

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**RICHARD A. DRAKE,**  
**Bar No. 025449**

Respondent.

**No. PDJ-2016-9131**

**FINAL JUDGMENT AND  
ORDER**

[State Bar Nos. 15-3089, 16-1014,  
16-1707]

**FILED APRIL 14, 2017**

This matter was heard by the Hearing Panel, which rendered its Decision and Order on March 14, 2017. An appeal has been filed and any assessment of costs shall be determined in accordance with Rule 60(b), Ariz. R. Sup. Ct. By Order filed April 5, 2017, Mr. Drake's motion for stay was denied as untimely.

Now Therefore,

**IT IS ORDERED** Respondent, **RICHARD A. DRAKE, Bar No. 025449**, is suspended from the practice of law for one (1) year effective March 14, 2017, as set forth in the Decision and Order Imposing Sanctions of the Hearing Panel.

**IT IS FURTHER ORDERED** Mr. Drake 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.

**DATED** this 14th day of April, 2017.

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

COPY of the foregoing e-mailed/mailed  
this 14<sup>th</sup> day of April, 2017, to:

Shauna R. Miller  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, AZ 85016-6266  
Email: lro@staff.azbar.org

Richard A. Drake  
Drake Law Firm, PLC  
3420 E. Shea Blvd., Suite 200  
Phoenix, AZ 85028  
Email: rdrake@bdlawyers.com  
Respondent

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

---

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

**RICHARD A. DRAKE,**  
**Bar No. 025449**

Respondent.

**PDJ 2016-9131**

**DECISION AND ORDER  
IMPOSING SANCTIONS**

[State Bar File Nos. 15-3089, 16-  
1014, 16-1707]

**FILED MARCH 14, 2017**

On March 7, 2017, the Hearing Panel, comprised of Kenneth L. Mann, attorney member, Anne B. Donahoe, public member, and Presiding Disciplinary Judge (“PDJ”) William J. O’Neil, held an aggravation/mitigation hearing. Shauna Miller appeared on behalf of the State Bar of Arizona. Richard Drake did not appear.

**PROCEDURAL HISTORY**

The State Bar of Arizona (“SBA”) filed its complaint on December 28, 2016. The complaint was served on Mr. Drake by certified, delivery restricted mail, and by regular first class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. The PDJ was assigned to the matter. A notice of default was properly issued on January 24, 2017. Mr. Drake filed no answer or otherwise defended against the complainant’s allegations and default was effective on February 14, 2017, at which time a notice of aggravation and mitigation hearing was sent to all parties notifying

them the aggravation mitigating hearing was scheduled for March 7, 2017 at 2:00 p.m., at the State Courts Building, 1501 West Washington, Phoenix, Arizona 85007-3231.

Although the allegations are deemed admitted by default, there has also been an independent determination by the Hearing Panel that the State Bar has proven by clear and convincing evidence that Mr. Drake violated the ethical rules. The State Bar had witnesses available to testify telephonically and avowed their testimony is consistent with the allegations in the complaint. Twenty (20) exhibits were admitted to undergird the allegations. We find these establish by clear and convincing evidence the accuracy of the allegations within the complaint. Many of the findings of facts listed below are those set forth in the SBA's complaint and were deemed admitted by Mr. Drake's effective default.

A respondent against whom an effective default has been entered may not litigate the merits of the factual allegations, but retains the right to appear and participate in the hearing that will determine the sanctions. Included with that right to appear is the ability to testify and the right to cross-examine witnesses, in each instance only to establish facts related to aggravation and mitigation.

Separate and apart from service of process, Bar Counsel detailed the multiple efforts to contact and locate Mr. Drake after service of the complaint. These included multiple calls and messages left to various locations, including his office

and a State Bar Investigator being sent repeatedly to contact him. That Investigator spoke with his secretary, and also spoke once, face to face with Mr. Drake. The Hearing Panel is satisfied the actions of Bar Counsel assured ample opportunity for Mr. Drake to be involved in these proceedings.

### **FINDINGS OF FACT**

1. Mr. Drake was licensed to practice law in Arizona on March 13, 2008.
2. On February 23, 2017, Mr. Drake was found in contempt and summarily suspended under Rule 47, Ariz. R. Sup. Ct.

### **COUNT ONE (File no. 15-3089/Shannon)**

3. Mai Shannon and her husband (“Shannons”) hired Mr. Drake at the end of 2011 to handle two cases for them, a bankruptcy case and to defend and file a counter-claim in an employment lawsuit. (“*Stepp*”). The Shannons paid Mr. Drake approximately \$50,000.

4. Mr. Drake did not respond to Ms. Shannon’s calls between June and August of 2015. Mr. Drake would not see Ms. Shannon when she went to his office.

5. In *Stepp*, Mr. Drake was served with a notice of Ms. Shannon’s deposition, but he failed to inform her of this and failed to keep her updated on her case. This failing occurred despite several emails from her asking for updates. Because of his failure to communicate with his client and his lack of diligence, Ms.

Shannon was unaware of and did not attend the deposition. She was ordered to pay \$327.50 in fees and cost for failing to attend. [Ex. 6-7 and 10.]

6. Mr. Drake failed to file a counter-claim he was retained to file. As a result Ms. Shannon had no ability to pursue or opportunity to collect on that claim. Mr. Drake caused the Shannons over two years of unnecessary legal turmoil in the *Stepp* matter and additional attorney fees because of his lack of communication and diligence. The Shannons having been abandoned by Mr. Drake sought and obtained substitute counsel. [Ex. 8-9.]

7. Mr. Drake also had to be replaced on the bankruptcy matter and another attorney had to complete a pending appeal.

8. Troubled by his effective abandonment of her, Ms. Shannon demanded Mr. Drake to provide her with an accounting disputing his charges. Mr. Drake failed to provide her with the accounting. Because of his failure to make any accounting of the \$50,000, the Shannons could not submit a China Doll affidavit including those fees in *Stepp*. [Ex. 11.] On June 30, 2016 Ms. Shannon filed a bar charge regarding him. [Ex. 1.]

9. Mr. Drake was sent a screening letter on July 13, 2016. [Ex. 2.] Mr. Drake failed to respond. The State Bar's staff investigator was asked to locate Mr. Drake.

10. On August 2, 2016, the staff investigator drove to Mr. Drake's address of record with the State Bar; 14500 N. Northsight Blvd., Ste. 208, Scottsdale, Arizona 85260-3661. Mr. Drake's name was still on the directory in the lobby. The receptionist, however, told the staff investigator that Mr. Drake no longer rented that space; Mr. Drake was in suite 313 of the same building.

11. The staff investigator went to suite 313. The receptionist while acknowledging it was his office said Mr. Drake was not in. The staff investigator left his card and asked her to have Mr. Drake contact the State Bar. Mr. Drake failed to contact the State Bar.

12. On August 10, 2016, the phone number provided by the receptionist was called and a message was left advising Mr. Drake that three State Bar screening files had been summarized and that the reports of investigation (ROI) were being sent to him, pursuant to Rule 55(b)(2)(B), Ariz. R. Sup. Ct., at his address of record and to the newly discovered address. [Ex. 3.] He was advised to call bar counsel and to provide the State Bar with a current telephone number and address. Mr. Drake did not respond to the ROIs, did not call bar counsel, and did not update his contact information with the State Bar.

13. On November 11, 2016, Mr. Drake was personally served with a subpoena to appear at his deposition scheduled for November 28, 2016. [Ex.4 and 5.] He was directed to bring the following documents: Any and all files related to

the representation of each client in the matters referenced in the caption<sup>1</sup> including but not limited to:

- a. Records of all written and/or electronic communications, including phone logs; telephone service invoices; emails; file backer notes, etc.;
- b. Fee agreement(s);
- c. Timekeeping/accounting records; and
- d. Billing/fee statements;

14. On November 28, 2016, Mr. Drake appeared for his deposition but brought none of the requested documents. Mr. Drake was given until December 15, 2016, to provide all subpoenaed documents and to provide written responses in each of the State Bar's screening files. Mr. Drake failed to do so.

15. Based on the forgoing, Mr. Drake violated Rule 42, Ariz. R. Sup. Ct., specifically:

- a. **ER 1.3 (Diligence)** (A lawyer shall act with reasonable diligence and promptness in representing a client).
- b. **ER 1.4 (Communication)** (A lawyer shall consult with the client, keep the client reasonably informed about the status of the matter,

---

<sup>1</sup> State Bar File Nos. 15-3089, 16-1014, 16-1707, 16-2232, 16-2682, 16-2683, and 16-2726.



promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).

c. **ER 1.15** Lawyers are required to keep complete records of all funds held in connection with the representation of clients. See, e.g., *In re Fountain*, 878 A.2d 1167 (Del. 2005). The rule is violated when a lawyer accepted advance cash fee payments from client but fails to create receipts or retain records of time spent on case. See *In re Chinquist*, 714 N.W.2d 469 (N.D. 2006). Also see Comment 3. “The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute such as arbitration.”).

d. **ER 1.16(d)** (Declining or Terminating Representation) (Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned).

e. **ER 8.1(b)** (disciplinary matters) (A lawyer shall not knowingly fail to respond to a lawful demand for information from the State Bar).

f. **ER 8.4(d)** (Misconduct) (It is professional misconduct for a lawyer to: engage in conduct that is prejudicial to the administration of justice).

g. **Rule 54 (c) (Grounds for Discipline)** (Knowing violation of any rule or any order of the court).

h. **Rule 54 (d)** (Grounds for Discipline) (Failure to furnish information requested by the State Bar.

Although requested, we find insufficient evidence to determine a violation of **ER 1.5(a) (Fees)** (A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses).

#### **COUNT TWO (File no. 16-1014/Kunz)**

16. Mr. Drake represented Mr. Kunz in his Chapter 13 bankruptcy case. After trying the entire month of November 2015 to reach Mr. Drake regarding questions on his bankruptcy, Mr. Kunz learned Mr. Drake had left the firm and opened his own firm.

17. Mr. Drake neither notified Mr. Kunz of that change nor provided him with new contact information. Mr. Kunz finally contacted Mr. Drake's ex-law partner in early January 2016 to get help with his questions.

18. Mr. Kunz emailed Mr. Drake the beginning of March 2016 using the new contact information and again received no response, so Mr. Kunz went to Mr. Drake's new office.

19. Mr. Kunz asked Mr. Drake why he wasn't returning his phone calls or emails. Mr. Kunz told Mr. Drake he had been trying to reach him as far back as November 2015 and needed his help on some items so he could wrap up the bankruptcy case and move-on. Mr. Drake told Mr. Kunz he would be in the office all day the following day and he would respond to Mr. Kunz' questions, which he failed to do.

20. One matter that had to be taken care of was getting Mr. Kunz's 2014 tax returns to the Trustee. There was a 10-day deadline to accomplish this. Mr. Drake missed the deadline.

21. On April 5, 2016, Mr. Kunz filed a bar charge. [Ex. 13.] On April 12, 2016, Mr. Drake was sent a screening letter. [Ex. 14.] Mr. Drake failed to respond.

22. On May 17, 2016, Mr. Drake was sent a non-response letter and given an additional 10 days to respond. [Ex. 15.] Mr. Drake failed to respond. The State Bar's staff investigator was asked to locate Mr. Drake. *See* finding 10 above and Ex. 16.

23. Based on the forgoing, Mr. Drake violated Rule 42, Ariz. R. Sup. Ct., specifically:

a. **ER 1.2 (Scope of representation)** (A lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued).

b. **ER 1.3 (Diligence)** (A lawyer shall act with reasonable diligence and promptness in representing a client).

c. **ER 1.4 (Communication)** (A lawyer shall consult with the client, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).

d. **ER 8.1(b)** (disciplinary matters) (A lawyer shall not knowingly fail to respond to a lawful demand for information from the State Bar).

e. **ER 8.4(d)** (Misconduct) (It is professional misconduct for a lawyer to: engage in conduct that is prejudicial to the administration of justice).

f. **Rule 54 (c) (Grounds for Discipline)** (Knowing violation of any rule or any order of the court).

g. **Rule 54 (d)** (Grounds for Discipline) (Failure to furnish information requested by the State Bar).

The evidence is insufficient to establish a violation of **ER 1.1 (Competence)**.

The comment to E.R. 1.1 states,

In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.

While we recognize Mr. Drake was defaulted and non-responsive to the allegations, it remains unclear what the "general knowledge and skill" or "training and experience" of Mr. Drake was in bankruptcy. There is nothing before us that demonstrates there was the presence of or absence of those qualities. There is much evidence to support the other stated rule violations.

### **COUNT THREE (File no. 16-1707/Clancy)**

24. Michael P. Clancy, Jr. (Mr. Clancy) was Father's lawyer in a divorce action. Mr. Drake was Mother's lawyer.

25. On October 8, 2015, the parties reached agreement regarding parenting time and legal decision-making. Mr. Clancy emailed Mr. Drake to memorialize the

terms of agreement and Mr. Drake told Mr. Clancy to draft the proposed notice of settlement. [Ex. 17.]

26. On October 19, 2015, Mr. Clancy drafted and submitted his proposed notice of settlement and request to vacate evidentiary hearing scheduled for October 26, 2015, to Mr. Drake for approval. Mr. Drake responded that "[Mr. Clancy] has my authority to electronically sign and file." The notice of settlement was electronically filed that same date. [*Supra.*]

27. On November 12, 2015, Mr. Clancy emailed Mr. Drake with a draft of the stipulated order re: modification of decree for his review and approval. Mr. Drake failed to respond. On November 18, 2015, Mr. Clancy's paralegal emailed Mr. Drake to follow-up on the status of his review of the stipulated order. Mr. Drake was reminded of the Court's dismissal deadline. Mr. Drake failed to respond. On November 20, 2015, Mr. Clancy lodged a form of order without signatures to satisfy the Court's dismissal deadline. Mr. Drake failed to respond. The Court rejected the November 20, 2015, proposed order. On January 8, 2016, Mr. Clancy resubmitted the proposed order, without the signature page, due to Mr. Drake's non-responsiveness. On January 14, 2016, the Court again rejected Father's proposed order, and set a dismissal deadline of February 15, 2016, unless the parties submitted a stipulated order with signatures. [*Supra.*]

28. Mr. Clancy immediately emailed Mr. Drake to get his and his client's signatures. Mr. Drake failed to respond. On January 20, 2016, Mr. Clancy called Mr. Drake's office and left a voicemail for him; Mr. Drake failed to respond. On February 3, 2016, Mr. Clancy again emailed Mr. Drake to reiterate the Court's dismissal deadline and to obtain his and his client's signature. Mr. Drake failed to respond. On February 10, 2016, Mr. Clancy called Mr. Drake's office and spoke with his paralegal. The paralegal confirmed that Mother had signed the stipulated order and that the document was with Mr. Drake. On February 12, 2016, Mr. Clancy called Mr. Drake's office and left a voicemail with his paralegal advising her he was moving for order to show cause re: failure to sign stipulated order. On February 18, 2016, the court issued an order to appear so Mr. Drake could appear and show cause why it had taken over four months to sign the stipulated order to which the parties had previously agreed. [*Supra.*]

29. On March 11, 2016 at 2:20 p.m. Mr. Drake was personally served with the order to appear. An affidavit of service was filed with the clerk reflecting that Mr. Drake was served "by leaving one set of the above listed documents [Order to Appear and Expedited Motion for Order to Show Cause] with Chris Barski, Partner, who stated he was authorized to accept." On March 22, 2016, Mr. Clancy spoke to Mr. Barski. Mr. Barski told Mr. Clancy he had not accepted service for Mr. Drake and that they had not been law partners since January 1, 2015. On March 22, 2016,

Mr. Clancy interviewed his process server, Bryan Curry (Mr. Curry), to confirm that the person he served on March 11, 2016, was Chris Barski and not Mr. Drake. Mr. Curry confirmed that his affidavit of service reflected what was communicated to him. [*Supra.*]

30. Mr. Clancy sent Mr. Curry an email with pictures of Chris Barski and Mr. Drake and asked Mr. Curry to confirm the visual identity of the person he served. On March 24, 2016, Mr. Curry, filed an amended affidavit of service informing the court that "[a]t the time of the service [Mr. Drake] stated that he was Chris Barski, Partner of [Mr. Drake], and authorized to accept service for [Mr. Drake]." In addition, Mr. Curry stated that "[he] was provided photos of both [Mr. Drake] and Chris Barski. The person [Mr. Curry] served was actually [Mr. Drake]." [*Supra.*]

31. On April 1, 2016, the parties and their attorneys appeared for the order to show cause hearing. At the hearing, the stipulated order was finally executed by Mr. Drake. When asked by the Court why it has taken nearly six months to sign the agreement, Mr. Drake reported that Mother "did not like the agreement and had made major concessions." Mr. Clancy pointed out to the court that the parties had a written agreement presumptively binding under Rule 69, Arizona Rules of Family Law Procedure. The court agreed and signed the stipulated order in open court. [*Supra.*]



32. On April 8, 2016, Mr. Clancy moved for attorney's fees and costs. On May 2, 2016, the court granted the motion and made the following findings:

a. Mr. Drake "significantly interfered with the administration of justice by his conduct in this matter,"

b. Mr. Drake "misrepresented his identity to an officer of the Court, namely the process server who served the Court's Order to Show Cause on [Mr. Drake] on March 11, 2016,"

c. Mr. Drake "made false statements to this Court during the April 1, 2016 hearing, when he denied that he misrepresented his identity to the process server." [*Supra.*]

33. On May 26, 2016, Mr. Clancy filed a bar charge against Mr. Drake. [Ex. 17.] On June 8, 2016, Mr. Drake was sent a screening letter. [Ex. 18.] Mr. Drake failed to respond. The State Bar's staff investigator was asked to locate Mr. Drake. *See* finding 10 above and Ex. 19.

34. Based on the forgoing, Mr. Drake violated Rule 42, Ariz. R. Sup. Ct., specifically:

a. **ER 3.2. (Expediting Litigation)** (A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client).

b. **ER 3.3(a) (Candor Toward the Tribunal)** (A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer).

c. **ER 3.4 (Fairness to Opposing Party and Counsel)** (A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

d. **ER 4.4(a) (Respect for Rights of Others)** (In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person, or use methods of obtaining evidence that violate the legal rights of such a person).

e. **ER 8.1(b) (disciplinary matters)** (A lawyer shall not knowingly fail to respond to a lawful demand for information from the State Bar).

f. **ER 8.4(c) (Misconduct)** (It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

g. **ER 8.4(d) (Misconduct)** (It is professional misconduct for a lawyer to: engage in conduct that is prejudicial to the administration of justice).

h. **Rule 54 (c) (Grounds for Discipline)** (Knowing violation of any rule or any order of the court).

i. **Rule 54(d) (Grounds for Discipline)** (Failure to furnish information requested by the State Bar.

### **CONCLUSIONS OF LAW**

Mr. Drake 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 Hearing Panel finds by clear and convincing evidence that Mr. Drake violated the ERs of Rule 42, Ariz. R. Sup. Ct., as stated above.

### **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 determining a 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. *In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004); *Standard 3.0*. Since the *Standards* do not account for multiple charges of misconduct, the ultimate sanction imposed should be consistent with the most

serious sanction. Other violations should be considered in aggravation. ABA *Standards*, II. Theoretical Framework, at 7.

The following ABA *Standards* are considered in determining the sanction in this matter.

*Standard 4.41* [ERs 1.2, 1.3, 1.4].

Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client: or
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client.

*Standard 4.42*

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

Mr. Drake has not abandoned his practice, as he is still representing clients and appearing in court, therefore Standard 4.42 suspension is appropriate. Mr. Drake has knowingly failed to perform services for clients and has engaged in a pattern of neglect and has caused injury to his clients.

*Standard 6.11* [ER 3.3]

Disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, ..., or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes serious or potentially serious adverse effect on the legal proceeding.

*Standard 6.11*

Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, 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.

Mr. Drake knew that he was making a false statement to the court when he denied that he misrepresented his identity to the process server. The court found that Mr. Drake “significantly interfered with the administration of justice by his conduct in this matter.”

*Standard 7.1 [ER 8.1]*

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

*Standard 7.2*

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession and causes injury or potential injury to a client, the public, or the legal system.

Mr. Drake failed to respond to the State Bar in any of the three counts above and knowingly failed to produce subpoenaed documents. When lawyers fail to abide by rules that apply to everyone else, it leads to the loss of public confidence in the profession and the judicial system.

Based on a review of the *ABA Standards*, the presumptive sanction is suspension.

## 1. AGGRAVATION/MITIGATION

9.22 Factors which may be considered in aggravation.

- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency;
- (i) substantial experience in the practice of law;

There are no mitigating factors and five aggravating factors; therefore the presumptive sanction of a suspension is appropriate.

### **PROPORTIONALITY**

The Supreme Court has balanced similar cases 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 of 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 factually similar. *See Peasley*, 208 Ariz. at 35, 90 P.3d at 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 Adams*, PDJ-2016-9025, Mr. Adams was suspended for six months and one day. Mr. Adams violated Rule 42, Ariz. R. Sup. Ct., ERs 1.3, 1.4, 1.16, 8.1(b), and 8.4(d), and Rule 54(d), Ariz. R. Sup. Ct.

In Count One, Mr. Adams was hired to represent a client in a criminal matter. When the client appealed and his appellate attorney requested the file, Mr. Adams failed to send client's file to that attorney. During the State Bar's investigation, Bar Counsel requested a copy of the client file, but Mr. Adams failed to provide one. In Count Two, Mr. Adams represented a client in a civil matter and filed a complaint, paying \$319.00 in filing fees drawn on his law firm account. Thereafter, Mr. Adams requested a stop payment of the check. The Clerk of the Court repeatedly tried to contact Mr. Adams regarding the unpaid filing fee. Mr. Adams did not respond. Mr. Adams also failed to respond to the State Bar's request for information. In Count Three, Mr. Adams was hired in May 2013 to represent a client in a personal injury matter. Mr. Adams failed to adequately communicate with the client, causing the client to hire another attorney who filed the complaint in May 2015. One week later Mr. Adams, without informing his client, also sued on her behalf. Mr. Adams failed to respond to requests for information from the State Bar.

Aggravating factors were prior discipline (admonition), pattern of misconduct, multiple offenses, and bad faith obstruction of the disciplinary process.

Mitigating factors: absence of a dishonest or selfish motive, personal or emotional problems, and remorse.

In *In re Mouser*, PDJ 2016-9055, Ms. Mouser was suspended for three years. Ms. Mouser violated Rules 42, ERs 1.2(a), 1.3, 1.5(a), 1.5(b), 1.16(d), 3.2, 3.4(c), 5.5, 8.1(b), 8.4(c), and 8.4(d); and 31, 54(c), 54(d), and 72, Ariz. R. Sup. Ct.

In count one, Ms. Mouser failed to attend her client's deposition despite receiving notice, failed to submit a court-ordered settlement conference memorandum, and conducted settlement negotiations after being suspended from the practice of law on July 29, 2015, thereby engaging in the unauthorized practice of law. In count two, Ms. Mouser failed to timely notify her client and opposing counsel of her July 29, 2015 suspension. In count three, Ms. Mouser failed to timely respond to discovery requests, failed to comply with a court order regarding discovery, and failed to timely pay to the opposing party's attorney court-ordered attorney's fees of \$1,500. In count four, Ms. Mouser failed to serve a complaint she filed on behalf of her client resulting in the complaint's dismissal. In count five, Ms. Mouser conducted settlement negotiations after being suspended from the practice of law. In count six, Ms. Mouser failed to help her client with a parenting time issue after agreeing to do so. In several of the counts, Ms. Mouser failed to provide the State Bar with requested information.



Aggravating factors were prior discipline (reprimand / six month and 1 day suspension), dishonest or selfish motive, a pattern of misconduct, and multiple offenses. Mitigating factors were personal and emotional problems, and imposition of other penalties or sanctions.

This case is similar to the others stated above because they all involve failure to communicate and diligently represent their clients, and a failure to fully respond to the State Bar's request for information. In some aspects, Mr. Drake's conduct is more egregious than Mr. Adams because he also lied to the court and failed to provide documents to the State Bar under a subpoena, therefore the suspension should be over six months and one day. In some aspects Mr. Drake's misconduct was not as egregious as Ms. Mouser. At the time of her misconduct, Ms. Mouser was suspended from the practice of law. That is not true of Mr. Drake. Ms. Mousers had also previously been suspended for six months and one day. Mr. Drake has no prior discipline. The State Bar requested a one year suspension. While the volunteer members believe a longer term is easily justified in light of the dishonesty of Mr. Drake, the one year suspension follows the rehabilitative purpose of attorney discipline in light of the absence of prior discipline of Mr. Drake.

### **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).

The sanction was reached using the facts deemed admitted, application of the *Standards* including aggravating and mitigating factors, and the goals of the attorney discipline system. The Hearing Panel orders:

1. Mr. Drake shall be suspended from the practice of law for one (1) year effective immediately.
2. Mr. Drake shall pay all costs and expenses incurred by the SBA. There are no costs incurred by the Office of the Presiding Disciplinary Judge in this proceeding.

A final judgment and order will follow.

**DATED** this 14th day of March 2017.

**CONCURRING:**

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

*Anne B. Donahoe*  
**Anne B. Donahoe, Volunteer Public Member**

*Kenneth L. Mann*  
**Kenneth L. Mann, Volunteer Attorney Member**

Copy of the foregoing e-mailed/mailed  
this 14th day of March, 2017, to:

Richard A. Drake  
3420 E. Shea Blvd. Ste. 200  
Phoenix, AZ 85028-3348  
Email: [rdrake@bdlawyers.com](mailto:rdrake@bdlawyers.com)  
Respondent

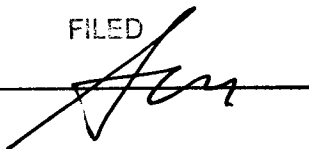
Shauna R. Miller  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> St., Suite 100  
Phoenix, Arizona 85016-6266  
Email: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: AMcQueen

Shauna R. Miller, Bar No. 015197  
Senior Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266  
Telephone (602)340-7250  
Email: LRO@staff.azbar.org

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

DEC 28 2016

FILED  
BY 

**BEFORE THE PRESIDING DISCIPLINARY  
JUDGE**

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

**RICHARD A. DRAKE,  
Bar No. 025449,**

Respondent.

**PDJ 2016-9131**  
[State Bar File Nos. 15-3089, 16-  
1014, 16-1707]

**COMPLAINT**

Complaint is made against Respondent as follows:

**GENERAL ALLEGATIONS**

1. At all times relevant, Respondent was licensed to practice law in Arizona having been admitted to practice on March 13, 2008.

**COUNT ONE (File no. 15-3089/Shannon)**

2. Mai Shannon and her husband (Ms. Shannon / the Shannons) hired Respondent at the end of 2011 to handle two cases for them, a bankruptcy case and an employment dispute (the *Stepp* case). The Shannons paid Respondent approximately \$50,000.

3. Respondent did not respond to Ms. Shannon's calls between June and August of 2015. Respondent would not see Ms. Shannon when she went to his office.

4. In *Stepp*, Respondent was served with a notice for Ms. Shannon's deposition, but he failed to inform her about it and generally failed to keep her

updated on her case, despite several emails from her asking for updates. Ms. Shannon did not attend the deposition and she was ordered to pay \$327.50 in fees and cost for failing to attend.

5. Respondent also failed to file a counter-claim, so Ms. Shannon was not able to collect on that claim. Respondent caused the Shannons over two years of unnecessary legal turmoil in the *Stepp* matter and additional attorney fees because of his lack of communication and diligence.

6. Respondent also had to be replaced on the bankruptcy matter and another attorney had to complete a pending appeal.

7. Ms. Shannon waited until her two matters were completed, then she asked Respondent to provide her with an accounting. Respondent failed to provide her with the accounting.

8. Respondent was sent a screening letter on July 13, 2016. Respondent failed to respond. The State Bar's staff investigator was asked to locate Respondent.

9. On August 2, 2016, the staff investigator drove to Respondent's address of record with the State Bar; 14500 N. Northsight Blvd., Ste. 208, Scottsdale, Arizona 85260-3661. Respondent's name was still on the directory in the lobby. The receptionist, however, told the staff investigator that Respondent no longer rented that space; Respondent at that time was located in suite 313 of the same building.

10. The staff investigator went to suite 313. The receptionist said Respondent was not in the office. The staff investigator left his card and asked her

to have Respondent contact the State Bar. Respondent failed to contact the State Bar.

11. On August 10, 2016, the phone number provided by the receptionist was called and a message was left advising Respondent that three State Bar screening files had been summarized and that the reports of investigation (ROI) were being sent to him, pursuant to Rule 55(b)(2)(B), Ariz. R. Sup. Ct., at his address of record and to the newly discovered address. He was advised to call bar counsel and to provide the State Bar with a current telephone number and address. Respondent did not respond to the ROIs, did not call bar counsel, and did not update his contact information with the State Bar.

12. On November 11, 2016, Respondent was personally served with a subpoena to appear at his deposition scheduled for November 28, 2016, and to bring the following documents: Any and all files related to the representation of each client in the matters referenced in the caption<sup>1</sup> including but not limited to:

- a. Records of all written and/or electronic communications, including phone logs; telephone service invoices; emails; file backer notes, etc.;
- b. Fee agreement(s);
- c. Timekeeping/accounting records; and
- d. Billing/fee statements;

13. On November 28, 2016, Respondent appeared for his deposition but failed to bring any of the requested documents. Respondent was given until

---

<sup>1</sup> State Bar File Nos. 15-3089, 16-1014, 16-1707, 16-2232, 16-2682, 16-2683, and 16-2726.

December 15, 2016, to provide all subpoenaed documents as well as to provide written responses in each of the State Bar's screening files. Respondent failed to do so.

14. Based on the forgoing, Respondent violated Rule 42, Ariz. R. Sup. Ct., specifically:

a. **ER 1.3 (Diligence)** (A lawyer shall act with reasonable diligence and promptness in representing a client).

b. **ER 1.4 (Communication)** (A lawyer shall consult with the client, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).

c. **ER 1.5(a) (Fees)** (A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses).

d. **ER 1.15(d)** (Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement between the client and the third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property).

e. **ER 1.16(d)** (Declining or Terminating Representation) (Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering documents and property to which the client is entitled and refunding any advance payment of a fee that has not been earned).

f. **ER 8.1(b)** (disciplinary matters) (A lawyer shall not knowingly fail to respond to a lawful demand for information from the State Bar).

g. **ER 8.4(d)** (Misconduct) (It is professional misconduct for a lawyer to: engage in conduct that is prejudicial to the administration of justice).

h. **Rule 54 (c) (Grounds for Discipline)** (Knowing violation of any rule or any order of the court).

i. **Rule 54 (d)** (Grounds for Discipline) (Failure to furnish information requested by the State Bar).

**COUNT TWO (File no. 16-1014/Kunz)**

15. Respondent represented Mr. Kunz in his Chapter 13 bankruptcy case. After trying the entire month of November 2015 to reach Respondent regarding questions on his bankruptcy, Mr. Kunz found out that Respondent had split with his law partner and opened his own firm.

16. Respondent neither notified Mr. Kunz of that change nor provided him with new contact information. Mr. Kunz finally contacted Respondent's ex-law partner in early January 2016 to get help with his questions.



17. Mr. Kunz emailed Respondent the beginning of March 2016 using the new contact information and again received no response, so Mr. Kunz went to Respondent's new office.

18. Mr. Kunz asked Respondent why he wasn't returning his phone calls or emails. Mr. Kunz told Respondent he had been trying to reach him as far back as November 2015 and needed his help on a couple of items so he could wrap up the bankruptcy case and move-on. Respondent told Mr. Kunz he would be in the office all day the following day and he would respond to Mr. Kunz' questions, which he failed to do.

19. One matter that had to be taken care of was getting Mr. Kunz's 2014 tax returns to the Trustee. There was a 10-day deadline to accomplish this. Respondent missed the deadline.

20. On April 12, 2016, Respondent was sent a screening letter. Respondent failed to respond.

21. On May 17, 2016, Respondent was sent a non-response letter and given an additional 10 days to respond. Respondent failed to respond. The State Bar's staff investigator was asked to locate Respondent.

22. The State Bar incorporates by reference paragraph's 9 through 13 above.

23. Based on the forgoing, Respondent violated Rule 42, Ariz. R. Sup. Ct., specifically:

a. **ER 1.1 (Competence)** (A lawyer shall provide competent representation to a client. Competent representation requires the legal

knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

b. **ER 1.2 (Scope of representation)** (A lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued).

c. **ER 1.3 (Diligence)** (A lawyer shall act with reasonable diligence and promptness in representing a client).

d. **ER 1.4 (Communication)** (A lawyer shall consult with the client, keep the client reasonably informed about the status of the matter, promptly comply with reasonable requests for information, and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).

e. **ER 8.1(b)** (disciplinary matters) (A lawyer shall not knowingly fail to respond to a lawful demand for information from the State Bar).

f. **ER 8.4(d)** (Misconduct) (It is professional misconduct for a lawyer to: engage in conduct that is prejudicial to the administration of justice).

g. **Rule 54 (c) (Grounds for Discipline)** (Knowing violation of any rule or any order of the court).

h. **Rule 54 (d)** (Grounds for Discipline) (Failure to furnish information requested by the State Bar).

**COUNT THREE (File no. 16-1707/Clancy)**

24. Michael P. Clancy, Jr. (Mr. Clancy) is Father's lawyer in a divorce action. Respondent is Mother's lawyer.

25. On October 8, 2015, the parties reached agreement with respect to parenting time and legal decision-making. Mr. Clancy emailed Respondent to memorialize the terms of agreement and Respondent told Mr. Clancy to draft the proposed notice of settlement.

26. On October 19, 2015, Mr. Clancy drafted and submitted his proposed notice of settlement and request to vacate evidentiary hearing scheduled for October 26, 2015, to Respondent for approval. Respondent responded that "[Mr. Clancy] has my authority to electronically sign and file." The notice of settlement was electronically filed that same date.

27. On November 12, 2015, Mr. Clancy emailed Respondent with a draft of the stipulated order re: modification of decree for his review and approval. Respondent failed to respond.

28. On November 18, 2015, Mr. Clancy's paralegal emailed Respondent to follow-up on the status of his review of the stipulated order. Respondent was reminded of the Court's dismissal deadline. Respondent failed to respond.

29. On November 20, 2015, Mr. Clancy lodged a form of order without signatures to satisfy the Court's dismissal deadline. Respondent failed to respond. The Court rejected the November 20, 2015, proposed order.

30. On January 8, 2016, Mr. Clancy resubmitted the proposed order, without the signature page, due to Respondent's non-responsiveness.

31. On January 14, 2016, the Court again rejected Father's proposed order, and set a dismissal deadline of February 15, 2016, unless the parties submitted a stipulated order with signatures. Mr. Clancy immediately emailed Respondent to get his and his client's signatures. Respondent failed to respond.

32. On January 20, 2016, Mr. Clancy called Respondent's office and left a voicemail for him; Respondent failed to respond.

33. On February 3, 2016, Mr. Clancy again emailed Respondent to reiterate the Court's dismissal deadline and to arrange to obtain his and his client's signature. Respondent failed to respond.

34. On February 10, 2016, Mr. Clancy called Respondent's office and spoke with his paralegal. The paralegal confirmed that Mother had signed the stipulated order and that the document was with Respondent.

35. On February 12, 2016, Mr. Clancy called Respondent's office and left a voicemail with his paralegal advising her that he was filing a motion for order to show cause re: failure to sign stipulated order.

36. On February 18, 2016, the court issued an order to appear so that Respondent could appear and show cause why it had taken over four months to sign the stipulated order to which the parties had previously agreed.

37. On March 11, 2016 at 2:20 p.m. Respondent was personally served with the order to appear. An affidavit of service was filed with the clerk reflecting that Respondent was served "by leaving one set of the above listed documents [Order to Appear and Expedited Motion for Order to Show Cause] with Chris Barski, Partner, who stated he was authorized to accept."

38. On March 22, 2016, Mr. Clancy spoke to Mr. Barski. Mr. Barski told Mr. Clancy that he had not accepted service for Respondent and that they had not been law partners since January 1, 2015.

39. On March 22, 2016, Mr. Clancy interviewed his process server, Bryan Curry (Mr. Curry), to confirm that the person he served on March 11, 2016, was Chris Barski and not Respondent. Mr. Curry confirmed that his affidavit of service reflected what was communicated to him.

40. Mr. Clancy sent Mr. Curry an email with pictures of Chris Barski and Respondent and asked Mr. Curry to confirm the visual identity of the person he served.

41. On March 24, 2016, Mr. Curry, filed an amended affidavit of service informing the court that "[a]t the time of the service [Respondent] stated that he was Chris Barski, Partner of [Respondent], and authorized to accept service for [Respondent]." In addition, Mr. Curry stated that "[he] was provided photos of both [Respondent] and Chris Barski. The person [Mr. Curry] served was actually [Respondent]."

42. On April 1, 2016, the parties and their attorneys appeared for the order to show cause hearing. At the hearing, the stipulated order was finally executed by Respondent. When asked by the Court why it has taken nearly six months to sign the agreement, Respondent reported that Mother "did not like the agreement and had made major concessions." Mr. Clancy pointed out to the court that the parties had a written agreement that was presumptively binding pursuant

to Rule 69, Arizona Rules of Family Law Procedure. The court agreed and signed the stipulated order in open court.

43. On April 8, 2016, Mr. Clancy filed a motion for attorney's fees and costs. On May 2, 2016, the court granted the motion and made the following findings:

a. Respondent "significantly interfered with the administration of justice by his conduct in this matter,"

b. Respondent "misrepresented his identity to an officer of the Court, namely the process server who served the Court's Order to Show Cause on [Respondent] on March 11, 2016,"

c. Respondent "made false statements to this Court during the April 1, 2016 hearing, when he denied that he misrepresented his identity to the process server."

44. On June 8, 2016, Respondent was sent a screening letter. Respondent failed to respond. The State Bar's staff investigator was asked to locate Respondent.

45. The State Bar incorporates by reference paragraph's 9 through 13 above.

46. Based on the forgoing, Respondent violated Rule 42, Ariz. R. Sup. Ct., specifically:

a. **ER 3.2. (Expediting Litigation)** (A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client).

b. **ER 3.3(a) (Candor Toward the Tribunal)** (A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer).

c. **ER 3.4 (Fairness to Opposing Party and Counsel)** (A lawyer shall not: (c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

d. **ER 4.4(a) (Respect for Rights of Others)** (In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden any other person, or use methods of obtaining evidence that violate the legal rights of such a person).

e. **ER 8.1(b) (disciplinary matters)** (A lawyer shall not knowingly fail to respond to a lawful demand for information from the State Bar).

f. **ER 8.4(c) (Misconduct)** (It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation).


g. **ER 8.4(d) (Misconduct)** (It is professional misconduct for a lawyer to: engage in conduct that is prejudicial to the administration of justice).

h. **Rule 54 (c) (Grounds for Discipline)** (Knowing violation of any rule or any order of the court).

i. **Rule 54(d) (Grounds for Discipline)** (Failure to furnish information requested by the State Bar.

**DATED** this 28<sup>th</sup> day of December, 2016.

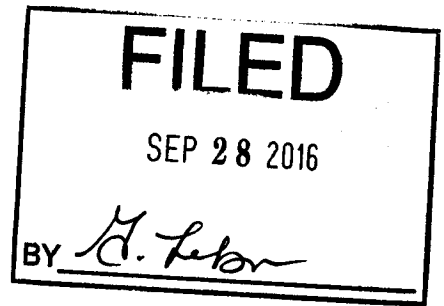
**STATE BAR OF ARIZONA**

  
\_\_\_\_\_  
Shauna R. Miller  
Senior Bar Counsel

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 28<sup>th</sup> day of December, 2016.

by:   
\_\_\_\_\_  
SRM:kc





**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,**

**RICHARD A. DRAKE  
Bar No. 025449**

Respondent.

No. 15-3089

**PROBABLE CAUSE ORDER**

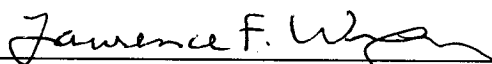
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on September 9, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 7-0-2<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-3089.

**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 27 day of September, 2016.

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

<sup>1</sup> Committee members Charles J. Muchmore and Karen E. Osborne did not participate in this matter.

Original filed this 28<sup>th</sup> day  
of September, 2016, 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 29<sup>th</sup> day  
of September, 2016, to:

Richard A Drake  
Drake Law Firm PLC  
14500 North Northsight Boulevard, Suite 208  
Scottsdale, Arizona 85260-3661  
Respondent

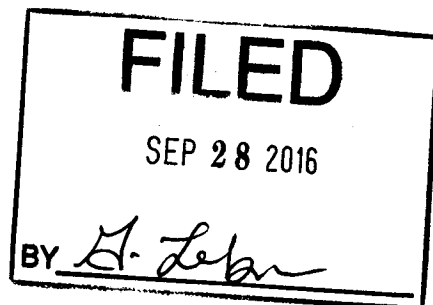
Copy emailed this 29<sup>th</sup> day  
of September, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> St., Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: UB Neal

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,

**RICHARD A. DRAKE**  
Bar No. 025449

Respondent.

No. 16-1014

**PROBABLE CAUSE ORDER**

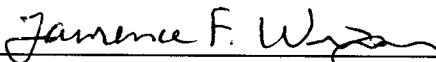
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on September 9, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 7-0-2<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-1014.

**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 27 day of September, 2016.

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

<sup>1</sup> Committee members Charles J. Muchmore and Karen E. Osborne did not participate in this matter.

Original filed this 27<sup>th</sup> day  
of September, 2016, 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 29<sup>th</sup> day  
of September, 2016, to:

Richard A. Drake  
Drake Law Firm PLC  
14500 North Northsight Boulevard, Suite 208  
Scottsdale, Arizona 85260-3661  
Respondent

Copy emailed this 29<sup>th</sup> day  
of September, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> St., Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: UJ Neal

**FILED**

SEP 28 2016

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

BY 

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

**RICHARD A. DRAKE  
Bar No. 025449**

Respondent.

No. 16-1707

**PROBABLE CAUSE ORDER**

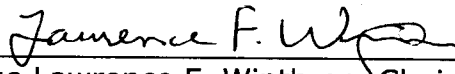
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on September 9, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 7-0-2<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-1707.

**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 27 day of September, 2016.

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

<sup>1</sup> Committee members Charles J. Muchmore and Karen E. Osborne did not participate in this matter.

Original filed this 22<sup>th</sup> day  
of September, 2016, 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 21<sup>st</sup> day  
of September, 2016, to:

Richard A. Drake  
Drake Law Firm PLC  
14500 North Northsight Boulevard, Ste 208  
Scottsdale, Arizona 85260-3661  
Respondent

Copy emailed this 21<sup>st</sup> day  
of September, 2016, to:

Attorney Discipline Probable Cause Committee  
of the Supreme Court of Arizona  
1501 West Washington Street, Suite 104  
Phoenix, Arizona 85007  
E-mail: [ProbableCauseComm@courts.az.gov](mailto:ProbableCauseComm@courts.az.gov)

Lawyer Regulation Records Manager  
State Bar of Arizona  
4201 N. 24<sup>th</sup> St., Suite 100  
Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: 