

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**SYLVIA L. THOMAS,**  
**Bar No. 023845**

Respondent.

**PDJ 2017-9053**

**FINAL JUDGMENT AND  
ORDER**

[State Bar No. 16-1878]

**FILED SEPTEMBER 6, 2017**

This matter was heard by the Hearing Panel, which rendered its Decision and Order on August 16, 2017. On August 30, 2017, Ms. Thomas filed a notice of appeal pursuant to Rule 59(a), Ariz. R. Sup. Ct., but filed no request for stay. The time for stay having expired; accordingly:

**IT IS ORDERED** Respondent **Sylvia L. Thomas, Bar No. 023845**, is suspended from the practice of law for six (6) months and one (1) day effective September 15, 2017.

**IT IS FURTHER ORDERED** Ms. Thomas shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

**IT IS FURTHER ORDERED** upon reinstatement, Ms. Thomas shall be placed on two (2) years of probation with the State Bar's Member Assistance Program.

**DATED** this September 6, 2017.

*William J. O'Neil*  
\_\_\_\_\_  
**Presiding Disciplinary Judge**

COPY of the foregoing e-mailed & mailed  
this 6<sup>th</sup> day of September 2017, to:

Nicole Kaseta  
Bar Counsel  
*State Bar of Arizona*  
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Sylvia L. Thomas  
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Respondent

by: AMcQueen

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**SYLVIA L. THOMAS,**  
**Bar No. 023845**

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**PDJ 2017-9053**

**DECISION AND ORDER  
IMPOSING SANCTIONS**

[State Bar No. 16-1878]

**FILED AUGUST 16, 2017**

Pursuant to Rule 58(d), Ariz. R. Sup. Ct.,<sup>1</sup> this matter proceeded to an aggravation/mitigation hearing on June 27, 2017, before the Hearing Panel (“Panel”). The Panel was composed of Glen S. Thomas, volunteer attorney member, Howard M. Weiske, volunteer public member and the Presiding Disciplinary Judge William J. O’Neil, (“PDJ”).

The hearing was scheduled for 9:00 a.m. Ms. Thomas had personal knowledge of the date and time of the hearing. After confirming that Ms. Thomas had not called or otherwise sent a communication to the Disciplinary Clerk explaining her non-appearance, the Panel commenced the hearing at 9:06 a.m. Ms. Thomas did not appear.

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<sup>1</sup> Unless stated otherwise, all Rule references are to the Ariz. R. Sup. Ct.

Staff Bar Counsel, Nicole Kaseta, appeared on behalf of the State Bar of Arizona. Twenty-three (23) exhibits were offered by the State Bar and admitted. Bar Counsel advised the Panel that Antonio J. Dominquez was available telephonically and was expected to testify consistent with the allegations in the complaint that pertained to him.

Although the allegations are deemed admitted by default, there has also been an independent determination by the Panel that the State Bar has proven by clear and convincing evidence that Ms. Thomas violated the ethical rules alleged. At the conclusion, the State Bar requested a six (6) month and one (1) day suspension. Bar Counsel further requested that if the Panel is inclined to impose a short-term suspension, that an independent medical examination be required as a condition of reinstatement.

### **PROCEDURAL HISTORY**

The State Bar of Arizona (“SBA”) filed its complaint on April 17, 2017. On April 20, 2017, the complaint was served on Ms. Thomas by certified, delivery restricted mail, as well as by regular first class mail, pursuant to Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge (“PDJ”) was assigned to the matter.

A notice of default properly issued on May 16, 2017. Pursuant to Rule 58(d), the default was effective on June 6, 2017. On that date a notice of aggravation and

mitigation hearing was sent to the parties notifying them that the aggravation mitigation hearing was scheduled for June 27, 2017 at 9:00 a.m., at the State Courts Building, 1501 West Washington Street, Phoenix, Arizona.

A respondent against whom an effective default has been entered no longer has the right to litigate the merits of the factual allegations, but retains the right to appear and participate in the hearing that will determine the sanctions. As stated above, Ms. Thomas did not appear.

### **FINDINGS OF FACT**

The facts listed below primarily consist of those set forth in the SBA's complaint and were deemed admitted by Ms. Thomas' default.

1. Ms. Thomas is a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on July 22, 2005.

#### **COUNT ONE (File no. 16-1878/Antonio J. Dominguez)**

2. On June 3, 2016, Ms. Thomas sent Antonio J. Dominguez (Dominguez) a "Litigation Preservation Notice" (Notice). Among other statements, the Notice asserted:

Please be advised of an impending federal lawsuit on behalf of *Sylvia Lynne Thomas, et al.* [Ms. Thomas] against the *Comunidad Universitaria del Golfo Centro dba Universidad Iberoamericana Puebla, et al.*, to be filed with the United States

District Court for the District of Arizona. This Notice does not mean that [Dominguez] is necessarily involved in the dispute; however [Dominguez] *is now under a legal duty to preserve all evidentiary records, that might become relevant to this matter, whether in printed, saved, stored, archived, recorded, faxed, emailed, scanned and texted or other electronic form (and to continue to preserve such evidentiary records related to the matter).*” (Emphasis in original). [Ex. 1, Bates SBA000003-6.]

3. The Notice directed Dominguez to preserve hundreds of categories of documents including guidelines, instructions, outlines, publications, translations, visitor registration logs, internal reference forms, “and the like.” [Id.] After receiving the Notice, Dominguez contacted the State Bar. [Id. at SBA000001.]

4. In an email dated June 8, 2016 to intake bar counsel, Dominguez wrote: “Since my practice focuses on Mexico, [I’m] not sure what [Ms. Thomas] is trying to accomplish with these emails. I’m not sure why she is suing the Mexican university in AZ, I’m not sure if she is trying to prevent me to get a potential client.”

5. On the same date, intake bar counsel emailed Ms. Thomas, attached the Notice, and directed her to “provide me with the basis for sending such a [Notice]” to Dominguez. Ms. Thomas refused to substantively respond to intake bar counsel’s question.

6. Ms. Thomas subsequently sent similar preservation letters to the State Bar and an attorney named Ronald Logan (Logan). Ms. Thomas informed Logan that she sent the preservation letters to every attorney that she has dealt with in her law practice.

7. On September 15, 2016, the State Bar sent Ms. Thomas a screening letter asking her to provide a copy of each preservation letter she sent to any person or entity. She was directed to identify the basis for the preservation letters, any legal support for the preservation letters, and the status of the “imminent lawsuit” referred to in the preservation letters. [Ex. 1, Bates SBA000001-2.]

8. The screening letter encloses the Notice Ms. Thomas had sent to Mr. Dominquez, and states “[y]ou also sent similar Preservation Letters to several staff members at the State Bar.” [Id.]

9. On the same date as the screening letter, Ms. Thomas advised the State Bar that she would not respond to the screening letter in a timely manner and that she was sending out more preservation letters. [Ex. 2.]

10. On September 16, 2016, Ms. Thomas again advised the State Bar that she would not timely respond to the screening letter by October 4, 2016, because “this matter will interfere with the prosecution of my Federal Antitrust Claims.” Ms. Thomas further advised that Dominguez, the Arizona Supreme Court, the State Bar, and Arizona State University were potential witnesses or defendants. She stated,

“given more recent discovery, additional federal antitrust Litigation Preservation Notices are scheduled for service.” [Ex. 3, Bates SBA000009-10.]

11. Bar counsel replied on September 19, 2016 and informed Ms. Thomas that she had a duty to cooperate by responding to the screening letter sent to her in the State Bar’s investigation. Ms. Thomas replied by email on September 19, 2016, stating “my having immediately advised you that I will not respond” by the Rule deadline “arises to cooperation.” She also wrote that “after the federal antitrust lawsuit is filed, likely on or about November 9, 2016, I will respond to the screening letter, but not before.” [Id. at SBA000008.] Ms. Thomas did not file her antitrust suit until May 8, 2017. [Ex. 19.]

12. On October 11, 2016, bar counsel sent Ms. Thomas a second letter requesting a response to the screening letter within ten days. [Ex. 4.]

13. Ms. Thomas failed to respond to the screening letter, and bar counsel requested and had a subpoena issued requiring a written response to the screening letter. [Ex. 5.] It was then personally served on Ms. Thomas. [Ex. 6.]

14. The subpoena directed Ms. Thomas to “substantively respond to the State Bar’s September 15, 2016 screening letter, including by producing the documents described in such screening letter, answering the questions posed in the screening letter, and addressing the ethical rules cited in the screening letter.” The subpoena demanded a response by 3 p.m. on December 2, 2016. Ms. Thomas was



personally served with the subpoena on November 9, 2016. [Ex. 6.] Civil Rule 45 is applicable to attorney discipline matters under Rule 48(b). As a result, Ms. Thomas was required to serve any objections “before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.” Ms. Thomas was required to file any objection prior to November 24, 2016. Ms. Thomas did not timely file an objection. Ms. Thomas did not comply with the subpoena by December 2, 2016.

15. Instead, on the required day of compliance, December 2, 2016, Ms. Thomas filed a twenty-three (23) page objection and motion to quash with the Attorney Discipline Probable Cause Committee (ADPCC). [Ex. 7.] Ms. Thomas’ objection and motion to quash included the argument that the subpoena was invalidly issued because the State Bar and the Arizona Supreme Court “are both interested party defendants” in her yet to be filed antitrust lawsuit. [Id.]

16. Ms. Thomas also alleged that the subpoena burdens her free exercise of religion and states: “It is a well-known fact that Ms. Thomas, though not a devout Christian, like all of her siblings was raised under the guidance of devout Christian practices; and as such Ms. Thomas applies parentally guided deep-seated Christian philosophies, parables and gospels, which promote having integrity throughout life . . . into her daily living, legal practice and business enterprise.” [Id. at SBA000035.]

17. On December 6, 2016, Ms. Thomas filed a thirty-seven (37) page amended objection and motion to quash the subpoena. [Ex. 8.] Under Civil Rule 45(e)(2)(D), the motion to quash was required to be filed “before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier.” Her amended motion was not timely.

18. Bar counsel filed a response and then an amended response to Ms. Thomas’ objections and motions to quash on December 7 and 8, 2016. [Ex. 9-10.]

19. On December 8, 2016, Ms. Thomas sent an email to State Bar general counsel John Furlong and wrote: “As we discussed would be forthcoming, the attached letter, in keeping with Guideline 8 of the Sedona Conference Commentary Guidelines, is intended to provide you with the promised information. . . commensurate with the discovery of new relevant, prior concealed and/or undisclosed information, documents and conduct during Plaintiffs’ pre-filing investigation process, which is coming to a close. . . . Also, given recent discovery of prior concealed or undisclosed information and/or conduct relevant to limitations statutes, we anticipate that you will receive two additional updates just prior to and/or upon the Firm’s filing of the Complaint.”

20. On December 12, 2016, Ms. Thomas emailed bar counsel’s assistant and asked if the State Bar filed a response on December 7 and December 8, 2016 to her objection and motion to quash and her amended objection and motion to quash.

Bar counsel's assistant confirmed the same and informed Ms. Thomas that she previously emailed Ms. Thomas the responses.

21. Ms. Thomas replied: "Once our IT specialists have just concluded their independent reviews of the SBA's electronic correspondence through December 13, 2016 . . . , so that the Firm can confirm what it received in relation to the SBA's December 7, 2016 and December 8, 2016 filings. . . . There is one item holding up completion . . . the Firm is not in receipt of a conformed . . . copy of the attached pdf format document . . . that the SBA filed . . . . Can you please immediately forward the file-stamped copy of the pdf formatted document . . . .?"

22. Bar counsel's assistant responded that Ms. Thomas should "click on the link at the end of the email" to retrieve the filings. Ms. Thomas then wrote: "In order to properly complete their independent analyses and assessments of the electronic correspondence that the Firm received . . . , our IT Specialists ask that for clarity, could you please state . . . to what email you are referring. . . ."

23. Bar counsel's assistant subsequently forwarded to Ms. Thomas a download receipt demonstrating that Ms. Thomas downloaded the responses. Bar counsel's assistant directed Ms. Thomas to "[s]croll down to the bottom of the email to download another copy" if she needed another copy. Ms. Thomas responded by stating that the State Bar's records were not accurate.

24. On December 14, 2016, bar counsel received a phone call and email from Kathleen Costa at the Internal Revenue Service (IRS). Ms. Costa informed bar counsel that Ms. Thomas sent the IRS two preservation letters.

25. On December 30, 2016, Ms. Thomas filed a reply in support of her objection and amended motion to quash which contends that chief bar counsel issued the subpoena to accomplish “unconstitutional aims.” Ms. Thomas attached to her reply an affidavit allegedly executed by a person named “Yoshi Budiyo” who claims to assist Ms. Thomas with IT issues. The affiant claims that he conducted an analysis of emails from the State Bar and that he advised Ms. Thomas not to open the documents attached to the State Bar’s December 7 and 8, 2016 emails.

26. On January 20, 2017, the ADPCC entered an order denying Ms. Thomas’ objections and motions to quash. [Ex. 11.]

27. Accordingly, on January 23, 2017, bar counsel emailed Ms. Thomas and requested that she comply with the subpoena by February 3, 2017. On January 24, 2017, Ms. Thomas replied: “**For the reasons previously stated and the arguments** set forth in the Ms. Thomas' Objection and Motion to Quash the SBA Subpoena and Motion to Dismiss the SBA Bar Charge, **which were unaddressed by the Committee**, in continued compliance with the Rules, the Ms. Thomas is unable to respond to the SBA Subpoena by February 3, 2017.” (Emphasis in original). [Ex. 12.]

28. On February 6, 2017, bar counsel filed a Verified Notice of Failure to Comply with Subpoena and Petition for Order to Show Cause (Petition) with the disciplinary clerk pursuant to Rule 47(h)(4) and Rule 55(b)(1)(B). [Ex. 13.]

29. Ms. Thomas did not file a response to the Petition.

30. On February 8, 2017, the Presiding Disciplinary Judge (PDJ) issued an Order to Show Cause Re: Contempt setting a show cause hearing (“O.S.C.”) for February 28, 2017. At the conclusion of the O.S.C. on that date, the PDJ entered an immediate Order of Suspension of License to Practice Law for failing to comply with the subpoena. The Order was supported by findings of fact and conclusions of law. The PDJ found that Ms. Thomas knowingly failed to provide documents responsive to the subpoena. In accordance with Rule 47(h)(4)(B), the Order directed that Ms. Thomas could “purge her contempt by the full and complete delivery of the documents sought by Bar Counsel...” As provided in that Rule, the Order also stated that “upon verification of compliance,” the presiding disciplinary judge would enter an order of reinstatement. [Exhibit 14 & 15.]

31. Ms. Thomas was also ordered to comply with the notification requirements to clients, adverse parties and other counsel of Rule 72(a)

32. On March 13, 2017, Ms. Thomas provided bar counsel documents responsive to the subpoena. The documentation shows that Ms. Thomas sent more than 130 preservation notices, including to the Office of the Attorney General, the

Maricopa County Superior Court, the Ninth Circuit Court of Appeals, the United States District Court for the District of Arizona, numerous law firms, the Internal Revenue Service, and the State Bar. The documentation supports Ms. Thomas' statement that she sent preservation notices on all persons or entities that she has dealt with in her practice of law.

33. By engaging in the misconduct described above, Ms. Thomas violated several ethical rules including, but not limited to: Rule 42, Ariz. R. Sup. Ct., Ethical Rules 1.1, 3.1, 3.4(c), 4.4(a), 8.1(b), and 8.4(d), and Rule 54(d), Ariz. R. Sup. Ct. The District Court dismissal order further implicates ER 1.1, however the hearing panel is disinclined to analyze it as the complaint was not amended to include that ruling.

### **CONCLUSIONS OF LAW**

Ms. Thomas failed to file an answer or otherwise defend against the allegations in the SBA's complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Panel finds by clear and convincing evidence that Ms. Thomas violated the following: Rule 42, Ariz. R. Sup. Ct., Ethical Rules (ER) 1.1 (competence), 3.1 (meritorious claims and contentions), 3.4(c) (fairness to opposing party and counsel), 4.4(a) (respect for rights of others), 8.1(b) (disciplinary

matter), and 8.4(d) (misconduct), and Rule 54(d) (violation of any obligation in a disciplinary investigation), Ariz. R. Sup. Ct.

ER 1.1 is implicated as the Notice is clear and convincing evidence that Ms. Thomas does not understand the most fundamental legal doctrines or procedures. The comment to ER 3.1 notes that “a lawyer has a duty not to abuse the legal process or the justice system.” *In Matter of Levine*, 174 Ariz. 146, 847 P.2d 1093 (1993), the Supreme Court ruled that the test for compliance with ER 3.1, had both an objective and a subjective component. “Therefore, if an improper motive or a bad faith argument exists, respondent will not escape ethical responsibility for bringing a legal claim that may otherwise meet the objective test of a non-frivolous claim.” [Id., 174 Ariz. at 153, 847 P.2d at 1100.]

The Court also ruled, “Thus, a common theme in both our procedural and ethical rules is the examination of whether a claim is frivolous by considering both the objective legal reasonableness of the theory and the subjective motive of the proponent of the claim.” [Id.]

The Litigation letters of Ms. Thomas did not seek to extend or modify existing law. Instead they contained explicit baseless threats declaring the recipient was under an expansive “legal duty” to preserve all records “that might become relevant.” These specifically included their communications with their “attorneys.” This declared “legal duty” was imposed despite that the Notice declared it did not

mean that the recipient “is necessarily involved in the dispute.” [Ex. 1, Bates SBA000003-4.]

It stated in bold print, “This is an important legal duty and failure to follow these instructions may subject (the recipient) to discipline, as the failure to preserve such evidentiary records has very serious consequences for the (recipient).” [Id. at SBA000006.]

Under ER 3.4(c), a lawyer may not “unlawfully obstruct another party’s access to evidence. *See In re Stover*, 104 P.3d 394 (Kan. 2005). Likewise, “Failure to comply with a court order is the very heart of the subject misconduct.” *Matter of Miranda*, 176 Ariz. 202, 204, 859 P.2d 1335, 137 (1993). ER 3.4(c) prohibits lawyers from disobeying the rules of a tribunal. *In re Gabriel*, 837 P.2d 149 (Ariz. 1992). When a lawyer’s noncompliance with a subpoena leads to a court order compelling compliance and the lawyer continues to refuse to comply, ER. 3.4(d) is violated because the lawyer knowingly disobeys an obligation under the rules of a tribunal. [Id.] ER 3.4(c) requires an attorney to use reasonably diligent effort to comply with legally proper discovery requests. *In re Ames*, 171 Ariz. 125, 829 P.2d 315 (1992).

The comment to ER 4.4 should have been instructive to Ms. Thomas. It states,

Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility



does not imply that a lawyer may disregard the rights of third persons. It is impracticable to catalogue such rights, but they include *legal restrictions on methods of obtaining evidence from others* and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

As the comment further explains, “threatening either criminal or civil proceedings to gain leverage for a client in a civil matter violated Rule 4.4,” when it is made with no “substantial purpose.” Such threats also implicate ER 8.4.

The refusal to respond to lawful demands for information from the State Bar is a violation of ER 8.1 The fact that Thomas eventually responded does not cure the initial delay. *See Att’y Grievance Com. V. Weiers*, 102 A.3d. 332 (Md. 2014.) *See also In re Obert*, 282 P.3d. 825 (Or. 2012). There the Court rejected the lawyer’s argument that eventual response constituted compliance.

### **ABA STANDARDS ANALYSIS**

The American Bar Association’s *Standards for Imposing Lawyer Sanctions* (“*Standards*”) are a “useful tool in determining the proper sanction.” *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should be considered: (1) the duty violated; (2) the lawyer’s mental state; (3) the actual or potential injury caused by the lawyer’s misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0*.

**Duties violated:**

Ms. Thomas violated her duty to the legal system by violating ERs 1.1, 3.1, 3.4(c), 4.4(a), and 8.4(d). Ms. Thomas violated her duty as a professional by violating ER 8.1(b) and Rule 54(d), Ariz. R. Sup. Ct.

**Mental State and Injury:**

Ms. Thomas violated her duty to clients, thereby implicating *Standard 4.5*. *Standard 4.51* states: “Disbarment is generally appropriate when a lawyer’s course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures, and the lawyer’s conduct causes injury or potential injury to a client.” *Standard 4.52* states: “Suspension is generally appropriate when a lawyer engages in an area of practice in which the lawyer knows he or she is not competent, and causes injury or potential injury to a client.”

In this matter, Ms. Thomas sent litigation preservation notices to any attorney that she ever came into contact with and subsequently filed a frivolous and nonsensical complaint against approximately eighty (80) entities or individuals. [SBA Exhibits 19 & 23]. Ms. Thomas’ litigation preservation notices and her subsequent complaint demonstrate that she does not understand the most fundamental legal doctrines or procedures and, therefore, that the *Standard 4.51* applies.

Ms. Thomas also violated her duty to the legal system, which implicates *Standard 6.2*. *Standard 6.22* states: “Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or party, or interference or potential interference with a legal proceeding.”

In this matter, Ms. Thomas intentionally failed to respond to the State Bar’s screening letter and intentionally failed to timely respond to the State Bar’s subpoena. Ms. Thomas sent frivolous litigation preservation notices to approximately 130 persons or entities. Ms. Thomas’ conduct caused actual interference with the disciplinary proceeding and resulted in the Presiding Disciplinary Judge issuing an order to show cause and a subsequent order finding Ms. Thomas in contempt. Accordingly, *Standard 6.22* applies.

Ms. Thomas also violated her duty owed as a professional, which implicates *Standard 7.0*. *Standard 7.2* states, “Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.”

In this matter, Ms. Thomas intentionally engaged in conduct that is a violation of her duty as a professional. Ms. Thomas failed to respond to the SBA’s investigation which caused potential injury to the legal system. Therefore, *Standard 7.2* applies.

## **AGGRAVATING AND MITIGATING FACTORS**

Rule 58(k) Rule 58(k) mandates that, “Sanctions imposed shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions*.”

In her Objection, Ms. Thomas declared that

[T]he American Bar Association’s Standards for imposing Lawyer Sanctions are not applicable in this repugnant sham disciplinary proceeding. Any sanction analysis and adversarial finding against the Respondent in relation to this repugnant, unconstitutional sham disciplinary proceeding are likewise unconstitutionally founded and inapplicable. [Objection, Page 19, lines 4-10.]

Ms. Thomas listed on that same page, under the heading of aggravation and mitigation factors that, “Any adversarial finding by the Hearing Panel against the Respondent in relation to this repugnant sham disciplinary proceeding are unconstitutionally founded and inapplicable.”

Notwithstanding, the Panel finds the following aggravating factors are present in this matter:

- *Standard 9.22(c)*, a pattern of misconduct. Ms. Thomas sent litigation frivolous litigation preservation notices to over 130 persons or entities.

- *Standard 9.22(e)*, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency. Ms. Thomas failed to respond to the bar charge, failed to timely respond to a subpoena which resulted in a contempt order, and filed a notice of removal of this case to federal court without legal cause. [Ex. 1-15, & Ex. 20]. Ms. Thomas' removal resulted in the State Bar having to expend time to file a motion for remand. [Ex. 21]. It also resulted in the District court having to expend time in drafting and issuing an order remanding the case to the disciplinary clerk. [Ex. 22.]

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

The Panel finds the following mitigating factor applies:

- *Standard 9.32(a)*, absence of a prior disciplinary record.

The Panel finds the sole mitigating factor does not outweigh the aggravating factors.

### **PROPORTIONALITY**

In the past, the Supreme Court has consulted similar cases in an attempt to assess the proportionality of the sanction recommended. *See In re Struthers*, 179 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept or proportionality review is “an imperfect process.” *In re Owens*, 182

Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases “are ever alike.” *Id.*

To have an effective system of professional sanctions, there must be internal consistency, and it is appropriate to examine sanctions imposed in cases that are factually similar. *See In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual case, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In *In Re Moffatt*, SB-15-1449, Moffatt was disbarred after an aggravation mitigation hearing. Moffatt solicited nude photographs and sex for legal services from a prospective client. After the State Bar served Moffatt with its complaint, Moffatt removed the complaint to the U.S. District Court twice. In each instance, the U.S. District Court remanded the matter to the Arizona Supreme Court. Moffatt failed to participate in the disciplinary proceedings. He failed to file an initial disclosure statement, refused to participate in a settlement conference, and failed to respond to discovery during the discipline proceedings. He also failed to appear for his deposition and a hearing that the presiding disciplinary judge scheduled at his request. He filed numerous motions that contained nonsensical or unsupported allegations. Moffatt violated ERs 8.4(a), 8.4(b), 8.1(b), and Rules 41(g) and 54(d),

Ariz. R. Sup. Ct. Aggravating factors included prior disciplinary offenses, selfish motive, bad faith obstruction of the disciplinary proceeding, refusal to accept wrongful nature of conduct, vulnerability of victim, and illegal conduct. There were no mitigating factors.

In *In Re Gertell*, SB-0400147-D, Gertell accepted an agreement for a 90 day suspension and two years of probation to include LOMAP. Gertell failed to respond to the State Bar's investigation, failed to act diligently and communicate with clients, controverted an issue without a good faith basis and failed to provide timely accountings to clients. Gertell violated ERs 1.2, 1.3, 1.4, 1.15, 1.16, 3.1, 8.1(b), 8.4(d), and Rules 51 and 63, Ariz. R. Sup. Ct. Aggravating factors included prior disciplinary offenses, a pattern of misconduct, multiple offenses, and substantial experience in the practice of law. Mitigating factors included personal or emotional problems, timely good faith effort to make restitution, and remorse.

In *In Re Chenal*, SB-05-0104-D, Chenal accepted an agreement for a 120 day suspension with two years of probation (LOMAP/MAP) and restitution. Chenal failed to provide competent representation to clients, failed to act with diligence and promptness, failed to keep clients informed about the status of their cases, brought a proceeding or asserted issues without a good faith basis, engaged in conduct that was unfair to the opposing party, engaged in the unauthorized practice of law, and engaged in conduct prejudicial to the administration of justice. Chenal violated ERs

1.1, 1.2, 1.3, 1.4, 3.1, 3.4, 5. 5, and 8.4(d). Aggravating factors included a pattern of misconduct and substantial experience in the practice of law. Mitigating factors included absence of a prior disciplinary record, absence of dishonest or selfish motive, personal or emotional problems, timely good faith effort to make restitution, full and free disclosure to disciplinary board, and remorse.

This case is similar to the above cases in that the above cases involve the removal of a discipline case to federal court, the filing of nonsensical documents, or asserting issues without a good faith basis.

On May 8, 2017, Ms. Thomas filed a 256 page Complaint in the United States District Court of Arizona for “antitrust violations, civil rights violations and violations of their international human rights analogues, violations of the United States Constitution analogues and Violations of United States law and treaties.” [Ex. 19.] On May 17, 2017, the District Court issued its Order dismissing the complaint with prejudice and ordering the Clerk of the Court to terminate the action. As with much of her pleadings she states descriptive conclusions without normative analysis.

The Court found, “A cursory read of Plaintiff’s 256-page, 912-paragraph complaint plainly evinces that the claims presented are frivolous.” The Court found “The claims lack any arguable basis in law and the factual allegations of a mass logotherapy conspiracy are ‘fanciful,’ ‘fantastic,’ and ‘delusional.’” (Citations omitted.) [Ex. 23, Bates SBA 000610-611.]



On May 30, 2017, Ms. Thomas filed a Notice of Removal of this disciplinary proceeding. The notice identified this proceeding as a “civil action.” One of the grounds stated for removal by Ms. Thomas states she was aware of the April 20, 2017 State Bar “conformed Complaint” in this proceeding. Ms. Thomas had no legal basis for her filing of the Notice of Removal as she knew or should have known the United States District Court had no subject matter jurisdiction.

[J]ust prior to the May 8, 2017 filing of the District Court action 2:17-CV-01409-SPL wherein Defendant’s May 10, 2017 Application for Temporary Restraining Order was subsequently denied May 17, 2017 by finding, “Although federal antitrust claims fall within the exclusive jurisdiction of federal courts, they do not serve as a basis for injunction against the Arizona Supreme court or the State Bar of Arizona.”

[Ex. 20, ¶ 2.]

Ms. Thomas certified that she only served the notice upon William Fairbourn of Bonnet Fairbourn Friedman & Balint, PC whom Ms. Thomas listed as “Attorneys for Plaintiff.” [Id. at SBA000589.] Her notice was filed with the Disciplinary Clerk. In her cover sheet to the District Court, Ms. Thomas listed, “REMOVAL FROM MARICOPA COUNTY, CASE #PDJ 2017-9053”. Under “Origin” she asserted to

the District Court that the case was “Removed from State Court.” She certified the “Nature of Suit” was “410 Antitrust.”

Ms. Thomas knew that the District Court in its May 17, 2017, dismissal order found as a matter of law, “the regulation of attorneys by a state supreme court and the state bar are exempt from Sherman Act challenges.” The Sherman Antitrust Act is the federal law prohibiting any contract, trust, or conspiracy in restraint of interstate or foreign trade. The District Court also found as a matter of law that as a result, it did not need to consider the Clayton Act, which amends and clarifies the Sherman Antitrust Act. [Ex. 23, Bates SBA0000609, Footnote 3.]

On June 6, 2017, the District Court found the “Notice of Removal fails to establish that this Court has, or would have had, jurisdiction over Plaintiff’s Complaint.” The Court also declared the Notice filed by Ms. Thomas only subjectively “claims this Court has subject-matter jurisdiction” but as with the District Court ruling cited by her in her Notice, the Court remanded this proceeding finding the Arizona Supreme Court “has exclusive jurisdiction to discipline lawyers.” [Ex. 22.]

The Panel considers these exhibits only for the purpose of determining the state of mind of Ms. Thomas and aggravation.

At 9:32 a.m., after the conclusion of the Aggravation/Mitigation hearing, Ms. Thomas appeared at the filing counter of the disciplinary clerk and filed a 23 page

Objection to the Rule 58(k) Proposed Hearing Panel Report, (“Objection”). The Panel read and considered the Objection. It is demonstrable evidence that nothing impeded the appearance of Ms. Thomas at the aggravation/mitigation hearing minutes earlier, nor was she incapable of timely filing an answer.

Many of the proposed findings were conceded by Ms. Thomas. The Panel found much of the pleading to be unsupported descriptive argument and rarely raised objections to the findings. For the Panel, the pleading underscores why suspension is warranted and that the actions of Ms. Thomas giving rise to the complaint and these proceedings were intentional.

She asserted, “Respondent is obligated and privileged to refrain from participation in the State Bar unconstitutional sham disciplinary proceedings...” [Objection, page 18, lines 12-13.] Ms. Thomas repeats this theme on Page 19, stating, “this repugnant, unconstitutional sham disciplinary proceeding” at line 8 and similarly at line 17.

The conclusion of Ms. Thomas begins on Page 20, increases the font size throughout, and proceeds with an eighteen (18) line, run on sentence. It is epitomized by her use of the word “begat” eleven times. On Page 21, Ms. Thomas continues with a thirteen (13) line, run on sentence, which uses the word “begat” five additional times. For support of this second lengthy sentence she cites to the United States

Supreme Court case of *Mapp v. Ohio*, (citations omitted). There is nothing that suggests how or why it applies.

Ms. Thomas completes her argument stating, “Any adversarial conclusions against the Respondent in relation to this repugnant, unconstitutional sham disciplinary proceeding are likewise unconstitutionally founded and inapplicable.”

At 12:00 p.m., Ms. Thomas filed a Notice of Errata regarding her Objection. Ms. Thomas sought to amend her objection to incorporate by reference various pleadings filed with the Supreme Court, including a “Motion to Temporarily Stay Appeal to Permit Appellant’s Filing of a Notice of Appeal of the Disciplinary Court’s Effective Entry of Default and to [Consolidate] the Briefing Schedule filed June 20, 2017 with the Arizona Supreme Court.” She also sought to incorporate the “Consolidated Opening Brief” she states she filed June 21, 2017, with the Supreme Court.

None of these documents have been filed with the disciplinary clerk. Nor does Ms. Thomas state any basis for how or why they would be material to our determination. The hearing panel declines to consider pleadings not filed with the disciplinary clerk.

The decision of the Panel was delayed by the filing of a June 27, 2017, “Motion for Immediate Disqualification” of the PDJ. The disciplinary clerk assigned the motion to a volunteer attorney member of the hearing pool under Rule 51(d). On

July 18, 2017, the assigned hearing officer denied the motion. To the extent Ms. Thomas intended the motion to be a request for recusal, the request is declined by the PDJ.

### **CONCLUSION**

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.’” *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

Ms. Thomas submits descriptions or explanations, but neither involves reasoning from a premise or premises to a conclusion. The Hearing Panel has determined the appropriate sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. Based upon the above, the Hearing Panel orders as follows:

1. Ms. Thomas shall be suspended from the practice of law for a period of six (6) months and one (1) day, effective thirty (30) days from the date of this order, with terms and conditions of reinstatement to be determined at

the time of reinstatement; however, any terms and conditions of reinstatement shall include a minimum two (2) years of probation including Ms. Thomas' participation in the SBA's Members Assistance Program.

2. Ms. Thomas shall pay all costs and expenses incurred by the SBA and the Office of the Presiding Disciplinary Judge in this proceeding.

A final judgment and order will follow.

**DATED** this 16th day of August 2017.

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

*Howard M. Weiske*  
**Howard M. Weiske, Volunteer Public Member**

*Glen S. Thomas*  
**Glen S. Thomas, Volunteer Attorney Member**

Copy of the foregoing e-mailed  
this 16th day of August, 2017, and  
mailed August 17, 2017, to:

Sylvia L. Thomas  
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PO Box 1584  
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Email: [sylvia.thomas@sltlaw.net](mailto:sylvia.thomas@sltlaw.net)  
Respondent

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

by: AMcQueen

Nicole S. Kasetta, Bar No. 025244  
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OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

APR 17 2017

FILED  
BY 

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**SYLVIA L. THOMAS,  
Bar No. 023845,**

Respondent.

PDJ 2017-9053

**COMPLAINT**

[State Bar No. 16-1878]

Complaint is made against Respondent as follows:

**GENERAL ALLEGATIONS**

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on July 22, 2005.

**COUNT ONE (File no. 16-1878/Dominguez)**

2. On June 3, 2016, Respondent sent Antonio J. Dominguez (Dominguez) a "Litigation Preservation Notice" (Notice). The Notice states: "Please be advised of an impending federal lawsuit on behalf of *Sylvia Lynne Thomas, et al.* [Respondent] against the *Comunidad Universitaria del Golfo Centro dba Universidad Iberoamericana Puebla, et al.*, to be filed with the United States District Court for the District of Arizona. This Notice does not mean that [Dominguez] is necessarily involved in the dispute; however [Dominguez] *is now under a legal duty to preserve all evidentiary records, that might become relevant to this matter, whether in printed, saved, stored, archived, recorded, faxed, emailed, scanned and texted or other electronic form (and to continue to preserve such evidentiary records related to the matter).*" (emphasis in original).

3. The Notice directs Dominguez to preserve hundreds of categories of documents including guidelines, instructions, outlines, publications, translations, visitor registration logs, internal reference forms, "and the like."

4. After receiving the Notice, Dominguez contacted the State Bar.

5. In an email dated June 8, 2016 to intake bar counsel, Dominguez wrote: "Since my practice focuses on Mexico, [I'm] not sure what [Respondent] is



trying to accomplish with these emails. I'm not sure why she is suing the Mexican university in AZ, I'm not sure if she is trying to prevent me to get a potential client."

6. On the same date, intake bar counsel emailed Respondent, attached the Notice, and directed her to "provide me with the basis for sending such a [Notice]" to Dominguez.

7. Respondent did not substantively respond to intake bar counsel's question.

8. Respondent subsequently sent similar preservation letters to the State Bar and an attorney named Ronald Logan (Logan).

9. Respondent informed Logan that she sent the preservation letters to every attorney that she has dealt with in her law practice.

10. On September 15, 2016, the State Bar sent Respondent a screening letter asking her to provide a copy of each preservation letter she sent to any person or entity and to identify the basis for the preservation letters, any legal support for the preservation letters, and the status of the "imminent lawsuit" referred to in the preservation letters.

11. The screening letter encloses the Notice and states “[y]ou also sent similar Preservation Letters to several staff members at the State Bar.”

12. On the same date as the screening letter, Respondent advised the State Bar that she would not respond to the screening letter in a timely manner and that she was sending out more preservation letters.

13. On September 16, 2016, Respondent again advised the State Bar that she would not timely respond to the screening letter because “this matter will interfere with the prosecution of my Federal Antitrust Claims.”

14. Respondent further advised that Dominguez, the Arizona Supreme Court, the State Bar, and Arizona State University were potential witnesses or defendants.

15. Bar counsel responded and advised Respondent that she had a duty to cooperate in the State Bar’s investigation.

16. Respondent replied that she would likely respond to the screening letter by November 9, 2016 but not before then.

17. On October 11, 2016, bar counsel sent Respondent a second letter requesting a response to the screening letter within ten days.

18. Because Respondent failed to respond to the screening letter, bar counsel had a subpoena issued and served on Respondent.

19. The subpoena directs Respondent to “substantively respond to the State Bar’s September 15, 2016 screening letter, including by producing the documents described in such screening letter, answering the questions posed in the screening letter, and addressing the ethical rules cited in the screening letter.”

20. The subpoena demands a response by 3 p.m. on December 2, 2016.

21. Respondent did not comply with the subpoena by December 2, 2016.

22. Instead, on December 2, 2016, Respondent filed an objection and motion to quash with the Attorney Discipline Probable Cause Committee (ADPCC).

23. Respondent’s objection and motion to quash contains no legitimate legal arguments to support her objection.

24. For example, in her objection and motion to quash, Respondent states that the subpoena was invalidly issued because the State Bar and the Arizona Supreme Court “are both interested party defendants” in her yet to be filed antitrust lawsuit.

25. In her objection and motion to quash, Respondent also alleges that the subpoena burdens her free exercise of religion and states: “It is a well-known fact that Respondent, though not a devout Christian, like all of her siblings was raised under the guidance of devout Christian practices; and as such Respondent applies parentally guided deep-seated Christian philosophies, parables and gospels, which promote having integrity throughout life . . . into her daily living, legal practice and business enterprise.”

26. On December 6, 2016, Respondent filed an amended objection and motion to quash the subpoena.

27. Respondent’s amended objection and motion to quash also contains no legitimate legal arguments.

28. Bar counsel filed a response and then an amended response to Respondent’s objections and motions to quash on December 7 and 8, 2016.

29. On December 8, 2016, Respondent sent an email to State Bar general counsel John Furlong and wrote: “As we discussed would be forthcoming, the attached letter, in keeping with Guideline 8 of the Sedona Conference Commentary Guidelines, is intended to provide you with the promised information. . . commensurate with the discovery of new relevant, prior concealed

and/or undisclosed information, documents and conduct during Plaintiffs' pre-filing investigation process, which is coming to a close. . . . Also, given recent discovery of prior concealed or undisclosed information and/or conduct relevant to limitations statutes, we anticipate that you will receive two additional updates just prior to and/or upon the Firm's filing of the Complaint."

30. On December 12, 2016, Respondent emailed bar counsel's assistant and asked if the State Bar filed a response on December 7 and December 8, 2016 to her objection and motion to quash and her amended objection and motion to quash.

31. Bar counsel's assistant confirmed the same and informed Respondent that she previously emailed Respondent the responses.

32. Respondent replied: "Once our IT specialists have just concluded their independent reviews of the SBA's electronic correspondence through December 13, 2016 . . . , so that the Firm can confirm what it received in relation to the SBA's December 7, 2016 and December 8, 2016 filings. . . . There is one item holding up completion . . . the Firm is not in receipt of a conformed . . . copy of the attached pdf format document . . . that the SBA filed . . . . Can you please immediately forward the file-stamped copy of the pdf formatted document . . . .?"

33. Bar counsel's assistant responded that Respondent should "click on the link at the end of the email" to retrieve the filings.

34. Respondent then wrote: "In order to properly complete their independent analyses and assessments of the electronic correspondence that the Firm received . . . , our IT Specialists ask that for clarity, could you please state . . . to what email you are referring. . . ."

35. Bar counsel's assistant subsequently forwarded to Respondent a download receipt demonstrating that Respondent downloaded the responses.

36. Bar counsel's assistant directed Respondent to "[s]croll down to the bottom of the email to download another copy" if she needed another copy.

37. Respondent responded by stating that the State Bar's records were not accurate.

38. On December 14, 2016, bar counsel received a phone call and email from Kathleen Costa at the Internal Revenue Service (IRS).

39. Ms. Costa informed bar counsel that Respondent sent the IRS two preservation letters.

40. On December 30, 2016, Respondent filed a reply in support of her objection and motion to quash.

41. Respondent's reply contains no legitimate legal arguments.

42. For example, Respondent's reply contends that chief bar counsel issued the subpoena to accomplish "unconstitutional aims."

43. Respondent attached to her reply an affidavit allegedly executed by a person named "Yoshi Budiyanto" who claims to assist Respondent with IT issues.

44. The affiant claims that he conducted an analysis of emails from the State Bar and that he advised Respondent not to open the documents attached to the State Bar's December 7 and 8, 2016 emails.

45. On January 20, 2017, the ADPCC entered an order denying Respondent's objections and motions to quash.

46. The ADPCC, however, did not designate a date by which Respondent must comply with the subpoena.

47. Accordingly, on January 23, 2017, bar counsel emailed Respondent and requested that she comply with the subpoena by February 3, 2017.

48. On January 24, 2017, Respondent replied: "**For the reasons previously stated and the arguments** set forth in the Respondent's Objection and Motion to Quash the SBA Subpoena and Motion to Dismiss the SBA Bar Charge,

**which were unaddressed by the Committee**, in continued compliance with the Rules, the Respondent is unable to respond to the SBA Subpoena by February 3, 2017.” (emphasis in original).

49. On February 6, 2017, bar counsel filed a Verified Notice of Failure to Comply with Subpoena and Petition for Order to Show Cause (Petition) with the disciplinary clerk.

50. Respondent did not file a response to the Petition.

51. On February 8, 2017, the Presiding Disciplinary Judge (PDJ) entered an Order to Show Cause Re: Contempt setting a show cause hearing for February 28, 2017.

52. On February 28, 2017, after the show cause hearing, the PDJ entered an Order of Suspension of License to Practice Law interim.

53. The PDJ interim suspended Respondent for failing to comply with the subpoena.

54. The PDJ found that Respondent knowingly failed to provide documents responsive to the subpoena.

55. On March 13, 2017, Respondent finally provided bar counsel documents responsive to the subpoena.



56. The documentation shows that Respondent sent more than 130 preservation notices, including to the Office of the Attorney General, the Maricopa County Superior Court, the Ninth Circuit Court of Appeals, the United States District Court for the District of Arizona, numerous law firms, the Internal Revenue Service, and the State Bar.

57. The documentation supports Respondent's statement that she sent preservation notices on all persons or entities that she has dealt with in her practice of law.

58. Respondent's conduct in this count violated Rule 42, Ariz. R. Sup. Ct., Ethical Rules 1.1, 3.1, 3.4(c), 4.4(a), 8.1(b), and 8.4(d), and Rule 54(d), Ariz. R. Sup. Ct.

DATED this 17<sup>th</sup> day of April, 2017.

**STATE BAR OF ARIZONA**



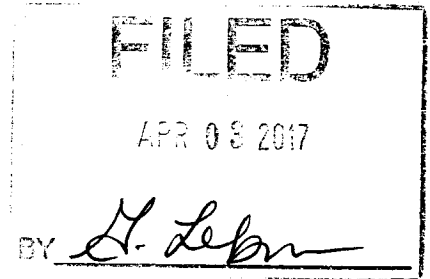
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Nicole S. Kaseta  
Staff Bar Counsel

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 17<sup>th</sup> day of April, 2017.

by: Karen E. Calvo  
NSK:kec

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



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

No. 16-1878

**SYLVIA L. THOMAS  
Bar No. 023845**

**PROBABLE CAUSE ORDER**

Respondent.

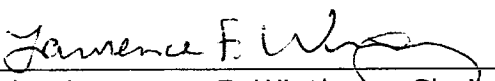
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on March 10, 2017, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-1878.

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

Parties may not file motions for reconsideration of this Order.

**DATED** this 3 day of April, 2017.

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

Original filed this 3<sup>rd</sup> day  
of April, 2017, with:

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

Copy mailed this 4<sup>th</sup> day  
of April, 2017, to:

Sylvia L. Thomas  
The Law Office of Sylvia L. Thomas, LLC  
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Respondent

Copy emailed this 4<sup>th</sup> day  
of April, 2017, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
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by: Karen S. Calcagno