

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

STEPHEN M. JOHNSON,
Bar No. 015831

Respondent.

No. PDJ-2016-9041

**ORDER DISMISSING
AMENDED COMPLAINT**

[State Bar File No. 12-2822]

FILED NOVEMBER 2, 2016

The complaint was filed on May 10, 2016 and the amended complaint on June 3, 2016. The answer of Mr. Johnson was filed on June 27, 2016. The Rule 58 hearing commenced on October 24, 2016 before the hearing panel. The Hearing Panel was comprised of Volunteer Public Member, Carole Kemps, Volunteer Attorney Member, Ralph J. Wexler, and Presiding Disciplinary Judge, William J. O'Neil.

The Hearing Panel found the State Bar failed to prove the allegations in the amended complaint by clear and convincing evidence. The Hearing Panel authorized the Presiding Disciplinary Judge to sign the dismissal order on behalf of the Hearing Panel.

Now Therefore,

IT IS ORDERED dismissing the amended complaint against Stephen M. Johnson with prejudice.

DATED this November 2, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed
on November 2, 2016, and
mailed on November 3, 2016 ,to:

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CLERK OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

JUN 9 2016

FILED
BY 

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

IN THE MATTER OF TWO MEMBERS OF THE
STATE BAR OF ARIZONA,

NATHANIEL J. CARR III,
Bar No. 018753,
and

STEPHEN M. JOHNSON
Bar no. 015831

Respondents.

PDJ 2016-9041

**THE STATE BAR'S FIRST
AMENDED COMPLAINT**

[State Bar File Nos.: Carr 12-2482 and
15-0328; Johnson 12-2822]

The State Bar of Arizona, by undersigned counsel, amends its original complaint filed on May 10, 2016, under Rule 47(b) (2), Ariz. R. Sup. Ct. Counsel for Respondent Johnson, R. Scott Rhodes, has asked the State Bar for a more definite statement regarding the alleged violation of ER 8.4(b), Ariz. R. Sup.Ct., in Count Two. Although not requested by Respondent Carr's counsel, Nancy A. Greenlee, the State Bar is also amending the ER 8.4(b) allegations in Counts One and Three.

Complaint is made against Respondents as follows:

GENERAL ALLEGATIONS

1. At all times relevant in Counts One and Three, Respondent Nathaniel J. Carr III (Respondent Carr) was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on May 16, 1998.

2. At all times relevant in Counts One and Three, Respondent Carr had a contract with the Office of Public Defense Services (OPDS) to provide representation to indigent criminal defendants.

3. At all times relevant in Count One, Respondent Carr was first chair on the Naranjo death penalty case, *State v. Israel Naranjo*, CR2007-119504 and CR2008-007163.

4. At all times relevant in Count Three, Respondent Carr was first chair on the Kuhs death penalty case, *State v. Ryan Wesley Kuhs*, CR2005-138481.

5. At all times relevant in Count Three, Respondent Carr was advisory counsel on the Dixon death penalty case, *State v. Clarence Wayne Dixon*, CR2002-019595.

6. At all times relevant, Respondent Stephen M. Johnson (Respondent Johnson) was a lawyer licensed to practice law in the state of Arizona having been admitted to practice in Arizona on October 22, 1994; except between September 11, 2003, and October 30, 2007, when he was as suspended member.

7. At all times relevant, Respondent Johnson was subject to the Arizona Rules of Professional Conduct.

8. At all times relevant in Count Two, Respondent Johnson was the mitigation specialist on the Naranjo death penalty case, *State v. Israel Naranjo*, CR2007-119504 and CR2008-007163.

COUNT ONE (CARR File no. 12-2482/State Bar)

9. On August 29, 2012, Maricopa County Superior Court Judge Douglas Rayes forwarded to the State Bar a Phoenix New Times article that alleged that

Respondent Carr falsely billed the County for services provided under his indigent criminal defendants contracts.

10. The article identified several criminal cases where Respondent Carr was appointed and in which there were questionable billings. The State Bar focused its investigation on Israel Naranjo CR2007-119504 and CR2008-007163. The allegations contained in this count deal solely with the Naranjo case.

Client Confidences

11. Bills submitted to public agencies are public records subject to the freedom of information act (FOIA). Respondent Carr’s billing statements are replete with client confidences that were unnecessarily included in the billing records that he submitted to the OPDS. The following are a samples of some the entries containing confidential information that Respondent Carr entered into his billing statements:

01/04/08	Naranjo	"Just discussing case with team members and how we are going to try and attack. Gaughn and our retardation arguments are key. Plan on talking with Ken over at OLD he successfully did one."
01/30/08	Naranjo	"Spoke with team about how to neutralize the child witnesses in this case and how our client seems to be better medicated which is not good for us."
01/31/08	Naranjo	"Just that working with the research over at ASU case law and treaties with regards to GDI plea. We may have some outs but it will take more time and research."
02/20/08	Naranjo	"Spoke with client at length. Called me using another inmates number did not know who it was at first. Client is doing much better now on meds. Not a good thing for us as a team."
08/09/08	Naranjo	"Talked with Sister about case, have concerns that she believes that this was the victims fault."
09/19/08	Naranjo	"Court gave us a Doctor Babich. Looking into her. Don't want her to be able to look into competency."
10/23/08	Naranjo	"They wanted Natural Life deal. May not be to bad. As I thought they want Bayless to check him out...Dangerous. I do not trust either one."

11/10/08	Naranjo	"Working on his mental retardation issue. Its big for us."
04/04/09	Naranjo	"Its taken some time but I and followed route of Israel with his nephew and it's a little different then the one I took last month. Going from his house adds a new dimension that phoenix police do not know about just yet"
04/12/09	Naranjo	"Had to go out and interview sister with what she saw and this is not going to be pretty if we have to go to trial."
04/20/09	Naranjo	"We are running out of legit options for this cat if we end up trying to explain to a jury why he shouldn't die if special action does not work."
04/21/09	Naranjo	"This is the worst one, but this client is the craziest one that I have." (Case review)
05/02/09	Naranjo	"Which came first mental retardation or mental illness, family is really unsure. Gave me more background which would have been useful 5 months ago."
05/09/09	Naranjo	"Looking at Babich's report, she is so full of garbage. If Gaughn doesn't waffle I think we may have a serious shot at GEI. Looking at their CV's Babich should be eaten alive by us. Have not seen to much by way of impeachment...not like Bayless."
06/22/09	Naranjo	"Looking at new video of our client from the past. He looks like a killer, not a retard."
07/08/09	Naranjo	"We are looking at what we have, it looks like we have a lot to attack there aggravation...but the murder is BAD."
09/17/09	Naranjo	"Had to listen to the confession [tape] - not good"
12/04/09	Naranjo	"Review of weapon, we got issues. Jury will hate us."
04/16/10	Naranjo	"Review of death certificate of Naranjo's grandfather possible mitigation can crazy run in families?"
08/08/10	Naranjo	"30 days out, so we are setting up timeline and trial review. We are also getting busy with DR's and writing notes in the margin. Make sure this does not get into state's hands."
08/09/10	Naranjo	"Gaughns report is amazing the more I go over it. I keep seeing more and more stuff for us, and he is so hyped up on GEI it's kinda scary."
08/20/10	Naranjo	"I have 6 more interviews set up so going over DR's and making notes cause it is obvious to me these cops are not going to be fair even though we know who did killing they still feel the need to slant there reports even more."

09/09/10	Naranjo	"Mom/Doris wacked interview, we are gonna have to destroy her on stand."
09/23/10	Naranjo	"Review of mitigation doctors and Colorado rape docs-not good for us."
09/28/10	Naranjo	"Thompson is in trouble, called Steve and discussed our problems with testimony."
09/29/10	Naranjo	"Review of Thompson's whole testimony, wrong persons either tested or on sheet."
11/11/10	Naranjo	"This is bad news, a lot of records we have and some we don't but they blast him for mental illness, and use a lot of what Sabrina says about him."
11/14/10	Naranjo	"Going to see Israel's brothers on the 17th, trying to prep as much as possible working on Willie today"
11/16/10	Naranjo	"Adolph prep he is the guy for us, carries a lot of baggage but is HUGE for us in mitigation."
11/17/10	Naranjo	"Florence interviews Willie and Adolph, we got trouble."
01/07/11	Naranjo	"Team meeting and review of Izzy's confessions how do we do this. Do we keep out full video try and get in transcript."
02/15/11	Naranjo	"State is going to call Diana Gonzales somehow they have found her and this is going to be bad. She is Israel's children's mother"
02/26/11	Naranjo	"Spoke Sheerka and Margi about what is coming up. Margi tells us that it is victims fault that she is dead, not Izzy's. Oh my gosh. More questionnaire review now cause motions should start flying around."
03/03/11	Naranjo	"Questionnaire review, interview with Diana Gonzales and then review of DR's that contain her, she is gonna hurt in rebuttal and penalty phase if we get there."
03/27/11	Naranjo	"Witness prep as well as Dr. Mosely testimony and photos yuck. Have to tailor cross to stay away from questions about child...can NOT open door and let those pictures in. Steinle just waiting for us to screw up...again. Getting ready for our case as well. Emailed script to Gaughn, trying to find a way to get Brown in since we finally found him as well."
03/30/11	Naranjo	"Girls did fine, Basta is a sneaky jerk he did file motion to preclude our doctors day before the start testifying. Under Rule 15.2 may be TECHNICALLY correct but NO prejudice...and I don't know why I am putting this in billing note...but I am so pissed. I am too tired to stay up past 1 am anymore so goodnight."

03/31/11	Naranjo	"So just that. After done today review of Thompson's impeachment file that someone allowed me to read...we may have some issues. He is back on Monday, all we can do is try and stop bleeding. Spoke with girls after dinner about how they did and what's going on. Late night discussion with team mates to see where we are going and research this rule violation and come to find out...state NEVER mentioned Bayless ANYWHERE! Filing motion as to that issue after Judge rules on our, he can't keep Gaughn out...not after all the time we have spent with this cat...and we still have ANOTHER 2 prep days left before he takes stand. 1:23 am April 1, I am done."
04/03/11	Naranjo	"Thompson debacle this is going to be bad he is hiding something. Brown should be able to come in I think. This should attack the State's theory about drugs. On May 1st, 2008, we disclosed our GEI defense."
04/10/11	Naranjo	"Review of child abuse case and statements that could really hurt us. Have to be ready for his daughter because she could be nasty."
04/19/11	Naranjo	"Back into trial dealing with aggravation. Tactical decision state the hell away from the strongest area. Little girl game back and it was still painful. 2 jurors are laughing like this is the funniest easiest thing they have ever done. Expert prep. instructions review. Switsky review still don't like this stuff with Thompson."
04/21/11	Naranjo	"This was the WORST day I have had as an attorney because our MAJOR expert...says on the stand it "confound the imagination" as two what our doctor did to us. I think he totally lied to us. Treated us horrible. We are in trouble."
04/22/11	Naranjo	"Switsky v. Thompson, this is shaping up very badly for us. Working on mistrial. Thompson has no idea what is going on, he says he will talk with me later. Reviewing new testing results from Thompson this is a joke, he is a fraud. Switsky doesn't know if he will be able to save us."
04/30/11	Naranjo	"Prep for Thompson coming back we have major problems, he has lied. Mistrial, we should get a mistrial but don't think we will. Have to work on family prep great way to spend easter weekend. Have Margi and Sheerka tomorrow after church."

04/23/11	Naranjo	"Another Bayless review always makes for a great weekend, he is such a liar. Review of everything for next week. Still have to close out our case. Thompson has murdered us, I don't think we can come back from this. He wont take stand because he is a liar as well. Keep pushing."
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Team Meetings

12. Respondent Carr has numerous entries regarding team meetings. However, many of these "team meetings" were not recorded by either the second-chair Taylor Fox (Mr. Fox) or the mitigation specialist Respondent Johnson.

13. Art Hanratty (Mr. Hanratty) was the investigator in the Naranjo case.

14. Mr. Hanratty met with Respondent Carr once for 30 minutes at the onset of the case. Other than that meeting, Mr. Hanratty was never part of any of the team meetings Respondent Carr charged the OPDS.

15. The following are "team meetings" that Respondent Carr falsely submitted on his billing statements:

DATE	TIME	BILLING ENTRY	ATTORNEY	CLIENT
09/06/07	0.5 hours	"Spoke with Taylor Fox about case."	Fox has no entry.	Naranjo
09/17/07	1.0 hours	"Discussed with Taylor the doctors and what is going on."	Fox has no entry.	Naranjo
12/13/07	1.5 hours	"Meeting at office."	Neither Fox nor Johnson has an entry.	Naranjo
01/04/08	3.5 hours	Just discussing case with team members and how we are going to try and attack. Gaughn and our retardation arguments are key. Plan on talking with Ken over at OLD he successfully did one."	Neither Fox nor Johnson has an entry.	Naranjo

01/24/08	2.5 hours	"Spoke with Taylor and copied our new file."	Fox has no entry.	Naranjo
01/30/08	3.0 hours	"Spoke with team about how to neutralize the child witnesses in this case and how our client seems to be better medicated which is not good for us."	Neither Fox nor Johnson has an entry.	Naranjo
02/21/08	0.5 hours	"Just spoke with Taylor about case nothing to crazy."	Fox has no entry.	Naranjo
03/03/08	2.0 hours	"Discussion with Steve Johnson about getting more records and what is going on."	Johnson has no entry.	Naranjo
05/12/08	2.0 hours	"Talked with team about what is going on."	Neither Fox nor Johnson has an entry.	Naranjo
06/16/08	2.0 hours	"Review of mitigation with Steve, we have some issues."	Johnson has no entry.	Naranjo
06/18/08	1.0 hours	"Just discuss case with some of team."	Neither Fox nor Johnson has an entry.	Naranjo
08/01/08	1.0 hour	"Spoke with Taylor about this damn thing. We are going to need another expert."	Fox has no entry.	Naranjo
03/08/09	4.0 hours	"2 nd Chair Discussion. Trying to begin w/special action."	Fox has no entry.	Naranjo
05/27/09	2.0 hours	"Discussion with Steve the special action and appeals angle especially with court of appeals not taking jurisdiction."	Johnson no entry.	Naranjo
05/27/09	2.0 hours	"Discussion with Steve."	Johnson has no corresponding entry.	Naranjo
06/27/09	2.0 hours	"Talking with mitigation specialist we have some issues."	Johnson has no entry	Naranjo
07/13/09	2.0 hours	"2 nd chair. Talking with Steve about this crazy mess."	Johnson has no entry.	Naranjo

08/17/09	4.5 hours	"Spoke with team about what to do. Research."	Neither Fox nor Johnson has an entry.	Naranjo
10/14/09	2.0 hours	"Spoke with team about what to do and how to do it."	Neither Fox nor Johnson has an entry.	Naranjo
03/21/10	1.0 hour	"Chat with second chair about case."	Fox has no entry.	Naranjo
06/08/10	2.0 hour	"Spoke with Taylor about mitigation."	Fox has no entry.	Naranjo
10/29/10	3.5 hour	"Spoke with co-counsel split of trial."	Fox has no entry.	Naranjo
11/09/10	1.0 hours	"Spoke with team about what is up."	Neither Fox nor Johnson has an entry.	Naranjo
01/23/11	5.5 hour	"Started writing motion with 2nd chair. Spoke with team."	Fox has no entry.	Naranjo
03/05/11	10.0 hours	"Team meeting dealing with voir dire for next week, and then I have to review the photos State is using especially dealing with Delia. Have to research this and see what we need to do."	Neither Fox nor Johnson has an entry.	Naranjo

16. Respondent Carr falsely billed for dozens of "team meetings" with Mr. Fox that Mr. Fox never attended and for which Mr. Fox never submitted invoices.

Scanning

17. Maricopa County uses a Request for Qualifications (ROQ) to solicit qualified attorneys to apply for contracts to provide legal representation for indigent defendants. "Submission of an application in response to [the] solicitation shall signify full understanding and agreement with the terms and conditions of the solicitation." Respondent Carr was working under such a contract.

18. The OPDS contract excludes payment for such things as:

- a. non-substantive motions,

b. support services or overhead items, or

c. any activity that does not "substantially advance the Client's case...."

19. Respondent Carr billed excessively for scanning, which is not compensable under the OPDS contract:

DATE	TIME	BILLING ENTRY	CLIENT
11/22/07	2.0 hours	"Scanning file."	Naranjo
01/06/08	2.0 hours	"Well scanning in motions duh."	Naranjo
01/26/08	1.5 hours	"Well scanning in some documents."	Naranjo
02/24/08	4.0 hours	"Scanning of Notes and other material that I made yesterday including situation with Magellan and Mr. Garner."	Naranjo
03/02/08	5.0 hours	"DR Review and Scanning. Just that great Sunday work."	Naranjo
03/14/08	2.5 hours	"Scanning and witness summary. Trying to scan in documents. Drive busted spent better part of day trying to get this stuss [sic] onto drive. Doing witness summary."	Naranjo
04/30/08	4.0 hours	"Scanning Scanning in og [sic] all od [sic] these new papers... wow long time."	Naranjo
05/03/08	3.0 hours	"Scanning of mitigation and reports. Just that, took some time."	Naranjo
06/22/08	3.5 hours	"Scanning day putting it on flash drive. Takes quite a bit of time."	Naranjo
07/02/08	3.0 hours	"Just scanning."	Naranjo
07/09/08	1.0 hour	"Scanning."	Naranjo
07/12/08	2.0 hours	"Scanning."	Naranjo
08/03/08	2.0 hours	"Scanning."	Naranjo
08/23/08	4.0 hours	"Scanning into flash drive."	Naranjo
09/20/08	2.0 hours	"Scanning - just that."	Naranjo
10/05/08	2.5 hours	"Tried to scan into flash drive Houston we have a problem."	Naranjo
10/11/08	4.0 hours	"Just trying to scan in."	Naranjo
11/18/08	3.5 hours	"Scanning - just that."	Naranjo
12/20/08	1.5 hours	"Looking at ADOC and scanning."	Naranjo

18. Respondent Carr falsely billed \$9,437.50 for scanning in the Naranjo case alone; 75.5 hours at \$125 an hour from October 04, 2007 to December 20, 2008.

Brother Interviews

19. Respondent Carr submitted an invoice for payment to Maricopa County in the death-penalty case of Israel Naranjo that included false billings. In particular, Respondent Carr billed 14.5 hours preparing for and attending interviews of Naranjo's step-brothers; only Respondent Carr never attended the interviews; Mr. Fox did.

20. Respondent Carr billed OPDS for 2.5 hours "Witness Prep" on November 14, 2010, "Going to see Israel [Naranjo's] brothers on the 17th, trying to prep as much as possible working on Willie today." However, Respondent Carr was not notified until November 16, 2010 that the interviews were set to take place November 17, 2010.

21. Respondent Carr billed OPDS for 4.0 hours "Witness Prep" on November 16, 2010, "Adolph prep he is the guy for us, carries a lot of baggage but is HUGE for us in mitigation."

22. Respondent Carr billed OPDS for 8.0 hours on November 17, 2010 for "Brother Interviews". Florence interviews Willie and Adolph, "we got trouble." Respondent Carr never interviewed Willie or Adolph.

23. Over the course of several years, from 2007 to 2011, Respondent Carr billed for work he did not perform, inflated the time he on spent on certain tasks, charged for work that was not compensable under the OPDS contract, and made material misrepresentations to the OPDS about actual work he did on the Naranjo case.

24. Respondent Carr accepted payment from OPDS based on the false billings he submitted to OPDS.

25. OPDS was unaware of Respondent Carr's material misrepresentations in his billing statements at the time it made payment to Respondent Carr.

26. Respondent Carr never attempted to correct the false billing records he provided to OPDS; Respondent Carr never offered to return, or returned, any of the funds he received related to the Naranjo case.

27. Based on the information above in Count One, Respondent Carr's conduct violated Rule 42, Ariz. R. Sup. Ct., specifically:

- a. ER 1.5 (a lawyer shall not make an agreement for, charge, or collect an unreasonable fee).
- b. ER 1.6 (confidentiality of client information).
- c. ER 8.4(b) (commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).
- d. ER 8.4(c) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentations).

COUNT TWO (JOHNSON File no. 12-2822/ State Bar)

28. On August 29, 2012, Maricopa County Superior Court Judge Douglas Rayes forwarded to the State Bar a Phoenix New Times articles that alleged that Respondent Johnson falsely billed the County for the services he provided. In particular, the article alleges that "[Respondent] Carr and [Respondent] Johnson appear to have added hours to their invoices whenever that wanted."

29. The billing entries below for Respondent Johnson are not substantiated by Respondent Carr's billing statement, by second chair Taylor Fox's billing statements, or by Mr. Hanratty.

07/06/07	1.1	Phone call with 2nd chair regarding records and status of case.	Fox has no entry.
07/12/07	2.4	Meeting with 2nd chair regarding jail meeting with client and upcoming hearing.	Fox has no entry.
07/23/07	1.6	Meeting with counsel to pick up new set of records re: court records of previous conviction for manslaughter.	Carr has no corresponding entry, Fox has no entry.
07/25/07	0.6	Phone call with counsel re: prison records.	Carr has no corresponding entry, Fox has no entry.
07/31/07	1.5	Meeting with counsel re: mitigation status.	Carr has no corresponding entry, Fox has no entry.
08/06/07	1.4	Phone call to counsel re: status of mitigation	Carr has no entry. Fox has no entry.
08/27/07	0.8	Phone call with lead counsel re: status of case	Carr has no entry. Fox has no entry.
08/28/07	0.6	Meeting with counsel re: status of mitigation.	Carr has no entry. Fox has no corresponding entry.
08/30/07	0.6	Phone call to second chair to discuss mitigation progress.	Fox has no entry.
10/05/07	0.9	Phone call with second chair to discuss mitigation.	Fox has no entry.
10/10/07	1.2	Meeting with second chair to discuss mental health records.	Fox has no entry.
12/06/07	1.2	Discussion with first and second chair while at the Death Penalty Seminar re: status of case and mitigation	Carr has no entry. Fox has no entry.
03/13/08	0.5	Meeting with first chair to discuss trial strategy and mitigation report.	Carr has no entry. Fox has no entry.
04/10/08	0.9	Meeting with second chair re: mental health records from Maricopa County Jail.	Fox recorded meeting at 0.2.

04/30/08	3.0	Meeting with first chair to discuss upcoming court date and turning over 55.00/hr records to the County Attorney.	Carr has no corresponding task. Fox has no entry.
05/01/08	1.6	Meeting with first and second chair re: mental health records and the State's response to mitigation.	Carr has no corresponding task. Fox has no entry.
05/02/08	3.0	Numerous conversations with first and second chair re: implementation of ARS 13-702D and reporting to Dr. Gann about the automatic withdrawal of death penalty if determination is made regarding client's mental health.	Carr has no entry. Fox has no entry.
07/14/08	1.8	Conference with first chair re: status of case and reports pending.	Carr has no entry. Fox has no entry.
07/29/08	1.5	Conference with first chair re: mitigation master hearing set for next day.	Carr has no corresponding entry. Fox recorded meeting at 0.1.
08/04/08	1.6	Telephonic conference with first chair re: Dr. Gaughn's report and status of mitigation	Carr has no corresponding entry. Fox has no corresponding entry.
09/16/08	2.1	Meeting with first chair re: Atkins hearing and mental retardation.	Carr has no corresponding entry. Fox has no corresponding entry.
12/12/08	1.5	Meeting with second chair to discuss Dr. Switzky's interviews.	Fox has no entry.
01/16/09	0.5	Discussion with second chair re: Atkins hearing and the records needed for hearing.	Fox has entry for 0.1 for emails.
02/27/09	1.0	Discussion with team re: resetting Atkins hearing and motion for reconsideration.	Carr has no corresponding entry. Fox has no corresponding entry.
05/11/09	1.3	Meeting with first chair re: status of special action and mitigation.	Carr has no corresponding entry. Fox has no entry.
05/18/09	1.2	Discussion with first chair re: status of mitigation as we wait for special action.	Carr has no entry. Fox has no entry.
05/25/09	1.5	Meeting with first chair re: status of mitigation and special action.	Carr has no corresponding entry. Fox has no entry.

06/02/09	1.6	Meeting with first chair re: status of mitigation and Atkins hearing.	Carr has no corresponding entry. Fox has no entry.
06/16/09	2.0	Discussion with first chair re: status of mitigation.	Carr has no corresponding entry. Fox has no entry.
06/22/09	1.8	Discussion with first chair re: status of mitigation.	Carr has no corresponding entry. Fox has no entry.
07/06/09	1.2	Discussion with first chair re: status of mitigation.	Carr has no corresponding entry. Fox has no entry.
07/07/09	0.5	Discussion with first and second chair re: Atkins and special action.	Carr has no corresponding entry. Fox has no entry.
07/13/09	1.0	Discussion with first and second chair re: court denying motion for reconsideration re: Dr. Babich.	Carr has no corresponding entry. Fox has no entry.
07/13/09	2.0	Team meeting re: status of mitigation.	Carr has no corresponding entry. Fox has no entry.
07/20/09	1.3	Discussion with first chair re: status of mitigation.	Carr has no corresponding entry. Fox has no entry.
07/27/09	1.4	Discussion with first chair re: status of mitigation.	Carr has no entry. Fox has no entry.
08/11/09	1.5	Meeting with first chair re: status of mitigation.	Carr has no corresponding entry. Fox has no entry.
08/19/09	1.7	Meeting with first chair re: status of mitigation and special actions.	Carr has no corresponding entry. Fox has no entry.
08/31/09	1.2	Meeting with second chair re: status of mitigation.	Fox has no entry.
09/15/09	0.6	Discussion with second chair re: upcoming hearing and special action.	Fox has no entry.
09/17/09	1.3	Discussion with first chair re: mental health experts and retardation.	Carr has no corresponding entry. Fox has no entry.
09/18/09	0.7	Phone call with first chair.	Carr has no entry. Fox has no entry.
09/21/09	0.5	Discussion with first chair re: State's renewed motion at hearing to unseal Dr.'s report.	Carr has no corresponding entry. Fox has no entry.

09/21/09	1.4	Discussion with first chair re: today's hearing and upcoming needs for mitigation.	Carr has no corresponding entry. Fox has no entry.
09/30/09	0.8	Discussion with second chair re: Court ordering release of Dr. Babich's report.	Fox has no corresponding entry. Carr has no entry.
09/30/09	0.7	Discussion with second chair re: Dr. Babich doing a follow up meeting with client for mitigation.	Fox has no corresponding entry. Carr has no entry.
10/05/09	1.6	Discussion with first chair re: status of mitigation and special action.	Carr has no corresponding entry. Fox has no entry.
10/05/09	2.5	Work on mitigation re: discussion with first chair.	Carr has no corresponding entry. Fox has no entry.
10/12/09	1.4	Discussion with first chair re: status of mitigation and special action.	Carr has no entry. Fox has no entry.
10/26/09	1.2	Discussion with first chair re: status of mitigation.	Carr has no corresponding entry. Fox has no entry.
10/28/09	1.2	Discussion with second chair re: Supreme Court denial of special action.	Fox entry for same activity is 0.1
10/29/09	0.5	Discussion with first chair re: collecting records.	Carr has no entry. Fox has no entry.
11/30/09	0.6	Discussion with second chair re: strategy and upcoming witness interviews.	Fox has no entry.
12/01/09	0.6	Discussion with first chair re: status.	Carr has no entry.
12/10/09	0.8	Discussion with second chair re: mitigation witness interviews.	Fox has no entry.
12/10/09	1.5	Strategic discussion with first and second chair re: status of case and county issues.	Carr has no corresponding entry. Fox has no entry.
01/15/10	0.5	Discussion with second chair re: mitigation and mental health.	Fox has no corresponding entry.
02/01/10	0.7	Discussion with second chair re: meeting with family members.	Fox has no entry.
02/15/10	1.8	Conference with second chair re: putting together mitigation packet for possible plea.	Fox has no corresponding entry.
02/23/10	1.1	Group discussion with first and second chair re: status of mitigation and being prepared for June trial date.	Carr has no corresponding entry. Fox has no corresponding entry.

02/26/10	0.7	Discussion with second chair re: client needs and family interviews.	Fox has no entry.
03/11/10	0.6	Discussion with second chair re: mitigation records.	Fox has no entry.
03/15/10	2.1	Meeting with first chair re: status of mitigation.	Carr has no corresponding entry. Fox has no entry.
03/18/10	2.5	Team meeting to discuss status of case and mitigation.	Carr has no corresponding entry. Fox has entry for 0.1.
03/22/10	1.8	Team meeting to discuss mitigation.	Carr has no entry. Fox has no entry.
03/26/10	1.5	Team meeting re: Dr. Wu and mitigation.	Carr has no entry. Fox has no entry.
03/29/10	1.8	Team meeting to discuss case.	Carr has no corresponding entry. Fox has no entry.
04/08/10	0.6	Discussion with second chair re: mitigation.	Carr has no corresponding entry. Fox has entry for 0.1. (email)
04/08/10	1.8	Team meeting re: mitigation.	Carr has no corresponding entry. Fox has no corresponding entry.
04/15/10	1.0	Meeting with attorneys after hearing re: mitigation.	Carr has no corresponding entry. Fox has no entry.
04/27/10	0.5	Discussion with second chair re: OHS worker who evaluated client on day of arrest.	Carr has no corresponding entry. Fox has no corresponding entry.
05/20/10	0.5	Discussed mitigation with second chair.	Carr has no corresponding entry. Fox has no entry.
05/21/10	0.2	Phone call with first chair.	Fox has no corresponding entry. Carr has no entry.
05/25/10	0.7	Discussion with second chair re: records needed for plea variance.	Carr has no corresponding entry. Fox has no corresponding entry.
06/04/10	1.1	Discussed with first chair extent of records needed for Dr. Lanyon.	Fox has no corresponding entry. Carr has no entry.

06/14/10	1.7	Team meeting to discuss case strategy and mitigation.	Carr has no corresponding entry. Fox has entry of 0.4.
07/15/10	1.0	Discussion with first chair re: settlement conference.	Carr has no corresponding entry. Fox has no entry.
07/16/10	0.7	Discussion with first chair re: motion to suppress statements.	Carr has no entry. Fox has no entry.
07/16/10	1.9	Team meeting to discuss possible settlement conference and pre-trial motions.	Fox has no corresponding entry. Carr has no entry.
07/16/10	0.2	Phone call from second chair.	Fox has no corresponding entry. Carr has no entry.
07/27/10	2.0	Team meeting to discuss insanity argument as defense.	Fox has no corresponding entry. Carr has no entry.
07/30/10	1.5	Meeting with first and second chair after hearing to discuss strategy.	Carr has no corresponding entry. Fox has entry of 0.3(email).
08/13/10	1.5	Meeting with 2nd Chair alter hearing re: further mitigation needs.	Carr has no corresponding entry. Fox has entry of 0.6.
08/19/10	0.5	Discussion with second chair re: records provided to State in mitigation.	Carr has no corresponding entry. Fox has no corresponding entry.
09/03/10	0.8	Conversation with second chair re: needs of meeting with client's brothers in prison.	Carr has no corresponding entry. Fox has no corresponding entry.
09/08/10	0.5	Discussion with second chair re; upcoming prison visits.	Carr has no corresponding entry. Fox has entry of 0.2.
09/09/10	1.3	Discussion with second chair re: upcoming prison visits.	Carr has no corresponding entry. Fox has entry of 0.4.
09/23/10	0.5	Discussion with second chair re: further records needed for mitigation.	Carr has no corresponding entry. Fox has no corresponding entry.

11/11/10	1.5	Meeting with second chair re: mitigation and witness interviews.	Carr has no corresponding entry. Fox has entry of 0.7 (telephone calls and emails).
12/01/10	1.0	Discussion with second chair re: mitigation and preparing for trial.	Carr has no corresponding entry. Fox has no corresponding entry.
01/10/11	3.4	Team meeting to discuss mitigation.	Carr has no corresponding entry. Fox has no entry.
01/14/11	2.5	Discussion with second chair re: Dr. Wu's PowerPoint presentation.	Carr has no corresponding entry. Fox has entry of 0.1 (email).
02/14/11	1.8	Meeting with second chair to go over questioning of Dr. Karis.	Carr has no corresponding entry. Fox has entry of 0.1 (email).
04/19/11	3.6	Met with second chair to prepare for mitigation witnesses.	Carr has no corresponding entry. Fox has no entry.

30. Respondent Johnson falsely billed for dozens of "team meetings" with Mr. Fox that Mr. Fox never attended and for which Mr. Fox never submitted invoices.

31. Mr. Hanratty performed many of the task as directed by Mr. Fox, that Respondent Johnson should have done as the mitigation specialist, such as:

- a. he tried to locate an important witness, Steve Brown, and conducted background research on him;
- b. he researched the Indio California School District Middle School;
- c. he conducted research and located four counselors at Magellan Health;
- d. he researched Naranjo's biological father;
- e. Mr. Fox directed him to conduct research with the Social Security Administration for Naranjo;

f. Mr. Fox directed him to search the county clerk's office on the Naranjo family criminal history. He also e-mailed his research from the county clerk's office on Naranjo's family criminal history to Mr. Fox.

32. Over the course of several years, from 2007 to 2011, Respondent Johnson billed for work he did not perform, inflated the time he spent on certain tasks, and made material misrepresentations to the OPDS about actual work he did on the Naranjo case.

33. Respondent Johnson accepted payment from OPDS based on the false billings he submitted to OPDS.

34. OPDS was unaware of Respondent Johnson's material misrepresentations in his billing statements at the time it made payment to Respondent Johnson.

35. Respondent Johnson never attempted to correct the false billing records he provided to OPDS; Respondent Johnson never offered to return, or returned, any of the funds he received related to the Naranjo case.

36. Based on the information above in Count Two, Respondent Johnson's conduct violated Rule 42, Ariz. R. Sup. Ct., specifically:

- a. ER 1.5 (a lawyer shall not make an agreement for, charge, or collect an unreasonable fee),
- b. ER 8.4(b) (commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects),
- c. ER 8.4(c) (engage in conduct involving dishonesty, fraud, deceit, or misrepresentations).

COUNT THREE (CARR File no. 15-0328/ State Bar)

STATE of ARIZONA v. RYAN WESLEY KUHS, CR2005-138481-001 DT

37. Respondent Carr was lead counsel during defendant Ryan Wesley Kuhs's (defendant) 2005 trial. Respondent Carr's co-counsel was Leo Valverde. The defendant was convicted of first-degree murder and sentenced to death. In his Rule 32 petition, defendant raised claims alleging the ineffective assistance of counsel at the sentencing and guilt phases of the trial.

38. The Court found that defendant raised colorable claims for relief that during the sentencing phase Respondent Carr failed to (1) sufficiently support or supervise the mitigation specialist, (2) prepare for mitigation with the degree of thoroughness necessary for effective representation, (3) ask Dr. Walter to prepare a report in sufficient time for the defense team to request more testing if necessary, and to prepare him for trial testimony, (4) engage a psychologist to identify and interpret the risk factors reflected in the defendant's background, and (5) find a psycho pharmacologist to tell the jury about meth-induced psychosis.

39. On October 2, 2014, Respondent Carr testified at the post-conviction relief hearing (PCR hearing) that his "major function was to get the guilt phase set for trial or do a plea; Leo's [Valverde] role was to do/discuss mitigation." He added, "I should have overseen, I didn't."

40. Respondent Carr also testified that he left supervision of the mitigation specialist, Connie Curtin (Ms. Curtin), to Mr. Valverde, and he had little contact with her.

41. In her affidavit, Ms. Curtin says:

There were no defense team meetings...Mr. Valverde spent literally two minutes with me. Given their lack of involvement, I frankly gave up trying to do an adequate job...In my opinion, the report I produced was the worst report I had ever done."

42. Despite Respondent Carr's testimony and Ms. Curtin's affidavit, time sheets submitted by Respondent Carr to OPDS identify specific times that he says he spent with Ms. Curtin:

- a. 8/23/2007 (4.5 hours "after trial prep for C. Curtin 9pm-1:30am");
- b. 8/24/2007 (6.0 hours "interview with Curtin").

43. Either Respondent Carr's testimony at the PCR hearing was false, or his billing statements to OPDS were false.

44. In a May 3, 2013 affidavit, Respondent Carr falsely testified that he was not involved in the mitigation preparation. "Valverde and I discussed which parts of the legal work would be done by me and which by him. As to the tasks that were in his share, I did not supervise.... For example, he was supposed to prepare Dr. Mark Walter, the defense expert in the penalty phase, for his testimony, and I left that task to him" However, Respondent Carr's time sheets reflect significant time that he billed as being spent addressing mitigation matters during "Co-Counsel Meetings" and "Client Contact" meetings:

02/21/06	3.0 hours	Co-counsel meetings - mitigation discussion
03/02/06	1.5 hours	Co-counsel meetings - mitigation discussion
03/11/06	1.5 hours	Mitigation review
03/25/06	3.0 hours	Mitigation review
04/30/06	1.5 hours	Co-counsel meetings - mitigation discussion
06/06/06	2.5 hours	Doc mitigation review
06/17/06	2.5 hours	Doc mitigation review
08/08006	2.5 hours	"family member came in for interviews, she will not be good for our client in mitigation"

09/08/06	2.5 hours	Mitigation conference review
10/13/06	2.0 hours	County Attorney Contact: questions about mitigation and aggravation
12/17/06	3.0 hours	Discuss mitigation
01/31/07	2.5 hours	"Review of mitigation report and Doc --- bad news"
02/01/07	2.0 hours	"More Doc"
03/05/07	2.0 hours	Court: Mit. State
04/23/07	2.5 hours	Motions and Research: mitigation review
05/06/07	1.0 hours	Mitigation: Review
05/25/07	3.0 hours	Motions and Research: mitigation review
06/09/07	4.0 hours	Mitigation: Mitigation review trial upcoming
07/04/07	4.0 hours	Co-counsel meetings – mitigation discussion
08/19/07	4.0 hours	"Review report from Dr. Walter in the middle of trial on a Sunday – bad news for ***"
08/22/07	3.0 hours	After trial prep for Dr. Walters 10pm-1:00am
08/23/07	4.5 hours	After trial prep for C. Curtin 9pm-1:30am (the mitigation specialist).
08/24/07	6.0 hours	Interview with Curtin

45. On September 13, 2007, the first day of the penalty phase, Respondent Carr told the Court that the defense was claiming that defendant had ADHD, not schizophrenia or any other mental illness. "Based on arguments preserved in the record, [Respondent Carr] entered the trial anticipating that no mental health information would be presented."

46. Respondent Carr's testimony at the PCR hearing was that at the time of trial he had a minimal understanding of schizophrenia and thought that neuropsychologists looked for damage to the brain and could do psychological testing, such as an IQ test: "It's up to him." Respondent Carr's understanding, that it is up to the expert to decide the area of testing, is not supported by the expert testimony or the standard of practice in Maricopa County at or around the time of trial. Respondent Carr testified that he relied on Valverde to select the doctor and communicate with him.

47. Respondent Carr testified that he did not read Dr. Walter's report until sometime in August, during the trial; he did not talk to Dr. Walter after reading the report and before he was called to testify. Acknowledging that the Rule 11 evaluations had identified "psychosis NOS" resulting in defendant being sent for restoration to competency (RTC), Respondent Carr testified that he did not seek a personality assessment because he "left it to [Valverde] for the mitigation aspect."

48. Respondent Carr was unaware that the evaluation request made of Dr. Walter was limited in scope to a neurological evaluation, and that only tests designed to identify the presence (or absence) of traumatic brain injury (TBI) were administered. Dr. Walter found no TBI. However, when writing his report, Dr. Walter referenced "ADHD" and "psychosis NOS," which he gleaned from the records provided, for the purpose of historical corroboration. Respondent Carr focused on these references as "findings" made by Dr. Walter, and made a last-minute determination that the doctor's report would be extremely helpful.

49. Respondent Carr never discussed the scope of Dr. Walter's work before trial, "leading to a disastrous — for Defendant — cross-examination of the doctor on personality testing, the possibility of malingering, the DSM-IV, and resulting in the doctor falling-back from 'psychosis NOS'¹ to 'psychosis RO.'²"

50. "Neither Valverde nor [Respondent Carr] appeared to have anticipated the State would critically challenge what Dr. Walter did, or did not do, in reaching his 'NOS' diagnosis. And while Valverde and [Respondent Carr] knew about schizophrenia generally, neither lawyer today understands the, significance of the

¹ Not otherwise specified.

² Ruled out.

Rule 11 diagnoses as it ultimately related to the determination that Defendant suffered from schizophrenia. These lawyers had three experts tell them that Defendant suffered from 'psychotic disorder NOS' and they took no action to determine what that meant, nor investigate further. As a result, the jury was misinformed regarding the fact that Defendant suffers from the serious mental illness of schizophrenia."

51. The court granted the petition for post-conviction relief and ordered that the defendant be resentenced.

CLARENCE WAYNE DIXON v. CHARLES L. RYAN ET AL., CV-14-258-PHX-DJH,
Petition for Writ of Habeas Corpus

52. In November 2002, Clarence Wayne Dixon (Dixon) was serving a life sentence in an Arizona state prison for a 1986 sexual assault conviction. That is when police found new DNA evidence that connected Dixon to the January 7, 1978, murder of 21-year-old Deana Bowdoin.

53. In March 2006, Dixon decided to represent himself during his trial. In July 2006, Respondent Carr and Ken Countryman were appointed as advisory counsel.

54. The matter is currently before the District Court on a Petition for Writ of Habeas Corpus. Dixon's present counsel noted in the petition that she did not find any prepared mitigation exhibits in the file. Consistent with this lack of documentation, the mitigation specialist, Tyrone Mayberry (Mr. Mayberry) confirmed that he had not prepared any exhibits for presentation at the penalty phase of Dixon's trial and that if Respondent Carr had prepared any such exhibits, he was not aware of them.

55. Respondent Carr's billing records show that he misrepresented the work he performed—or failed to perform—on this case. Respondent Carr received a total of \$129,475.00 for his work as advisory counsel on Dixon's case. Respondent Carr, however, requested and received payments for work that he never performed, and exaggerated the amount of time required for the minimal work he did perform. For example:

- a. Respondent Carr billed 81 hours for "trial day" on days when there was no trial.
- b. Respondent Carr billed for a total of 40 trial days, even though Dixon's trial lasted only 27 days.
- c. Respondent Carr billed 12 hours for trial on January 14, 2008, but the court transcript reveals that he was not in court that day.
- d. Carr billed 2 hours for a hearing on January 21, 2007, when no hearing took place,
- e. Respondent Carr billed for 9.5 hours for five hearings where he was not actually present.
- f. Respondent Carr billed 18 hours for reviewing jury questionnaires on November 5, 6, and 7, even though the court had not yet given the questionnaires to prospective jurors.
- g. Respondent Carr billed for conversations with prosecutor Juan Martinez on August 13, 2006 (2 hrs.), October 4, 2006 (3 hrs.), June 3, 2007 (.5 hrs.), June 5, 2007 (2 hrs.), and June 28, 2007 (1 hr.). On August 30, 2007, Mr. Martinez informed the court that he had "never spoken to [Respondent Carr] about this case."

h. Dixon researched and wrote all of his own motions; nevertheless, Respondent Carr billed excessive time for purportedly reading these motions. He billed four hours for reading Dixon's motion to produce documentation on White Pants that consisted of two paragraphs. Respondent Carr billed three hours for reading the State's one-paragraph response. Respondent Carr similarly billed many hours for reading other short motions and responses:

- i. November 29, 2006 billing entry (3 hours to review a two-page motion);
 - ii. February 26, 2007 billing entry (2 hours to review a one-page motion);
 - iii. June 8, 2007 billing entry (claiming to research case law "in motion from yesterday" when there was no motion filed the previous day);
 - iv. June 17, 2007 billing entry (4 hours to read Dixon's one-page request that the court take judicial notice);
 - v. October 29, 2007 billing entry (2 hours to read Dixon's two-page motion to compel court reporter provide July 3rd transcript.
- i. Respondent Carr billed 37.5 hours for preparing witness summaries and compiling eleven "trial notebooks." The eleven trial notebooks and witness summaries were never found. The mitigation specialist, Mr. Mayberry, sat directly behind Dixon and Respondent Carr during the trial, and he does not recall seeing Respondent Carr refer to any such notebooks.

- j. On December 14, 2007, Respondent Carr billed eight hours for transcript review and "mitigation discussion" and on December 15, 2007, he billed another eight hours for "serious mitigation discussion." Neither Mr. Countryman nor Mr. Mayberry billed for any such discussion, nor did Respondent Carr visit Dixon on either of these days.
- k. On January 21, 2008, Respondent Carr billed seven hours for mitigation with "team and Aiken." James Aiken³, however, billed nothing for that day and did not even travel to Phoenix until the next day.
- l. Respondent Carr billed eight hours on January 25, 2008, for "prepping client for death verdict," even though Dixon had been sentenced to death the previous day, January 24, 2008. On January 26, 2008, two days after the verdict, Respondent Carr again billed six hours for "[v]erdict of death, talked with client and team for quite some time."

56. Over the course of several years, in both the Kuhs and Dixon matters, Respondent Carr billed for work he did not perform, inflated the time he spent on certain tasks, and made material misrepresentations to the OPDS about actual work he did perform.

57. Respondent Carr accepted payment from OPDS without performing the services he falsely alleged he performed.

58. OPDS was unaware of Respondent Carr's material misrepresentations at the time it made payment to Respondent Carr.

³ Ex-federal prison warden who would discuss the prison's ability to maintain Dixon and protect society.

59. Respondent Carr never attempted to correct the false billing records he provided to OPDS; Respondent Carr never offered to return, or returned, any of the funds he received related to either the Kuhs or Dixon case.

60. Based on the information above in Count Three, Respondent Carr's conduct violated Rule 42, Ariz. R. Sup. Ct., specifically:

- a. ER 1.1 (Competence) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation,
- b. ER 1.5 (Fees) 1.5 (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.
- c. ER 3.2 (Expediting Litigation) A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.
- d. ER 8.4. (Misconduct) It is professional misconduct for a lawyer to:
 - (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
 - (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
 - (d) engage in conduct that is prejudicial to the administration of justice;

COUNT FOUR (CARR File no. 15-0328/ State Bar)

61. On December 29, 2014, the State Bar notified Respondent Carr by certified mail, return receipt signed by Respondent Carr, that there was no record of his mandatory continuing legal education (MCLE) affidavit for educational year July 1, 2013 to June 30, 2014. The letter also stated in part that "this letter serves as the required

30 day notice prior to summary suspension, pursuant to Ariz. R. Sup. Ct. Rules 45 and 62."

62. On February 27, 2015, Respondent Carr was summarily suspended from the practice of law under Rule 45(i), Ariz. R. Sup. Ct. A letter advising of the suspension was sent to his address of record, certified mail, return receipt requested.

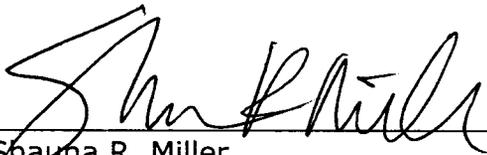
63. Respondent Carr continued to practice law and "handle[d] his caseload throughout the month of March 2015." Respondent Carr was reinstated April 7, 2015.

64. Based on the information above, Respondent Carr's conduct violated:

- a. ER 5.5 (Unauthorized practice of law) 5.5(a) a lawyer shall not practice law in violation of the regulation of the legal profession in that jurisdiction. Rule 42, Ariz. R. Sup. Ct.
- b. Rule 54 (Grounds for discipline) 54(d) knowing violation of any rule or any order of the court. Ariz. R. Sup. Ct.

DATED this 3rd day of June, 2016.

STATE BAR OF ARIZONA



Shauna R. Miller
Senior Bar Counsel - Litigation

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 3rd day of June, 2016.

Copy of the foregoing emailed
this 3rd 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

Copy of the foregoing mailed/emailed
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Copy of the foregoing hand-delivered
this 3rd day of June, 2016, to:

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by: _____

SRM:aib

