

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

GARY JOEL HILL,

Respondent.

PDJ-2016-9096

FINAL JUDGMENT AND ORDER

[State Bar No. 15-2621]

FILED OCTOBER 3, 2016

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on September 20, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS ORDERED Respondent, **Gary Joel Hill**, is reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this order.

IT IS FURTHER ORDERED that Mr. Hill shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00 within thirty (30) days from the date of this order. 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 3rd day of October, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed
this 3rd day of October, 2016, and
mailed October 4, 2016, to:

Gary Joel Hill
801 N. El Paso Street, Suite 200
El Paso, Texas 79902-4160
Respondent

James D. Lee
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

GARY JOEL HILL,

Respondent.

PDJ-2016-9096

**DECISION AND ORDER
ACCEPTING DISCIPLINE BY
CONSENT**

[State Bar No. 15-2621]

FILED OCTOBER 3, 2016

A Probable Cause Order issued on June 29, 2016. No formal complaint has been filed. An Agreement for Discipline by Consent (Agreement) was filed on September 20, 2016 and submitted under Rule 57(a)(3) Ariz. R. Sup. Ct.¹ A Supplement to the Agreement was filed on September 26, 2016. Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject, or recommend the agreement be modified." Rule 57(a)(3)(b).

Rule 57 requires admissions be tendered solely "...in exchange for the stated form of discipline...." Under that rule, the right to an adjudicatory hearing is waived only if the "...conditional admission and proposed form of discipline is approved...." If the agreement is not accepted, those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

Under Rule 53(b)(3), notice of this Agreement to the complainant was provided by email on September 2, 2016. Complainant notified the State Bar that there is no objection to the Agreement.

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

The Agreement details a factual basis to support the admissions to the charge and is summarized. Mr. Hill is licensed to practice law in Texas but not Arizona. In Count One, Mr. Hill on October 1, 2015, filed notices of appearances on behalf of two criminal defendants in La Paz County Superior Court in *State V. Franco* No. CR2015-00248 and *State V. Laris*, No. CR2015-00249. Thereafter, Mr. Hill appeared at the defendants' arraignments in La Paz County. He waived the reading of indictments, entered pleas on behalf of the defendants, argued for a bond reduction, and informed the judge he had filed notices of appearance. The bond was reduced and a pretrial conference was set.

On October 16, 2015, Mr. Hill filed motions for *pro hac vice* with the La Paz County Superior Court but failed to comply with former Supreme Court Rule 38 (currently Rule 39), which required him to associate with local counsel and file a verified application with the State Bar of Arizona. By Order filed October 19, 2015, Mr. Hill's motion was denied and ordered Mr. Hill was precluded from representing the defendants until he complied with Rule 38. On November 2, 2015, Mr. Hill made a telephonic appearance at the defendants' pretrial conference and informed the judge he had not yet secured local counsel. The judge continued the pretrial conferences and reminded Mr. Hill he could not appear until he complied with Rule 38. On December 2, 2015, notices of appearances were filed by Julie LaBenz, Esq. She was not available for the continued pretrial conference on December 7, 2015, and Mr. Hill called the court and appeared telephonically. Mr. Hill informed the court that plea agreements were reached and requested a change of plea hearing. The judge inquired if Mr. Hill complied with Rule 38 as previously ordered. Mr. Hill stated he had not. When the judge denied his request to proceed he said "Well, fine then"

and hung up. Mr. Hill failed to take any steps to be admitted *pro hac vice* and failed to comply with the requirements of Rule 38.

Mr. Hill previously appeared in La Paz County Superior Court and his assistant erroneously concluded he could appear again. His staff also erroneously concluded Mr. Hill's admission to the District Court for the District of Arizona was a state admission. Mr. Hill did not review the notices of appearance prior to them being filed. He conditionally admits he violated Rule 42, ER 3.4(c) (knowingly disobey an obligation under the rules of tribunal), 5.3(a), (b) and (c) (responsibilities regarding non-lawyer assistants), ER 5.5(a) and (b)(2) (unauthorized practice of law), 8.4(d) (conduct prejudicial to the administration of justice), and Rules 31(b) (authority to practice), 33(c) (practice in courts) and 54(c) (knowing violation of any rule or order of court).

The parties stipulate to a reprimand and costs of these proceedings. Mr. Hill violated his duty to clients, the profession, the legal system, and the public causing actual and potential harm to clients, the profession, legal system and the public. The parties agree that *Standard 6.23* (Abuse of the Legal Process) is applicable to Mr. Hill's violation of ER 3.4(c) and provides:

Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Standard 7.3 (Violations of Other Duties Owed as A Professional) is applicable to Mr. Hill's violation of ER 5.3, ER 5.5 and Rule 54(c) and provides:

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

The parties agree the presumptive sanction is reprimand. Mr. Hill negligently failed to comply with Supreme Court rules pertaining to *pro hac vice* admission resulting in a delay in the criminal proceedings. Given that the most severe sanction that may be imposed for a non-member of the State bar of Arizona is reprimand,² the agreed upon sanction appears reasonable; however, the PDJ notes that a knowing mental state is required to violate ER 3.4(c) and Rule 54(c). The PDJ concludes the parties mean the actions were knowingly done, but under the circumstances outlined in mitigation, the stated *Standards* warrant the sanction under the negligent mental state.

The parties further agree that the following aggravating factor is present in the record: 9.22(i) substantial experience in the practice of law). The agreed upon mitigating factors include: 9.32(a) (absence of a prior disciplinary record), 9.32(b) absence of a selfish or dishonest motive; 9.32(c) (personal or emotional problems), and 9.32(e) (full and free disclosure to bar counsel and cooperative attitude toward the disciplinary proceedings). The PDJ further notes no evidence was submitted to support factor 9.32(c).

The PDJ finds reprimand and the payment of costs within thirty (30) days meets the objectives of attorney discipline. The Agreement and any attachments are accepted and incorporated by this reference.

IT IS ORDERED Respondent, Gary Joel Hill is reprimanded for violations of the Rules of Professional Conduct, as outlined in the consent documents, effective the date of this order.

² See *Matter of Olsen*, 180 Ariz. 5, 881 P.2d 337 (1994).

IT IS FURTHER ORDERED Mr. Hill shall pay the costs and expenses of the State Bar of Arizona totaling \$1,200.00 within thirty (30) days of this order. If costs are not paid within thirty (30) days, interest will accrue at the legal rate. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

DATED this 3rd day of October, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed this 3rd day of October, 2016, and mailed October 4, 2016, to:

Gary Joel Hill
801 North El Paso Street, Suite 200
El Paso, TX 79902-4160
Respondent
Email: none provided

James D. Lee
Senior Bar Counsel
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: AMcQueen

James D. Lee, Bar No. 011586
Senior Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7272
Email: LRO@staff.azbar.org

Gary Joel Hill, Texas Bar No. 09633300
(Not admitted in Arizona)
801 North El Paso Street, Suite 200
El Paso, Texas 79902-4160
Telephone: (915) 544-9459
Respondent

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

GARY JOEL HILL,

Respondent.

PDJ-2016-_____

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

[State Bar File No. 15-2621]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Gary Joel Hill, who has chosen not to seek the assistance of counsel, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on June 29, 2016, but no formal complaint has been filed in this matter. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant, Judge Samuel E. Vederman, by email on September 2, 2016, at which time he was notified of the opportunity to file a written objection to the agreement with the State Bar within five business days of bar counsel's notice. Judge Vederman notified bar counsel that he does not object to the recommended sanction and waives his right to appear at any hearing held to address this agreement for discipline by consent.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, Ariz. R. Sup. Ct., specifically ER 3.4(c), 5.3(a), (b) and (c), ER 5.5(a) and (b)(2), and ER 8.4(d), and Rules 31(b), 33(c) and 54(c), Ariz. R. Sup. Ct. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Texas on December 4, 1973, and is presently permitted to practice in that state and numerous other jurisdictions. He was admitted to practice before the United States District Court for the District of

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

Arizona on March 5, 1996, and was previously admitted *pro hac vice* in the La Paz County Superior Court, but has never been admitted by the Supreme Court of Arizona to regularly practice law in Arizona.

COUNT ONE (File No. 15-2621/Judge Vederman)

2. On October 1, 2015, Respondent filed notices of appearance on behalf of two criminal defendants in the La Paz County Superior Court: Rene Franco, Jr. (*State v. Franco*, No. CR2015-00248) and Adrian Laris (*State v. Laris*, No. CR2015-00249). The notices stated that Respondent was admitted to practice law only in Texas.

3. On October 5, 2015, Respondent appeared at Franco and Laris's arraignments in La Paz County Superior Court. Respondent waived the reading of the indictments and entered "not guilty" pleas on Franco and Laris's behalf. Respondent informed Judge Samuel Vederman that he had filed notices of appearance, but they were not in the judge's file. Respondent argued for a reduction of the bond amount, and the State did not object. Judge Vederman reduced the bond amount from \$50,000.00 to \$10,000.00 for each defendant. Respondent informed Judge Vederman that he was from Texas, but Judge Vederman did not ask Respondent if he was licensed to practice law in Arizona. A pretrial conference was scheduled for November 2, 2015.

4. On October 16, 2015, Respondent filed motions for *pro hac vice* admission with the La Paz County Superior Court. Respondent, however, failed to

comply with former Rule 38² (he had not associated with local counsel and did not file a verified application with the State Bar).

5. On October 19, 2015, Judge Vederman entered an order denying Respondent's motion to appear *pro hac vice*. The order stated the motion failed to comply with Arizona Supreme Court Rule 38 and that Respondent was not allowed to appear on Franco or Laris's behalf until he complied with Rule 38. A copy of that order, along with a copy of Rule 38, was mailed to Respondent.

6. On November 2, 2015, Respondent called into the court and made an appearance at the defendants' pretrial conferences. He informed Judge Vederman that he had not yet located local counsel and that he would make arrangements with a local attorney within a day or two. He informed the judge that both Franco and Laris were with him as he spoke on the phone, and that both were aware of the court order precluding him from representing them until he complied with Rule 38. Judge Vederman continued both pretrial conferences to December 7, 2015, but informed Respondent that he could not appear until he properly complied with the *pro hac vice* requirements.

7. On December 2, 2015, Arizona attorney Julie LaBenz filed notices of appearance on Franco and Laris's behalf.

8. On December 7, 2015, Respondent appeared at the continued pretrial conference by telephone because attorney LaBenz was not available. He informed Judge Vederman that the parties had reached plea agreements and asked that

² Effective January 1, 2016, the *pro hac vice* requirements were moved to Supreme Court Rule 39.

change-of-plea hearings be set. When asked by the judge whether he had complied with his earlier order, Respondent stated he had not. At that time, Judge Vederman told Respondent that he could not appear on the defendants' behalf. Respondent hung up. According to Judge Vederman, Respondent was argumentative with him about compliance with Rule 38. When the judge told him that he could not appear, Respondent became agitated (a recording of the hearing revealed that Respondent said, "Well fine, then," when told he could not appear). The prosecutor asked the judge to schedule a pretrial conference for January 25, 2016, which the court scheduled.

9. Following Judge Vederman's denial of Respondent's initial motion for *pro hac vice* admission on October 19, 2015, Respondent failed to take any further steps to be admitted *pro hac vice* pursuant to Rule 38.

10. Respondent had appeared in La Paz County Superior Court a number of years previously and his assistant mistakenly believed he could do so again.

11. Respondent's staff prepared and filed the two notices of appearance, but Respondent did not review them prior to being filed. Respondent's staff believed his admission to the District Court for the District of Arizona was a state admission.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ER 3.4(c), 5.3(a), (b) and (c), ER 5.5(a) and (b)(2), and ER 8.4(d), and Rules 31(b), 33(c) and 54(c), Ariz. R. Sup. Ct.

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Reprimand and the payment of the costs and expenses of this proceeding.

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

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

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

The parties agree that *Standard 6.23* and *Standard 7.3* are the appropriate *Standards* given the facts and circumstances of this matter. *Standard 6.23* states, "Reprimand is generally appropriate when a lawyer negligently fails to comply with a court order or rule, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding." *Standard 7.3* states, "Reprimand is generally appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system." Respondent's failure to comply with the rules and the judge's orders regarding *pro hac vice* admission resulted in a delay in the criminal proceedings.

The duty violated

As described above, Respondent's conduct violated his duty to his clients, the profession, the legal system and the public.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent negligently failed to comply with the Supreme Court rules pertaining to *pro hac vice* admission and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree there was actual and potential harm to Respondent's clients, the profession, the legal system and the public.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is reprimand. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22(i) – substantial experience in the practice of law (Respondent was licensed to practice law in Texas on December 4, 1973).

In mitigation:

Standard 9.32(a) – absence of a prior disciplinary record;

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

Standard 9.32(c) – personal or emotional problems; Respondent may have been more careful regarding his representation of Mr. Franco and Mr. Laris, but his 42-year-old son died of cancer on July 27, 2015, and his former wife, whom he supports, lost her sight in one eye due to a physician's error during a cataract operation and is losing her sight in her other eye due to glaucoma; and

Standard 9.32(e) – full and free disclosure to bar counsel and cooperative attitude toward the disciplinary proceedings.

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate.

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. This agreement was based upon the following: Respondent's initial failure to comply with the rules pertaining to *pro hac vice* admission was negligent.

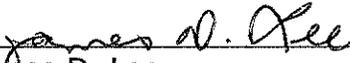
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanctions and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 19th day of September, 2016.

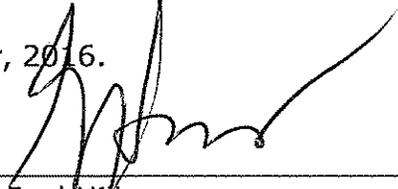
STATE BAR OF ARIZONA



James D. Lee
Senior Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 12TH day of September, 2016.



Gary Joel Hill
Respondent

Approved as to form and content

Maret Vessella

Maret Vessella
Chief Bar Counsel

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

Copy of the foregoing emailed
this 20TH day of September, 2016, to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 W. Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 20TH day of September, 2016, to:

Gary Joel Hill
801 North El Paso Street, Suite 200
El Paso, Texas 79902-4160
Respondent

Copy of the foregoing hand-delivered
this 20TH day of September, 2016, to:

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

by: Jalise Stone
JDL/ts

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Non-Member of the State Bar of Arizona,
GARY JOEL HILL, Respondent

File No. 15-2621

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegals, secretaries, typists, file clerks and messengers; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings

\$1,200.00

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

Total for staff investigator charges \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED **\$1,200.00**

EXHIBIT B

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

GARY JOEL HILL,

Respondent.

PDJ-2016-_____

FINAL JUDGMENT AND ORDER

[State Bar No. 15-2621]

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

IT IS HEREBY ORDERED that Respondent, **Gary Joel Hill**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order or _____.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00 within 30 days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of \$_____, within 30 days from the date of service of this Order.

DATED this _____ day of September, 2016.

William J. O'Neil, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of September, 2016.

Copies of the foregoing mailed/emailed
this _____ day of September, 2016, to:

Gary Joel Hill
801 N. El Paso Street, Suite 200
El Paso, Texas 79902-4160
Respondent

Copy of the foregoing emailed/hand-delivered
this _____ day of September, 2016, to:

James D. Lee
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this _____ day of September, 2016, to:

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

by: _____