

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF MEMBERS OF
THE STATE BAR OF ARIZONA,

DANIEL ROBERT WARNER,
Bar No. 026503

AARON MATTHEW KELLY,
Bar No. 025043

RAEESABBAS MOHAMED,
Bar No. 027418

Respondents.

PDJ-2018-9012

**ORDERS RE: INITIAL CASE
MANAGEMENT
CONFERENCE**

[State Bar Nos. 16-3120, 17-
1236 & 17-1835]

FILED MARCH 6, 2018

The Presiding Disciplinary Judge (PDJ), under Supreme Court Rule 58(c), held a mandatory initial case management conference on March 6, 2018. Bradley F. Perry and Kelly J. Flood, Staff Bar Counsel, appeared on behalf of the State Bar of Arizona. J. Scott Rhodes and Kerry A. Hodges, *Jennings, Strouss & Salmon PLC*, appeared representing Daniel R. Warner and Raeesabbas Mohamed. Nancy A. Greenlee appeared representing Aaron M. Kelly. The complaint was filed on January 26, 2018. The timely answer of Mr. Kelly was filed on February 23, 2018. The timely answer of Mr. Warner and Mr. Mohamed was filed on February 26, 2018.

The purpose of the Initial Case Management Conference and this order is to establish a uniform, court-supervised procedure for case management. It further schedules the hearing on the merits and all other prehearing conferences encouraging professionalism and cooperation while facilitating pretrial procedures. These orders shall control the subsequent course of this action unless a modified written order is

entered. Civil Rule 16(i) has been incorporated into disciplinary proceedings by Supreme Court Rule 48(b). The parties are cautioned to govern themselves accordingly.

I. CONTACT INFORMATION

The court confirmed the following contact information:

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The parties are ORDERED to notify the Disciplinary Clerk in writing of any change in address. The following are ORDERS of the Court:

II. SETTLEMENT

Settlement Conference Deadline:

June 15, 2018. A settlement conference *shall* occur no later than this date except upon stipulation of the parties with notice to this court.

1. The parties have stipulated that Judge Patricia Norris (ret.) serve as the settlement officer. Within five days the parties shall arrange with the settlement officer for the scheduling of the settlement conference.
2. The parties shall attend and actively participate in good faith in settlement negotiations. The parties and their counsel shall be prepared for the

conference with full authority to settle. The parties shall promptly notify the Disciplinary Clerk if this matter does not resolve at the settlement conference and will proceed to hearing.

3. The settlement officer has sole authority to conduct the conference and to determine whether non-parties may appear. No non-party may appear or participate without approval of the settlement officer.
4. NO non-party may address counsel without the express permission of the settlement officer AND the attorney to be addressed. The party responsible for the non-party shall be responsible for the conduct of such non-party and to assure compliance with this order.
5. The parties shall be prepared at such conference to discuss the factual and legal disputes, proposed sanctions, the ABA's Standards and any aggravating and mitigating factors and the costs associated with a hearing.
6. If the settlement officer informs the Office of the PDJ of failing to cooperate by a party, sanctions may issue including but not limited to striking of pleadings, dismissal, proceeding as if by default or fines or assessments. The parties are strongly encouraged to conduct themselves accordingly.

III. HEARING DATES AND DEADLINES

Firm Hearing Date:

July 16-20, 2018. The hearing is set to commence at the Arizona State Courts Building, 1501 W. Washington, Phoenix, AZ 85007-3231 at **1:00 p.m.** on Monday and **9:00 a.m.** on the remaining days.

Anticipated Length of Hearing: Five (5) days. The parties shall notify the Court, by email and in writing, of any requested change in the anticipated length of hearing. The parties are reminded if a rule violation is established by clear and convincing evidence, the Hearing Panel is not bound to or limited by the sanction suggested by the Bar. In determining the sanction, the Hearing Panel will consider the arguments and evidence offered by both parties, and the hearing panel members' own perceptions regarding the facts and the law.

Deadline for Motions:

June 8, 2018. Any motion must be *timely* filed. No non-dispositive motion shall be filed later than this date and time. Dispositive motions, including a motion for summary judgment, must be filed timely under the time limits set in Civil Rule 56.

Joint Prehearing Statement:

July 6, 2018. Counsel who will try the case shall confer, prepare and file a Joint Prehearing Statement not later than this date. Each party shall prepare their

individual portion of the written joint pretrial statement, to be signed by each counsel or unrepresented party. Civil Rule 16(a), 16(g)(2)(A-E) and (J) and 16(i) applies to these proceedings by Supreme Court Rule 48(b). The Joint Pretrial Statement shall be jointly prepared by the parties as a single document in adherence to those Civil Rules provisions. **The Parties are cautioned that except on a showing of good cause, the court-on motion or on its own-must enter such orders as are just including, among others, any of the sanctions in Civil Rule 37(b)(2)(A)(ii through (vii), if a party or attorney does any of the items described in 16(i)(1)(A-E).**

Exhibits:

July 2, 2018. Not later than this date the parties shall pre-mark and shall deliver all hearing exhibits to the Disciplinary Clerk's office. Respondent shall cause to be delivered to the State Bar all pre-marked and bates-stamped exhibits of respondent not later than one week prior to that date. The original exhibits from both parties shall be combined in a binder with identifying tabs and filed with the Disciplinary Clerk. Within the original exhibit book and any copies submitted, ALL exhibits shall be listed numerically commencing with the exhibits of the State Bar. The parties shall bates-stamp ALL exhibit pages in sequential order. As an example, if exhibit 1 is bates 1-3, then exhibit 2 would begin with bates 4. Exhibits proposed or stipulated to be sealed must be marked in capitalized print at the top of each page, "SEALED" and so identified on the index. However, this marking of the exhibits for sealing does not seal the record. Only an order of the PDJ seals any exhibit. See Section VI below. *The State Bar shall deliver one electronic version of the exhibits for the hearing panel.* The hearing panel's electronic copy exhibits shall be accessible by exhibit number and by bates number.

Final Prehearing Conference:

July 3, 2018. The telephonic conference shall commence at 11:00 a.m.

Prehearing Memorandum:

July 9, 2018. The parties may each file with the disciplinary clerk, not later than this date, an individual pretrial memorandum outlining for the panel the Disciplinary Rules involved and a brief discussion of which facts apply to each applicable rule. This should be followed by a brief discussion of the ABA Standards involved and finally a brief discussion of aggravation or mitigation. A review of authority including standards and supporting case law would be of assistance.

Filing of All Pleadings:

All pleadings or documents shall be originals and in paper form, filed with the Disciplinary Clerk. Any pleading shall contain an original “wet” signature of the respondent or respondent’s attorney. Those exhibits stipulated admitted in the Joint Prehearing Statement may be submitted for the consideration of the panel members by the Disciplinary Clerk. **All email correspondence to the Disciplinary Clerk related to this case and any copy of a pleading for the PDJ shall be emailed to officepdj@courts.az.gov.** Use of an individual email account of an employee of the PDJ office can cause delay in handling that communication. **The clerk will not deliver the PDJ pleading copy unless the original paper pleading is filed.**

IV. PREHEARING MATTERS

1. Hearing Panel Members: Panel members shall be appointed after the Settlement Conference in this has been concluded.
2. Pre-Hearing Stipulations: The Parties shall attempt to stipulate to facts, violations and the admissibility/authenticity of exhibits by the prehearing conference. All stipulations should be reduced to writing. These stipulations may be set forth within the joint pre-hearing statement. If stipulations are filed there is no need to present evidence on that fact.
3. Motions: The PDJ encourages filing pre-hearing and dispositive motions when doing so will promote a speedy and just resolution of the issues and will not unnecessarily delay the proceedings. The parties shall limit the length of any memoranda filed to support a motion to seven (7) pages except with leave of the PDJ for good cause shown or stipulation by the parties.
4. Filing of Pleadings: This Office is not an “e-file” Court. No electronic pleadings shall be filed with the Disciplinary Clerk by any party. The parties are reminded all pleadings must be paper documents with an original “wet” signature to be accepted for filing by the Disciplinary Clerk.
5. Electronic Service: *The parties are ordered to effectuate service between themselves by delivering copies of any materials by electronic means, including pleadings. All pleadings served shall state the date within the certificate of service of when the pleading was filed with the disciplinary clerk or mailed for filing.*

V. DISCOVERY

1. Timely Disclosure: Rule 58(e) of the Rules of the Supreme Court of Arizona mandates initial disclosure statements be timely served between the parties. **Full and complete known disclosure is required. Failure to make**

disclosure or discovery may cause sanctions under Rule 58(f)(3) which could include entry of judgment by default. The parties are strongly cautioned that absent extraordinarily good cause, no witnesses or exhibits will be admitted and no objections to exhibits will be permitted that are not set forth in the initial disclosure statements or timely amendments to it or set forth by stipulation within the joint prehearing statement. Disclosure Statements, are not to be filed with the disciplinary clerk. Each party shall serve the initial disclosure statement upon the other party.

2. Continuing Duty: All disclosures shall conform to the Arizona Rules of Civil Procedure 26(a)-(f), and 29-36 to the extent they are not in conflict with the Arizona Supreme Court Rules. The parties are reminded that Civil Rule 26(e) requires the parties to supplement or correct discovery responses.

VI. SEALED RECORDS AND/OR TESTIMONY

Supreme Court Rule 70 provides as a general rule all records maintained by the disciplinary clerk, including the record of any hearings “shall be open to the public” with certain exceptions. It is the responsibility of each individual party to assure those portions of the court filing record desired to be sealed are specifically ordered to be sealed. Orders should be sought, stating with specificity, the testimony or exhibits offered at hearing to be sealed. Marking the record for sealing does not seal the record beyond what is requested.

VII. ACCOMMODATIONS

1. Disability: Persons with a disability may request a reasonable accommodation by contacting the Disciplinary Clerk at (602) 452-3436. Requests should be made early to allow time to arrange for the accommodation.
2. Translators: The party calling a witness with limited English proficiency shall provide file written notice to the Disciplinary Clerk at least thirty (30) days before the hearing of the need for a translator.

DATED this 6th day of March, 2018.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
on this 6th day of March, 2018, to:

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