BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JACK LEVINE,** **Bar No. 001637** Respondent.	**No. PDJ-2016-9116** **AMENDED FINAL JUDGMENT AND ORDER** [State Bar No. 15-1425] **FILED MARCH 9, 2017**

This matter was heard by the Hearing Panel, which rendered its Decision and Order on February 17, 2017. An appeal has been filed and any assessment of costs shall be determined in accordance with Rule 60(b), Ariz. R. Sup. Ct. No request for stay having been filed under Rule 59(c), and the time to seek a stay having expired,

Now Therefore,

IT IS ORDERED Respondent, **JACK LEVINE, Bar No. 001637,** is suspended from the practice of law for ninety (90) days effective **March 20, 2017**.

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

IT IS FURTHER ORDERED upon reinstatement, Mr. Levine shall be placed on two (2) years probation with the State Bar's Member Assistance Program (MAP).

IT IS FURTHER ORDERED as a condition of reinstatement, Mr. Levine shall obtain a Member Assistance Program (MAP) assessment with Dr. Lett. Mr. Levine shall contact the State Bar Compliance Monitor at (602) 340-7258, prior to reinstatement to obtain information and schedule the MAP assessment. Thereafter, the Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Mr. Levine shall be responsible for any costs associated with MAP participation and compliance.

There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

DATED this 9th day of March, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed & mailed
this 9th day of March, 2017 to:

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by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JACK LEVINE,** **Bar No. 001637** Respondent.	**PDJ 2016-9116** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar No. 15-1425] **FILED FEBRUARY 17, 2017**

On January 12, 2017, the Hearing Panel, comprised of, Richard L. Brooks, Attorney Member, Howard M. Weiske, Public Member, and Presiding Disciplinary Judge ("PDJ") William J. O'Neil, heard this case. Stacy L. Shuman appeared on behalf of the State Bar of Arizona. Jack Levine represented himself. The Hearing Panel considered the testimony of Amy Overman and attorneys Michael Ferraro, William J. Wolf, and Michael Wright. At the conclusion of the Hearing, the State Bar requested a ninety (90) day suspension, two (2) years of probation (MAP assessment) and costs. Mr. Levine did not explicitly acknowledge that any misconduct occurred and objected to all proposed sanctions.

I. SANCTION IMPOSED

NINETY (90) DAY SUSPENSION, TWO (2) YEARS OF PROBATION (MAP), ASSESSMENT AS A CONDITION OF REINSTATEMENT, AND COSTS.

II. PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint against Mr. Levine on November 22, 2016. On November 8, 2016, the SBA filed a notice of service of the complaint demonstrating Mr. Levine was served 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 on November 29, 2016. Mr. Levine filed his answer on November 29, 2016, admitting allegations 1-13, 15-27, and 32-33. Mr. Levine denied allegation 14, but only because it alleged that he disclosed (in a Wrongful Death action described herein) that Dr. Flam "would" testify rather than "is expected" to testify regarding a stated medical opinion. Of the remaining four allegations, Mr. Levine avowed that he lacked sufficient information to form a belief regarding two of the allegations because they involved the state of mind of his Client. The remaining two allegations were denied as were the conclusory allegations 34-39.

An Initial Case Management Conference was conducted before the PDJ on December 6, 2016. On December 15, 2016, Mr. Levine filed a Motion for Summary Judgment supported by his own affidavit of the facts, which motion was denied by order of the PDJ on January 10, 2017. The parties filed a Joint Prehearing Statement on January 6, 2017. The State Bar and Mr. Levine subsequently filed a separate Prehearing Memorandum on January 9, 2017.

On January 13, 2017, Mr. Levine moved for leave to supplement the Hearing record with evidence proving he had paid his Client $200.00. The State Bar did not oppose the Motion, which the PDJ granted that same day.

III. FINDINGS OF FACT[1]

1. At all times relevant, Mr. Levine was a lawyer licensed to practice law in Arizona, having been first admitted to practice in Arizona on July 27, 1964.

COUNT ONE (State Bar File no. 15-1425/Overman/Personal Injury Case)

2. On January 26, 2005, Marilyn Dennis ("Client") was involved in an automobile accident. On November 22, 2005, Client filed a personal injury complaint against Kathryn Ryan with the Maricopa County Superior Court, Case No. CV2005-018048. Mr. Levine entered his appearance on behalf of Client on December 21, 2006.

3. Client prevailed at the personal injury trial. However, she was assessed 60% of the fault for the automobile accident, and the trial court entered a corresponding judgment. Mr. Levine appealed the judgment, and the Court of Appeals subsequently reversed and remanded the case to the trial court for a new trial.

[1] Findings of fact 1-10 and 12-27, are comprised of allegations from the complaint admitted by Mr. Levine in his answer or undisputed by him in the hearing.

4. On February 10, 2010, Client died. Her daughter, Amy Overman (Ms. Overman), was appointed to be the personal representative of Client's probate estate. Ms. Overman subsequently was substituted for Client as the plaintiff in the Personal Injury Case.

5. Ms. Overman and the PI plaintiffs both participated in binding arbitration in the Personal Injury Case and stipulated that the Client had been 60% responsible for the automobile accident. The arbitrator subsequently awarded the Client's estate the total sum of $6,985.22, which reflected 40% of the medical bills incurred by the Client in the automobile accident. On October 19, 2011, trial court dismissed the Personal Injury Case with prejudice.

Wrongful Death Action Filed by Ms. Overman on Behalf of Client's Estate

6. Following the arbitration, Mr. Levine called Ms. Overman and discussed filing a Wrongful Death action relating to the Client's death. Mr. Levine advised that the Wrongful Death Case could be based on the theory that the automobile accident shortened Client's life because she later developed ischemic colitis and a severe gastrointestinal infection, which required the removal of a portion of her intestines by Dr. Michael Flam in 2006. During the discussion, Ms. Overman expressed concern over the possibility that she could be personally become liable for litigation costs if the Wrongful Death lawsuit was not successful. A part of the concern of Ms. Overman regarding any liability was because she has had rheumatoid arthritis for

thirty years, was on disability, and had little financial resources. Mr. Levine knew this. [Hearing Testimony of Ms. Overman at 9:58:00 A.M. to 9:59:00 A.M.]

7. Mr. Levine assured Ms. Overman she would bear no personal financial risks relating to the filing and prosecution of a wrongful death action. Mr. Levine later admitted this in the Verified Facts of the Summary Judgment Motion filed in these proceedings.

8. Under oath Mr. Levine stated, "I admit that I assured complainant, Amy Overman that she would not have to bear ***any*** personal financial risks relating to the case…" (Emphasis added). [Respondent Motion for Summary Judgment, Verified Statement of Facts, Paragraph 8, Page 5-6.] We find there was no written attorney-client fee agreement entered into covering his representation in the Wrongful Death action. [Hearing Testimony of Ms. Overman at 9:58:30 A.M. to 9:59:15 A.M.]

9. Ms. Overman, over the objection of her siblings, agreed to the filing of the Wrongful Death action, and signed over to Mr. Levine the entire $2,500.00 that had been awarded to Client by the arbitrator in the personal injury arbitration. [Hearing Testimony of Ms. Overman at 9:59:15 A.M. to 10:00:30 A.M.]

10. On October 21, 2011, Mr. Levine filed a Wrongful Death Complaint in the Maricopa County Superior Court [Exhibit 12, Bates SBA00775.] The Complainant named Ms. Overman as the Wrongful Death plaintiff, and identified her "as the Personal Representative of Marilyn Dennis, deceased for herself, and on

behalf of Kathryn Hughes and Michael Dennis, as surviving children of the Decedent." The complaint sought damages for $250,000.00 [Hearing Testimony of Mr. Levine, most specifically 1:45:00 P.M. to 1:48:00 P.M.]

11. On February 28, 2013, Mr. Levine served a Fifth Supplemental Disclosure Statement in the Wrongful Death Case, in which he identified Dr. Flam as another expert witness stating Dr. Flam was "expected to testify that decedent's [Client's] pre-existing conditions of pain, anxiety and emotional stress were severely exacerbated by her accident related injuries. She will further testify that these accident related conditions resulted in chronic conditions of pain, severe anxiety and emotional stress at a greatly elevated level than previously existed. She will further testify that these circumstances would like contribute to the development of ischemic bowel syndrome and accompanying infection, which resulted in the removal of her entire large intestine as well as a portion of her small intestine…." [Exhibit 1, Bates SBA00012 and SBA00020:13-26.] Mr. Levine intentionally restated for each named physician expert the exact opinion of one disclosed physician expert, (Karla Birkholz, M.D.) as also the opinion of the other physician experts. [Hearing Testimony of Mr. Levine, most specifically 2:01:30 P.M. to 2:02:30 P.M.]

12. In December 2006, Client had suffered from ischemic bowel that resulted in surgery by Dr. Michael Flam removing part of her intestines. Mr. Levine

wrote to Dr. Flam in June 2007, attempting to relate her ischemic bowel to the automobile accident. [Exhibit 4, SBA000682-3.]

13. Dr. Flam advised Mr. Levine by letter dated June 21, 2007, that "After careful review of her case, I cannot find a correlation between her injuries incurred by an automobile accident on 1/26/05 and her ischemic bowel that occurred in December 2006. I cannot think of an etiology or literature based support that would correlate [the Client's] stress created by the injuries [from the automobile accident] that would have compromised ischemic bowel." [Exhibit 1, SBA00026.] Mr. Levine had no further direct or indirect communication with Dr. Flam until Dr. Levine wrote him a letter asking him to reconsider that opinion on January 28, 2013. [Exhibit 1, Bates SBA00055 and Hearing Testimony of Dr. Levine, 2:03:30 P.M. to 2:04:15 P.M.]

14. Prior to the February disclosure, Defendant's counsel had never heard of Dr. Flam. After seeing Dr. Flam named as an expert in the Fifth Supplemental Disclosure Statement signed by Mr. Levine, the Wrongful Death defendant's attorney deposed Dr. Flam on April 24, 2013. During the deposition, Dr. Flam testified that he 1) had not spoken with Mr. Levine in the years preceding the execution of the February 28, 2013 Fifth Supplemental Disclosure Statement; 2) had never opined that Client's preexisting conditions were exacerbated by the automobile accident; 3) did not respond to Mr. Levine's January 28, 2013 letter asking he reconsider his opinion

expressed in his June 21, 2007 letter; and 4) had not agreed to testify as an expert in the case [Hearing Testimony of Mr. Ferraro, Exhibit 1, Bates SBA00028 and Exhibit 4, Paragraph 15, Bates SBA00088 and SBA00684-5.]

15. On May 29, 2013, the attorney for the Wrongful Death defendant filed a Motion for Sanctions against Mr. Levine alleging Mr. Levine had "submitted patently false disclosure regarding expert witnesses and opinions" in violation of Rule 11. On October 4, 2013, the trial court heard oral argument on various pending motions, including the Motion for Sanctions. [Exhibit 1, Bates SBA00006.]

16. In a Minute Entry dated October 4, 2013, the trial court granted the Motion for Sanctions and ordered the Wrongful Death defendant's attorney to submit an Attorney Fee Affidavit. The trial court deferred ruling on the attorney fee matter until the end of trial. [Exhibit 1, Bates SBA00061.]

The Judgment for Jury Fees

17. The Wrongful Death trial was held on December 8-10, 2014 and the Wrongful Death defendant prevailed. On December 10, 2014, the trial court entered a Judgment against Ms. Overman, personally, for jury fees totaling $707.13. [Exhibit 26, Bates SBA00829.]

18. On January 15, 2015, Ms. Overman paid $100.00 to the Clerk of the Court of Maricopa County towards the satisfaction of the jury fee Judgment. The Clerk of the Court denied Ms. Overman's request to pay the remaining balance over

time. [Undisputed Hearing Testimony of Ms. Overman and Exhibit 31, Bates SBA000839.]

19. Mr. Levine wrote Ms. Overman and her siblings informing them of the jury fee Judgment on March 19, 2015. [Exhibit 4, SBA00708.]

20. Ms. Overman subsequently sent Mr. Levine $200.00. She also spoke with Mr. Levine, and he agreed to pay the remaining balance owed on the jury fee Judgment. [Hearing Testimony of Ms. Overman at 10:05:00 A.M. to 10:06:00 A.M.] Mr. Levine did not pay the balance on the jury fee Judgment or apply the $200.00 he had received toward the judgment, but instead kept the money. Ms. Overman was later contacted by a collection agency regarding the Judgment and learned that the Judgment had been noted on her credit history. As of January 2016, the balance owed was $735.60. [Hearing Testimony of Ms. Overman at 10:06:45 A.M. to 10:08:00 A.M.]

21. By letter dated June 24, 2016, Mr. Levine sent Ms. Overman a check for $707.13, stating that he was not aware that Ms. Overman had received a bill for the jury fees [Exhibits 5 and 6.]. Mr. Levine stated that he had been waiting for Ms. Overman to pay the jury fees and then contact him so he could reimburse her. [Hearing Testimony of Mr. Levine at 2:07:00 P.M. to 2:09:00 P.M.]

22. The payment of $200.00 to Mr. Levine by Ms. Overman was denied in the Answer of Mr. Levine, but at the conclusion of the hearing Mr. Levine

affirmatively stated the testimony of Ms. Overman was true and we accept her testimony as the accurate version of the events. The jury fee judgment has been satisfied, however, it remains on Ms. Overman's credit report. [Hearing Testimony of Ms. Overman at 10:08:00 A.M. to 10:09:00 A.M.]

23. The day after the discipline hearing Mr. Levine returned the $200.00 to Ms. Overman and provided proof of his payment in his supplemented exhibit. [Exhibit 76, Motion for Leave to Supplement Record of Proceedings]

The Judgment for Defense Costs

24. Following the conclusion of the Wrongful Death trial, Mr. Levine filed several motions, including a Motion for a New Trial, all of which were denied except for a Motion to Amend the Judgment for a deficiency in proof of the defendant's costs.

25. On April 22, 2015, the trial court granted Mr. Levine's Motion to Amend the Judgment and directed the defendant to file an amended Statement of Costs. [Exhibit 35, Bates 00849.]

26. On or about May 6, 2015, the trial court entered judgment in favor of the Wrongful Death defendant and against Ms. Overman personally for $5,150.95. [Exhibit 36, Bates 00851.]

27. On or about June 17, 2015, the Wrongful Death defendant's attorney and Mr. Levine negotiated a settlement which stipulated that the agreed to accept

$1,500.00 in full and complete satisfaction of the Judgment after Mr. Levine successfully negotiated this reduction in the amount of the Judgment.

28. On June 26, 2015, Mr. Levine sent Overman an email directing her to sign the settlement agreement or else tell her brother he "can look forward to losing his house and 25% of his salary until the $5,150.95 judgment, together with interest accruing there on [sic], is paid in full." Mr. Levine also advised Ms. Overman to consult with a bankruptcy attorney to protect her assets if the settlement agreement was not executed [Hearing testimony of Mr. Levine, 2:09:00 P.M. to 2:13:00 P.M.]

29. On that date, Ms. Overman, for herself and the statutory beneficiaries (the Siblings), and Mr. Levine signed the settlement agreement. Mr. Levine paid the $1,500.00 out of his own personal funds because he had assured Ms. Overman she would not be personally responsible.

IV. CONCLUSIONS OF LAW

The Hearing Panel finds, by clear and convincing evidence, that Mr. Levine violated, the following ethical rules:

a. ER 3.1 [Meritorious Claims and Contentions]: A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous.

b. ER 3.3(a) [Candor toward the Tribunal]: A lawyer shall not 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 8.4(c) [Misconduct]: It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

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

e. ER 1.5(b) and (c) [Fees]: It is professional misconduct for a lawyer to not communicate in writing to the client the scope of the representation and the basis or rate of the fees and expenses the client will be responsible for. A contingent fee agreement "shall be in writing signed by the client."

During the Hearing, the State Bar moved to amend its complaint to conform to evidence adduced at the Hearing, pursuant to Rule 47(b)(1). The pleadings and testimony clearly and convincingly proved Mr. Levine violated ER 1.5(b) and (c) (fees) by failing to provide his client with a written fee agreement as required prior to representation and in addition, contingency fees must be in writing and signed by the client. The Panel granted the motion.

The *Standards* however, do not account for multiple charges of misconduct. Instead, multiple instances of misconduct are considered as aggravating factors.

[Theoretical Framework, p. 7.] Therefore, the Panel considers this additional violation of ER 1.5(b) and (c) as an aggravating factor.

The Hearing Panel finds there was not clear and convincing evidence, that Mr. Levine violated,

> 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.

V. ANALYSIS

As a defense, Mr. Levine appeared to argue the State Bar was alleging he had no basis in suing. There was no such allegation. While Mr. Levine requested evidence of his research be admitted to form his good faith belief in the cause of action he filed, there was no such issue before this Hearing Panel.

The State Bar alleged Ms. Overman rarely received any correspondence from Mr. Levine and that he did not keep her advised of the "mundane day-to-day activities relating to the means of reaching the agreed-upon goals." [Complaint allegation 28, Page 6.] This allegation quoted the July 20, 2015 response of Mr. Levine to their inquiry. [Exhibit 3, SBA00074.] It is not clear to us which Ethical Rule, ("ER"), is asserted to have been violated by his admitted method of communications. The complaint makes no assertion of an ER 1.4 (Communication) violation. We find the only credible evidence relating to this allegation was the testimony of Ms. Overman.

She stated she was not informed of what was going on regarding Dr. Flam or the motion for sanctions regarding him. [Hearing Testimony of Ms. Overman, most specifically 10:00 A.M. to 10:03:00 A.M.] Regardless, we find the State Bar has not met its burden of proof regarding that allegation.

In the Wrongful Death Complaint, Ms. Overman was named in the caption by Mr. Levine as Personal Representative of the Estate of her mother. An allegation leveled against Mr. Levine appears to be that he made Ms. Overman liable for costs due to his choice of language in paragraph 1 of the lawsuit. The language is not disputed. Mr. Levine stated in that first paragraph of the complaint it was brought by Ms. Overman "as the Personal Representative of Marilyn Dennis, deceased for herself, and on behalf of Kathryn Hughes and Michael Dennis, as surviving children of the Decedent." [Complaint allegation 10, Page 2.]

The allegations that the court issued judgment against her personally for the defense costs of $5,150.95, which the parties agreed was satisfied by the payment of $1,500 were admitted by Mr. Levine. [Complaint allegations 24 and 25, Page 5.] The testimony of Mr. Ferraro was undisputed that the agreement was reached for the sole purpose of avoiding an appeal. We assume this is part of the alleged violation of ER 1.1 (Competence).

It is not disputed Mr. Levine "met with decedent's three children, Amy Overman, Mike Dennis and Cathy Hughes to discuss the filing of a wrongful death

action in place of the still pending personal injury action." Ms. Overman disputed the statement of Mr. Levine that, "This cause of action was unanimously approved." [Respondent Motion for Summary Judgment, Verified Statement of Facts, Paragraph 5, Page 5.]

When the court issued judgment for costs personally against Overman, Mr. Levine timely objected. [Ex. 29.] His opponent filed a response [Ex. 32.] and Mr. Levine filed a reply. [Ex. 33]. The court ruled against Ms. Overman ordering her to personally pay the costs of $5,150.95 and issued an amended judgment to that effect. [Ex. 35-36.] We have read the pleadings and the ruling. The issuance of the order and judgment are the law of that case.

We review the pleadings and rulings in the underlying matter to assist us in determining facts in the proceeding before us of what occurred and why. We decline to reconsider the ruling or whether the ruling was correct. Judicial rulings are often relevant in discipline proceedings. However, attorney discipline is *sui generis* or of its own kind; unique. We do not give preclusive effect to that ruling. We decide what weight to give to rulings by a court in an underlying matter. We view such evidence, not to determine whether the ruling was correct, but whether that ruling aids us in our determination of the ethical issues before us.

At worst the argument is Mr. Levine was negligent in his use of language. The record before us does not constitute clear and convincing evidence that the language

used by Mr. Levine or his methods of communication constituted a violation of ER 1.1. We decline to find an ethical breach when there is not clear and convincing evidence to prove it.

The email Mr. Levine wrote to his client is more troubling. On June 26, 2015, Mr. Levine sent Ms. Overman an email directing her to sign the settlement agreement or else tell her brother he "can look forward to losing his house and 25% of his salary until the $5,150.90 judgment, together with interest accruing there on [sic], is paid in full." Mr. Levine further asserted that Ms. Overman should consult with a bankruptcy attorney to protect her assets if the settlement agreement was not executed. This was contrary to his admitted promise and contradicts his own interpretation of the order of the court. [Admitted Complaint Allegation 26 and Ex. 4, SBA00671.]

Mr. Levine swore, "I admit that I assured complainant, Amy Overman that she would not have to bear ***any*** personal financial risks relating to the case…." (Emphasis added). In his testimony, he clarified that he said she should not be responsible for out of pocket and believed he used the term costs. While it was Mr. Levine's opinion there could be no costs assessed personally against her as personal representative, that opinion did not limit his expressed assurance to her.

That did not stop Mr. Levine from repeatedly demanding payment from Ms. Overman and her siblings during the litigation. [Respondent Motion for Summary Judgment, Verified Statement of Facts, paragraph 8, page 5-6 and Exhibits 34 and

36.] The testimony before us was that the judgment was entered personally against Amy Overman, not against her siblings. The judgment supports that interpretation.

In his June 26, 2015 letter, Mr. Levine rationalized away his promised payment of all costs (Finding of Fact 23 *supra*). While Mr. Levine himself paid those costs as he originally agreed to do, it is equally clear he had a personal gain in the waiving of the appeal to reduce his costs. We do not find this to be negligent. It was dishonest of Mr. Levine to have Ms. Overman inform her brother he would bear personal liability and Ms. Overman would have her only source of income, her retirement checks, garnished. Ms. Overman testified it upset her when she received the letter from Mr. Levine stating she would be responsible for the costs. This was compounded by the later conduct of Mr. Levine regarding the jury fees assessed against his client.

We are troubled by the testimony of Mr. Levine stating he wanted to appeal but was stopped by Overman and her siblings. The agreement required the waiver of the appeal. Mr. Levine was clear in his email to them. They would either come in to sign the agreement or "you are on your own." [Exhibit 4, SBA00671.]

Dishonesty" includes "conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness," but need not involve conduct legally characterized as fraud, deceit, or misrepresentation." *In re Scanio*, 919 A.2d 1137 (D.C. 2007). There is no requirement under the rule that it also involve conduct

that meets the legal definition of fraud, deceit or misrepresentation. We find the threat of Mr. Levine was a misrepresentation of the judgment and the agreement between Mr. Levine and Ms. Overman. It constitutes conduct that is inherently prejudicial to the administration of justice which is directly relevant to the practice of law and potentially injurious to his client. We find Mr. Levine knowingly violated ERs 8.4(c) and (d).

We find the evidence insufficient to establish by clear and convincing evidence that Mr. Levine was not competent in his representation of Ms. Overman. The relevant factors in making that determination are set forth in the first Comment to ER 1.1.

> 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.

Having considered those factors, we find no violation of ER 1.1.

We find other ethical breaches by Mr. Levine. These included: his failing to protect his client from the jury fee judgment which went to collection and affected

her credit rating; his admitted refusal to account for the $200.00 paid him by his client until after our hearing concluded; the absence of a written fee agreement; and his actions regarding Dr. Flam. We find the first three to be negligent. We find the last to be intentional.

During the hearing, Mr. Levine testified he was not aware of the jury assessment entered against Ms. Overman. [Hearing Testimony of Mr. Levine, starting around 2:07 P.M.] His own letter to Ms. Overman and her siblings impeached him. At the conclusion of the hearing, Mr. Levine acknowledged that the testimony of his client was reliable. He acknowledged his promise to pay all costs. The testimony of Ms. Overman matched her charge to the State Bar sent by email on June 23, 2015. [Ex. 1, SBA00001.] She stated Mr. Levine had called her to initiate a lawsuit. She didn't think she would receive a dime. However, she knew the work Mr. Levine had put in her mother's case and she would help his cause as a result but not if she would be at any financial risk. She stated, "I was told I would never be held accountable for anything if he lost the case." Mr. Levine has affirmed he made that promise to her.

In his answer, Mr. Levine denied Ms. Overman paid him $200.00 to apply towards the jury fees. The evidence was clear and convincing that she did and Mr. Levine acknowledged both her truthfulness and that he did not account for those

monies. We find this is mitigated by his payment to her of that $200.00 after our hearing concluded. [Exhibit 76, or Ex. B to Respondent's Supplement.]

We find the most serious of the ethical violations by Mr. Levine related to his intentional misrepresentation of, and lack of disclosure of the opinion of Dr. Flam. In describing Dr. Flam, Mr. Levine swore, Dr. Flam was a "part of the significant part of the causation chain." Mr. Levine testified "He was the most important witness in my case. So I needed him as a witness." [Hearing Testimony of Mr. Levine, around 2:00 P.M.]

Mr. Levine explained why he waited so long to disclose his most important witness in his case. He also explained why he refused to disclose the only opinion he had of Dr. Flam and instead disclosed an "expected" opinion of Dr. Flam despite having no reasonable expectation that Dr. Flam would even express a causation opinion. [Hearing Testimony of Mr. Levine, 2:03 P.M. to 2:06 P.M.] Mr. Levine never had a conversation with nor ever met Dr. Flam before he disclosed him. He first met him at the deposition of Dr. Flam.

Mr. Levine testified he had always intended to call Dr. Flam as a witness. Mr. Levine intentionally did not disclose Dr. Flam earlier nor disclose the only opinion he had from Dr. Flam because "This is my work product. You don't disclose the work product." Mr. Levine testified he did much research into the medical opinion he hoped he could get Dr. Flam to adopt. Mr. Levine testified his research was such

that "every doctor who has a degree would agree with him." He also emphasized that "there couldn't be a single doctor in the world that would disagree, (with him)." [Testimony of Dr. Levine, around 1:50 P.M.] Such presumption does not equate with the requirements of Civil Rule 11.

Another reason given for the absence of disclosing his contrary opinion was, "His (Dr. Flam) only purpose as a witness was to describe the surgical procedure which he performed and the possible "cause" or "causes" of the gangrenous bowel which he removed." [Respondent Motion for Summary Judgment, Verified Statement of Facts, paragraph 15, page 9.]

Mr. Levine waited to write Dr. Flam until after he disclosed him. In that letter, he attached the 2007 letter of Dr. Flam, the only opinion he had ever received from him. [Exhibit 4, Bates SBA00684-5.] Mr. Levine had never met with nor spoken with Dr. Flam. He had no communication from Dr. Flam since 2007. [Exhibit 4, SBA000682.] Notwithstanding, he swore, "I was not at all troubled at the time by the fact that I did not receive an immediate response from Dr. Flam to my letter because the trial of the case was still a long way off." [Respondent Motion for Summary Judgment, Verified Statement of Facts, last paragraph page 7.] Mr. Levine also swore, "I thought his opinion was totally wrong. I knew what it really meant and so I didn't disclose it." [Hearing Testimony of Mr. Levine at 2:22 p.m.]

Still another reason was he thought it would confuse his opponent. "I thought it would be misleading." The only opinion of Dr. Flam which Mr. Levine possessed he refused to disclose. The opinion of Dr. Flam stated, "I cannot think of an etiology or literature based support that would correlate [the Client's] stress created by the injuries [from the automobile accident] that would have compromised ischemic bowel." [Exhibit 1, Bates SBA00026.]

Mr. Levine remains convinced he could have persuaded Dr. Flam to testify as his expert despite Dr. Flam's active avoidance of him. Mr. Levine expressed his basis for why Dr. Flam would not testify in the manner Mr. Levine wanted him to. "I never had any doubt in my mind that Dr. Flam would not have agreed with this position had he not been tampered with by State Farm's attorneys who had a crystal clear unethical conflict of interest in this matter. Because they ignored this conflict, I did file a complaint against Mr. Cohen and his law firm, Jones, Skelton & Hochuli." (Emphasis in original.) [Respondent Motion for Summary Judgment, Verified Statement of Facts, last paragraph within numbered paragraph 15, page 9.]

On February 11, 2015, Honorable John Hannah found Mr. Levine in violation of Rule 11, and ordered him to deliver a cashier's check to Defendant for $3,031.90, within thirty days of the order. [Exhibit 77.]

Mr. Levine argues it is not his misconduct that caused the sanctions. Instead, he swore the October 4, 2013 ruling resulted from the Judge "apparently either not

understanding the purpose of Rule 26.1, or not being sufficiently familiar with all of the facts and circumstances leading up to my reasonable and legitimate 'expectations' as to Dr. Flam's opinions…." [Respondent Motion for Summary Judgment, Verified Statement of Facts, paragraph 18, page 10.] We disagree. The ruling was sound. We have independently determined the actions and inactions of Mr. Levine involving Dr. Flam conduct constitute clear and convincing evidence of his violations of the ethical rules we have cited above.

Mr. Levine offered two attorney experts to testify regarding disclosure. Both testified Mr. Levine had to disclose the 2007 letter from Dr. Flam.

Arizona has long been a mandatory disclosure state. It is fundamental that attorneys engaged in the conduct of litigation must comply with Civil Rule 26.1. Mr. Levine testified he is an expert in disclosure. He testified he has taught other lawyers on the meaning of and compliance requirements with the discovery rules many times. We conclude Mr. Levine knew his disclosures duties. He knew his Rule 11 duties. We find he intentionally did not adhere to them in violation of the ethical rules. There was no allegation Mr. Levine violated ER 3.4 through the concealment of the evidence.

Notably, Dr. Flam was not an expert witness on causation of death. The January 28, 2013 letter Mr. Levine wrote to Dr. Flam never informed him that Mr. Levine has disclosed him as an expert witness. The letter is intentionally misleading.

Mr. Levine stated, "I can guarantee you that because you were the surgeon that operated on her ischemic bowel, the insurance company's lawyer will be issuing a subpoena requiring you to appear and testify at a deposition at some time in the very near future." [Exhibit 4, SBA00684-5.]

The deposition was taken because Mr. Levine had disclosed Dr. Flam as a causation expert. Even though Mr. Levine stated that "every doctor who has a degree would agree with him," Dr. Flam, in his deposition testified he could not determine a theory of causation. It may be true that Mr. Levine presumed Dr. Flam would change his opinion written in his letter in 2007. Mr. Levine labeled his expectation "rationally based" and stated that because he was convinced he would change Dr. Flam's mind, he wrote a false disclosure statement that would be "correct" once Dr. Flam changed his opinion. [Hearing Testimony of Mr. Levine, around 2:00 P.M. to 2:05 P.M.] There was no inquiry by Mr. Levine to support his presumption that Dr. Flam had any opinion on the causation of her death. Based on the totality of the evidence before us we find Mr. Levine violated the ethical rules we have cited.

VI. ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions ("Standards")* are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should be considered: (1) the duty violated; (2) the lawyer's mental

state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard* 3.0.

Duty Violated:

Mr. Levine violated his duty to his clients by violating ERs 8.4(c). Mr. Levine violated his duty to the legal system by violating ERs 3.1, 3.3(a), and 8.4(d). Mr. Levine violated his duty to the public by violating ER 8.4(c).

Mental State and Injury:

Mr. Levine violated his duty to his client, implicating *Standard* 4.6. *Standard* 4.62 states that suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to the client. Mr. Levine accepted payment of $200.00 from Ms. Overman to be used to satisfy the judgment entered against her for jury fees after Mr. Levine lost the wrongful death case. Instead, Mr. Levine retained the monies; did not pay the judgment; and the judgment was ultimately turned over to collections. Ms. Overman received notices from the collection agency threatening collection action if she did not satisfy the judgment. Mr. Levine sent Ms. Overman monies to satisfy the jury fee judgment only after the initiation of these formal proceedings. *Standard* 4.62 applies.

Mr. Levine also violated his duty owed to the legal system, implicating *Standard* 6.1. *Standard* 6.12 states that suspension is generally appropriate when a lawyer knows that false statement 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.

We also find the past history of Mr. Levine gave him notice "that some of his theories may not have been considered objectively reasonable or well-founded." *In re Levine*, 174 Ariz. 146, 847 P.2d 1093 (1993).

AGGRAVATING AND MITIGATING FACTORS

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

- 9.22(a) Prior Disciplinary Offense
    - 04/08/93: Suspension, Six Months, ERs 3.1 and 4.4, File No. 86-1450/88-0836; SB-91-0028-D.
    - 04/21/99: Censure, ER 8.4(b), File No. 97-0325; SB-99-0059-D.
    - 07/21/14: Diversion, ER 1.15 and Rule 43, File No. 13-1132.
    - 03/09/15: Admonition, ERs 1.3 and 8.4(d), File No. 14-1151.
    - 09/29/15: Diversion, ERs 1.15(a) and 1.15(d), Rule 43, File No. 13-1132.
- 9.22(c) pattern of misconduct. Levine's prior misconduct is similar in nature to his present conduct.

- 9.22(d) multiple offenses. Mr. Levine violated multiple ethical rules.
- 9.22(g) refusal to acknowledge wrongful nature of conduct. Mr. Levine has still not fully and explicitly acknowledged his misconduct.
- 9.22(h) vulnerability of victim. Mr. Levine's client Ms. Overman was unfamiliar with the legal profession, disabled, and vulnerable.
- 9.22(i) substantial experience in the practice of law. Mr. Levine was admitted to practice law in Arizona on April 27, 1974.

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

- 9.32(d) timely good faith effort to make restitution or to rectify consequences of misconduct. The Hearing Panel finds as a mitigating factor the good faith effort to make restitution to his client to rectify the consequences of his misconduct. Ms. Overman testified she knew nothing of the matters involving Dr. Flam. There are multiple notices to her by Mr. Levine of depositions of other witnesses. We could find no such notice to her of his deposition. It would be easy to conclude Mr. Levine sensed his error and did not notify his client of that concern. It is not a factor for us because Mr. Levine made a good faith effort to rectify the consequences of his action by paying the Rule 11 sanction and the costs assessed against Ms. Overman. While his payment of jury costs were significantly delayed, such payment "demonstrate precisely the

recognition and the acceptance of personal responsibility that diminish the need for further protection of the public." *In re Fischer*, 89 P.3d 817 at 821, (Colo. 2004.)

- 9.32(e) full and free disclosure to disciplinary board but questionable cooperative attitude. We find Mr. Levine was cooperative, respectful and professional in these discipline proceedings. However, we were troubled by his arguments. By example, in his motion for summary judgment, Mr. Levine swore each of his prior disciplines "had no basis in law or in fact." By example, Mr. Levine attested the reason he was suspended in 1993 was due to the inability of the State Bar's Hearing Committee, the Probable Cause Commission and the Arizona Supreme Court being unable to "conceive" of the defense he offered. [Motion for Summary Judgment, Page 2, Paragraphs 2-3.] While we find cooperation, we give it the weight it warrants in the context of his other actions.
- 9.32(h) physical disability. In his closing, Mr. Levine was candid that his age has affected his thought process. [Exhibit 76.] This should be addressed with an assessment prior to reinstatement.

Mr. Levine testified he frequently represented clients at a discount. We acknowledge this but temper it with his testimony that during the representation of the mother's personal injury claim he charged both a contingency and an hourly

fee, leaving a debt of $75,000 owed to him (which he said he waived in proceeding with the wrongful death action). It is not clear to us if this is his usual discounted fee.

VII. 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 and determined the sanction using the facts, application of the *Standards* including the aggravating and lack of mitigating factors, and the goals of the attorney discipline system. The Hearing Panel orders:

IT IS ORDERED Respondent, **Jack Levine, Bar No. 001637** is suspended from the practice of law for ninety (90) days effective thirty (30) days from this order.

IT IS FURTHER ORDERED upon reinstatement, Mr. Levine shall be placed on two (2) years' probation with the State Bar's Member Assistance Program (MAP).

IT IS FURTHER ORDERED as a condition of reinstatement, Mr. Levine shall obtain a Member Assistance Program (MAP) assessment with Dr. Lett. Mr. Levine shall contact the State Bar Compliance Monitor at (602) 340-7258, prior to reinstatement to obtain information and schedule the MAP assessment. Thereafter, the Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Mr. Levine shall be responsible for any costs associated with MAP participation and compliance.

IT IS FURTHER ORDERED Mr. Levine shall comply with Rule 72, Ariz. R. Sup. Ct., including notice to clients and others.

IT IS FURTHER ORDERED Mr. Levine shall pay all costs and expenses incurred by the SBA. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in this proceeding.

A final judgment and order shall follow.

DATED this 17th day of February 2017.

William J. O'Neil

_____

William J. O'Neil, Presiding Disciplinary Judge

Howard M. Weiske

_____

Howard M. Weiske, Volunteer Public Member

/././.

Richard L. Brooks

Richard L. Brooks, Volunteer Attorney Member

Copy of the foregoing emailed this 17th day of February, 2017,
and mailed February 21, 2017 to:

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A CURRENT MEMBER OF THE STATE BAR OF ARIZONA, **JACK LEVINE, Bar No. 001637,** Respondent.	**PDJ 2016-9116** **COMPLAINT** [State Bar No. 15-1425]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on July 27, 1964.

COUNT ONE (File no. 15-1425/Overman)

2. On January 26, 2005, Marilyn Dennis (the Client) was involved in an automobile accident. On November 22, 2005, the Client filed a personal injury complaint against Kathryn Ryan with the Maricopa County Superior Court, Case No. CV2005-018048 (the Personal Injury Case). Respondent entered his appearance on behalf of the Client on December 21, 2006. The Client prevailed at trial, however she was assessed 60% of the responsibility for the automobile accident.

3. Respondent appealed the jury verdict on behalf of the Client, which the Court of Appeals reversed and remanded to the trial court for a new trial.

4. On February 10, 2010, the Client passed away and her daughter Amy Overman (Overman) was appointed personal representative of the probate estate.

5. Overman was substituted in as plaintiff in the Personal Injury Case.

6. The parties participated in binding arbitration in the Personal Injury Case and stipulated that the Client had been 60% responsible for the automobile accident. The arbitrator awarded the Client's estate $6,985.22, which reflected 40% of the medical bills incurred by the Client in the automobile accident.

7. On October 19, 2011, the Personal Injury Case was dismissed with prejudice.

8. Thereafter, Respondent discussed with Overman the filing of a wrongful death action relating to the Client's death. Overman expressed to Respondent her concerns about becoming financially responsible for litigation expenses if the case was unsuccessful.

9. Respondent assured Overman that she would not have to bear any personal financial risks relating to the filing and prosecution of a wrongful death action.

10. On October 21, 2011, Respondent caused a wrongful death complaint to be filed with the Maricopa County Superior Court, *Amy Overman, as Personal Representative of the Estate of Marilyn Dennis, Deceased v. Kathryn Ryan,* Case No. CV2011-054764 (the Wrongful Death Case). The plaintiff was identified as

Overman, who was acting for herself and on behalf of her siblings. The complaint sought damages in the amount of $250,000.00.

11. Respondent based the Wrongful Death Case on the theory that the automobile accident shortened the Client's life because she later developed ischemic colitis and a severe gastrointestinal infection, which required the removal of a portion of her intestines by Dr. Michael Flam in 2006.

12. However, during the pendency of the Personal Injury Case, Dr. Flam had advised Respondent by letter dated June 21, 2007, that "I cannot think of an etiology or literature based support that would correlate [the Client's] stress created by the injuries [from the automobile accident] that would have compromised ischemic bowel."

13. By letter dated January 28, 2013, Respondent wrote Dr. Flam, acknowledged receipt of the June 21, 2007 letter, and stated as follows: "I think I understand your position and I agree with it." Notwithstanding that fact, Respondent enclosed literature with the letter relating to the interaction between non-steroidal pain medication, stress levels and bowel complications, and asked Dr. Flam for the opportunity to discuss the causation issue with him. Dr. Flam did not respond to the letter or further discuss the causation issue with Respondent.

14. On February 28, 2013, Respondent served a fifth supplemental disclosure statement in the Wrongful Death Case, in which he identified Dr. Flam as an expert and stated that Dr. Flam would testify that the automobile accident severely exacerbated the Client's pre-existing conditions; contributed to the

development of the ischemic bowel syndrome and infection; and ultimately hastened her death.

15. On April 24, 2013, Defendant's counsel deposed Dr. Flam, who testified that he 1) had not spoken with Respondent in the months preceding the execution of the February 28, 2013 fifth supplemental disclosure statement; 2) never opined that the Client's preexisting conditions were exacerbated by the automobile accident; 3) did not respond to Respondent's 2013 letter asking that he reconsider the opinion expressed in the June 21, 2007 letter; and 4) had not agreed to testify as an expert in the case.

16. On May 29, 2013, Defendant filed a Motion for Sanctions on the grounds that Respondent had "submitted patently false disclosure regarding expert witnesses and opinions" in violation of Rule 11 (the Motion for Sanctions).

17. On October 4, 2013, the trial court heard oral argument on pending motions, including the Motion for Sanctions.

18. By minute entry dated October 4, 2013, the trial court granted the Motion for Sanctions and directed defendant's counsel to submit an attorney's fee affidavit. The issue of defendant's attorney's fees was ultimately ordered held in abeyance until the end of trial.

19. A trial was held on December 8-10, 2014 on the Wrongful Death Case and the defendant prevailed.

20. By order dated December 10, 2014, the trial court entered a judgment against Overman, personally, for jury fees totaling $707.13.

21. On January 15, 2015, Overman paid $100.00 to the Clerk of the Court of Maricopa County towards the satisfaction of the jury fee judgment.

22. Thereafter, Respondent filed a number of motions, including a Motion for a New Trial, all of which were denied with the exception of a Motion to Amend the Judgment for a deficiency in proof of the defendant's costs.

23. On April 22, 2015, the trial court granted Respondent's Motion to Amend the Judgment and directed the defendant to file an amended Statement of Costs.

24. On or about May 6, 2015, the trial court entered a judgment for the defendant and against Overman in the amount of $5,150.95 (the Judgment).

25. On or about June 17, 2015, counsel for the parties agreed that the defendant would accept $1,500.00 in full and complete satisfaction of the Judgment.

26. On June 26, 2015, Respondent sent Overman an email directing her to sign the settlement agreement, as written, or else tell her brother that he "can look forward to losing his house and 25% of his salary until the $5,150.90 judgment, together with interest accruing there on [sic], is paid in full." Respondent further asserted that Overman should consult with a bankruptcy attorney to protect her assets if the settlement agreement was not executed.

27. On that date, Overman, for herself and the statutory beneficiaries (the Siblings), and Respondent signed a settlement agreement.

28. Overman rarely received any correspondence from the Respondent. Respondent did not keep Overman advised of what he refers to as the mundane day-to-day activities relating to the means of reaching the agreed-upon goals.

29. After the jury returned a verdict for the defendant, Overman received a notice stating that she owed jury fees and court costs and advising that a judgment had been entered against her. While Overman was able to pay $100.00 towards the jury fees at the courthouse after the verdict had been returned, the Clerk of the Court would not allow Overman to pay the remaining balance over time.

30. At that time, Overman spoke with Respondent, who agreed to pay the balance owed on the jury fees and allow her to pay him back. Thereafter, Overman sent Respondent $200.00, assuming that Respondent had paid the balance owed on the jury fees. However, she was then contacted by a collection agency regarding the outstanding jury fees. As of January 2016, the balance owed was $735.60.

31. Respondent has not accounted for the $200.00 that Overman sent to him in 2015.

32. Respondent negotiated a reduction in the judgment to $1,500.00 and paid that amount out of his own personal funds because he had assured Overman that she would not be personally responsible.

33. By letter dated June 24, 2016, and after Overman had filed a complaint with the State Bar, Respondent sent Overman a check in the amount of $707.13, stating that he was not aware that Overman had received a bill for the

jury fees. In the letter, Respondent stated that he had been waiting for Overman to pay the jury fees and then contact Respondent so that he could reimburse her.

34. By engaging in the foregoing conduct, Respondent violated numerous ethical rules, including but not limited to, the following.

35. 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.

36. ER 3.1 [Meritorious Claims and Contentions] A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous.

37. ER 3.3(a) [Candor toward the Tribunal] A lawyer shall not 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.

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

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

DATED this 22nd day of November, 2016.

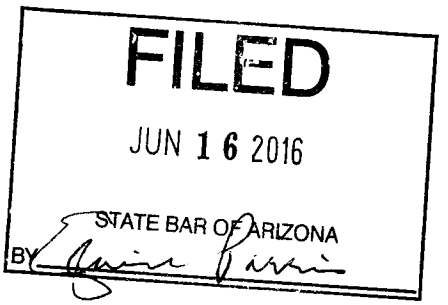
STATE BAR OF ARIZONA

Stacy L. Shuman

Stacy L. Shuman
Bar Counsel - Litigation

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 22nd day of November, 2016.

by: Karen E. Calcaterra
SLS:kec



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

IN THE MATTER OF A MEMBER OF THE STATE BAR OF ARIZONA, **JACK LEVINE** **Bar No. 001637** Respondent.	No. 15-1425 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on May 13, 2016, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation and Respondent's Response.

By a vote of 5-0-4[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 15-1425.

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 15th day of June, 2016.

Daisy Flores

Daisy Flores, Vice Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

[1] Committee members Judge Lawrence F. Winthrop, Karen Osborne, Ben Harrison and Ella Johnson did not participate in this matter.

Original filed this 16th day
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