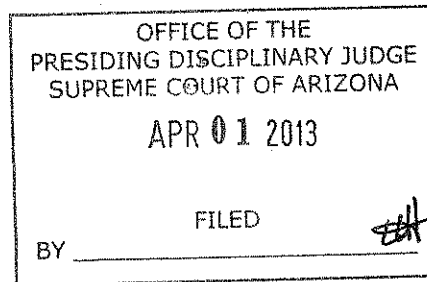


Nicole S. Kaseta, Bar No. 025244
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: 602-340-7386
Email: LRO@staff.azbar.org



Karen Clark, Bar No. 012665
Adams & Clark, PC
520 E. Portland Street, Suite 200
Phoenix, AZ 85004-1843
Telephone: 602-258-3542
Email: karen@adamsclark.com
Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

John M. Curtin,
Bar No. 011435,

Respondent.

PDJ-2013- 9035

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

[State Bar No. 12-2259]

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent John M. Curtin, who is represented in this matter by counsel Karen Clark, hereby submit their Tender of Admissions and Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. The parties reached an agreement for discipline by consent before the matter was submitted to the Attorney Discipline Probable Cause Committee; therefore, there is no order of probable cause. 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.

Respondent conditionally admits that his conduct as set forth below violated Rule 42, Ariz. R. Sup. Ct., ER(s) 1.15(a), Rule 43(b)(2)(A), Rule 43(b)(2)(B), Rule 43(b)(2)(D), Rule 43(a)(1), Rule 43(b)(1)(A), Rule 43(b)(1)(B), Rule 43(b)(1)(C), Rule 43(b)(2)(C). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand, followed by one year of probation and participation in Law Office Management Assistance Program (LOMAP) and Trust Account Ethics Enhancement Program (TAEHP). Respondent also agrees to pay the costs and expenses of the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

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 October 24, 1987.

COUNT ONE (State Bar File No. 12-2259)

2. The State Bar of Arizona received an insufficient funds notice on Respondent's client trust account. On August 10, 2012, check number 1435 in the amount of \$9,440.97 attempted to pay against the account when the balance was \$6,242.82. The bank paid the check and did not charge an overdraft fee, leaving the account with a negative balance of \$3,198.15.

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.

3. On August 20, 2012, the trust account examiner sent Respondent a copy of the overdraft notice and requested an explanation and copies of the related records.

4. On September 7, 2012, Respondent called the State Bar to self-report. He informed bar counsel that his assistant may have forged checks from his IOLTA. Respondent advised that he filed a police report and would terminate the staff member. Respondent stated that he did not receive the screening letter and, therefore, a second copy of that letter was emailed to Respondent the same day.

5. Respondent provided the requested information with exceptions, and explained that the occurrence of the overdraft was the result of misappropriations by Respondent's assistant. Respondent stated that he hired Stacey Williams ("Williams") in 2005. Williams had drug problems in the 1980s but allegedly presented herself as sober.

6. As time went on, Respondent contends that Williams became more involved in the details of his practice. Williams was not an authorized signer on his operating account or IOLTA but she drafted checks for Respondent's signature and entered them into QuickBooks.

7. Respondent contends that he used Quickbooks. Williams apparently stopped keeping a ledger on QuickBooks sometime in 2009.

8. Respondent explained that he manages somewhere between three and five large settlements in the course of a year and that it is fairly rare for him to have two clients' money in the trust account at any given time. When settlement monies were received, Respondent contends that a settlement summary would be

generated which would identify the amounts owed to various payees. Williams would then write the checks and present them to Respondent for signature.

9. Respondent allegedly instructed Williams to create and maintain an individual client ledger card. In some instances, however, the individual ledger card amounted to no more than copies of the checks that had been written.

10. Around the end of 2011, Respondent contends that he partially settled a case for clients W.S. and Y.S. in the amount of \$650,000. W.S. was the conservator for Y.S. Of this settlement, Respondent contends that \$4,472.45 was to be a Medicare set aside account and the remainder of \$645,527.55 was to be deposited to the IOLTA. The Medicare set aside check for \$4,472.45 was never deposited. Respondent contends that he found the check in a file. The \$645,527.55 was deposited to the IOLTA on January 13, 2012. At the time of the deposit, these were the only client funds in the account other than residual unknown funds held on deposit of \$2,951.13.

11. Respondent contends that over the past twenty years checks did not clear the trust account for unknown reasons amounting to several hundred dollars since then. The investigation revealed that the true ownership of the \$2,900 should be considered unknown. Therefore, when a fee in the amount of \$20 was debited from the IOLTA on December 31, 2008, it is unknown whether Respondent held administrative funds to cover this fee.

12. On January 12, 2012, Respondent wrote checks out to his law firm and another law firm to cover their costs and fees. Pursuant to the probate court's direction, Respondent also wrote three checks to W.S. in the total amount of \$250,013.06 with some of the funds going to W.S. individually and some as the

conservator for Y.S. These checks were cashed and cleared by the end of February of 2012 with only \$86,837.26 remaining in the trust account.

13. In March of 2012, Respondent contends that Williams forged a check to a collection agency representing Scottsdale Critical Care to cover an error. Respondent further contends that Williams missed a lien in preparing a settlement distribution for client M.R. Respondent explained that, even though all of client M.R.'s funds had been distributed, Williams wrote check #1426 in the amount of \$889.60, thereby reducing the "residual" balance of funds held in the IOLTA from \$2,951.13 to \$2,061.53.

14. Respondent contends that by May of 2012 the balance in his trust account was \$85,947.66 which was comprised of \$83,886.13 withheld to satisfy liens on behalf of W.S. and Y.S. plus \$2,061.53 in residual funds.

15. On June 7, 2012, Respondent issued checks to be distributed for the W.S. matter in the amounts of \$36,681.29 to Medicare, and \$9,440.97 to W.S. individually, and \$37,763.87 to W.S. as conservator.

16. Unbeknownst to Respondent, however, these checks never left the office. Respondent contends that Williams held the originals.

17. At around the same time, Respondent alleges that Williams began to forge checks on the IOLTA. A total of four forged checks were recovered (#1430 for \$27,763.87, #1431 for \$19,440.92, #1432 for \$20,000, and #1434 for \$12,500), all of them written to the Law Offices of John M. Curtin, and totaling \$79,704.84, which were funds from the W.S./Y.S. matter and which left a balance of \$4,132.42 in the trust account. Respondent contends that the check memos

make reference to non-existent fees or closed cases. One check, #1433, has not been recovered to date.

18. During the summer of 2012, Respondent contends that he was involved in a lengthy trial. During this time, W.S. complained that he had not received his money. W.S. spoke with Williams who allegedly convinced W.S. that the checks had been lost in the mail. Williams put a stop payment on one of the checks, #1428, in the amount of \$9,940.97, and issued replacement check #1435, which was sent to W.S. According to the check register, duplicate check #1436 was also written out to W.S. in the amount of \$37,763.87. Respondent believes this check may also have been withheld or destroyed. Respondent has not located it but it also has never been cashed. When W.S. cashed his replacement check for \$9,940.97, it resulted in the overdraft. All of this allegedly occurred in August while Respondent was engaged in trial.

19. The State Bar then sent Respondent a letter regarding the overdraft on August 20, 2012. Respondent contends that Williams withheld this letter from Respondent. The bank informed him of the overdraft, however, and he asked Williams for an explanation. Williams allegedly informed Respondent that the initial check, #1428 for \$9,440.97, got lost in the mail. Williams allegedly claimed that she put a stop order on that check and wrote replacement check #1435. Williams allegedly claimed that both checks were cashed, resulting in the overdraft. She informed Respondent that she was in communication with the bank. Respondent assumed that the bank would correct its error.

20. In early September, Respondent believes that he contacted the bank to ask why the trust account situation was not corrected. The bank allegedly

advised Respondent that the stop order was issued and honored, but that too many checks had been written from the account. On September 6, 2012, Respondent allegedly discussed this with Williams who professed ignorance regarding the situation.

21. On September 7, 2012, Respondent states that he received notice from the bank that his operating account was overdrawn due to a payment to his credit card. Respondent contends that his investigation revealed that Williams funneled monies from his business line accounts to his operating account, and wrote checks to herself.

22. Respondent allegedly called his bank and requested copies of the last 10 checks written from the IOLTA. Respondent alleges that he recognized that several of the checks were forgeries. Respondent then transferred sufficient funds to cover the overdraft and closed the IOLTA. Respondent subsequently terminated Williams.

23. Respondent then allegedly contacted client W.S., his co-counsel, and the probate lawyer for W.S. and Y.S. to advise them of what transpired. He allegedly advised W.S. that he would ensure that he received his settlement funds. Respondent produced checks showing that he made the outstanding payment to Medicare in the amount of \$36,681.29, a separate payment to Medicare for accrued interest as a result of the payment being late in the amount of \$3,563.37, the Medicare set aside payment in the amount of \$4,472.45, and the outstanding payment due to W.S. as conservator in the amount of \$37,763.87. Respondent transferred \$74,445.16 from his personal checking account to cover these payments.

24. The trust account examiner sent Respondent requests for additional information. Respondent timely complied with the requests. Respondent contends that he does not have a copy of the administrative funds ledger, that Williams no longer maintained a general ledger as of January 2009, and that he does not have copies of the monthly reconciliations for that period of review due to the actions of Williams. Respondent also provided an incomplete ledger for client M.R. The investigation also revealed that the client ledger for G.C. is incomplete. Respondent was not able to locate a client ledger for M.H. Respondent also states that he was unable to locate the check stub register for checks numbered 32, 33, and 34 because it was physically removed from the checkbook. Respondent suspects that Williams did this to conceal her forgeries involving those checks.

25. The trust account examiner's investigation also revealed the following: (a) Regarding a client ledger for M.C., check number 1385 was recorded as \$10,048.52 when the check was actually written and cashed for \$10,048.62, causing the conversion of other client funds in the amount of \$.10 since June 21, 2010; (b) regarding a client ledger for I.F., the investigation revealed that check number 1298 was written on December 22, 2006 in the amount of \$364,685.83 when the balance for the client was only \$362,685.83 at the time. The client's negative account balance was not remedied until January 2, 2007 with a transfer from the operating account to cover the shortage, causing the conversion of other client funds for more than three business days; (c) Regarding a client ledger for M.J., the investigation revealed that check number 1363 was recorded as \$644.80 when the check was actually written and cashed for \$664.80, causing the conversion of other client funds in the amount of \$20.00 since September 18,

2009; and (d) regarding a client ledger for D.S., the investigation revealed that check number 1408 was recorded as \$84,927.47 when the check was actually written and cashed for \$84,927.53, causing the conversion of other client funds in the amount of \$.06 since April 19, 2011.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is 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., ER(s) 1.15(a), Rule 43(b)(2)(A), Rule 43(b)(2)(B), Rule 43(b)(2)(D), Rule 43(a)(1), Rule 43(b)(1)(A), Rule 43(b)(1)(B), Rule 43(b)(1)(C), and Rule 43(b)(2)(C).

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 sanction is appropriate: Reprimand, followed by one year of probation and participation in Law Office Management Assistance Program and Trust Account Ethics Enhancement Program.

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP

examination of his office's procedures, including, but not limited to, compliance with ER 1.15(a). The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

TAEPP

Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEPP). Respondent must contact the TAEPP Program Coordinator, State Bar of Arizona, at (602) 340-7278, within 20 days from the date of the final judgment and order. Respondent shall be responsible for the cost of attending the program.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

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* 4.13 applies in this matter, given the facts and circumstances involved. *Standard* 4.13 provides that reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client. Respondent failed to maintain adequate trust accounting procedures, failed to maintain complete trust account records, failed to safe keep client property and maintain adequate internal controls to safeguard funds held in trust, converted client funds, and failed to properly supervise his staff.

The duty violated

As described above, Respondent's conduct violated his duty to his client.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent negligently failed to maintain adequate trust accounting procedures, negligently failed to maintain complete trust account records, negligently failed to safe keep client property and maintain adequate internal controls to safeguard funds held in trust, negligently converted client funds, negligently failed to properly supervise his staff, and that his conduct was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

While full restitution has been made to YS and WS, the parties agree for purposes of this agreement that there was actual harm to his clients as a result of the undetected errors discovered during the investigation of this matter.

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 first admitted in Arizona in 1987.

In mitigation²:

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/emotional problems.

² See Exhibit 1 to Respondent's February 8, 2013 Request for Protective Order for a discussion and evidence of Respondent's mitigation, including his personal or emotional problems; see *also* Protective Order entered on February 20, 2013.

Standard 9.32(d): Timely good faith effort to make restitution or to rectify consequences of misconduct.

Standard 9.32(e): Full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

Standard 9.32(g): Character and reputation. Respondent is a man of good character, with an excellent reputation in the legal community. Attached as Exhibit "B" are character letters in support of this mitigating factor.

Standard 9.32(l): Remorse.

Discussion

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 on the following: Although Respondent failed to maintain adequate trust account procedures and records and failed to supervise his employee which resulted in the theft of client funds, Respondent contends that this situation would not have occurred but for his personal/emotional issues. Moreover, Respondent made significant efforts to rectify his misconduct by making payments from his personal account to cover the amounts that his employee misappropriated. Furthermore, during the course of this investigation, client W.S. was understanding of Respondent's situation, and wrote a letter to the State Bar in support of him. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the

prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand, followed by one year of probation and participation in Law Office Management Assistance Program and Trust Account Ethics Enhancement Program, and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit "C."

DATED this 18th day of April, 2013.

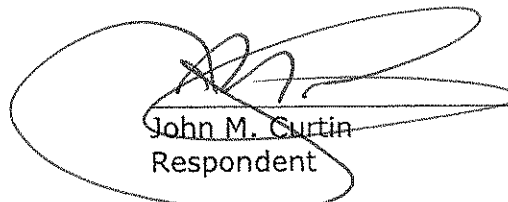
STATE BAR OF ARIZONA



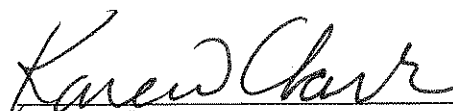
Nicole S. Kaseta
Staff Bar Counsel

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

DATED this 27th day of March, 2013.


John M. Curtin
Respondent

DATED this 28th day of March, 2013.


Karen Clark
Counsel for 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
this 1st day of April, 2013.

Copies of the foregoing mailed/emailed
this 1st day of April, 2013, to:

Karen Clark
Adams & Clark, PC
520 E. Portland Street, Suite 200
Phoenix, AZ 85004-1843
Email: karen@adamsclark.com
Respondent's Counsel

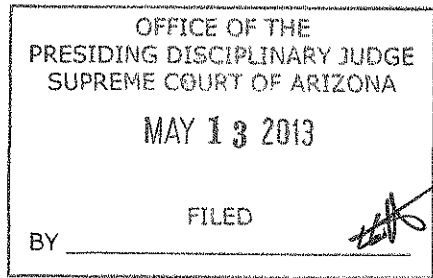
Copy of the foregoing emailed
this 1st day of April, 2013, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 1st day of April, 2013, to:

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

By: Diane C. Heller
NSK:dch



**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

**John M. Curtin
Bar No. 011435**

Respondent.

PDJ-2013-9035

FINAL JUDGMENT AND ORDER

State Bar No. 12-2259

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on April 1, 2013, pursuant to Rule 57(a), Ariz. R. Sup. Ct., and having submitted an Order Requesting Modification of Agreement for Discipline by Consent dated April 17, 2013, hereby accepts the parties' proposed agreement with the modification noted herein. Accordingly:

IT IS HEREBY ORDERED that Respondent, **John M. Curtin**, is hereby reprimanded for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, and for his conduct in violation of Arizona Rule of Professional Conduct 5.3(b) per the Order Requesting Modification of Agreement for Discipline by Consent.

IT IS FURTHER ORDERED that Respondent shall be placed on probation for a period of one year.

IT IS FURTHER ORDERED that, during the period of probation of one year, Respondent shall also complete the following:

LOMAP

Respondent shall contact the director of the State Bar's Law Office Management Assistance Program (LOMAP), at 602-340-7332, within 30 days of the date of the final judgment and order. Respondent shall submit to a LOMAP examination of his office's procedures, including, but not limited to, compliance with ER 1.15(a). The director of LOMAP shall develop "Terms and Conditions of Probation", and those terms shall be incorporated herein by reference. The probation period will commence at the time of the entry of the judgment and order and will conclude one (1) year from that date. Respondent shall be responsible for any costs associated with LOMAP.

TAEPP

Respondent shall attend a half-day Trust Account Ethics Enhancement Program (TAEPP). Respondent must contact the TAEPP Program Coordinator, State Bar of Arizona, at (602) 340-7278, within 20 days from the date of the final judgment and order. Respondent shall be responsible for the cost of attending the program.

NON-COMPLIANCE LANGUAGE

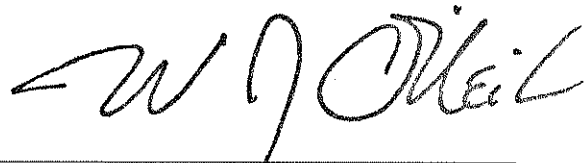
In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing

terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,286.71.

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 zero.

DATED this 13th day of May, 2013.

A handwritten signature in black ink, appearing to read "W J O'Neil", written over a horizontal line.

The Honorable 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 13th day of May, 2013.

Copies of the foregoing mailed/emailed
this 13th day of May, 2013, to:

Karen Clark
Adams & Clark, PC
520 East Portland Street
Phoenix, Arizona 85004-1843
Email: karen@adamsclark.com
Respondent's Counsel

Copy of the foregoing hand-delivered/emailed
this 13th day of May, 2013, to:

Nicole S. Kaseta
Staff Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: lro@staff.azbar.org

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

By: 