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MAY 13 2009

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY [Signature]

BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

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

No. 08-1225

KEVIN B. SWEENEY,
Bar No. 011737

DISCIPLINARY COMMISSION
REPORT

RESPONDENT.

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on May 9, 2009, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer's Report filed April 21, 2009, recommending acceptance of the Agreement for Discipline by Consent and Joint Memorandum in Support of Discipline by Consent providing for censure, two years of probation with the State Bar's Member Assistance Program ("LOMAP") and costs.

Decision

Having found no facts clearly erroneous, the nine members of the Disciplinary Commission unanimously recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for censure, two years of probation (LOMAP) and costs of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk and the Supreme Court of Arizona.¹ The terms of probation are as follows:

¹ The Hearing Officer's Report is attached as Exhibit A. The State Bar's costs total \$1,574.65.

Terms of Probation

1 1. Within 30 days from the date of the final Judgment and Order, Respondent
2 shall contact the Director of LOMAP at (602) 340-7313 and shall submit to a LOMAP
3 examination of his office's procedures, including, but not limited to, compliance with ERs
4 5.5, 8.1, 8.4(a), (c) and (d), and Rules 31, 52 and 53, Ariz.R.Sup.Ct. The LOMAP director
5 shall develop "Terms and Conditions of Probation" and those terms shall be incorporated
6 herein by reference. The period of probation will begin to run at the time of the final
7 Judgment and Order and will conclude two years² from the date that Respondent has
8 signed the "Terms and Conditions of Probation." Respondent shall be responsible for any
9 costs associated with LOMAP.
10

11 2. Respondent shall refrain from engaging in any conduct that would violate
12 the Rules of professional Conduct or other Rules of the Supreme Court of Arizona.
13

14 3. In the event that Respondent fails to comply with any of the foregoing
15 conditions, and the State Bar receives information, bar counsel shall file with the imposing
16 entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The
17 imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest
18 practicable time, but in no event later than 30 days after receipt of said notice, to determine
19 whether the terms of probation have been violated and if an additional sanction should be
20 imposed. In the event there is an allegation that any of these terms have been violated, the
21 burden of proof shall be on the State Bar of Arizona to prove non-compliance by a
22
23
24

25 ² As confirmed by the parties, the Hearing Officer's Report, p. 8 and the Tender, p. 9, inadvertently
26 stated one year.

preponderance of the evidence.

1 RESPECTFULLY SUBMITTED this 13th day of May, 2009.

2
3
4 Jeffrey Messing/cs
5 Jeffrey Messing, Chair
Disciplinary Commission

6 Original filed with the Disciplinary Clerk
7 this 13th day of May, 2009.

8 Copy of the foregoing mailed
9 this 14th day of May, 2009, to:

10 Stanley R. Lerner
11 Hearing Officer 7V
3703 N. Seventh Street, Suite 250
Phoenix, AZ 85014

12 Kevin B. Sweeney
13 Respondent
14 *Eckley & Associates, P.C.*
3602 E. Campbell, Suite A
15 Phoenix, AZ 85018-0001

16 Harriet M. Bernick
17 Bar Counsel
18 State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

19 by: Arlene Loza
20 /mps
21
22
23
24
25
26

EXHIBIT

A

1 Stanley R. Lerner
Hearing Officer
2 Stanley R. Lerner, PC
3707 N. Seventh Street, Suite 250
3 Phoenix, Arizona 85014

FILED

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HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA

5 **BEFORE A HEARING OFFICER OF**
6 **THE SUPREME COURT OF ARIZONA**

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

No. 08-1225

9 **KEVIN B. SWEENEY,**
Bar No. 011737

HEARING OFFICER'S REPORT ON
TENDER OF ADMISSIONS AND
AGREEMENT FOR DISCIPLINE BY
CONSENT

10 Respondent.

(Assigned to Hearing Officer 7V, Stanley R.
Lerner)

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14 The State Bar of Arizona, represented by Bar Counsel Harriet Bernick, and Respondent
15 Kevin B. Sweeney, who represented himself in this matter, submitted their Tender of
16 Admissions and Agreement for Discipline by Consent pursuant to Rule 56(a), Ariz.R.Sup.Ct.,
17 and the Guidelines for Discipline by Consent issued by the Disciplinary Commission of the
18 Arizona Supreme Court.

19 The Hearing officer accepted the Tender of Admissions and Agreement for Discipline
20 and therefore finds:

21 Respondent admits the following: that he failed to cooperate and respond to the State
22 Bar disciplinary investigation in violation of Rules 31 and 53(f) and ER 8.1; that he
23 engaged in the unauthorized practice of law while he was summarily suspended for failure
24 to comply with MCLE requirements and failure to pay bar dues in violation of ER. 5.5 and
25 8.4(a); that he engaged in conduct prejudicial to the administration of justice in violation of

1 ER 8.4(d). Complainant has been notified of this consent agreement in compliance with
2 Rule 52(b)(3), Ariz.R.Sup.Ct.

3 Subject to review and acceptance by the Disciplinary Commission and the Supreme
4 Court of Arizona, the State Bar and Respondent agreed to the imposition of the following
5 sanction: censure, two years probation with LOMAP and payment of costs and expenses in
6 this matter.¹ The State Bar's Statement of Costs is attached hereto as Exhibit "A."

7
8 **FACTS**

9 1. At all times relevant, Respondent was a lawyer licensed to practice law in the
10 State of Arizona having been first admitted to practice in Arizona on January 5, 1988.

11 **COUNT ONE (File no. 08-1225)**

12 2. On or about January 18, 2008, the State Bar sent Respondent a letter
13 informing him that he was delinquent in filing his MCLE affidavit.

14 3. Although this letter was sent to Respondent's address of record,
15 Respondent asserted and the State Bar does not dispute that he did not receive the letter
16 because he had closed his office at this location at or close to this time.

17 4. On or about April 10, 2008, Respondent changed his mailing address
18 with the State Bar from Law Offices of Kevin B. Sweeney PC, 1650 N. First Avenue,
19 Phoenix, Arizona 85003-0001 to Kevin B. Sweeney at Eckley & Associates PC, The Eckley
20 Building, 3602 E. Campbell Suite A, Phoenix, Arizona 85018-0001.

21
22 5. On April 17, 2008, Respondent was sent a letter from the State Bar, to
23
24

25

¹ Respondent understands agree that expenses of the Disciplinary Commission, Disciplinary Clerk and Supreme Court of Arizona.

1 his new address, informing him that his dues payment was delinquent because it was required
2 to be paid on February 1, 2008. Respondent was also advised that to avoid administrative
3 suspension he needed to have his dues postmarked on or before June 9, 2008.

4 6. Respondent asserted and the State Bar does not dispute
5 that Respondent told someone in his new firm that his dues needed to be paid. Respondent
6 showed the employee the letter and expected that his dues would be paid.

7 7. On April 21, 2008, the State Bar sent Respondent a letter to his former
8 address of record informing him that he would be summarily suspended by the Board of
9 Governors at their May 30, 2008 meeting. Respondent asserted and the State Bar
10 conditionally does not dispute that Respondent did not receive this letter as it was sent to the
11 wrong address.

12 8. On May 22, 2008, a certified letter was sent to Respondent at his
13 current address of record informing him that his name would be presented to the Board of
14 Governors to seek his summary suspension on June 17, 2008 for non-payment of dues.
15 Respondent asserted and the State Bar does not dispute that Karen Eckley, a bookkeeper at
16 his law firm, signed for this certified letter and put it in Respondent's mailbox for his review.
17 Respondent asserted and the State Bar does not dispute that Respondent never saw this letter
18 and therefore, he was unaware that he would suspended for non-payment of dues on June 17,
19 2008.

20 9. On or about May 29, 2008, Grace Henderson, the MCLE coordinator
21 for the State Bar, called Respondent and informed him that he was going to be summarily
22 suspended for failure to comply with his MCLE requirements. Grace Henderson also sent
23 Respondent an electronic copy of the April 21, 2008 letter.
24
25

1 10. On May 30, 2008, Respondent sent Grace Henderson an email
2 requesting more time to comply with his MCLE requirements.

3 11. Respondent asserted and the State Bar does not dispute that
4 Respondent never heard back from Grace Henderson at the State Bar regarding additional
5 time to comply with his MCLE requirements.

6 12. On June 17, 2008, the Board of Governors summarily suspended
7 Respondent for non-payment of dues and failure to comply with his MCLE requirements.

8 13. On June 25, 2008, the State Bar sent Respondent a letter to his
9 address of record notifying him that he had been summarily suspended by the Board of
10 Governors for failure to comply with his MCLE requirements on June 17, 2008. Respondent
11 asserted and the State Bar does not dispute that Respondent received this letter on or about
12 June 30, 2008.

13 14. On June 25, 2008, Respondent engaged in the unauthorized practice
14 of law by defending a deposition in *Deluca v. McMahan*, CV 2006-0152. Respondent
15 asserted and the State Bar does not dispute that Respondent did not know he was summarily
16 suspended due to non-payment of dues or MCLE at this time because he had not received
17 notice of his summary suspension at that time.

18 15. On July 1, 2008, Respondent wrote to Grace Henderson in an attempt
19 to comply with his MCLE requirements. Respondent provided his MCLE Affidavit, a check
20 for all delinquent charges, and submitted materials in support of his claimed CLE Affidavit.

21 16. Respondent asserted and the State Bar does not dispute
22 that Respondent thought he would be reinstated when he initially sent in his MCLE affidavit
23 on July 1, 2008.
24
25

1 17. On July 3, 2008, Respondent filed a Notice of Withdrawal of
2 Plaintiff's "Motion in Limine RE: Alleged Fault of Pat Monahan". Respondent signed this
3 pleading even though he was not authorized to practice law since he was summarily
4 suspended for non-payment of dues and failure to comply with his MCLE requirements.
5 Respondent asserted and the State Bar does not dispute that Respondent negligently believed
6 that he was no longer summarily suspended because he thought the dues had been paid and
7 his MCLE Affidavit had been turned into the State Bar.

8
9 18. On July 14, 2008, Grace Henderson sent Respondent's MCLE
10 affidavit, check, and attached materials back to him because he did not comply with the
11 MCLE requirements. Respondent was short a few credits and needed to take an additional
12 course.

13 19. On or about July 15, 2008, Respondent took the additional course he
14 needed in order to have enough MCLE hours.

15 20. On or about July 16, 2008, Respondent resubmitted his MCLE
16 affidavit, materials and a check.

17 21. On July 18, 2008, Respondent was advised that he had been
18 reinstated after having been summarily suspended for failure to comply with his MCLE
19 requirements.

20
21 22. On July 18, 2008 and July 21, 2008, Respondent participated in court
22 appearances in *Deluca v. McMahan*, CV2006-0152. Respondent asserted and the State Bar
23 does not dispute that Respondent did not know that he was summarily suspended for non-
24 payment of dues at the time he made these court appearances.

25 23. On July 24, 2008, the State Bar wrote to Respondent to inform him

1 that he engaged in the unauthorized practice of law when he was summarily suspended for
2 non-payment of dues and failure to comply with his MCLE requirements. The State Bar
3 requested that Respondent submit a written response within twenty days. Respondent failed
4 to submit a response by the required date.

5 24. On or about July 28, 2008, Respondent learned from opposing
6 counsel that he was suspended for non-payment of dues.

7 25. On or about July 29, 2008, Respondent paid his bar dues and was
8 reinstated for non-payment of dues.

9 26. On September 23, 2008, the State Bar again requested that
10 Respondent submit a written response to the above mentioned allegations within 10 days.
11 Respondent failed to submit a response by the required date.

12 28. Respondent waived his right to a formal disciplinary hearing that he would
13 otherwise be entitled to pursuant to Rule 57(i), Ariz.R.Sup.Ct., and the right to testify or present
14 witnesses on his behalf at a hearing.

15 29. Respondent was not represented in this matter by counsel. Respondent
16 knowingly and voluntarily waived all motions, defenses, objections or requests that he could
17 have made or raised, or could assert. Respondent read the agreement and received a copy of
18 this agreement.

19 30. The Tender of Admissions and Agreement for Discipline by Consent was
20 submitted to a Hearing Officer and will be submitted to the Disciplinary Commission for
21 approval.

1 31. Respondent further understood that if the agreement is approved by the
2 Disciplinary Commission, the matter will be submitted to the Arizona Supreme Court for
3 final approval or rejection.

4 32. The testimony provided by Respondent at the hearing indicated sincere remorse
5 and embarrassment at the circumstances and his testimony convinced the Hearing Officer
6 that he has taken steps to remedy the problems that created his failures that led to his
7 summary suspensions.

8
9 **ADMISSIONS**

10 Respondent admits that his conduct as set forth above violated Rule 31, 42, and 53(f)
11 Ariz.R.Sup.Ct., specifically ERs 5.5, 8.1 and 8.4, Ariz.R.Sup.Ct.

12 **DISMISSAL**

13 The State Bar informs that it cannot prove a knowing violation in this case and
14 therefore the allegation that Respondent violated ER 8.4(c) is dismissed.

15 **SANCTIONS AND ORDER**

16 Respondent and the State Bar of Arizona agreed that on the basis of the conditional
17 admissions that the following appropriate disciplinary sanctions are imposed and accordingly
18 the following orders entered:

- 19 1. Respondent shall receive a censure;
20
21 2. Respondent shall be placed on probation for a period of two years, under
22 the following terms and conditions:
- 23 a. Respondent shall contact the director of the State Bar's Law Office
24 Management Assistance Program (LOMAP) at 602-340-7313 within 30 days of the date of the
25 final judgment and order. Respondent shall submit to a LOMAP examination of his office's

1 procedures, including, but not limited to, compliance with ERs 5.5, 8.1, 8.4(a)(c) and (d), Rules
2 31, 52 and 53. The Director of LOMAP shall develop "Terms and Conditions of Probation",
3 and those terms shall be incorporated herein by reference. The probation period will begin to
4 run at the time of judgment and order and will conclude one year from the date that Respondent
5 has signed the "Terms and Conditions of Probation." Respondent shall be responsible for any
6 costs associated with LOMAP.

7
8 b. Respondent shall refrain from engaging in any conduct that would violate
9 the Rules of Professional Conduct or other Rules of the Supreme Court of Arizona.

10 c. In the event that Respondent fails to comply with the foregoing
11 terms of probation, and the State Bar of Arizona thereof receives information, Bar Counsel
12 shall file a Notice of Non-Compliance with the imposing entity, pursuant to Rule 60(a)(5),
13 Ariz.R.Sup.Ct. The imposing entity may refer the matter to a Hearing Officer to conduct a
14 hearing at the earliest practical time, but in no event later than 30 days after receipt of notice, to
15 determine whether a term of probation has been breached, and, if so, to recommend an
16 appropriate action and response. If there is an allegation that Respondent failed to comply with
17 any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove
18 non-compliance by a preponderance of the evidence.

19
20 3. Respondent shall pay all costs incurred by the State Bar in bringing these
21 disciplinary proceedings. In addition, Respondent shall pay all costs incurred by the
22 Disciplinary Commission, the Supreme Court of Arizona, and the Disciplinary Clerk's Office
23 in this matter. The State Bar's Itemized Statement of Costs and Expenses is attached as Exhibit
24 "A," and is incorporated herein by reference.
25

1 DATED this 21st day of April, 2009.

2 Stanley R. Lerner / NM
3 Stanley R. Lerner
4 Hearing Officer 7V

5 Original filed with the Disciplinary Clerk
6 of the Supreme Court of Arizona
7 this 21st day of April, 2009.

8 Copies of the foregoing mailed
9 this 22nd day of April, 2009, to:

10 Harriet M. Bernick, Bar No. 013462
11 Staff Bar Counsel
12 State Bar of Arizona
13 4201 N. 24th Street, Suite 200
14 Phoenix, Arizona 85016-6288
15 Telephone 602-340-7244

16 Kevin B. Sweeney
17 Eckley & Associates, PC
18 3602 E. Campbell, Suite A
19 The Eckley Building
20 Phoenix, Arizona 85018-0001
21 (Respondent)

22 by: Quelma Lopez
23
24
25

Exhibit "A"

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Kevin B Sweeney, Bar No.011737, Respondent

File No(s). 08-1225

Administrative Expenses

The Board of Governors of the State Bar of Arizona has adopted a schedule of administrative expenses to be assessed in disciplinary proceedings. The administrative expenses were determined to be a reasonable amount for those expenses incurred by the State Bar of Arizona in the processing of a disciplinary matter. An additional fee of 20% of the administrative expenses is also assessed for each separate matter over and above five (5) matters due to the extra expense incurred for the investigation of numerous charges.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings = \$600.00

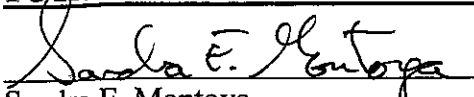
Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

11/14/08	Consult with Bar Counsel; Review attorney calendar on Respondent; iCIS research	\$61.25
02/02/09	Attempt to contact Respondent; Call to Karen Eckley; Service of subpoena on Karen Eckley; Request for fed. address information from USPS	\$35.00
02/03/09	Service of subpoena on Respondent	\$17.50
02/04/09	Call to Denea Hovland; Email to Hovland	\$26.25
02/09/09	Cost to obtain copies of transcripts from Yavapai Superior Court	\$168.00
02/09/09	Atwood Reporting Agency, deposition of K.B Sweeney and K. Eckley	\$666.65

Total for staff investigator charges \$974.65

TOTAL COSTS AND EXPENSES INCURRED \$1,574.65


Sandra E. Montoya
Lawyer Regulation Records Manager

3-24-09
Date