

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

MICHAEL G. TAFOYA,
Bar No. 018655

Respondent.

PDJ NO. 2015-9027

FINAL JUDGMENT AND ORDER

[State Bar No. 13-1703]

FILED APRIL 10, 2015

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on March 31, 2015, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED Respondent, **Michael G. Tafoya**, is hereby 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 Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,223.80 within 90 days from the date of service 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 10th day of April, 2015.

/

/

William J. O'Neil

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

Copies of the foregoing mailed/emailed
this 10th day of April, 2015.

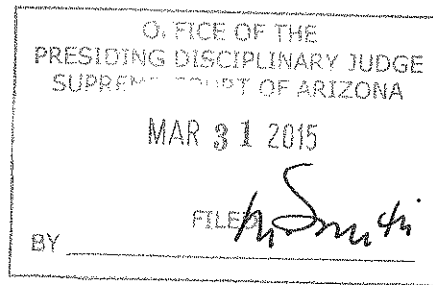
Michael G. Tafoya
P.O. Box 930
Maricopa, AZ 85139-0317
Email: michael.tafoya@azbar.org
Respondent

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

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

by: JAlbright

David L. Sandweiss, Bar No. 005501
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7250
Email: LRO@staff.azbar.org



Michael G. Tafoya, Bar No. 018655
P.O. Box 930
Maricopa, AZ 85139-0317
Telephone 520-450-0537
Email: michael.tafoya@azbar.org
Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

**MICHAEL G. TAFOYA,
Bar No. 018655,**

Respondent.

PDJ No. PDS-2015-9027

**AGREEMENT FOR DISCIPLINE BY
CONSENT (Prefiling)**

State Bar File No. 13-1703

The State Bar of Arizona through undersigned Bar Counsel, and Respondent Michael G. Tafoya 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.¹ This matter has not been presented to the Attorney Discipline Probable Cause Committee and no probable cause order has been entered. 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 admissions and proposed form of discipline are approved.

¹ All references herein to rules are to the Arizona Rules of the Supreme Court unless otherwise expressly stated.

Pursuant to Rule 53(b)(3) notice of this agreement was provided to the complainant by telephone on March 12, 2015, and by letter and email on March 19, 2015. Complainant has been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice; he told bar counsel that he has no objection.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.3 (diligence) and 8.4(d) (conduct prejudicial to the administration of justice). Respondent agrees to accept a reprimand. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding within 90 days from the date of this order, and if costs are not paid within the 90 days interest will begin to accrue at the legal rate.² The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

COUNT ONE of ONE (File No. 13-1703/George Tacker, Complainant)

BACKGROUND

1. Respondent was licensed to practice law in Arizona on January, 21, 1998.

2. Complainant is a suspended attorney who brought this charge in July 2013, before he was suspended. At the time, Complainant represented Vince Goett in various civil cases and in Mr. Goett's divorce from Melissa Goett. Complainant explained that he brought this charge after reviewing Mrs. Goett's bankruptcy case file.

² 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. Before Complainant began representing Mr. Goett, Respondent represented Mr. and Mrs. Goett in 13 litigated cases in various state and federal courts; Mrs. Goett in her 2008 Chapter 11 bankruptcy case (converted to a Ch. 7 case in 2009); and in many other pre-litigation or non-litigated matters.

4. Bankruptcy Judge George Nielsen denied Mrs. Goett's discharge in January 2011 after adversary proceedings (in which Respondent did not represent her; Mrs. Goett represented herself *in proper personam*).

FACTS

5. Due to past banking offenses, the Goetts were unable to open a bank account.

6. Despite owning homes in Paradise Valley and several cars, they claimed to have no steady income and were supported by gifts and loans from family, friends, and business associates.

7. Respondent did not want to accept or hold in his trust account money from third-party payors to finance the Goetts' legal fees.

8. On March 24, 2008, three months before Mrs. Goett filed for bankruptcy protection (June 29, 2008), Respondent opened a Goett Legal Fund Holding Account at Wells Fargo Bank, in his name.

9. Respondent added Mrs. Goett as a signer. Mr. and Mrs. Goett obtained debit cards.

10. According to Respondent, deposits into the account were to be made or arranged by the Goetts using instruments paid to them by others. The Goetts were to distribute funds to finance all of their litigation **except** Mrs. Goett's bankruptcy

case, such as paying legal fees to Respondent or litigation costs (filing fees, court reporter charges, etc.).

11. The Goetts could simply have endorsed to Respondent checks made payable to them, for Respondent to deposit into his lawyer's operating account as fees "earned on receipt" or into his trust account. However, Respondent's office was in Maricopa, the Goetts lived in Paradise Valley, and Mr. Goett's office was in Phoenix. They agreed that it would be convenient to open an account in Respondent's name but with Mrs. Goett to have access to it so the Goetts could make direct deposits without delays occasioned by mail or delivery.

12. Respondent occasionally withdrew funds, such as \$50.00 to pay a courier employed in the Goetts' cases, and wrote checks, but otherwise did not monitor the account, read bank statements, reconcile the account, deposit any of his own funds into the account, or use the account for his own personal expenses.

13. While Respondent represented the Goetts, over \$500,000 passed into and out of the Wells Fargo account.

14. The Goetts used the money to finance investments; pay for tennis lessons, dog grooming, jewelry and sunglasses, and their own and their children's living expenses; cover dinner tabs on Coronado Island; and for other purposes unrelated to their legal cases.

15. Respondent testified in a deposition in connection with adversary proceedings in Mrs. Goett's bankruptcy case that he received bank statements electronically and did not open or read them because any transactions or balances were of no concern to him.

16. When Mr. Goett deposited money to pay Respondent's bills he would tell that to Respondent and Respondent would simply withdraw money and move it to his business account. As long as Wells Fargo honored the transaction he had no need to know how much money was in the account, or to review bank statements. He regarded them as "out of sight, out of mind."

17. The State Bar is skeptical of Respondent's claim that he never looked at or paid attention to the bank statements. Respondent did write some checks out of the account. The bar questions that he did so without first examining a bank statement to confirm that there was money in the account, and how much.

18. Respondent explained that if he bounced a check (which never happened) he would fix it simply by depositing enough money to cover it. It did not occur to him that an overdrawn account would impact his credit-worthiness given that the account was in his name, or that he might have reportable taxable income based on deposits to a bank account in his name.

19. Respondent tried to tailor his practice toward working for one big real estate operator, and perceived Mr. Goett to fit that mold. During the period in question, most of the legal work that Respondent did was for Mr. Goett and his various corporations and partnerships. Mr. Goett gave Respondent a suite in Mr. Goett's office, and Respondent was there three days per week. If Mr. Goett wanted to see a bank statement (initially Mrs. Goett never asked for one, claiming she relied entirely on Mr. Goett in financial matters) Respondent simply opened the statement on a computer at Mr. Goett's office and printed it for Mr. Goett.

20. Respondent claimed that when Mrs. Goett obtained a debit card and had checks printed, she had the account statements sent to her address; however,

the copies of bank statements produced in discovery in the bankruptcy litigation all list Respondent's address in the title of the account.

21. Respondent explained:

This account turned out to be a big mistake. Mrs. Goett obtained a debit card and had checks printed. She had the account statements sent to her address and then, I later discovered, used the account for all kinds of things.

I was stupid. Because the account served no purpose except as a conduit to pay me, it never occurred to me that I had any reason to pay attention to it. Unless Mr. Goett told me he obtained funds to pay me, the account would never be used. The only salve for my pride is that even if you look at nothing other than the Trustee's Nondischargability Complaint, it's obvious that Mrs. Goett is adept at lying to almost everyone about everything. And, by the way, in the end Mrs. Goett overdrew the account by \$3,800 and left me holding the bill.

Respondent closed the account in April 2009 and withdrew from representation in May 2009 when he was suspended from the bar for non-payment of dues.

22. Respondent contended that Mrs. Goett was not required to list the bank account in her bankruptcy petition and schedules. Schedule B(2) requires disclosure of accounts owned by the debtor. Mrs. Goett was a signer on the account, but not an owner, and as envisioned she was not to have any ownership rights in the funds on deposit in the account. All money was to be paid to Respondent.

23. Respondent elaborated:

The Trustee did not allege that the bankruptcy estate or any creditors had any right to any money that went into the account. The issue with the account (failure to make disclosure) was a false reporting issue, not a "hiding assets" issue. The Trustee [alleged] that Mrs. Goett "wrote checks on this account for her benefit" but reported "no income and no expenses" in her monthly operating reports. Mrs. Goett had a duty to disclose monies paid out by her or on her behalf or for her benefit, regardless of the source of the funds. She got into trouble for not reporting, not for spending the money.

24. All of the monthly operating reports filed in Mrs. Goett's bankruptcy case were blank in the areas in which receipts, disbursements, and money balances were to be listed. Respondent claimed that Mrs. Goett prepared some of the monthly reports on her own; others, Respondent filled out based on information Mrs. Goett provided; and Mrs. Goett signed them all before Respondent filed them because an attorney may not sign a monthly report on a client's behalf.

25. Mrs. Goett did not disclose on her bankruptcy schedules all items of property she owned (jewelry, furs, guns, cars, or bank accounts including the Wells Fargo account) or transactions involving that property, and she stated false valuations for other items. There is no evidence that Respondent was complicit in making the false or incomplete statements.

26. The bankruptcy trustee filed adversary proceedings in Mrs. Goett's bankruptcy case and asked for an order denying discharges for her and her marital community with Mr. Goett. After a trial, on January 17, 2011, Bankruptcy Judge Nielsen entered an order denying a discharge to Mrs. Goett and her marital community with Mr. Goett pursuant to 11 U.S.C. §§727(a)(2)(A) and (B), 727(a)(3), 727(a)(4)(A) and (D), and 727(a)(5).

27. Judge Nielsen recited his findings into the audio record. Judge Nielsen determined that Mrs. Goett was not credible both in her explanations for why she did not compose or later amend her bankruptcy schedules accurately, and in her efforts to deflect blame to Mr. Goett and Respondent.

28. It is unknown whether the court would have denied Mrs. Goett a discharge if failing to disclose the Wells Fargo account or report the many bank

transactions were her only omissions. Counsel for the trustee, Terry Dake, speculated that if Mrs. Goett had disclosed the existence of the Wells Fargo account and reported the transactions properly, she may have gotten her discharge.

29. Even if one accepts Respondent's claim that it was well-intentioned albeit ill-advised, but not deceitful, to open the Wells Fargo account for the Goetts, his conduct prejudiced the administration of justice. Had he looked at his bank statements he would have seen that the Goetts were using the bank account for unintended purposes. That would have instigated a pointed conversation with Mrs. Goett over her prospects for a successful outcome in her bankruptcy case. Respondent's failure to examine bank statements had the ripple effect of immersing the court and parties to Mrs. Goett's bankruptcy case in discovery and litigation that contributed to the court's denial of her discharge.

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, specifically ERs 1.3 and 8.4(d).

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 reprimand is the appropriate sanction. 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; *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 duty violated

As described above, Respondent's conduct violated his duties to his client and the legal system.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent conducted himself negligently as described above.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual harm to Respondent's client and to the legal system.

Based on the foregoing the parties agree that the following *Standards* are applicable:

Standard 4.43-Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client.

Standard 6.13-Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

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—

(a) prior disciplinary offenses;

- May 2010, 09-0605 and 09-1208 (consolidated), Informal Reprimand (currently, Admonition) and Probation for one year (CLE-“Candor, Courtesy and Confidences: Common Courtroom Conundrums;” and LOMAP), ERs 1.1, 1.3, 1.4(a)(4), 3.1, 3.2, 3.4(a), 3.4(c), 4.4(a), 5.5, 8.4(d), and Rules 32(c)(3), 41(c), and 64(f)(1).
- 2009, admin. suspension for nonpayment of dues, reinstated after 45 days.
- 2001, 99-0561, Informal Reprimand and Probation for one year (EEP, LOMAP, and Practice Monitor), ERs 7.5(d) and 8.1(b).
- 2000, admin. suspension for “NO Sig,” reinstated after one month.
- 2000, 98-0580, Informal Reprimand, ERs 3.1, 8.4(c), and 8.4(d) (while attending a hearing Respondent unknowingly misrepresented to the court that he did not receive timely notice of a motion).

(b) dishonest or selfish motive;

(c) a pattern of misconduct (Respondent’s past offenses include ERs 1.3 and 8.4(d));

(d) multiple offenses;

(i) substantial experience in the practice of law.

In mitigation: Standard 9.32—

- (e) full and free disclosure to a disciplinary board or cooperative attitude toward proceedings;
- (l) remorse;
- (m) remoteness of prior offenses.

Discussion

The parties conditionally agree that upon application of the aggravating and mitigating factors the presumptive sanction is appropriate. Respondent's conduct occurred from 2008-2009, he was deposed in 2009, and Judge Nielsen announced his decision in Mrs. Goett's bankruptcy case in 2011. None of the participants in Mrs. Goett's case (Judge Nielsen, trustee David Birdsell, counsel for the trustee Terry Dake, counsel for a creditor in the adversary proceedings Tamara McKane, or Mrs. Goett) filed bar charges. Counsel in an unrelated case brought the charge considerably later, in 2013. The aggravating and mitigating factors more or less offset. Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that a reprimand 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.

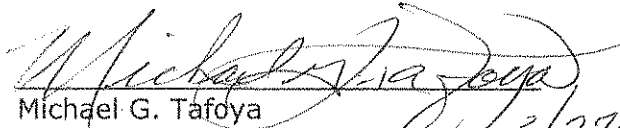
DATED this _____ day of March 2015.

STATE BAR OF ARIZONA

David L. Sandweiss
Senior Bar Counsel

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

DATED this _____ day of March, 2015.


Michael G. Tafuya
Respondent 3/29/15

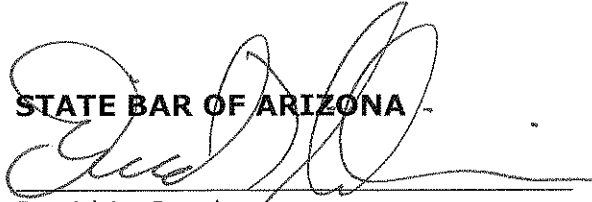
Approved as to form and content

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 _____ day of March 2015.

sanction of Reprimand and the imposition of costs and expenses. A proposed form order is attached hereto as Exhibit B.

DATED this 31st day of March 2015.

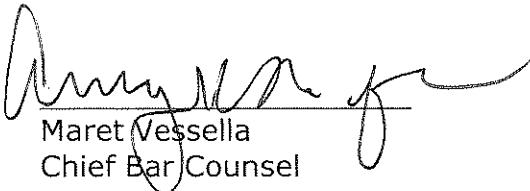
STATE BAR OF ARIZONA

David L. Sandweiss
Senior Bar Counsel

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

DATED this _____ day of March, 2015.

Michael G. Tafoya
Respondent

Approved as to form and content


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 31st day of March 2015.

Copies of the foregoing mailed/emailed
this 31st day of March 2015 to:

Michael G. Tafoya
P.O. Box 930
Maricopa, AZ 85139-0317
michael.tafoya@azbar.org
Respondent

Copy of the foregoing emailed
this 31st day of March, 2015, to:

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

Copy of the foregoing hand-delivered
this 31st day of March, 2015, to:

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

by: Jackie Dorender
DLS: jld

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Current Member of the State Bar of Arizona,
Michael G. Tafoya, Bar No. 018655, Respondent

File No. 13-1703

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.

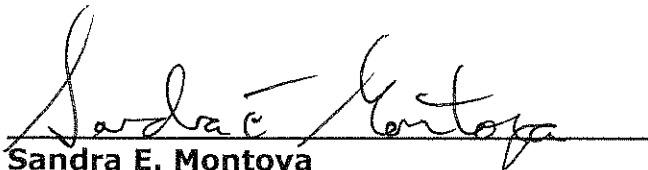
Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative 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

07/19/13	Computer investigation reports, PACER	\$ 6.40
02/05/15	Computer investigation reports, Accurint	\$ 17.40
Total for staff investigator charges		\$ 23.80
TOTAL COSTS AND EXPENSES INCURRED		\$1,223.80


Sandra E. Montoya
Lawyer Regulation Records Manager

3-19-15
Date

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

Michael G. Tafoya,
Bar No. 018655,

Respondent.

PDJ No.

FINAL JUDGMENT AND ORDER

State Bar No. 13-1703

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

IT IS HEREBY ORDERED that Respondent, **Michael G. Tafoya**, 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 \$ _____, within 90 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 90 days from the date of service of this Order.

DATED this _____ day of March, 2015.

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 March, 2015.

Copies of the foregoing mailed/mailed
this _____ day of March, 2015.

Michael G. Tafoya
P.O. Box 930
Maricopa, AZ 85139-0317
Email: michael.tafoya@azbar.org
Respondent

Copy of the foregoing emailed/hand-delivered
this _____ day of March, 2015, to:

David L. Sandweiss
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 March, 2015 to:

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

by: _____