and have given advance notice to the court that he was having surgery on that date. We conclude Mr. Guajardo intentionally misleads this Panel. His misleading statements are magnified as the objective evidence contradicts him regarding his surgery date. Mr. Guajardo submitted a surgery information sheet indicating that surgery on his hand was scheduled on *January 21, 2015*, and had an office follow up documented by progress notes dated February 23, 2015. Contrary to his assertions, he was not in surgery on February 23, 2015, nor sedated or incapacitated. Under the circumstances, we find his refusal to supply the medical records a bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the State Bar's request for information. If Mr. Guajardo had a scheduling conflict for that day, there is no evidence he took any action to inform the court.

Count Two

In Count Two, Mr. Guajardo, represented a client ("Father") in a family law matter. On July 7, 2015 a return hearing on a petition for temporary orders was held under the Arizona Rules of Family Procedure and transcribed by a court reporter. [Exhibit 36.] Judge Joseph Kreamer presided over the hearing and announced the case. Emi Koyama, Esq. appeared for and with the mother/wife. Mr. Guajardo appeared on behalf of Father. Father did not appear. When the court made inquiry about his absence, Mr. Guajardo acknowledged he was attorney for Father, had received the pleadings and "put it on our docket." He stated he "was hoping that my staff had given him a reminder." He then speculated regarding the reasons for the absence of Father but concluded stating under Rule 40(F), Arizona Rules of Family Law Procedure, "but we can waive his presence today." [Exhibit 36, p. 4:3-5:1.]

Rule 40(F) states in pertinent part,

A person upon whom service is required may, in person or by attorney or by an authorized agent, enter an appearance in open court, and the appearance shall be noted by the clerk upon the docket and entered in the minutes. Such waiver, acceptance or appearance shall have the same force and effect as if a summons had been issued and served.

The waiver of the presence of Father by Mr. Guajardo had “the same force and effect as if a summons had been issued and served.” There was no obligation for Ms. Koyama to file proof of service with the court under Rule 40(F), Arizona Rules of Family Law Procedure as service was waived. It was not disputed Ms. Koyama served a copy of the pleadings upon Mr. Guajardo by email on June 26, 2015. [Exhibit 29.] Ms. Koyama also served Father by certified mail on June 12, 2015, which was signed for by Father. [Exhibit 26; and 27.] The USPS tracking information was also filed as an exhibit, demonstrating the service of the pleadings on Father on June 15, 2015 at 9:58 A.M. [Exhibit 28.] Under the Family Law Rules, Ms. Koyama had no duty to file proof of service. However, we find these exhibits clear and convincing proof Father was served, which is likely why Mr. Guajardo told the court he expected Father to attend the hearing. Regardless, even if waiver had not occurred, “Failure to make proof of service does not affect the validity thereof.” Rule 40(F), Arizona Rules of Family Law Procedure. The court had jurisdiction and venue was proper.

Judge Kraemer acknowledged the parties were there only “on a temporary order to return.” [Exhibit 36, p. 5:2-3.] He noted there was “some request for immediate financial relief.” And although this was set as a return hearing, not as an evidentiary hearing Judge Kraemer inquired of counsel for mother how she wanted to proceed. Judge Kraemer then stated to Mr. Guajardo that with the request for a child support order and spousal maintenance that despite there being no financial

affidavits from either party that he was "inclined, essentially, on a temporary basis, (to) issue an order today." Mr. Guajardo made no objection but rather affirmatively stated, "I think that's appropriate, your Honor." [Exhibit 36, pp. 5:4-6:5.]

Mr. Guajardo acknowledged he did not have financial information but certified his client was "just making minimum wage at this point." He asserted, "neither one of them has any money" and concluded, "But I think it is appropriate that he be ordered to pay the guideline child support and all that." [Id., p. 6:4-13.] Thereafter, without objection, mother was sworn in and testified. Mr. Guajardo asked that the order state that "the mother will just continue on AHCCCS." [Id., p. 12:21-23.] Mr. Guajardo made no objection to her testimony and instead stated, "I can't refute that, so we'll just take it on face value," which the court did. [Id., p. 15:9-16.] Mr. Guajardo requested the issue of parenting time be deferred and clarified he did not believe there was evidence of drug use by Father. The judge declined to issue any order regarding drug testing and directed Father, "without an order from the Court" to have no contact. Mr. Guajardo stated, "Okay, that'll work." [Id., p. 19:2-18.] Throughout the hearing, there were multiple stipulations. At the request of Mr. Guajardo, the matter was set for a status conference on October 6, 2015. [Exhibit 23, Bates No. SBA0074.]

On October 6, 2015, Judge Kraemer conducted a status conference with the parties and their counsel present. During that status conference, Mr. Guajardo said that he had a "procedural" matter to place on the record. Mr. Guajardo said that his client was never served with Mother's motion for temporary orders and stated he told the court that information at the July 7, 2015 return hearing on Mother's petition for temporary orders. Mr. Guajardo further stated that he told the court on July 7, 2015,

that neither he nor Mother's counsel were ready to proceed with establishing temporary orders. Mr. Guajardo asserted to the court that despite the judge having been informed there was no service and both parties telling the court they were not ready, Judge Kraemer ordered the matter to proceed. [Exhibit 25; and 36.] Judge Kreamer reviewed the FTR recording of the July 7, 2015 hearing and determined that Mr. Guajardo's statements in court were false. By Minute Entry filed on October 13, 2015, the court found Mr. Guajardo made false statements to Judge Kreamer on the record during the October 6, 2015 status conference. Judge Kramer stated "Indeed, both attorneys told the court it was appropriate to move forward with temporary orders, and based on these representations, the court did so." Judge Kreamer further stated he "is disturbed by [Respondent's] wholesale misrepresentation of the record. Not only did he misrepresent the record, he used this misrepresentation to accuse the court of acting improperly." [Exhibit 22; 25; and 36.]

The Panel independently reviewed the July 7, 2015 and October 6, 2015 FTR recordings and transcripts of the recording and takes judicial notice of those proceedings. The Panel finds Mr. Guajardo's testimony and response to the allegations in this count are not credible. [Exhibit 23; and Testimony of Mr. Guajardo.] It is clear Mr. Guajardo waived his client's presence.

IV. CONCLUSIONS OF LAW

In Count One, the Panel determined clear and convincing evidence is present that Mr. Guajardo violated Rule 42, Ariz. R. Sup. Ct., specifically, ER 1.2(a) (scope of representation), ER 1.3 (diligence), ER 1.4(a) (communication), ER 3.4(c) (fairness to opposing party and counsel), ER 8.4(d) (conduct prejudicial to the administration of justice), and Rule 54(c).

In Count Two, the Panel determined clear and convincing evidence is present that Mr. Guajardo violated Rule 42, Ariz. R. Sup. Ct., specifically, ER 3.3(a) (candor toward the tribunal), ER 4.1(a) (truthfulness in statements to others), 8.4(c) (engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and 8.4(d) (conduct prejudicial to the administration of justice).

V. DISCUSSION OF THE DECISION

The *American Bar Association Standards for Imposing Lawyer Discipline (Standard)* are a "useful tool in determining the proper sanction" to be imposed on a lawyer found in violation of the Ethical Rules. *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). We give consideration to the following factors: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the misconduct; and (4) the existence of aggravating and mitigating factors. *Standard 3.0; In re Peasley*, 208 Ariz. 27, 32, 90 P.3d 764, 769 (2004). A lawyer's misconduct may violate a duty owed to a client, the public, the legal system, or the profession. *Commentary, Standard 3.0; see also Standards Theoretical Framework*. When disciplinary proceedings are brought against lawyers alleged to have engaged in ethical misconduct, the State Bar must prove misconduct by clear and convincing evidence. *Commentary, Standard 1.3*. We have followed these *Standards*.

DUTY VIOLATED

We find Mr. Guajardo violated his duties to his client, the legal system, and other duties owed as professional.

MENTAL STATE

ER 1.0(f) states that "knowingly," "known," or "knows" denotes actual knowledge of the fact in question and a person's knowledge may be inferred from

circumstances. The *Standards* define “knowledge” as “the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” *Standards* Definitions. The *Standards* define “intent” as “the conscious objective or purpose to accomplish a particular result.” *Id.*

“(T)he knowledge required for setting a higher sanction for professional misconduct is ‘knowledge that [respondent] may have been violating an ethical rule.’” *Id.*, quoting *In re Levine*, 174 Ariz. 146, 171, 847 P.2d 1093, 1118 (1993).

The Panel finds Mr. Guajardo’s mental state is knowing.

INJURY

The *Standards* define “injury” as harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. Whether a lawyer’s actions caused harm is a question of fact. *Van Dox*, 214 Ariz. 300, 305, 152 P.3d 1138, 1188 (2007). The *Standards* note that the level of injury can range from “serious” injury to “little or no” injury, while a reference to “injury” alone indicates any level of injury greater than “little or no” injury. *Standards* Definitions. A “potential injury” is the harm to a client, the public, the legal system or the profession reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct. *Id.*

The Panel finds Mr. Guajardo’s misconduct caused actual injury to his client and the legal system in Count One and potential injury to the legal system and to the profession in Counts One and Two.

PRESUMPTIVE SANCTION

The Panel looks to the *Standards* to determine the presumptive sanction. The Panel determined Mr. Guajardo's most serious misconduct occurred in Count Two. When considering multiple instances of misconduct, the most serious charge serves as a baseline in imposing sanctions. *In re Moak*, 205 Ariz. 31, 353, ¶ 9, 71 P.3d 343, 345 (2003).

Standard 6.1, False Statements, Fraud and Misrepresentation, applies to Mr. Guajardo's violations of ERs 3.3(a), 4.1(a) and 8.4(c). *Standard 6.12* provides:

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

Mr. Guajardo, in Count One, made multiple false statements. In Count Two, Mr. Guajardo knowingly made false statement to Judge Kreamer at the October 6, 2015 hearing, failed to correct the misrepresentation, and used that statement to impugn the integrity of the court and opposing counsel and accused both of acting improperly. [Exhibit 23, Bates No. SBA0064-68.] We are disinclined to assume such an experienced attorney as Mr. Guajardo did not know the Rules of Family Court. If he did not, he did not try to review them before responding to the State Bar or the hearing before us.

Standard 6.22, Abuse of the Legal System, applies to Mr. Guajardo's violation of ER 3.4(c) in Count One, and 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.

Standard 7.0, Violations of Duties Owed As A Professional, applies to Mr. Guajardo's violation of Rule 54(c) and 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 Panel determined the presumptive sanction is suspension. Mr. Guajardo knowingly failed to appear as ordered by the court on two separate occasions and intentionally failed to appear at the final order to show cause hearing.

AGGRAVATING AND MITIGATING FACTORS

Each disciplinary case involves a unique set of facts and circumstances and in striving for fair and consistent disciplinary sanctions, consideration must be given to the facts pertaining to the particular misconduct and to any aggravating or mitigating factors. *Commentary, Standard 9.1*. The Panel determined the following aggravating factors are supported by the record:

- *Standard 9.22(a)* (prior disciplinary offenses).

For failing to appear in three separate matters in Immigration Court, the U.S. Department of Justice Board of Immigration Appeals on December 2, 2009 ordered an "actual suspension" for six (6) months for Mr. Guajardo and a public reprimand (censure in Arizona) to be filed with the State Bars of Arizona and Texas. The six (6) month suspension was stayed contingent upon Mr. Guajardo's timely remedial completion of CLE in law office management and legal ethics. On October 6, 2010, the Supreme Court of Arizona issued its Judgment and Order censuring Mr. Guajardo with an otherwise identical order in reciprocal discipline File No. 10-4002.

- *Standard 9.22(c)* (pattern of misconduct)

A pattern of misconduct is established as an aggravating factor when evidence confirms repeated occurrences of similar misconduct. The misconduct in the prior discipline offense is similar and occasionally identical to the misconduct here. Such similarity between the past misconduct of Mr. Guajardo and his present actions makes such "previous matters highly relevant" and warrant a one-year suspension. *In re Disciplinary Proceeding Against Cohen*, 82 P.3d 224, 233 (Wash. 2004). In *Levine*, 174 Ariz. at 172, 847 P.2d at 1119, the Court re-emphasized the type of prior fact patterns upon which *Standard 9.22(c)* is usually applied.

The more usual type of "pattern of misconduct" typically considered an aggravating factor is described in *Galusha*: We note that respondent was involved in another disciplinary matter, involving similar misconduct, at the time he agreed to perform services for the client in this matter. We also note that respondent was aware of the Commission's recommendation that he be suspended for six months and one day in that matter. Despite heightened awareness of his duties and responsibilities, respondent knowingly failed to fulfill his ethical obligations to his client. 164 Ariz. at 505, 794 P.2d at 138.

We find the prior discipline record of Mr. Guajardo to be substantially identical to the facts before us. We find three categories of failures to appear: 1) Mr. Guajardo failed to attend the adjudication hearing, despite knowing his motion to withdraw had not been granted; 2) He knowingly failed to attend the first scheduled order to show cause hearing, but belatedly tried to appear telephonically and; 3) He intentionally failed to attend a third scheduled order to show cause hearing and did not try to continue or notify the court of his purported inability to appear. We find there was no disability that precluded his attendance. His position was clear in stating, "Had Judge Pineda required me to appear to show cause with a separate hearing, I would

have been more than happy to appear and explain my position.” [Exhibit 2, Bates No. SBA0007.] His failure to attend was intentional.

In his prior discipline, in the *Matter of Salas-Salas*, Mr. Guajardo filed a motion to withdraw 41 days before the hearing. He stated he did not attend the hearing before his client terminated their relationship, just as occurred before us. The court had not ruled on the motion and Mr. Guajardo failed to appear at the scheduled hearing. In ruling on that prior discipline matter, the adjudicating immigration judge ruled, “He was attorney of record and the mere filing of the motion did not change that status.” Multiple cases were cited supporting that position. [Exhibit 30, Bates No. SBA0110.]

In *Matter of Sanchez-Macias*, Mr. Guajardo asserted the client terminated the relationship, failed to move to withdraw and failed to appear at the scheduled hearing. He initially argued he was in another court on urgent business but presented no evidence establishing that assertion. The immigration judge ruled,

The rupture, if at all, of his relationship with his client did not obviate his duties to the immigration court. An attorney of record has two obligations: one to the court and one to the client.” The obligations are different, and the severance of the attorney-client relationship is not tantamount to the severance of the court and counsel relationship.
[Id., Bates No. SBA0111-12.]

In *Matter of Mendez*, Mr. Guajardo acknowledged he received notice but argued the notice of hearing was defective and confusing. The court rejected his argument based on the standardized language used in the notice and Mr. Guajardo’s experience as an immigration attorney. [Id., Bates No. SBA0112-13.]

In each case, Mr. Guajardo “presses a number of defenses which basically allege he is the victim of disparate treatment by immigration judges in the Phoenix

immigration court.” The judge found Mr. Guajardo “claims that other attorneys are granted continuances in the same circumstances in which he is denied such requests.” The judge ruled “his remedy cannot be to ignore the ordinary rules of court.” The judge also pointed out, Mr. Guajardo “complains there are not standards for the granting or denial of continuances” and “no standards governing the adjudication of a request to withdraw.” As the court held, that lack of standards did not “empower the response to ignore his obligations.” The court comments regarding the conduct of Mr. Guajardo, “This seems especially derelict, if not brazen.” [Id., Bates No. SBA0113-14.]

Before us, Mr. Guajardo has made similar arguments. He stated, “I felt that Judge Pineda only wanted to chastise me in front of the client, various CPS workers that would be at the hearing that I will continue to work with, and other attorneys that would be at the hearing.” In light of the undisputed evidence that Mr. Guajardo never discussed with his client his decision to withdraw and then offered multiple factually conflicting reasons for his decision, we find disingenuous his statement, “if I showed up and attempted to explain to the Judge in open court why I had a conflict with this case, it would have prejudiced the proceedings” and damaged the case of his client. [Exhibit 2, Bates No. SBA006.]

Regarding his second failure to appear for the order to show cause, Mr. Guajardo stated, “At this time I was not aware that I still needed to appear at any other hearing. My staff also was not aware and removed any further hearings from my calendar.” [Exhibit 2, Bates No. SBA007.] Such an argument is also identical to his prior discipline where he argued, “his staff made a calendaring error....” *Matter of Sanchez Macias*. There the court cited cases holding the attorney responsible for the

consequences of such error and that such mis-calendarling constitutes inexcusable neglect. [Exhibit 30, Bates Nos. SBA0108 and 0112.]

- *Standard 9.22(d)* (multiple offenses)

Mr. Guajardo on multiple separate occasions failed to obey court orders.

- *Standard 9.22(e)* (bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with the State Bar's request for information.

Mr. Guajardo swore to the State Bar that "on 02/23/2015, I was in surgery..." Mr. Guajardo stated under oath "Additionally, I was highly sedated with medication and anesthesia on 02/23/2015. I was not able to comply [due] to physical incapacity." [Exhibit 2, SBA0007-8.] Mr. Guajardo failed to submit the additional requested medical records to the State Bar on two separate occasions, to support his defense that he failed to attend the February 23, 2015 because he was in surgery on that date. [Exhibit 2, Bates 007; Exhibit 3; and 5]

We find his statements untrue. From the record supplied by him we find Mr. Guajardo had surgery on his hand. We find based on the record he submitted that Mr. Guajardo was not in surgery on that date but rather on the morning of January 21, 2015. This was followed with a post-operative examination on January 22, 2015. There is no support in the record for his sworn statement he was "highly sedated with medication and anesthesia on 02/23/2015." He had a post-operative appointment, however, he failed to notify the court of any scheduling conflicts and failed to appear as ordered.

- *Standard 9.22(f)* (submission of false evidence, false statements, or other deceptive practices during the disciplinary process).

At the final case management conference and in his expedited motion filed on August 16, 2016, Mr. Guajardo argued that stipulated Exhibits 25 (FTR recordings) and 36 (transcript of those recordings) had been altered. In the Joint Prehearing Statement he had stipulated to their admission. Mr. Guajardo's varying accounts of why he filed his motion to withdraw were lacking in credibility and constitute false statements. *See Idaho State Bar v. Malmin*, 78 P.3d 371 (Idaho 2003). Aggravation under *Standard 9.22(f)* is warranted when evidence supports findings that a lawyer knowingly made false statement in connection with a disciplinary proceeding. Here, Mr. Guajardo provided state bar with three varying accounts during the investigation. Similarly he swore he did not know of the February, 2015 O.S.C. and then inconsistently states he gave the court advance notice of his surgery. Such varying accounts appear intentional and to deceive. His refusal to submit his medical records we find to be deceptive.

- *Standard 9.22(g)* (refusal to acknowledge wrongful nature of conduct)

We find Mr. Guajardo adamantly and repeatedly to refuse to acknowledge the wrongful nature of his actions. His defenses are substantially identical to those which brought him prior discipline, and demonstrate a certain callousness. *See Att'y Grievance Comm'n v. Mininsohn*, 846 A.2d 353, 376 (Md. 2004). There the Court found as an aggravating factor under *Standard 9.22(g)*, that the lawyer exhibited "a certain callousness toward his situation" and a "reluctance to accept responsibility for his actions."

His conduct and actions call into question his fitness to practice. On the first page of his prehearing memorandum, Mr. Guajardo stated,

Be it known, the international, National and State Bar Associations no longer have any jurisdiction on American soil to enforce legal or illegal punishment

upon [its'] citizens. The Bar Association is in violation of [its'] treaties with the United States and as a result, [its'] Charters have not been renewed and the Bar Association is operating outside of the law, only under the color of law. The Bar Association is operating unlawfully on our shores. Any enforcement of legal power without the authority to do so upon citizens will be dealt with through prosecution and due process upon all those involved.

These legally unsupported arguments punctuate Mr. Guajardo's refusal to honor the fundamental precepts of the ethical practice of law.

- *Standard 9.22(i)* (substantial experience in the practice of law.)

Factors such as time, experience, and knowledge of the attorney are factors in determining whether there should be harsher sanctions imposed. Mr. Guajardo has been admitted to practice law in Arizona since May 2002.

Mr. Guajardo offered no factors for consideration in mitigation and therefore, the Panel finds no mitigating factors present. Although Mr. Guajardo submitted limited records regarding hand surgery scheduled for January 21, 2015 and post-operative consultation on February 23, 2015, no causal connection has been established. Mr. Guajardo further stated his medical condition was not relevant and the exhibits explained his whereabouts only.

VI. CONCLUSION

The Supreme Court has held that the object of lawyer discipline is to protect the public, the legal profession, the administration of justice, and to deter other attorneys from engaging in unprofessional conduct. *In re Van Doo*, 214 Ariz. at 303, 152 P.3d at 1186; and *In re Peasley*, 208 Ariz. at 38, 90 P.3d at 775. Although attorney discipline is not intended to punish the offending attorney, sanctions imposed may have that incidental effect. *In re Pappas*, 159 Ariz. 516, 526, 768 P.2d 1161, 1171 (1988).

Based on the facts, conclusions of law, and application of the *Standards*, including both aggravating and mitigating factors, the Panel orders:

IT IS ORDERED suspending Mr. Guajardo from the practice of law for one (1) year effective thirty (30) days from this Decision and Order.

IT IS FURTHER ORDERED as a condition to reinstatement, Mr. Guajardo shall obtain an independent medical examination (IME) by Dr. Phillip Lett. Mr. Guajardo shall be responsible for the costs associated with the IME.

IT IS FURTHER ORDERED Mr. Guajardo shall pay costs and expenses under Rule 60(b), Ariz. R. Sup. Ct.

A final judgment and order will follow.

DATED this 30th day of September, 2016.

William J. O'Neil

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

Marsha Morgan Sitterley

**Marsha Morgan Sitterley,
Volunteer Public Member**

David W. Garbarino

**David W. Garbarino,
Volunteer Attorney Member**

///

Copies of the foregoing e-mailed
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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAY 12 2016

FILED 
BY _____

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

T. ANTHONY GUAJARDO,
Bar No. 021500,

Respondent.

PDJ 2016- 9049

COMPLAINT

[State Bar Nos. 15-0525, 15-2659]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on May 24, 2002.

COUNT ONE
(File no. 15-0525/Judicial Referral)

2. Judge Pineda reported Respondent to the State Bar for failing to appear in juvenile court on three consecutive court dates.

3. Respondent, who was retained by Mother, was scheduled to appear for a November 13, 2014, dependency adjudication hearing. Instead of appearing, Respondent filed a Motion to Withdraw on the eve of that trial date. The court

denied his motion to withdraw and court staff notified Respondent's office that his appearance was expected.

4. Respondent failed to appear, leaving his client without representation at the dependency trial and requiring that the court continue the hearing.

5. The court set a show cause hearing for Respondent to appear and explain why he should not be held in contempt for failing to appear at the November 13, 2014, hearing.

6. On the eve of the show cause hearing, Respondent filed a motion to appear telephonically. The court denied the motion and expected Respondent to appear in person. On December 8, 2014, Respondent again failed to appear.

7. Another minute entry was entered, again ordering Respondent to appear and to show cause why should not be held in contempt for repeatedly failing to appear when directed to do so. The show cause hearing was set for February 23, 2015 at 9:00 a.m. Respondent again failed to appear and did not contact the court. As a result of Respondent's failure to appear, the court held him in contempt and submitted the matter to the State Bar.

8. By engaging in the above referenced misconduct, Respondent violated Rule 54(c) (knowing violation of a court order) and Rule 42, Ariz. R. Sup. Ct., specifically:

- a. **ER 1.2(a)** (scope of representation): [A] lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued.

- b. **ER 1.3** (diligence): A lawyer shall act with reasonable diligence and promptness in representing a client.
- c. **ER 1.4(a)** (communication): A lawyer shall consult with the client, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).
- d. **ER 3.4(c)** (fairness to opposing party and counsel). A lawyer shall not:...(c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.
- e. **ER 8.4(d)** (misconduct)It is professional misconduct for a lawyer to:
... (d) Engage in conduct that is prejudicial to the administration of justice.

COUNT TWO
(File no. 15-2659/Judicial Referral)

9. This matter was referred to the State Bar by Judge Kreamer, by way of a minute entry in FC2015-052389. Respondent made false statements to Judge Kreamer on the record during an October 6, 2015, status conference.

10. During the status conference, Respondent said that he had a "procedural" matter to place on the record. Respondent said that his client (Father) was never served with Mother's motion for temporary orders and he said that he told the court that at the July 7, 2015, return hearing on Mother's petition for temporary orders.

11. Respondent further stated that he told the court on July 7, 2015, that neither he nor Mother's counsel were ready to proceed with establishing temporary orders. Respondent then claimed that even in the face of no service, and both parties telling the court that they were not ready, the court stated that the matter would proceed.

12. Judge Kreamer reviewed the FTR recording of the July 7, 2015, hearing and determined that Respondent's statements in court were false.

13. The recording of the hearing shows that Respondent expected Father to be at the hearing and never said that Father was not served. When the court asked him whether it was appropriate for the court to address Mother's request for temporary orders in light of Father's non-appearance at the hearing, Respondent replied: "I think that is appropriate."

14. Contrary to Respondent's assertions, Mother's counsel never stated that she was not prepared to proceed on July 7, 2015. "Indeed, both attorneys told the court it was appropriate to move forward with temporary orders, and based on these representations, the court did so."

15. Judge Kreamer "is disturbed by [Respondent's] wholesale misrepresentation of the record ... Not only did he misrepresent the record, he used this misrepresentation to accuse the court of acting improperly."

16. By engaging in the above referenced misconduct, Respondent violated Rule 42, Ariz. R. Sup. Ct., specifically:

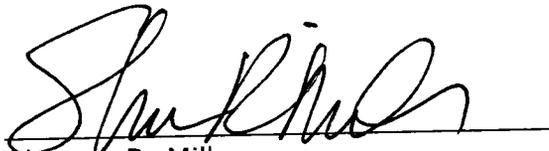
- a. **ER 3.3(a)** (Candor Toward the Tribunal): A lawyer shall not knowingly: (a) make a false statement of fact or law to a tribunal or

fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

- b. **ER 4.1(a)** (Truthfulness in Statements to Others): In the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person.
- c. **8.4(c)** (Misconduct): It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
- d. **8.4(d)** (Misconduct): It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

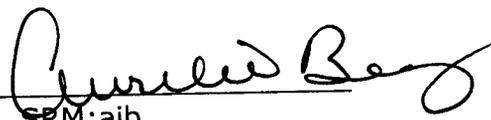
DATED this 12th day of May, 2016.

STATE BAR OF ARIZONA



Shauna R. Miller
Senior Bar Counsel

Original filed with the Disciplinary Clerk of the Office of the Presiding Disciplinary Judge of the Supreme Court of Arizona this 20th day of May, 2016.

by: 
SRM:aib

FILED

JUL 27 2015

STATE BAR OF ARIZONA
BY *Laurence F. Winthrop*

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

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

**T. ANTHONY GUAJARDO
Bar No. 021500**

Respondent.

No. 15-0525

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on July 10, 2015, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-0525.

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

Parties may not file motions for reconsideration of this Order.

DATED this 27 day of July, 2015.

Laurence F. Winthrop

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

¹ Committee member Ben Harrison did not participate in this matter.

Original filed this 27th day
of July, 2015, with:

Lawyer Regulation Records Manager
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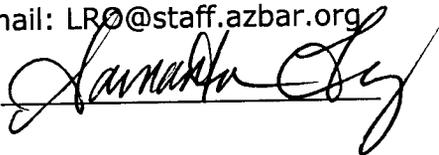
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Respondent

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by:



FILED

APR 26 2016

STATE BAR OF ARIZONA
BY *Ernest Parr*

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

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

**T. ANTHONY GUAJARDO
Bar No. 021500**

Respondent.

No. 15-2659

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 8, 2016, 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 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-2659.

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

Parties may not file motions for reconsideration of this Order.

DATED this 26 day of April, 2016.

Lawrence F. Winthrop

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

Original filed this 26th day
of April, 2016, with:

Lawyer Regulation Records Manager
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by: Amelia Berry