

**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 2017-9035**

**FINAL JUDGMENT AND  
ORDER OF DISBARMENT**

[State Bar Nos. 16-2232, 16-2682,  
16-2683, 16-2726]

**FILED SEPTEMBER 13, 2017**

This matter was heard by the Hearing Panel, which rendered its Decision and Order on August 21, 2017. A Notice of Appeal was filed on September 11, 2017, but no request for stay was filed and the time for request a stay having passed,

Accordingly:

**IT IS ORDERED** Respondent **RICHARD A. DRAKE, Bar No. 025449** is disbarred from the State Bar of Arizona and the name of Respondent is stricken from the roll of lawyers effective August 21, 2017. Richard A. Drake is no longer entitled to the rights and privileges of a lawyer but remains subject to the jurisdiction of the Court.

**IT IS FURTHER ORDERED** Richard A. 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.

**IT IS FURTHER ORDERED** Richard A. Drake shall pay any costs and expenses of the State Bar of Arizona imposed pursuant to Rule 60(b), Ariz. R Sup. Ct. There are no costs or expenses incurred by the disciplinary clerk or Presiding Disciplinary Judge's Office in these disciplinary proceedings.

**DATED** this September 13, 2017.

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

COPY of the foregoing e-mailed this 13<sup>th</sup> day of September 2017, and mailed September 14, 2017, to:

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MEMBER OF THE STATE BAR OF  
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**RICHARD A. DRAKE,**  
**Bar No. 025449**

Respondent.

**PDJ 2017-9035**

[State Bar File Nos. 16-2232, 16-  
2682, 16-2683, 16-2726]

**DECISION AND ORDER  
IMPOSING SANCTIONS**

**FILED AUGUST 21, 2017**

On July 18, 2017, the Hearing Panel, composed of Ralph Wexler, attorney member, Mel O'Donnell, volunteer public member, and the Presiding Disciplinary Judge (PDJ) held an aggravation/mitigation hearing. Shauna R. Miller appeared on behalf of the State Bar of Arizona. Mr. Drake did not appear. Exhibits 1-23 were admitted. Exhibit 23 was sealed. At the conclusion of the hearing, the State Bar requested disbarment.

**I. SANCTION IMPOSED**

**DISBARMENT AND COSTS**

**II. PROCEDURAL HISTORY**

The State Bar of Arizona ("SBA") filed its complaint on March 20, 2017. On March 22, 2017, 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 Presiding Disciplinary Judge (“PDJ”) was assigned to the matter. On April 18, 2017, a Notice of Default and Entry of Default was filed by the Disciplinary Clerk. On April 26, 2017, Mr. Drake filed his Answer.

On June 12, 2017, the State Bar filed a Notice of Failure to Comply with Discovery Rules and requested a hearing. On June 15, 2017, the PDJ set a status conference for June 20, 2017. Mr. Drake failed to participate in the status conference. On June 20, 2017, the PDJ issued an Entry of Judgment of Default and Orders Re: Notice of Failure to Comply with Discovery. Mr. Drake’s Answer was stricken and the allegations of the complaint were deemed admitted. The July 18, 2017, hearing date was reset as an aggravation / mitigation hearing.

On July 18, 2017, the aggravation / mitigation hearing was scheduled to begin at 9:00 a.m. at the State Courts Building, 1501 West Washington Street, Phoenix, Arizona 85007-3231, where the Hearing Panel, duly empaneled, was present to hear argument. At approximately 8:47 a.m. on July 18, 2017, Mr. Drake emailed the Office of the PDJ informing it that he would not be appearing at the hearing. 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.

### **III. FINDINGS OF FACT**

The facts listed below are those set forth in the SBA's complaint and were deemed admitted by Mr. Drake's default. A respondent against whom a default has been entered no may longer 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 right to testify and the right to cross-examine witnesses, in each instance only to establish facts related to aggravation and mitigation. Mr. Drake did not appear.

#### **GENERAL ALLEGATIONS**

1. At all times relevant, Mr. Drake was licensed to practice law in Arizona having been admitted on March 13, 2008. [Complaint ¶ 1.]

#### **COUNT ONE (File No. 16-2232/Grabowski)/Exhibits 1-3**

2. Mr. Edward Grabowski hired Mr. Drake to represent him in a Chapter 7 Bankruptcy filing. [Exhibit 1.]

3. In July 2011, Mr. Grabowski received a discharge for bankruptcy. Mr. Drake had previously told him that once he received the discharge, he was "finished with the bankruptcy." [Exhibit 2, Bates 000005.]

4. In August 2013, Mr. Grabowski sold his residence, as he thought it was exempt from the previous bankruptcy filing. In May 2015, Mr. Grabowski received a summons in an adversary proceeding in Bankruptcy Court that claimed Mr.

Grabowski knowingly and fraudulently failed to deliver or surrender estate property to the Trustee. [Complaint, ¶ 4- 5; Exhibit 2, Bates 00000-09.]

5. On April 7, 2015, Mr. Grabowski was ordered by the court, to turn over to the trustee \$82,766.14. [Complaint, ¶ 6.]

6. Mr. Grabowski contacted Mr. Drake who for the first time informed him that the bankruptcy estate was still open and as a result Mr. Grabowski did not have the right to sell his residence. [Complaint, ¶ 7.]

7. Mr. Drake told Mr. Grabowski he would respond to the summons. [Complaint, ¶ 8.]

8. In September 2015, Mr. Drake told Mr. Grabowski he had appeared at the adversary hearing and that a judgment was issued for the amount owed to the Trustee. [Complaint, ¶ 9; Exhibit 2, Bates SBA000012.]

9. Mr. Drake told Mr. Grabowski he would work with the Trustee on a settlement and recommended that he offer a payment of \$1,000. Mr. Grabowski told Mr. Drake to make the offer and do what was necessary to settle the issue. [Complaint ¶ 10.]

10. Mr. Grabowski never received any update from Mr. Drake regarding the settlement issue. [Complaint ¶ 11.]

11. In June 2016, Mr. Grabowski received a call from the US Marshall Service regarding a warrant for his arrest for failure to appear. Mr. Grabowski had no idea at what court proceeding he failed to appear. [Complaint ¶ 12.]

12. Mr. Grabowski contacted Mr. Drake and Mr. Drake arranged for a debtor's exam on May 20, 2016. Mr. Drake told Mr. Grabowski not to discuss settlement during the exam, as he would have those discussions with the Trustee at a later time. [Complaint ¶ 13.]

13. After the debtor's exam, Mr. Drake did not respond to Mr. Grabowski's several requests for a response. [Complaint ¶ 14.]

14. On June 25, 2016, Mr. Grabowski received a charging order demanding that all distributions made by his LLC be paid directly to the Trustee. [Complaint ¶ 15.]

15. Mr. Drake was copied on the charging order but Mr. Drake did not make any effort to contact Mr. Grabowski. [Complaint ¶ 16.]

16. By the time Mr. Grabowski received the charging order, he was already in violation of it, as it directed him to provide the Trustee with bank statements the first of each month. [Complaint ¶ 17.]

17. Mr. Drake failed to respond to Mr. Grabowski when he notified Mr. Drake that he had received the charging order. [Complaint ¶ 18.]

18. Mr. Grabowski cannot conduct business because any proceeds he collects are automatically sent to the Trustee not allowing him to earn an income or pay expenses. [Complaint ¶ 19.]

19. Mr. Drake was sent a screening letter on August 11, 2016. Mr. Drake failed to respond. [Complaint ¶ 20; Exhibit 3, Bates SBA000015-19.]

20. Prior to sending the screening letter, the State Bar asked a staff investigator to locate Mr. Drake due to other charges the State Bar had received. [Complaint ¶ 21.]

21. 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. [Complaint ¶ 22.]

22. The staff investigator went to suite 313. The receptionist in suite 313 said Mr. Drake was not in the office. 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. [Complaint ¶ 23.]

23. 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. 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. [Complaint ¶ 24.]

24. On November 11, 2016, Mr. Drake 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;

[Complaint ¶ 25; Exhibit 16.].]

25. On November 28, 2016, Mr. Drake appeared for his deposition but brought none of the subpoenaed documents. Mr. Drake was given until December 15, 2016, to provide all subpoenaed documents and to provide written responses in

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

each of the State Bar's screening files. Mr. Drake failed to do so. [Complaint ¶ 26; Exhibit 17.]

26. On February 23, 2017, in PDJ 2017-9009, the Presiding Disciplinary Judge held Mr. Drake in contempt for failing to comply with the subpoena and placed him on interim suspension<sup>2</sup>. [Complaint ¶ 27; Exhibit 18.]

27. Mr. Drake violated Rule 42, ERs 1.2, 1.3, 1.4, 1.16(a), 3.4(c), 8.1(b), and 8.4(d); and Rule 54, Ariz. R. Sup. Ct.

#### **COUNT TWO (16-2682/Capone)/Exhibits 4-8**

28. Mr. John Capone hired Mr. Drake in October 2015 and paid him \$1,000 to file a civil lawsuit against a former business partner. [Complaint ¶ 29; Exhibit 4.]

29. Between October 2015 and September 2016, Mr. Drake was not diligent in responding to Mr. Capone's calls and emails, and at times was nonresponsive, and he moved offices and did not notify Mr. Capone. [Complaint ¶ 30; Exhibit 4.]

30. Mr. Capone finally logged on to the court website and learned that a judgment had been entered in his case. [Complaint, ¶ 31; Exhibit 4, Bates SBA000026.]

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<sup>2</sup> On March 14, 2017, Mr. Drake was suspended from the practice of law for one year, effective that same date.

31. Mr. Capone demanded his money back, but Mr. Drake has failed to provide a refund. [Complaint ¶ 32; Exhibit 5, Bates SBA000051.]

32. The following are email communications between Mr. Capone and Mr. Drake:

- a. On November 18, 2015, Mr. Drake sent Mr. Capone a copy of the defendant's answer and counterclaim;
- b. On November 30, 2015, Mr. Capone asked for a status report;
- c. On December 1, 2015, Mr. Drake told Mr. Capone he was preparing draft discovery answers for Mr. Capone's to review;
- d. On December 9, 2015, Mr. Capone again asked Mr. Drake about the status of his case and asked when they had to answer the counterclaim;
- e. On December 9, 2015, Mr. Drake told Mr. Capone that "everything is fine" and they were "still ok on responding";
- f. On February 10, 2016, Mr. Drake told Mr. Capone the case had been reassigned and he would move for a scheduling conference;
- g. On April 3, 2016, Mr. Drake sent Mr. Capone a copy of the joint report and proposed schedule that he filed with the court.
- h. On June 21, 2016, Mr. Capone emailed Mr. Drake complaining that he has been trying to get a hold of him;
- i. On June 30, 2016, Mr. Drake's office manager tells Mr. Capone that Mr. Drake will update him soon;
- j. On August 3, 2016, Mr. Capone emails Mr. Drake again asking for a status report;
- k. On August 15, 2016, Mr. Capone emails Mr. Drake and his office manager telling them he has been trying to get in touch with them for the last three months;

- l. On August 17, 2016, the office manager emails him that there have been no updates since June and Mr. Drake will get in touch with him soon;
  - m. On August 17, 2016, Mr. Capone responds, telling her that he is very upset, that the website shows a judgment against him, that Mr. Drake has failed to return his calls or emails, and he wants a full refund;
  - n. On August 18, 2016, Mr. Drake tells Mr. Capone he has been in court, but will “figure things out and contact” Mr. Capone that afternoon. He also says he “will see if [he] can’t right this ship”;
  - o. On August 22, 2016, Mr. Capone tells Mr. Drake that Mr. Drake has abandoned his case; that Mr. Capone referred a friend to Mr. Drake and Mr. Drake abandoned her case, too; and Mr. Drake must tell him when he can pick up his refund check.  
[Complaint, ¶ 33; Exhibit 5.]
33. On August 29, 2016, the defendant/counter-plaintiff moved to dismiss Mr. Capone’s lawsuit. [Complaint, ¶ 34; Exhibit 6.]
34. On September 20, 2016, the defendant/counter-plaintiff applied for attorney’s fees. [Complaint, ¶ 35; Exhibit 6.]
35. On September 23, 2016, judgement was entered against Mr. Capone for \$22,078.22. [Complaint, ¶ 36; Exhibit 6.]
36. Mr. Drake was sent a screening letter on October 6, 2016. Mr. Drake failed to respond. [Complaint, ¶ 37; Exhibit 8.]
37. Paragraphs 21 through 27 are incorporated herein.
38. Mr. Drake violated Rule 42, ERs 1.2, 1.3, 1.4, 1.5(a), 1.16(a), 3.4(c), 8.1(b), and 8.4(c) and (d); and Rule 54(c), Ariz. R. Sup. Ct.

**COUNT THREE (File No. 16-2683/Gawlak)/Exhibits 9-12**

39. In April 2016, Ms. Dorota Gawlak hired Mr. Drake to represent her in her divorce action. [Complaint ¶ 40; Exhibit 9.]

40. Mr. Drake told Ms. Gawlak the case would be quick and simple to handle and charged her \$800. [Complaint, ¶ 41; Exhibit 9.]

41. On April 26, 2016, Mr. Drake filed the petition for dissolution and sent a copy to Ms. Gawlak. [Complaint, ¶ 42; Exhibit 10.]

42. In early June 2016, Ms. Gawlak unsuccessfully tried to get in touch with Mr. Drake by phone and by visiting his office. She was unable to talk to him. [Complaint, ¶ 43.]

43. On June 27, 2016, the court filed a notice of lack of service. [Complaint, 44; Exhibit 10.]

44. In early July 2016, Ms. Gawlak again attempted to get in touch with Mr. Drake, but was unable to communicate with him. [Complaint, ¶ 45.]

45. Ms. Gawlak then asked her son Patrick to get in touch with Mr. Drake; Patrick called and left messages for Mr. Drake at least four times in July and August, and sent two emails in August. Mr. Drake never responded. [Complaint, ¶ 46; Exhibit 11.]

46. Ms. Gawlak sought restitution and Mr. Drake did eventually refund her \$399.50. [Complaint, ¶ 47.]

47. Mr. Drake was sent a screening letter on August 29, 2016. Mr. Drake failed to respond. [Complaint, ¶ 48; Exhibit 12.]

48. Paragraphs 21 through 27 are incorporated herein.

49. Mr. Drake violated Rule 42, ERs 1.2, 1.3, 1.4, 1.5(a), 1.16(a), 3.2, 8.1(b), and 8.4(d); and Rule 54(c), Ariz. R. Sup. Ct.

**COUNT FOUR (File No. 16-2726/Young)/Exhibits 13-15**

50. Mr. Drake represented Nationwide Insurance (Nationwide) in case TJ2008012031, which involved collecting a wage garnishment that was forwarded to Mr. Drake by Nationwide. [Complaint, ¶ 51.]

51. Mr. Drake collected the judgment on Nationwide's behalf over a year ago, filed a satisfaction of judgment, but forwarded no funds to Nationwide. [Complaint ¶ 52; Exhibit 14, Bates SBA000188.]

52. Mr. Drake owes Nationwide approximately \$4,662.79. [Complaint ¶ 53; Exhibit 13, Bates SBA000169.]

53. From February 2015 through May 2016, Nationwide emailed Mr. Drake about this matter, but he did not respond. [Complaint ¶ 54; Exhibit 13, Bates SBA 000168-169.]

54. Mr. Drake was sent screening letters on September 12 and October 6, 2016. Mr. Drake failed to respond. [Complaint ¶ 55; Exhibit 15.]

55. Paragraphs 21 through 27 are incorporated herein.

56. Mr. Drake violated Rule 42, ERs 1.2, 1.3, 1.4, 1.15(a), 1.16(a), 8.1(b), 8.4(b), and 8.4(c); Rules 43(a) and 54(c), Ariz. R. Sup. Ct.

#### **IV. CONCLUSIONS OF LAW**

Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Mr. Drake violated: Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.2, 1.3, 1.4, 1.5, 1.15(a), 1.16, 3.2, 3.4(c), 8.1(b), 8.4(d), and Rules 43(a) and 54(c).

#### **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 consider: (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:**

Mr. Drake violated his duty to his clients by violating ERs 1.2, 1.3, 1.4, 1.5, 1.15 and 1.16. Mr. Drake violated his duty to the legal system by violating ERs 3.2 and 3.4(c). Mr. Drake also violated his duty owed as a professional by violating ERs 8.1(b) and 8.4(d), and Rule 43(a) and 54(c).

## **Mental State and Injury:**

Mr. Drake violated his duty to clients, implicating *Standard 4.4. Standard*

4.41 states:

Disbarment is generally appropriate when:

- (a) a lawyer abandons the practice and causes serious or potentially serious injury to a client;
- (b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or
- (c) a 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* states:

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.

In all cases, there was client harm and Mr. Drake knowingly failed to perform services for clients in all four counts and caused serious or potentially serious injury to the clients. Disbarment is the presumptive sanction based on this *Standard*.

Mr. Drake also violated his duty owed as a professional, which implicates *Standard 7.0*.

*Standard 7.1* states:

Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional 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* 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.”

Mr. Drake knowingly failed to cooperate in the screening process when he failed to provide subpoenaed records at his deposition, and continued that pattern through these formal proceedings by failing to provide a disclosure statement and failing to fully participate in these proceedings. Mr. Drake took money from clients and did not provide the services contracted for. In one count, he failed to turn over to the client funds collected from a wage garnishment. Disbarment is the presumptive sanction based on this *Standard*.

*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, page 7.

### **AGGRAVATING AND MITIGATING FACTORS**

The Hearing Panel finds the following aggravating factors are present in this matter:

#### *Standard 9.22*

(a) prior disciplinary offenses; Mr. Drake was summarily suspended for failing to provide subpoenaed documents, and is on a one-year suspension in a three-count formal complaint that went to an aggravation/mitigation hearing. [Exhibits 18-22.]

(b) dishonest or selfish motive; taking client funds and failing to perform services or to tender the funds to the person rightfully entitled to the funds is a dishonest and selfish motive.

(c) a pattern of misconduct; the misconduct in several of the cases in this formal file, and the cases in the other formal file, demonstrate a pattern of misconduct.

(d) multiple offenses; these matters encompass multiple offences.

(e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency; Mr. Drake has failed to cooperate with the State Bar over an extended period.

(g) refusal to acknowledge wrongful nature of conduct; and

(i) substantial experience in the practice of law;

The Hearing Panel finds the following mitigating factor applies:

*Standard 9.32*

(c) personal or emotional problems: Mr. Drake's defense to his misconduct and his failure to respond to the State Bar is due to "fear and avoidance" issues and panic attacks. A letter from Mr. Drake's doctor was admitted into evidence, but this mitigating factor is given little weight. [Sealed Exhibit 23.]

The Hearing Panel finds the sole mitigating factor does not outweigh the aggravating factors. Disbarment and restitution is appropriate.

**PROPORTIONALITY**

In the past, the Supreme Court has consulted 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 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 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)).

The following cases are useful in determining a sanction.

**Andrich, Devin**, PDJ 2014-9029; SBA File nos. 12-0689 et al. DISBARRED September 24, 2014. Mr. Andrich was retained by clients on a variety of matters. The clients paid Mr. Andrich a fee but he provided little or no legal services to them. In those matters in which Mr. Andrich provided some legal services, they were of no real value to the clients. He also occasionally caused them actual harm. Mr. Andrich filed complaints without a good faith basis in law or fact and intending to delay, harass, and burden the defendants. He refused to dismiss the complaints when they were meritless. Mr. Andrich was not diligent in his representation and billed a client for services he did not provide. He failed to provide a client with a copy of the file upon termination

of the representation. During the State Bar's screening investigation Mr. Andrich gave the State Bar a demand letter he falsely claimed to have sent to opposing counsel in the underlying matter. Mr. Andrich repeatedly misrepresented to another client the status of the underlying case. He failed to promptly respond to client requests for information. Mr. Andrich defrauded two clients of \$135,000 which he was supposed to have been holding in trust for them, and then lied to them and the State Bar about the status of those funds. Aggravating factors: selfish or dishonest motive; pattern of misconduct; multiple offenses; bad faith obstruction of disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge wrongful nature of misconduct; indifference to restitution; and illegal conduct. Mitigating factors: absence of prior disciplinary record. Violations: Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.4(a)(3) and (4), 1.5(a), 1.15(a), 1.16(d), 3.1, 3.2, 4.4(a), 8.1(a), 8.4(c) and (d); Rule 41(g); and Rule 54(d) and (i).

**Golder, Michael R.** PDJ 2016-9031, SBA File Nos. 15-2420 and 15-2426; DISBARRED August 23, 2016. In Count One of the two count Complaint, Mr. Golder abandoned a personal injury plaintiff's case. The matter was ultimately dismissed for his failure to have the Complaint served. Golder failed to notify his client of the dismissal. In Count Two, a medical malpractice action, Golder failed to respond

to a motion for summary judgment, resulting in the dismissal of his client's case. He failed to inform his client of the dismissal. Mr. Drake failed to furnish written responses to the State Bar's investigations in the respective matters. When deposed about the matters, Mr. Drake admitted that cocaine use contributed to his failures in the underlying cases. Aggravating factors: a pattern of misconduct, multiple offenses, vulnerability of the victims, substantial experience in the practice of law, and illegal conduct. Mitigating factor: absence of a prior disciplinary record. Violations: Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.4, 3.2, 3.4(c), 8.4(b), 8.4(d), and Rule 54(d)(2).

**Pattullo, John G.** PDJ 2015-9110, SBA File Nos. 14-3522 et al. DISBARRED February 2, 2016. In three counts Mr. Pattullo received client fees and then performed no services. In two counts, he took the money knowing he would be suspended within the month. In one count, he did not give the client the latter's original trust documents because they were in a storage facility and Pattullo had stopped paying his bill. This contradicted Pattullo's previous testimony that he had no original wills in storage. Aggravating factors: prior discipline, pattern of misconduct, bad-faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and substantial experience in the practice of law. There were no mitigating factors. Violations: Rule 42, ERs 1.2, 1.3, 1.4, 1.5, 1.15(d), 1.16(d),

3.3(a), 8.1(a) and (b), and 8.4(c) and (d), and Rules 54(c), (d)(1) and (2), and 72, Ariz. R. Sup. Ct.

Mr. Drake's conduct in the four counts of the State Bar's complaint are similar to all three cases noted above. Mr. Drake was retained by clients on a variety of matters. He was paid a fee but he provided little or no legal services, and where Mr. Drake provided some legal services, they were of no real value to the clients and sometimes, caused them actual harm.

In all three cases, there was a pattern of misconduct; in two cases, there was bad faith obstruction of disciplinary proceeding; in two cases, there was substantial experience in the practice of law. Mr. Andrich and Mr. Golder had no prior discipline, but their misconduct was more egregious. Mr. Pattullo had prior discipline, but his misconduct was less egregious and more on par with Mr. Drake's misconduct. Mr. Drake also has prior discipline.

## V. 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 Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. The Hearing Panel orders:

1. Mr. Drake shall be disbarred from the practice of law effective immediately.
2. Mr. Drake shall pay all costs and expenses incurred by the SBA and the Office of the Presiding Disciplinary Judge in this proceeding. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

A final judgment and order will follow.

**DATED** this 21<sup>st</sup> day of August 2017.

*William J. O'Neil*

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

*Mel O'Donnell*

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**Mel O'Donnell, Volunteer Public Member**

*Ralph Wexler*

\_\_\_\_\_  
**Ralph Wexler, Volunteer Attorney Member**

Copy of the foregoing e-mailed/mailed  
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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



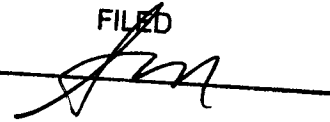
Shauna R. Miller, Bar No. 015197  
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Email: LRO@staff.azbar.org

OFFICE OF THE  
PRESIDING DISCIPLINARY JUDGE  
SUPREME COURT OF ARIZONA

MAR 20 2017

FILED

BY



**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 2017-9035**

[State Bar File Nos. 16-2232, 16-  
2682, 16-2683, and 16-2726]

**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 on March 13, 2008.

**COUNT ONE (File No. 16-2232/Grabowski)**

2. Mr. Edward Grabowski hired Respondent to represent him in a Chapter 7 Bankruptcy filing.

3. In June 2011, Mr. Grabowski received a discharge for bankruptcy. Respondent had previously told him that once he received the discharge, he was “finished with the bankruptcy.”

4. In August 2013, Mr. Grabowski sold his residence, which he thought was exempt from the previous bankruptcy filing.

5. In May 2015, Mr. Grabowski received a summons in an adversary proceeding in Bankruptcy Court that claimed Mr. Grabowski knowingly and fraudulently failed to deliver or surrender estate property to the Trustee.

6. On April 7, 2015, Mr. Grabowski was ordered by the court, to turn over to the trustee \$82,766.14.

7. Mr. Grabowski contacted Respondent who for the first time informed him that the bankruptcy estate was still open and as a result Mr. Grabowski did not have the right to sell his residence.

8. Respondent told Mr. Grabowski that he would respond to the summons.

9. In September 2015, Respondent told Mr. Grabowski he had appeared at the adversary hearing and that a judgment was issued for the amount owed to the Trustee.

10. Respondent told Mr. Grabowski he would work with the Trustee on a settlement and recommended that he offer a payment of \$1,000. Mr. Grabowski told Respondent to make the offer and do what was necessary to settle the issue.

11. Mr. Grabowski never received any update from Respondent regarding the settlement issue.

12. In June 2016, Mr. Grabowski received a call from the US Marshall Service regarding a warrant for his arrest for failure to appear. Mr. Grabowski had no idea for which court proceeding he failed to appear.

13. Mr. Grabowski contacted Respondent and Respondent made arrangements for a debtor's exam on May 20, 2016. Respondent told Mr. Grabowski not to discuss settlement during the exam, that he would have those discussions with the Trustee at a later time.

14. After the debtor's exam, Respondent did not respond to Mr. Grabowski's several requests for a response.

15. On June 25, 2016, Mr. Grabowski received a charging order demanding that all distributions made by his LLC be paid directly to the Trustee.

16. Respondent was copied on the charging order but Respondent did not make any effort to contact Mr. Grabowski.

17. By the time Mr. Grabowski received the charging order, he was already in violation of it, as it directed him to provide the Trustee with bank statements the first of each month.

18. Respondent failed to respond to Mr. Grabowski when he notified Respondent that he had received the charging order.

19. Mr. Grabowski is unable to conduct business because any proceeds he collects are automatically sent to the Trustee, thus not allowing him to earn an income or pay expenses.

20. Respondent was sent a screening letter on August 11, 2016. Respondent failed to respond.

21. Prior to sending the screening letter, the State Bar asked a staff investigator to locate Respondent due to other charges the State Bar had received.

22. 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.

23. The staff investigator went to suite 313. The receptionist in suite 313 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.

24. 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.

25. 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.;

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

- b. Fee agreement(s);
- c. Timekeeping/accounting records; and
- d. Billing/fee statements;

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

27. On February 23, 2017, in PDJ 2017-9009, the Presiding Disciplinary Judge held Respondent in contempt for failing to comply with the subpoena and placed him on interim suspension<sup>2</sup>.

28. Based upon the foregoing, Respondent violated Rule 42, ERs 1.2, 1.3, 1.4, 1.16(a), 3.4(c), 8.1(b), and 8.4(d); and Rule 54, Ariz. R. Sup. Ct.

### **COUNT TWO (16-2682/Capone)**

29. Mr. John Capone hired Respondent in October 2015 and paid him \$1,000 to file a civil lawsuit against a former business partner.

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<sup>2</sup> On March 14, 2017, Respondent was suspended from the practice of law for one year, effective that same date.

30. Between October 2015 and September 2016, Respondent was not diligent in responding to Mr. Capone's calls and emails, and at times was nonresponsive, and he moved offices and did not notify Mr. Capone,

31. Mr. Capone finally logged on to the court website and learned that a judgment had been entered in his case.

32. Mr. Capone demanded his money back, but Respondent has failed to provide a refund.

33. The following are email communications between Mr. Capone and Respondent:

- a. On November 18, 2015, Respondent sent Mr. Capone a copy of the defendant's answer and counterclaim;
- b. On November 30, 2015, Mr. Capone asked for a status report;
- c. On December 1, 2015, Respondent told Mr. Capone he was preparing draft discovery answers for Mr. Capone's to review;
- d. On December 9, 2015, Mr. Capone again asked Respondent about the status of the case and asked when they had to answer the counterclaim;
- e. On December 9, 2015, Respondent told Mr. Capone that "everything is fine" and they were "still ok on responding";
- f. On February 10, 2016, Respondent told Mr. Capone the case had been reassigned and he would file a motion for a scheduling conference;

- g. On April 3, 2016, Respondent sent Mr. Capone a copy of the joint report and proposed schedule that he filed with the court.
  - h. On June 21, 2016, Mr. Capone emailed Respondent complaining that he has been trying to get a hold of him;
  - i. On June 30, 2016, Respondent's office manager tells Mr. Capone that Respondent will update him soon;
  - j. On August 3, 2016, Mr. Capone emails Respondent again asking for a status report;
  - k. On August 15, 2016, Mr. Capone emails Respondent and his office manager telling them he has been trying to get in touch with them for the last three months;
  - l. On August 17, 2016, the office manager emails him that there have been no updates since June and Respondent will get in touch with him soon;
  - m. On August 17, 2016, Mr. Capone responds, telling her that he is very upset, that the website shows a judgment against him, that Respondent has failed to return his calls or emails, and he wants a full refund;
  - n. On August 18, 2016, Respondent tells Mr. Capone he has been in court, but will "figure things out and contact" Mr. Capone that afternoon. He also says he "will see if [he] can't right this ship";
  - o. On August 22, 2016, Mr. Capone tells Respondent that Respondent has abandoned his case; that Mr. Capone referred a friend to Respondent and Respondent abandoned her case, too; and Respondent needs to tell him when he can pick up his refund check.
34. On August 29, 2016, the defendant/counter-plaintiff moved to dismiss Mr.

Capone's lawsuit.



35. On September 20, 2016, the defendant/counter-plaintiff filed an application for attorney's fees.

36. On September 23, 2016, judgement was entered against Mr. Capone in the amount of \$22,078.22.

37. Respondent was sent a screening letter on October 6, 2016. Respondent failed to respond.

38. Paragraphs 21 through 27 are incorporated herein.

39. Based upon the foregoing, Respondent violated Rule 42, ERs 1.2, 1.3, 1.4, 1.5(a), 1.16(a), 3.4(c), 8.1(b), and 8.4(c) and (d); and Rule 54(c), Ariz. R. Sup. Ct.

### **COUNT THREE (File No. 16-2683/Gawlak)**

40. In April 2016, Ms. Dorota Gawlak hired Respondent to represent her in her divorce action.

41. Respondent told Ms. Gawlak the case would be quick and simple to handle and charged her \$800.

42. On April 26, 2016, Respondent filed the petition for dissolution and sent a copy to Ms. Gawlak.

43. In early June 2016, Ms. Gawlak tried to get in touch with Respondent by phone and by visiting his office. She was unable to talk to him.

44. On June 27, 2016, the court filed a notice of lack of service.

45. In early July 2016, Ms. Gawlak again attempted to get in touch with Respondent, but was unable to communicate with him.

46. Ms. Gawlak then asked her son Patrick to try to get in touch with Respondent; Patrick called and left messages for Respondent at least four times in July and August, and sent two emails in August. Respondent never responded.

47. Ms. Gawlak is seeking restitution.

48. Respondent was sent a screening letter on August 29, 2016. Respondent failed to respond.

49. Paragraphs 21 through 27 are incorporated herein.

50. Based upon the foregoing Respondent violated Rule 42, ERs 1.2, 1.3, 1.4, 1.5(a), 1.16(a), 3.2, 8.1(b), and 8.4(d); and Rule 54(c), Ariz. R. Sup. Ct.

#### **COUNT FOUR (File No. 16-2726/Young)**

51. Respondent represented Nationwide Insurance (Nationwide) in case TJ2008012031, which involved collecting a wage garnishment that was forwarded to Respondent by the garnishee.

52. Respondent collected the judgment on Nationwide's behalf over a year ago, filed a satisfaction of judgment, but failed to forward any funds to Nationwide.

53. Respondent owes Nationwide approximately \$4,662.79.

54. From February 2015 through May 2016, Nationwide emailed Respondent about this matter, but he did not responded.

55. Respondent was sent screening letters on September 12 and October 6, 2016. Respondent failed to respond.

56. Paragraphs 21 through 27 are incorporated herein.

57. Based upon the foregoing Respondent violated Rule 42, ERs 1.2, 1.3, 1.4, 1.15(a), 1.16(a), 8.1(b), 8.4(b), and 8.4(c); Rules 43(a) and 54(c), Ariz. R. Sup. Ct.

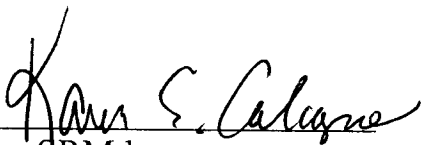
DATED this 20<sup>th</sup> day of March, 2017.

**STATE BAR OF ARIZONA**



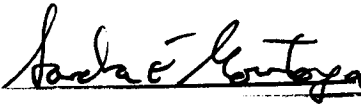
Shauna R. Miller  
Senior Bar Counsel

Original filed with the Disciplinary Clerk of  
the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 20<sup>th</sup> day of March, 2017.

by:   
SRM:kec

**FILED**

JAN 31 2017

BY 

**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. 16-2232

**PROBABLE CAUSE ORDER**

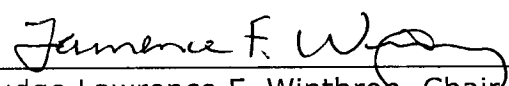
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on January 13, 2017, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2232.

**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 31 day of January, 2017.

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

<sup>1</sup> Committee member Ben Harrison did not participate in this matter.

Original filed this 31<sup>st</sup> day  
of January, 2017, with:

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

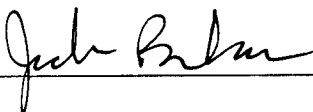
Copy mailed this 1<sup>st</sup> day  
of February, 2017, to:

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

Copy emailed this 1<sup>st</sup> day  
of February, 2017, 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: 

**FILED**

JAN 31 2017

BY *Sandra Montoya*

**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. 16-2682

**PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on January 13, 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 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2682.

**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 31 day of January, 2017.

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

<sup>1</sup> Committee member Ben Harrison did not participate in this matter.

Original filed this 31st day  
of January, 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 1st day  
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Respondent

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Phoenix, Arizona 85016-6266  
E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: Jackie Barkan

**FILED**

JAN 31 2017

BY 

**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. 16-2683

**PROBABLE CAUSE ORDER**

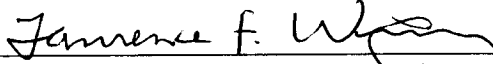
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By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2683.

**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 31 day of January, 2017.

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

<sup>1</sup> Committee member Ben Harrison did not participate in this matter.



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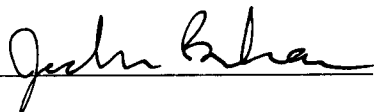
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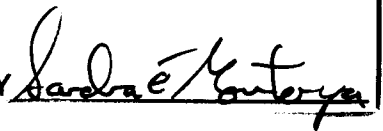
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E-mail: [LRO@staff.azbar.org](mailto:LRO@staff.azbar.org)

by: 

**FILED**

JAN 31 2017

BY 

**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. 16-2726

**PROBABLE CAUSE ORDER**

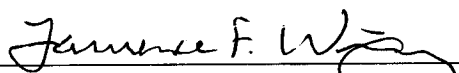
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By a vote of 8-0-1<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2726.

**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 31 day of January, 2017.

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

<sup>1</sup> Committee member Ben Harrison did not participate in this matter.

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by: Josh Berkman