BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **JACK LEVINE,** **Bar No. 001637** Respondent.	**PDJ-2017-9033** **FINAL JUDGMENT AND ORDER** [State Bar File Nos. 16-2626, 16-2100, 16-2099] **FILED SEPTEMBER 28, 2017**

This proceeding went to a hearing panel which rendered its decision on August 25, 2017. The decision of the hearing panel is final under Rule 58(k), Ariz. R. Sup. Ct. On August 29, 2017, a notice of appeal and request for stay was filed pursuant to Rule 59, Ariz. R. Sup. Ct. The request for stay was denied by order of the hearing panel filed September 8, 2017.

IT IS ORDERED Respondent, **JACK LEVINE**, **Bar No. 001637,** is suspended from the practice of law for a period of ninety (90) days effective August 25, 2017, for conduct in violation of his duties and obligations as a lawyer, as stated in the hearing panel's Decision and Order Imposing Sanctions.

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 Mr. Levine shall pay any costs and expenses of the State Bar of Arizona as ordered in accordance with Rule 60(b), Ariz. R. Sup. Ct. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office regarding these disciplinary proceedings.

DATED this 28th day of September, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed
this 28th day of September, 2017,
and mailed September 29, 2017 to:

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A copy was transmitted to the Supreme Court Clerk
this 28th day of September, 2017.

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **JACK LEVINE,** **Bar No. 001637** Respondent.	**PDJ 2017-9033** **DECISION AND ORDER IMPOSING SANCTIONS** [State Bar Nos. 16-2626, 16-2100, & 16-2099] **FILED AUGUST 25, 2017**

The complaint in this proceeding was filed on March 16, 2017. The answer was filed on March 28, 2017. On July 17, 2017, the Hearing Panel (Panel), comprised of Sandra E. Hunter, attorney member, Howard Weiske, public member, and Presiding Disciplinary Judge (PDJ) William J. O'Neil, heard this matter. Senior Bar Counsel, Craig D. Henley, appeared on behalf of the State Bar of Arizona. Jack Levine appeared representing himself. Exhibits 1-66 were admitted. At the conclusion of the hearing, the State Bar requested a six (6) month and one (1) day suspension.

PROCEDURAL HISTORY

The State Bar of Arizona filed its complaint on March 16, 2017. The answer was filed on March 28, 2017. On March 21, 2017, the Presiding Disciplinary Judge (PDJ) was assigned to the matter. Mr. Levine moved to change the presiding

disciplinary judge. The disciplinary clerk designated a volunteer attorney member to hear that matter. On May 1, 2017, the motion was denied.

Mr. Levine moved to dismiss on June 9, 2017, which he amended on June 12, 2017. The motion was denied on July 7, 2017. The parties filed their joint prehearing statement on June 16, 2017. There are no factual disputes.

FINDINGS OF FACT[1]

1. On July 27, 1964, Mr. Levine was licensed to practice law in the State of Arizona.

2. At all times pertinent to this Complaint, Respondent was authorized to engage in the practice of law in the State of Arizona.

COUNT ONE (File No. 16-2626/State Bar)/Exhibits 1-8

3. By order dated September 29, 2015, in State Bar File No. 14-3164, Mr. Levine was placed in diversion and ordered to participate in the State Bar's Law Office Management Assistance Program (LOMAP) for two (2) years for violations of Rule 42, ERs 1.15(a) and (d), Rules 43(a), (a)(1), (b)(1)(A), (b)(1)(B), (b)(1)(C), (b)(2)(A), (b)(2)(B), (b)(2)(C), (d)(3), and Rule 54(d)(2), (d)(2)(A), and (d)(2)(C).

4. On November 30, 2015, Mr. Levine signed "Terms of Diversion," which detailed the minimum requirements that Mr. Levine was to fulfill during the period of diversion ("Terms").

[1] Stipulated facts set forth in the parties Joint Prehearing Statement.

5. Under the Terms, Mr. Levine was to submit reports to the State Bar Compliance Monitor monthly beginning on March 31, 2016. Under Section III of the Terms, failing to comply with the Terms constitutes a violation, which shall be reported to Bar Counsel in the Lawyer Regulation Office.

6. Mr. Levine failed to submit a quarterly report on March 31, 2016, as required under the Terms.

7. On June 24, 2016, Compliance Monitor Yvette Penar emailed Mr. Levine to remind him that his quarterly LOMAP report and Trust Account records were due and requested that Mr. Levine provide her with all Trust Account Records from January 2016 through June 2016.

8. The next day, Mr. Levine emailed Ms. Penar stating that until her email, he did not realize that the report was due on June 30, 2016.

9. Mr. Levine requested an extension of time until July 7, 2016 to submit his records, but failed to do so on July 7, 2016.

10. Bar Counsel Stacy Shuman spoke with Mr. Levine on July 20, 2016 and confirmed that Mr. Levine now promised to submit a quarterly report by July 22, 2016.

11. At Mr. Levine's request, Bar Counsel Stacy Shuman provided him with another copy of the Terms and reminded Mr. Levine that the next report would be due on September 30, 2016.

12. By letter dated July 22, 2016, Mr. Levine advised Bar Counsel Stacy Shuman he was "not quite sure whether I am capable of complying [with the Terms] without some additional help from the Member Assistance Program".

13. Mr. Levine also advised Bar Counsel Stacy Shuman that he was purportedly scheduled to meet with State Bar Practice Management Advisor Kristin Moye on July 28, 2016 to arrange for some additional training "so that I can become compliant" with the Terms.

14. On August 9, 2016, Bar Counsel Stacy Shuman contacted Mr. Levine by telephone to discuss his ongoing failure to comply with the Terms.

15. When Mr. Levine advised that the meeting with Ms. Moye had been moved to August 16, 2016, Bar Counsel Stacy Shuman invited Mr. Levine to attend the State Bar's October 4, 2016 Trust Account Ethics Enhancement Program (also known as "TAEEP") at no cost.

16. Mr. Levine did not attend the program.

17. By letter dated August 11, 2016, Bar Counsel sent Mr. Levine a screening letter and asked that he respond to the allegation that he had violated Rule 54(e), by failing to comply with the Terms, and that he do so by August 31, 2016.

18. Mr. Levine failed to do so.

19. By email dated August 30, 2016, Senior Bar Counsel (SBC) Shauna Miller advised Mr. Levine that she had reviewed the report submitted for the period

of January through May 2016 and asked him to provide her with a three-way reconciliation using an attached form and client ledgers for four identified clients.

20. By letter dated September 6, 2016, Bar Counsel Stacy Shuman sent Mr. Levine a ten (10) day notice letter and asked that he respond to the screening letter by September 16, 2016.

21. By email dated September 7, 2016, SBC Miller advised Mr. Levine that while he had provided her with some documents, he had not completed the three-way reconciliation form provided to him.

22. By letter dated September 12, 2016, Mr. Levine responded to the second screening letter, stating that he is "terrified" about keeping financial records, "whether in paper form or on a computer" and therefore, he has "never personally undertaken to do this in either form.

23. Mr. Levine states that the Terms required that he reconstruct his trust account records, which were "in great disarray" because he was "completely reliant" upon legal assistants.

24. Mr. Levine further states that when he received "inquiries" and complaints from the State Bar, he was unable to adequately represent his clients and satisfy the demands for information.

25. By email dated September 19, 2016, SBC Miller again directed Mr. Levine to use the three-way reconciliation form provided to him for the quarterly report due in September 2016.

26. By email dated October 4, 2016, Mr. Levine submitted a quarterly report for July through September 2016.

27. While Mr. Levine used the three-way reconciliation previously provided to him by SBC Miller, Mr. Levine continued to use it incorrectly by identifying himself as the client.

28. On May 10, 2017, the State Bar offered Mr. Levine an opportunity to attend the State Bar's June 2017 Trust Account Ethics Enhancement Program (also known as "TAEEP") at no cost.

29. Mr. Levine attended the TAEEP course, but could not understand the basic requirements to comply with the Trust Account Rules.

30. The hearing panel finds Mr. Levine violated Rule 42, ER 5.3(b) , Rule 43(b)(1)(A), Rule 43(b)(1)(B), Rule 43(b)(1)(C), Rule 43(b)(2)(A), Rule 43(b)(2)(B), and Rule 43(b)(2)(C), Ariz. R. Sup. Ct. By violating his terms of diversion, he also violated Rule 54(e), Ariz. R. Sup. Ct.

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COUNT TWO (File No. 16-2099/State Bar-Trust Account)/Exhibits 9-15

31. On 06/16/2016, check number 1017 for $373.16 attempted to pay against Mr. Levine's US Bank IOLTA account ending 2965 when the balance was $248.98.

32. The bank paid the check, but charged no overdraft fee leaving the account with a negative balance of ($124.18).

33. The Trust Account Examiner (Examiner) sent Mr. Levine a copy of the overdraft notice, and requested an explanation of the overdraft and copies of the related mandatory records.

34. Mr. Levine provided the requested information with exceptions. Mr. Levine failed to provide a written response explaining the circumstances surrounding the overdraft. Mr. Levine also failed to provide a copy of an administrative funds ledger.

35. On 07/19/2016, the Examiner spoke with Mr. Levine who indicated that the only thing not included by his assistant in the information provided were individual client ledgers.

36. Mr. Levine attributed the lack of individual client ledgers to the mix-up of deposits and disbursements discovered in his prior State Bar trust account examination.

37. Mr. Levine explained that various deposits and disbursements were mistakenly transacted from either his IOLTA or operating account when they were intended to be transacted from the opposite account.

38. The examination subsequently revealed that the aforementioned IOLTA incident was not directly related to the 06/16/2016 overdraft incident as the prior incident occurred in Mr. Levine's Chase bank IOLTA ending 5020.

39. Ultimately, the records provided to the State Bar failed to provide an accurate and complete accounting of all funds held on deposit.

40. Specifically, the beginning balance in the IOLTA on 06/01/2016 was $248.98, however the general ledger reflects the beginning balance as $655.59.

41. Also, while the three client ledgers provided reflect negative beginning balances totaling ($5,338.22), Mr. Levine's "reconciliations" reflect a beginning balance of $248.98.

42. The Examiner also discovered that not all transactions were recorded on the actual date on which transactions occurred and there were date inconsistencies in Mr. Levine's duplicate deposit records.

43. Examples of these inconsistencies include, but are not limited to:

a. Mr. Levine's general ledger reflects that on 06/01/2016 a $1,640.45 settlement deposit was made on behalf of client

Molck, but the duplicate deposit slip reflects the hand-written deposit date of 05/31/2016;

b. Mr. Levine's general ledger and the duplicate deposit slip reflects that on 06/13/2016 a $435.11 settlement deposit was made on behalf of client Johnson, but the teller date stamp indicates the funds were actually presented for deposit on 06/22/2016;

c. Mr. Levine's general ledger reflects that on 01/19/2016 check number 1152 was disbursed on behalf of client Johnson made payable to Mr. Levine for earned fees, but the bank statements reflect the item posted on 01/14/2016.

44. Other record-keeping discrepancies include, but are not limited to:

a. Neither the general ledger nor individual client ledgers record the actual name of the payor of funds received and deposited in the IOLTA; and

b. The copy of the monthly reconciliation provided is not an adequate equivalent because it does not include reconciliation to the total of all client/administrative funds ledgers.

45. By ordered dated September 29, 2015, in State Bar File No. 14-3164, Mr. Levine was placed in diversion and required to submit various trust account records as part of mandated quarterly LOMAP reporting.

46. The Examiner discovered said submissions contained documentation and explanations pertinent to the matter at hand and extended the period of review to include January through June 2016.

47. One such item consisted of a copy of a general ledger for the activity purported to have been transacted in the US Bank IOLTA during the period of review.

48. Unlike the initial copy provided to the Examiner, the new general ledger copy reflected the beginning balance in the IOLTA on 06/01/2016 as negative ($1,391.47), resulting from the disbursement of checks numbered 1013 and 1014 for $1,640.45 when the unexpended balance was $248.98. The checks were outstanding at the onset of the month, thus the $248.98 beginning balance in the IOLTA consisted of the previous unexpended balance.

49. In a letter dated 07/22/2016, Mr. Levine identified the $248.98 balance as administrative funds and, contrary to Mr. Levine's explanation to the Examiner on 07/19/2016, Mr. Levine explained to Bar Counsel that the US Bank overdraft occurred because of a client depositing a check drawn on the IOLTA before the corresponding settlement funds had been deposited in the IOLTA.

50. In the same correspondence Mr. Levine also stated:

The Examiner determined that the actual activity reflected in the IOLTA did not fully support Mr. Levine's account of the incident "I really cannot explain

exactly how that happened because my usual custom and practice is to deposit trust funds on the same day that I mail out a client's check for the portion due to them. This occurred shortly after I first opened my accounts at U.S. Bank with a deposit of $248.98 of my own funds to cover the bank's administrative expenses to print our new checks and deposit slips. Unfortunately, the bank's administrative expenses exceeded my initial deposit by $124.18. The irony of this is that all but $124.18 consisted of my own funds. When I was notified of the overdraft, I immediately went to the bank and again deposited my own funds to cover this overdraft."

51. The Examiner determined that the actual activity reflected in the IOLTA did not fully support Mr. Levine's account of the incident.

52. Mr. Levine states that the IOLTA was opened with a $248.98 administrative funds deposit to cover check order and deposit slip charges and that the fees exceeded the deposited amount by $124.18, resulting in a negative account balance of ($124.18). Contrary to this assertion, the only negative balance was because the amount was the result of the client check presented for payment prior to the deposit of settlement funds. There is no indication that the IOLTA was opened with a deposit of $248.98. Instead the examination revealed that following the establishment of the account a negative balance of ($1.22) was caused in the IOLTA during the month of December 2015 [prior to the period of review]; presumably because of bank charges.

53. Subsequently, on 01/14/2016, settlement funds associated to client Johnson were deposited and checks numbered 1151 and 1152 drawn to disburse the entire funds to the client and Mr. Levine, temporarily resulting in the conversion of client funds. Both disbursements posted without incident by 01/19/2016, returning the IOLTA balance to negative ($1.22). The account remained negative until 01/26/2016, on which date an administrative funds deposit for $250 [not $248.98] was made, offsetting the negative balance and resulting in an unexpended administrative funds balance of $248.78 which remained in the IOLTA throughout the period of review.

54. Mr. Levine only held $100 in administrative funds on deposit in the Chase Bank IOLTA. The period of review comprised half the year and no further bank charges were evident in the US Bank IOLTA during that period. Therefore, the $248.78 administrative funds balance held on deposit is unreasonable.

55. The remaining $0.20 originated from undisbursed funds received on behalf of client Molck. Specifically, on 04/04/2016, a $1,640.45 settlement recovery was deposited in the IOLTA. The same day all but $0.20 was disbursed by way of checks numbered 1001 for $410.11 made payable to Mr. Levine and 1002 for $1,203.14 made payable to the client. The unexpended funds remained in the IOLTA throughout the period of review.

56. Two additional settlement recoveries in the identical amount were deposited in the IOLTA during the period of review. In each of those instances the $0.20 difference was attributable to Mr. Levine as earned funds. Therefore, it appears that unexpended funds were earned funds, however, supporting documentation was not provided to confirm this assumption. In addition, similar partial disbursements are evident in the records provided for Mr. Levine's Chase bank IOLTA ending 5020.

57. When the Examiner reconstructed the individual client ledgers pursuant to the dates reflected on the general ledger, the Examiner discovered a pattern of checks drawn prior to the corresponding settlement funds being recorded as deposited.

58. Besides the incident resulting in the overdraft reported to the State Bar, the reconstructed Johnson ledger reflects two similar instances of negligent disbursements. The first instance is evident in April, during which checks numbered 1005 and 1006 are recorded as drafted on 04/04/2016, while the corresponding settlement funds are not recorded as deposited until ten (10) days later, on 04/14/2016. While the second instance is evident in May, during which checks numbered 1009 and 1012 are recorded as drafted on 05/11/2016, while the corresponding settlement funds are not recorded as deposited until the following day on 05/12/2016. Likewise, the reconstructed Molck ledger reflects that during the

month of May, checks numbered 1013 and 1014 were drafted on 05/31/2016, while the corresponding settlement funds are not recorded as deposited until the following day on 06/01/2016.

59. Mr. Levine violated Rule 42, ER 1.15(a), ER 1.15(b)(1), ER 1.15(d), ER 5.3(b), Rule 43(a)(1), Rule 43(b)(1)(A), Rule 43(b)(1)(B), Rule 43(b)(1)(C), Rule 43(b)(2)(A), Rule 43(b)(2)(B), Rule 43(b)(2)(C), and Rule 43(b)(2)(D).

COUNT THREE (File No. 16-2099/State Bar)

60. On February 24, 2016, Mr. Levine filed a Complaint for Declaratory and Other Relief with the Maricopa County Superior Court case of *Levine vs. Haralson, Miller, Pitt, Feldman & McAnally, PLC., et al.*, CV2016-001518 ("Complaint").

61. Mr. Levine sought recovery for the *quantum meruit* value of legal services provided before he was terminated as one of the attorneys in a personal injury case for Tom and Gloria Erhardt ("Erhardts").

62. Mr. Levine alleged that:

a. In or around September 2010, Jerry Krumwiede and his law firm of J.D. Krumwiede Law Office ("Krumwiede") initially represented the Erhardts in a contingency fee case;

b. In 2011, Krumwiede asked Mr. Levine for assistance in the case;

c. Mr. Levine agreed and was associated as counsel of record until he and Krumwiede had a dispute and Mr. Levine's legal services terminated;

d. Defendant Haralson, Miller, Pitt, Feldman & McAnally, PLC (Haralson Firm) ultimately took over the representation from Krumwiede and settled the case;

e. Mr. Levine claims to have documented at least 428.5 hours of work on behalf of the Erhardts between 2011 and 2013; and

f. Mr. Levine asserted a charging lien for fees to which he believed he was due from the settlement in the case.

63. At all times pertinent, Mr. Levine and Krumwiede were employed by different law firms.

64. On March 30, 2016, the defendants filed a Motion to Dismiss the Complaint for failure to state a claim under Rule 12(b)(7) and failure to join necessary parties under Rule 19 alleging that Mr. Levine and several other attorneys had asserted a claim to the contingency fee.

65. In his Response to the defendants' Motion to Dismiss, Mr. Levine represented to the Court that he and Krumwiede "worked out an oral agreement" whereby Krumwiede would divide the contingency fee in the Erhardts' case with Mr. Levine. At a May 26, 2016 hearing on the Motion to Dismiss, Mr. Levine's

counsel, Joel Robbins ("Robbins"), admitted that Mr. Levine and Krumwiede had no written agreement between themselves relating to the representation of the Erhardts and acknowledged that they did not go through the "formality of a contract."

66. By minute entry dated June 15, 2016, the trial court granted the motion to dismiss and concluded that Mr. Levine's claim "cannot move forward because it is based on an arrangement that does not comply with the ethical rules for attorneys."

67. The trial court found that the failure to have a written approval of either of the clients or co-counsel was "fatal to any claim for compensation" and, that public policy "dictates that [his] claims in equity fail as a result of [Mr. Levine]'s failure to follow the proscribed ethical rules."

68. On July 7, 2016, Mr. Levine moved to reconsider the Court's June 15, 2016 ruling, that he was "operating under a written fee agreement; he did so with the knowledge of both co-counsel and client; and he improved the client's position."

69. Mr. Levine further maintained that if there are any ER 1.5 issues, those issues were between Mr. Levine and the clients, not the Defendants: "The clients in this case have already had their fees determined, and Levine does not seek to re-determine that issue."

70. The trial court denied the Motion to Reconsider and a judgment dismissing Mr. Levine's complaint was filed on September 9, 2016.

71. Mr. Levine timely appealed from that judgment and the appeal is pending in the Arizona Court of Appeals, Division One case of *Levine vs. Haralson, Miller, Pitt, Feldman & McAnally, PLC., et al.*, 1 CA-CV 16-0590.

72. By letter dated November 23, 2016, Mr. Levine responded to the November 16, 2016 Report of Investigation and enclosed a "Client and Attorney Representation Agreement" entered into between Krumwiede and the Erhardts on September 9, 2010.

73. The "Client and Attorney Representation Agreement" only identifies the "J.D. KRUMWIEDE LAW OFFICE" as the sole "ATTORNEY" representing the Erhardts.

74. The "Client and Attorney Representation Agreement" does not mention Mr. Levine and does not contain the compliant signed client approval as set forth in Rule 42, Ariz. R. Sup. Ct., ER 1.5(e)(2).

75. On or about November 23, 2016, Mr. Levine also wrote the Attorney Discipline Probable Cause Committee stating he and Mr. Krumwiede "**orally** agreed that they would each share in the 33 1/3% fee…" [Ex. 24.] On July 5, 2016, Mr. Levine wrote the State Bar that "Mr. Krumwiede assured me that he *would* obtain the consent of the clients to this association and our agreement to share fees…" (Emphasis added), not that Krumwiede did. Mr. Levine then changed that position stating, "…because the signed consent from the Erhardts to my arrangement with

Mr. Krumwiede is in Mr. Krumwiede' s possession." [Ex. 20.] We find no written approval by clients of the association of Mr. Levine.

76. Mr. Levine violated Rule 42, Ariz. R. Sup. Ct., ER 1.5(e)(2).

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. Levine violated his duty to his clients and the profession.

Mental State and Injury:

Mr. Levine knowingly violated his duty to clients and the profession, in violating ER 5.3(b), and Rule 54(e) in Count I, ERs 1.15(a), 1.15(b)(1), 1.15(d), and 5.3(b), in Count II, and violating his Rule 43 obligations in each of those counts. He also violated ER 1.5(e)(2) and ER 8.4, in Count III. He caused actual harm to his clients and the profession in all counts.

Standards 4.12 and 7.2 apply to the violations in Count I and Count II. Under Count III, Standards 7.2 applies.

Standard 4.12 states:

> Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client."

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."

The Panel determined that suspension is the presumptive sanction under the *Standards* regarding Mr. Levine's knowing violations.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors are present:

- *Standard* 9.22(a) prior disciplinary history;
- *Standard* 9.22(c) pattern of misconduct;
- *Standard* 9.22(d) multiple offenses; and
- *Standard* 9.22(i) substantial experience in the practice of law.

The Hearing Panel finds the following mitigating factors are present:

- *Standard* 9.32(b) absence of a dishonest or selfish motive;
- *Standard* 9.32(d) timely good faith effort to make restitution.

ANALYSIS

Mr. Levine assigned blame to others throughout the proceedings for his ethical breeches. He blamed the high school graduates he hired to oversee his trust

account compliance for his ethical violations. He blamed the bank. He blamed a client he referred to as brain-injured for cashing a check earlier than he told him to. He blamed the trust account rules themselves; and apparently blames the Court for not granting his petition to change the rules. [*See* Ex. 56.] It is not clear what his purpose in offering his multiple articles as exhibits was, except to continue to assign responsibility elsewhere. [Exhibits 59-65.] Their submission left the Panel with the impression he believes he has no obligation to follow any rule he disagrees with.

In Count III, Mr. Levine argued he "totally complied with all the requirements of ER 1.5(e)," because "to date, there has been **no** division of any fees between Respondent and Attorney Jerry Krumwiede." (Emphasis in original). [Levine Prehearing memorandum.] His argument fails. He seeks to obtain that which the ethical rules categorically prohibit under the facts before us. Mr. Levine states he relies on the fee agreement the Erhardts signed with Mr. Krumwiede because it "expressly authorized Mr. Krumwiede to associate counsel." (Emphasis in original). [Id.] Such reliance is revealing.

Mr. Levine made clear in his testimony that he is an enormously experienced litigator. Mr. Levine could have requested the issuance of subpoenas from the disciplinary clerk throughout these proceedings. *See* Rule 47(h)(2), Ariz. R. Sup. Ct. He did not use that available subpoena power. Yet in the hearing he testified he hopes there might be some writing signed by the clients, that he thinks he saw, but never

sought by subpoena. We are reluctant to find his disinclination to use such subpoena power as inadvertent because of the inconsistent arguments and testimony he gave.

The assertion by Mr. Levine that the Krumwiede fee agreement brought him into compliance is not an alternative argument. Mr. Levine strives to make the unambiguous requirements of ER 1.5(e) unintelligible. We do not doubt he relied on his view of how he thinks the rule should read. His view of the ethical rules is manifested in his articles which are part of the exhibits before us. In his closing, he argued the ethical rules don't protect clients at all. His closing was telling when he stated he complied with the "spirit" of the rules.

Rule 1.5(e)(2), allows a division of fees "only if" three conditions are met. Mr. Levine had every opportunity to utilize discovery in this proceeding to produce any document demonstrating that "the client agrees, in a writing signed by the client, to the participation of the lawyers involved." It is for Mr. Levine to produce the document. He did not. His testimony was inconsistent and not credible.

In his prehearing memorandum, he argued that Exhibit 66, (Exhibit "C" to his memorandum), which is an authorization for release of information, is dispositive proof of his compliance. "The Ehrhardt's, in writing **did**, expressly authorize Respondent to represent them." [Levine prehearing memorandum.] Such argument is not even salutary. It is the opposite. The exhibit only seeks a release of documents.

In his opening statement, Mr. Levine unambiguously stated the rule required you to contact the client and get written approval. He did not do that, but submits his belief that Mr. Krumwiede did, and the clients wrote back their approval. He claimed the clients told him months later *they* wanted *him* to represent them. But according to his earlier statement, he already did represent them through the original fee agreement.

We focus on the language in the rule rather than what any respondent thinks a rule should say. We find the language easy to understand and apply. It clarifies what is required of an associating lawyer if lawyers associating on a case with to divide the attorney fees. The rule avoids precisely the chaos in the attorney client relationship Levine brought by seeking to obtain a division of the fees contrary to the ethical rules.

In his testimony, Levine acknowledged he prepared no ER 1.5 compliant document for signature by the clients, but instead, told Krumwiede to do so. Mr. Levine did not dispute that the clients denied signing any such document. When asked why he didn't follow up in writing, to assure compliance he at first testified, he didn't think it was necessary. But then later, tellingly, testified, that if he had contacted them, that "I had no association with the clients and no personal relationship. It was inappropriate for me to interfere with their relationship." [Levine hearing testimony, Time: 10: 10:49.]

After making such concessions, Mr. Levine then testified he apparently unilaterally met with the clients, in their home, informing them Krumwiede said he would receive most of the attorney fees. Yet again, Mr. Levine tellingly acknowledged he did nothing to memorialize in writing any of this meeting. He testified he made no notes because it was not "significant" to him. [Levine hearing testimony, Time: 10:16:07.] We find this is the reason there is no compliant written client approval, because compliance with the rule was not significant to him until much later.

We find there was no ER 1.5 compliant approval in writing signed by the clients. He may have had an informal relationship with Krumwiede. But the language of the rule is clear and explicit. The client must agree "in a writing signed by the client."

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 orders Mr. Levine be suspended from the practice of law for ninety (90) days effective the date of this order, and pay all costs and expenses incurred by the State Bar in this proceeding.

A final judgment and order will follow.

DATED this August 25, 2017.

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

Sandra E. Hunter
Sandra E. Hunter, Volunteer Attorney Member

Howard Weiske
Howard Weiske, Volunteer Public Member

COPY of the foregoing e-mailed
on August 25, 2017, and mailed August 28, 2017 to:

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by: AMcQueen

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BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, **JACK LEVINE,** **Bar No. 001637,** Respondent.	**PDJ 2017-9033** **COMPLAINT** [State Bar No. 16-2626, 16-2100 and 16-2099]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. On July 27, 1964, Respondent was licensed to practice law in the State of Arizona.

2. At all times pertinent to this Complaint, Respondent was authorized to engage in the practice of law in the State of Arizona.

COUNT ONE (File No. 16-2626/State Bar-Diversion)

2. By ordered dated September 29, 2015, in State Bar File No. 14-3164, Respondent was placed in diversion and ordered to participate in the State Bar's Law Office Management Assistance Program (LOMAP) for two (2) years for violations of Rule 42, ERs 1.15(a) and (d), Rules 43(a), (a)(1), (b)(1)(A), (b)(1)(B), (b)(1)(C), (b)(2)(A), (b)(2)(B), (b)(2)(C), (d)(3), and Rule 54(d)(2), (d)(2)(A), and (d)(2)(C).

3. On November 30, 2015, Respondent signed "Terms of Diversion," which detailed the minimum requirements that Respondent was to fulfill during the period of diversion (hereinafter referred to as the "Terms").

4. Under the Terms, Respondent was to submit reports to the State Bar Compliance Monitor on a monthly basis beginning on March 31, 2016.

5. Under Section III of the Terms, the failure to comply with the Terms constitutes a violation, which shall be reported to Bar Counsel in the Lawyer Regulation Office.

6. Respondent failed to submit a quarterly report on March 31, 2016, as required under the Terms.

7. On June 24, 2016, Compliance Monitor Yvette Penar emailed Respondent to remind him that his quarterly LOMAP report and Trust Account records were due and

requested that Respondent provide her with all Trust Account Records from January 2016 through June 2016.

8. The next day, Respondent emailed Ms. Penar stating that until her email, he did not realize that the report was due on June 30, 2016.

9. Respondent requested an extension of time until July 7, 2016 to submit his records, but failed to do so on July 7, 2016.

10. Bar Counsel Stacy Shuman spoke with Respondent on July 20, 2016 and confirmed that Respondent now promised to submit a quarterly report on or before July 22, 2016.

11. At Respondent's request, Bar Counsel Stacy Shuman provided him with another copy of the Terms and reminded Respondent that the next report would be due on September 30, 2016.

12. By letter dated July 22, 2016, Respondent advised Bar Counsel Stacy Shuman that he was "not quite sure whether I am capable of complying [with the Terms] without some additional help from the Member Assistance Program".

13. Respondent also advised Bar Counsel Stacy Shuman that he was purportedly scheduled to meet with State Bar Practice Management Advisor Kristin

Moye on July 28, 2016 to arrange for some additional training "so that I can become compliant" with the Terms.

14. On August 9, 2016, Bar Counsel Stacy Shuman contacted Respondent by telephone to discuss his ongoing failure to comply with the Terms.

15. When Respondent advised that the meeting with Ms. Moye had been moved to August 16, 2016, Bar Counsel Stacy Shuman extended an invitation to Respondent to attend the State Bar's October 4, 2016 Trust Account Ethics Enhancement Program (also known as "TAEEP") at no cost.

16. Respondent did not attend the program.

17. By letter dated August 11, 2016, Bar Counsel sent Respondent a screening letter and asked that he respond to the allegation that he had violated Rule 54(e), by failing to comply with the Terms, and that he do so by August 31, 2016.

18. Respondent failed to do so.

19. By email dated August 30, 2016, Senior Bar Counsel (SBC) Shauna Miller advised Respondent that she had reviewed the report submitted for the period of January through May 2016 and asked him to provide her with a three-way reconciliation using an attached form and client ledgers for four identified clients.

20. By letter dated September 6, 2016, Bar Counsel Stacy Shuman sent Respondent a ten (10) day notice letter and asked that he respond to the screening letter on or before September 16, 2016.

21. By email dated September 7, 2016, SBC Miller advised Respondent that while he had provided her with some documents, he had not completed the three-way reconciliation form provided to him.

22. By letter dated September 12, 2016, Respondent responded to the second screening letter, stating that he is "terrified" about keeping financial records, "whether in paper form or on a computer" and therefore, he has "never personally undertaken to do this in either form."

23. Respondent states that the Terms required that he reconstruct his trust account records, which were "in great disarray" because he was "completely reliant" upon legal assistants.

24. Respondent further states that when he started to receive "inquiries" and complaints from the State Bar, he was unable to adequately represent his clients and satisfy the demands for information.

25. By email dated September 19, 2016, SBC Miller again directed Respondent to use the three-way reconciliation form provided to him for the quarterly report due in September 2016.

26. By email dated October 4, 2016, Respondent submitted a quarterly report for July through September 2016.

27. While Respondent used the three-way reconciliation previously provided to him by SBC Miller, Respondent continued to use it incorrectly by identifying himself as the client.

28. By engaging in the above-referenced conduct, Respondent violated:

a. Rule 42, ER 5.3(b), Ariz. R. Sup. Ct. by failing to make reasonable efforts, in his direct supervisory authority over nonlawyer employed or retained by or associated with Respondent's firm, to ensure that the nonlawyer's conduct is compatible with the professional obligation of the lawyer;

b. Rule 43(b)(1)(A), Ariz. R. Sup. Ct. by failing to exercise due professional care in the performance of the lawyer's duties;

c. Rule 43(b)(1)(B), Ariz. R. Sup. Ct. by failing to properly train and supervise employees and others assisting the attorney in the performance

of his duties;

d. Rule 43(b)(1)(C), Ariz. R. Sup. Ct. by failing to maintain adequate internal controls under the circumstances to safeguard funds or other property held in trust;

e. Rule 43(b)(2)(A), Ariz. R. Sup. Ct. by failing to maintain on a current basis, complete records of the handling, maintenance, and disposition of all funds, securities, and other property belonging in whole or in part to a client/third person in connection with a representation. These records shall include the records required by ER 1.15 and cover the entire time from receipt to the time of final disposition by the lawyer of all such funds, securities, and other property;

f. Rule 43(b)(2)(B), Ariz. R. Sup. Ct. by failing to maintain or cause to be maintained an account ledger or the equivalent for each client, person, or entity for which funds have been received in trust, showing: (i) the date, amount, and payor of each receipt of funds; (ii) the date, amount, and payee of each disbursement; and (iii) any unexpended balance; and

g. Rule 43(b)(2)(C), Ariz. R. Sup. Ct. by failing to make or cause to be made a monthly three-way reconciliation of the client ledgers, trust

account general ledger or register, and the trust account bank statement

h. Rule 54(e), Ariz. R. Sup. Ct. by violating a condition(s) of diversion.

COUNT TWO (File No. 16-2099/State Bar-Trust Account)

28. The State Bar incorporates the previous paragraphs of this Complaint by reference.

29. On 06/16/2016, check number 1017 in the amount of $373.16 attempted to pay against Respondent's US Bank IOLTA account ending 2965 when the balance was $248.98.

30. The bank paid the check, and did not charge an overdraft fee leaving the account with a negative balance of ($124.18).

31. The Trust Account Examiner (Examiner) sent Respondent a copy of the overdraft notice, and requested an explanation of the overdraft and copies of the related mandatory records.

32. Respondent provided the requested information with exceptions. Respondent failed to provide a written response explaining the circumstances surrounding the overdraft. Respondent also failed to provide a copy of an administrative funds ledger.

33. On 07/19/2016, the Examiner spoke with Respondent who indicated that the only thing not included by his assistant in the information provided were individual client ledgers.

34. Respondent attributed the lack of individual client ledgers to the mix-up of deposits and disbursements discovered in his prior State Bar trust account examination.

35. Respondent explained that various deposits and disbursements were mistakenly transacted from either his IOLTA or operating account when they were intended to be transacted from the opposite account.

36. The examination subsequently revealed that the aforementioned IOLTA incident was not directly related to the 06/16/2016 overdraft incident as the prior incident occurred in Respondent's Chase bank IOLTA ending 5020.

37. Ultimately, the records provided to the State Bar failed to provide an accurate and complete accounting of all funds held on deposit.

38. Specifically, the beginning balance in the IOLTA on 06/01/2016 was $248.98, however the general ledger reflects the beginning balance as $655.59.

39. Also, while the three client ledgers provided reflect negative beginning balances totaling ($5,338.22), Respondent's "reconciliations" reflect a beginning balance of $248.98.

40. The Examiner also discovered that not all of the transactions are recorded on the actual date on which transactions occurred as well as date inconsistencies in Respondent's duplicate deposit records.

41. Examples of these inconsistencies include, but are not limited to:

a. Respondent's general ledger reflects that on 06/01/2016 a $1,640.45 settlement deposit was made on behalf of client Molck, but the duplicate deposit slip reflects the hand written deposit date of 05/31/2016;

b. Respondent's general ledger and the duplicate deposit slip reflects that on 06/13/2016 a $435.11 settlement deposit was made on behalf of client Johnson, but the teller date stamp indicates the funds were actually presented for deposit on 06/22/2016;

c. Respondent's general ledger reflects that on 01/19/2016 check number 1152 was disbursed on behalf of client Johnson made payable to Respondent for earned fees, but the bank statements reflect the item posted on 01/14/2016.

42. Other record-keeping discrepancies include, but are not limited to:

a. Neither the general ledger nor individual client ledgers record the actual name of the payor of funds received and deposited in the IOLTA; and

b. The copy of the monthly reconciliation provided is not an adequate equivalent in that it does not include reconciliation to the total of all client/administrative funds ledgers.

43. By ordered dated September 29, 2015, in State Bar File No. 14-3164, Respondent was placed in diversion and required to submit various trust account records as part of mandated quarterly LOMAP reporting.

44. The Examiner discovered said submissions contained documentation and explanations pertinent to the matter at hand and extended the period of review to include January through June 2016.

45. One such item consisted of a copy of a general ledger for the activity purported to have been transacted in the US Bank IOLTA during the period of review.

46. Unlike the initial copy provided to the Examiner, the new general ledger copy reflected the beginning balance in the IOLTA on 06/01/2016 as negative ($1,391.47), resulting from the disbursement of checks numbered 1013 and 1014 in the total amount of $1,640.45 when the unexpended balance was $248.98. The checks were outstanding at the onset of the month, thus the $248.98 beginning balance in the IOLTA consisted of the aforementioned unexpended balance whose ownership is described herein.

47. In a letter dated 07/22/2016, Respondent identified the $248.98 balance as administrative funds and, contrary to Respondent's explanation to the Examiner on 07/19/2016, Respondent explained to Bar Counsel that the US Bank overdraft occurred as a result of a client depositing a check drawn on the IOLTA before the corresponding settlement funds had been deposited in the IOLTA.

48. In the same correspondence Respondent also stated the following:

"I really cannot explain exactly how that happened because my usual custom and practice is to deposit trust funds on the same day that I mail out a client's check for the portion due to them. This occurred shortly after I first opened my accounts at U.S. Bank with a deposit of $248.98 of my own funds to cover the bank's administrative expenses to print our new checks and deposit slips. Unfortunately, the bank's administrative expenses exceeded my initial deposit by $124.18. The irony of this is that all but $124.18 consisted of my own funds. When I was notified of the overdraft, I immediately went to the bank and again deposited my own funds to cover this overdraft."

49. The Examiner determined that the actual activity reflected in the IOLTA did not fully support Respondent's account of the incident.

50. For example, Respondent states that the IOLTA was opened with a $248.98 administrative funds deposit to cover check order and deposit slip charges and that the

fees exceeded the deposited amount by $124.18, thereby resulting in a negative account balance of ($124.18). Contrary to this assertion, the only negative balance in that amount was the result of the client check presented for payment prior to the deposit of settlement funds. Moreover, there is no indication that the IOLTA was opened with a deposit of $248.98. Instead the examination revealed that following the establishment of the account a negative balance of ($1.22) was caused in the IOLTA during the month of December 2015 [prior to the period of review]; presumably as a result of bank charges.

51. Subsequently, on 01/14/2016, settlement funds associated to client Johnson were deposited and checks numbered 1151 and 1152 drawn to disburse the entirety of the funds to the client and Respondent, temporarily resulting in the conversion of client funds. Both disbursements posted without incident by 01/19/2016, returning the IOLTA balance to negative ($1.22). The account remained negative until 01/26/2016, on which date an administrative funds deposit in the amount of $250 [not $248.98] was made, offsetting the negative balance and resulting in an unexpended administrative funds balance of $248.78 which remained in the IOLTA throughout the period of review.

52. Respondent only held $100 in administrative funds on deposit in the Chase Bank IOLTA. Moreover, the period of review consisted of half the year and no further

bank charges were evident in the US Bank IOLTA during that period. Therefore, the $248.78 administrative funds balance held on deposit is unreasonable.

53. The remaining $0.20 originated from undisbursed funds received on behalf of client Molck. Specifically, on 04/04/2016, a $1,640.45 settlement recovery was deposited in the IOLTA. The same day all but $0.20 was disbursed by way of checks numbered 1001 in the amount of $410.11 made payable to Respondent and 1002 in the amount of $1,203.14 made payable to the client. The unexpended funds remained in the IOLTA throughout the period of review.

54. Two additional settlement recoveries in the identical amount were deposited in the IOLTA during the period of review. In each of those instances the $0.20 difference was attributable to Respondent as earned funds. Therefore, it appears the unexpended funds in question were earned funds, however, supporting documentation was not provided to confirm this assumption. In addition, similar partial disbursements are evident in the records provided for Respondent's Chase bank IOLTA ending 5020.

55. When the Examiner reconstructed the individual client ledgers pursuant to the dates reflected on the general ledger, the Examiner discovered a pattern of checks drawn prior to the corresponding settlement funds being recorded as deposited.

56. In addition to the incident resulting in the overdraft reported to the STATE BAR, the reconstructed Johnson ledger reflects two similar instances of negligent disbursements. The first instance is evident in April, during which checks numbered 1005 and 1006 are recorded as being drafted on 04/04/2016, while the corresponding settlement funds are not recorded as being deposited until ten (10) days later on 04/14/2016. While the second instance is evident in May, during which checks numbered 1009 and 1012 are recorded as being drafted on 05/11/2016, while the corresponding settlement funds are not recorded as being deposited until the following day on 05/12/2016. Likewise, the reconstructed Molck ledger reflects that during the month of May, checks numbered 1013 and 1014 were drafted on 05/31/2016, while the corresponding settlement funds are not recorded as being deposited until the following day on 06/01/2016.

57. By engaging in the above-referenced conduct, Respondent violated:

a. Rule 42, ER 1.15(a), Ariz. R. Sup. Ct. by failing to safekeep client property and funds, failing to keep and preserve complete records of the trust account funds and other property for a period of five years after termination of the representation;

b. Rule 42, ER 1.15(b)(1), Ariz. R. Sup. Ct. by depositing lawyer's own

funds in a client trust account in excess of the amount reasonably estimated to be necessary to pay service or other charges or fees imposed by the financial institution that are related to the operation of the trust account;

c. Rule 42, ER 1.15(d), Ariz. R. Sup. Ct. by failing to promptly render a full accounting regarding client or third party property or funds;

d. Rule 42, ER 5.3(b), Ariz. R. Sup. Ct. by failing to make reasonable efforts, in his direct supervisory authority over nonlawyer employed or retained by or associated with Respondent's firm, to ensure that the nonlawyer's conduct is compatible with the professional obligation of the lawyer;

e. Rule 43(a)(1), Ariz. R. Sup. Ct. by failing to deposit funds to pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account, but only in an amount reasonably estimated to be necessary for that purpose may be deposited therein;

f. Rule 43(b)(1)(A), Ariz. R. Sup. Ct. by failing to exercise due professional care in the performance of the lawyer's duties;

g. Rule 43(b)(1)(B), Ariz. R. Sup. Ct. by failing to properly train and supervise employees and others assisting the attorney in the performance of his duties;

h. Rule 43(b)(1)(C), Ariz. R. Sup. Ct. by failing to maintain adequate internal controls under the circumstances to safeguard funds or other property held in trust;

i. Rule 43(b)(2)(A), Ariz. R. Sup. Ct. by failing to maintain on a current basis, complete records of the handling, maintenance, and disposition of all funds, securities, and other property belonging in whole or in part to a client/third person in connection with a representation. These records shall include the records required by ER 1.15 and cover the entire time from receipt to the time of final disposition by the lawyer of all such funds, securities, and other property;

j. Rule 43(b)(2)(B), Ariz. R. Sup. Ct. by failing to maintain or cause to be maintained an account ledger or the equivalent for each client, person, or entity for which funds have been received in trust, showing: (i) the date, amount, and payor of each receipt of funds; (ii) the date, amount, and payee of each disbursement; and (iii) any unexpended balance;

k. Rule 43(b)(2)(C), Ariz. R. Sup. Ct. by failing to make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement; and

l. Rule 43(b)(2)(D), Ariz. R. Sup. Ct. by failing to retain, in accordance with this rule, duplicate deposit slips or the equivalent (which shall be sufficiently detailed to identify each item).

COUNT THREE (File No. 16-2099/State Bar)

58. On February 24, 2016, Respondent filed a Complaint for Declaratory and Other Relief with the Maricopa County Superior Court case of *Levine vs. Haralson, Miller, Pitt, Feldman & McAnally, PLC., et al.*, CV2016-001518 (hereinafter referred to as the "Complaint").

59. Respondent sought recovery for the *quantum meruit* value of legal services provided before he was terminated as one of the attorneys in a personal injury case for Ron and Gloria Erhardt (hereinafter referred to as the "Erhardts").

60. Respondent alleged, in pertinent part, that:

a. In or around September 2010, Jerry Krumwiede and his law firm of J.D. Krumwiede Law Office (hereinafter referred to as "Krumwiede") initially represented the Erhardts in a contingency fee case;

b. At some point in 2011, Krumwiede asked Respondent for assistance in the case;

c. Respondent agreed and was associated as counsel of record until he and Krumwiede had a dispute and Respondent's legal services terminated;

d. Defendant Haralson, Miller, Pitt, Feldman & McAnally, PLC (Haralson Firm) ultimately took over the representation from Krumwiede and settled the case;

e. Respondent documented approximately 428.5 hours of work on behalf of the Erhardts between 2011 and 2013; and

f. Respondent asserted a charging lien for fees to which he believed he was due from the settlement in the case.

61. At all times pertinent, Respondent and Krumwiede were employed by different law firms.

62. Respondent did not obtain a written fee-splitting agreement or any other confirmatory writing between Respondent's law firm and the Erhardts which complied with the requirements set forth in Rule 42, Ariz. R. Sup. Ct., ER 1.5(e)(2).

63. Respondent did not obtain a written fee-splitting agreement or any other confirmatory writing between Respondent's law firm and Krumwiede which complied with the requirements set forth in Rule 42, Ariz. R. Sup. Ct., ER 1.5(e)(2).

64. On March 30, 2016, the defendants filed a Motion to Dismiss the Complaint for failure to state a claim under Rule 12(b)(7) and failure to join necessary parties under Rule 19 alleging, among other things, that Respondent and several other attorneys had asserted a claim to the contingency fee.

65. In his Response to the defendants' Motion to Dismiss, Respondent represented to the Court that he and Krumwiede "worked out an oral agreement" whereby Krumwiede would divide the contingency fee in the Erhardts' case with Respondent.

66. At a May 26, 2016 hearing on the Motion to Dismiss, Respondent's counsel, Joel Robbins (hereinafter referred to as "Robbins"), admitted that Respondent and Krumwiede did not have a written agreement between themselves relating to the

representation of the Erhardts and acknowledged that they did not go through the "formality of a contract."

67. By minute entry dated June 15, 2016, the trial court granted the motion to dismiss and concluded that Respondent's claim "cannot move forward because it is based on an arrangement that does not comply with the ethical rules for attorneys."

68. The trial court found that the failure to have a written fee agreement with either the clients or co-counsel was "fatal to any claim for compensation" and, that public policy "dictates that [his] claims in equity fail as a result of [Respondent]'s failure to follow the proscribed ethical rules."

69. By letter dated July 5, 2016, Respondent responded to the screening letter and denied any violation of the identified ethical rules because he had "no direct relationship with Mr. and Mrs. Ehrhardt [sic] as my only relationship with them was through my association with Mr. Krumwiede, who had a written contingent fee agreement with [them] who approved of our association, in writing, and our agreement to share fees under Mr. Krumwiede's fee agreement with them."

70. On July 7, 2016, Respondent filed a motion to reconsider the Court's June 15, 2016 ruling, that he was "operating under a written fee agreement; he did so with the knowledge of both co-counsel and client; and he improved the client's position."

71. Respondent further maintained that to the extent that there are any ER 1.5 issues, those issues were between Respondent and the clients, not the Defendants: "The clients in this case have already had their fees determined, and Levine does not seek to re-determine that issue. He does seek to be treated fairly, along with the other lawyers in this case."

72. The trial court denied the Motion to Reconsider and a judgment dismissing Respondent's complaint was filed on September 9, 2016.

73. Respondent timely appealed from that judgment and the appeal is currently pending in the Arizona Court of Appeals, Division One case of *Levine vs. Haralson, Miller, Pitt, Feldman & McAnally, PLC., et al.*, 1 CA-CV 16-0590.

74. By letter dated November 23, 2016, Respondent responded to the November 16, 2016 Report of Investigation and enclosed a "Client and Attorney Representation Agreement" entered into between Krumwiede and the Erhardts on September 9, 2010.

75. The "Client and Attorney Representation Agreement" only identifies the "J.D. KRUMWIEDE LAW OFFICE" as the sole "ATTORNEY" representing the Erhardts.

76. The "Client and Attorney Representation Agreement" does not mention Respondent and does not contain any fee-splitting provisions as set forth in Rule 42, Ariz. R. Sup. Ct., ER 1.5(e)(2).

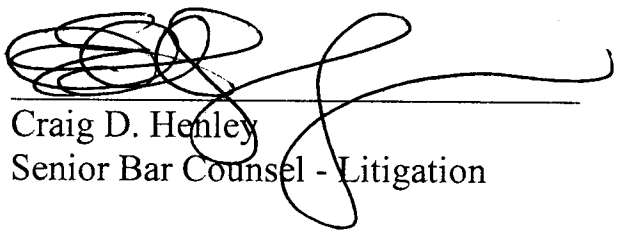
77. By engaging in the above-referenced conduct, Respondent violated:

a. Rule 42, Ariz. R. Sup. Ct., ER 1.5(e)(2) by pursuing a division of fee between lawyers who are not in the same firm without a written agreement, signed by the clients, which set forth the division of fees and responsibilities between the lawyers; and

b. Rule 42, Ariz. R. Sup. Ct., ER 8.4(d) for engaging in conduct that is prejudicial to the administration of justice.

DATED this 16th day of March, 2017.

STATE BAR OF ARIZONA



Craig D. Henley
Senior Bar Counsel - Litigation

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 16th day of March, 2017.

by: _____
CDH:nr

EXHIBIT A

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. 16-2099

PROBABLE CAUSE ORDER

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on February 10, 2017, 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 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2099.

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 21 day of February, 2017.

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

Original filed this 21st day
of February, 2017 with:

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

Copy mailed this 22nd day
of February, 2017, to:

Jack Levine
Jack Levine PC
777 E. Thomas Road, Suite 250
Phoenix, Arizona 85014-5478
Respondent

Copy emailed this 22nd 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
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Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

by: Karen E. Calcagno

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, **JACK LEVINE,** **Bar No. 001637,** Respondent.	No. 16-2100 **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 and Respondent's Response.

By a vote of 8-0-1[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2100.

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

[1] 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. 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 1st day
of February, 2017, to:

Jack Levine
Jack Levine, PC
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Respondent

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of February, 2017, to:

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by: Karen E. Calagna

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. 16-2626 **PROBABLE CAUSE ORDER**

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on December 9, 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 8-0-1[1], the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2626.

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 28 day of December, 2016.

Lawrence F. Winthrop

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

[1] Committee member Daisy Flores did not participate in this matter.

Original filed this 28th day
of December, 2016 with:

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Phoenix, Arizona 85016-6266

Copy mailed this 30th day
of December, 2016, to:

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Respondent

Copy emailed this 30th day
of December, 2016, to:

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by: Jaime Parris