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11 Telephone (602) 330-8125
12 Respondent's counsel

13 **BEFORE THE DISCIPLINARY COMMISSION**
14 **OF THE SUPREME COURT OF ARIZONA**

15 **IN THE MATTER OF A MEMBER**
16 **OF THE STATE BAR OF ARIZONA**

17 **DENNIS P. BAYLESS**
18 **Bar No. 010550,**
19 **Respondent.**

No. 02-2156

TENDER OF ADMISSIONS
AND AGREEMENT FOR
DISCIPLINE BY CONSENT

20 This agreement is entered into between the State Bar of Arizona and
21 respondent Dennis P. Bayless, who is represented by John P. Bruno, and is
22 submitted pursuant to Rule 56(a), Ariz.R.S.Ct. and the guidelines for discipline by
23 consent issued by the Disciplinary Commission of the Supreme Court of Arizona.
24 Respondent's admissions to the charges are being tendered in exchange for the
25 form of discipline stated herein, subject to review and acceptance by the
Disciplinary Commission.

1 Respondent practiced law while on a thirty-day suspension. Respondent
2 will receive a censure for his conduct and one year probation.

3 This agreement serves the purposes of discipline in that it protects the
4 public and will deter other lawyers from engaging in similar misconduct.
5 Restitution is not applicable in this matter. Respondent shall pay all costs and
6 expenses incurred in these discipline matters. The joint memorandum in support
7 of the agreement by consent is filed contemporaneously herewith.
8
9

10 **FACTS**

- 11 1. Respondent was admitted to practice law in Arizona on October 21, 1988.
- 12 2. A formal complaint in this matter was filed on July 10, 2003. No hearing has
13 been held.
- 14 3. By Supreme Court Judgment and Order in SB-02-0038, respondent was
15 suspended on May 1, 2002, effective June 1, 2002, for 30 days for conduct in
16 violation of ERs 1.1, 1.2, 1.3, 1.4, and 8.4(a).
- 17 4. Respondent was reinstated on August 5, 2002.
- 18 5. From at least July 19, 2002 until August 5, 2002, respondent practiced law in
19 violation of the Supreme Court's Judgment and Order.
- 20 6. In one matter, respondent had a civil subpoena issued, filed a notice of filing
21 hearing exhibits, and file a joint pre-trial statement. In another matter,
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1 respondent appeared with his client at an arraignment. In the last matter,
2 respondent filed a notice of appearance.

- 3 7. There is no evidence that any clients were harmed by respondent's actions.
- 4
- 5 8. Respondent's conduct in practicing law while still on suspension was
- 6 negligent, not knowing.

7 **CONDITIONAL ADMISSIONS**

- 8
- 9 1. Respondent conditionally admits that his conduct as described above
- 10 violated Rule 42, Ariz.R.S.Ct., specifically, ER 5.5, and Rules 31(a)(3), 63(c)
- 11 and 71(c)

12 **SANCTION**

13 Respondent and the State Bar agree that on the basis of the conditional
14 admissions contained herein, the appropriate disciplinary sanction is as follows:
15

- 16 1. Respondent shall receive a censure for violating Rule 42 Ariz. R. S. Ct.,
- 17 specifically ER 5.5, and Rules 31(a)(3), 63(c) and 71(c).
- 18
- 19 2. Respondent shall be placed on probation for a period of one (1) year,
- 20 effective as of the date of the Supreme Court's Judgment and Order, under
- 21 the following terms and conditions:
 - 22 a. Respondent shall prepare and submit to the State Bar an educational
 - 23 article describing his conduct in this matter and explaining what he
 - 24
 - 25

1 should have done to comply with Rule 71, Ariz.R.S.Ct. The article
2 must be approved by bar counsel prior to this term being satisfied.

3 b. The terms of probation in SB-02-0038 shall be extended for an
4 additional year, starting from the date the Judgment and Order is
5 entered in this matter.
6

7 3. Respondent shall refrain from engaging in conduct that violates the Rules of
8 Professional Conduct.

9 4. In the event the State Bar receives information that respondent has failed to
10 comply with any of the foregoing conditions, bar counsel shall file with the
11 hearing officer a notice of non-compliance, pursuant to Rule 51(j),
12 Ariz.R.S.Ct. The hearing officer shall conduct a hearing at the earliest
13 practicable date, but in no event later than thirty days after the receipt of
14 said notice, to determine whether a condition of probation has been
15 breached and, if so, to recommend an appropriate sanction therefore.
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18 5. In the event there is an allegation that any of these terms have been
19 breached, the burden of proof shall be on the State Bar to prove non-
20 compliance by a preponderance of the evidence.
21

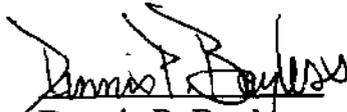
22 6. Respondent shall be assessed the costs and expenses incurred in these
23 disciplinary matters, pursuant to Rule 52(a)(8), Ariz.R.S.Ct. A statement of
24 costs and expenses is attached hereto (Exhibit A).
25

1 Respondent, by entering into this agreement, waives his right to a formal
2 disciplinary hearing that he would otherwise be entitled to pursuant to Rule
3 53(c)6, Ariz.R.S.Ct., and the right to testify or present witnesses on his behalf at a
4 hearing. Respondent further waives all motions, defenses, objections, or requests
5 which he has made or raised, or could assert hereafter, if the conditional
6 admissions and stated form of discipline are approved. Respondent has the
7 assistance of counsel in these proceedings. Respondent acknowledges that he has
8 read this agreement and received a copy of it.

11 This tender of admissions and agreement for discipline by consent will be
12 submitted to the Disciplinary Commission for approval. Respondent realizes that
13 the Commission may request his presence at a hearing for presentation of
14 evidence and/or oral argument in support of this agreement. He further recognizes
15 that the Commission may recommend rejection of this agreement, and that the
16 Arizona Supreme Court may accept or reject the Commission's recommendation.
17 If the Arizona Supreme Court or the Disciplinary Commission rejects this
18 agreement, Respondent's conditional admissions are withdrawn.

21 **This agreement, with conditional admissions, is submitted freely and**
22 **voluntarily and not under coercion or intimidation. I am aware of the Rules**
23 **of the Supreme Court with respect to discipline and reinstatement.**

1 DATED this 14th day of November, 2003.

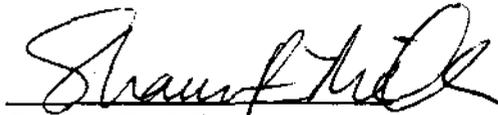
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4 Dennis P. Bayless
Respondent

5 DATED this 12th day of November, 2003.

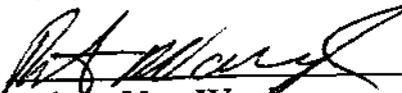
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8 
9 John P. Bruno
Respondent's Counsel

10 DATED this 17th day of November, 2003.

11
12 **STATE BAR OF ARIZONA**

13 
14 Shauna R. Miller
15 Senior Bar Counsel

16 Approved as to form and content:

17 
18 Robert Van Wyck
19 Chief Bar Counsel

20 Original filed this 17th day
21 of November, 2003, with the
22 Disciplinary Clerk's Office
23
24
25

1 Copy of the foregoing hand delivered
2 this 17th day of November, 2003, to:

3 Lawyer Regulation Records Manager
4 111 West Monroe St., Suite 1800
5 Phoenix, AZ 85003

6 Copy of the foregoing mailed
7 this 17th day of November, 2003, to:

8 John P. Bruno
9 Attorney at Law
10 3507 N Central Ave Suite 301
11 Phoenix, AZ 85012-0001
12 Respondent's counsel

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by: Barbara T. Chandler

EXHIBIT A



Statement of Costs and Expenses
Dennis P. Bayless, Respondent

No. 02-2156

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 expense is also assessed for each separate matter over and above five (5) matters due to extra expenses incurred for the investigation of multiple 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

Costs

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.

INVESTIGATOR/AUDITOR CHARGES

-0-

SCREENING INVESTIGATIONS

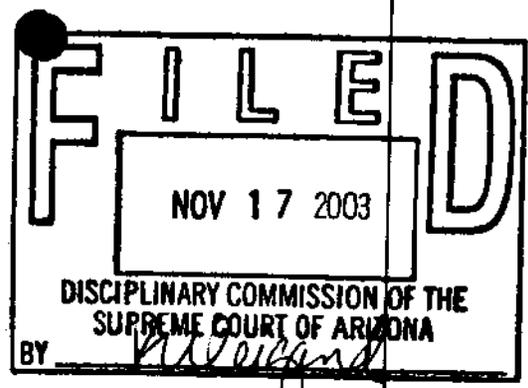
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Total Costs and Expenses Incurred by the State Bar of Arizona \$600.00*

*PRELIMINARY STATE BAR COSTS AND EXPENSES, ONLY. ACTUAL FINAL COSTS AND EXPENSES MAY VARY DEPENDENT UPON FINAL RESOLUTION OF THESE PROCEEDINGS. DO NOT PAY COSTS UNTIL FINAL ORDER OR JUDGMENT IS ISSUED.

Prepared by: Cathy McNeelge
Cathy McNeelge, Interim Records Manager

11/3/03
November 3, 2003



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17 **DENNIS P. BAYLESS**
18 **Bar No. 010550,**
19 **Respondent.**

JOINT MEMORANDUM IN
SUPPORT OF THE AGREEMENT
FOR DISCIPLINE BY CONSENT

20 The State Bar of Arizona and respondent Dennis P. Bayless, who is
21 represented by John P. Bruno, hereby submit their Joint Memorandum in Support
22 of the Agreement for Discipline by Consent.

23 Respondent practiced law while on suspension. Respondent will receive a
24 censure for his conduct and will be placed on probation for one year. Respondent
25 shall pay all costs and expenses incurred in these discipline matters.

This agreement serves the purposes of discipline in that it protects the
public and will deter other lawyers from engaging in similar misconduct.

1 Restitution is not applicable in this matter. The Tender of Admission and
2 Agreement for Discipline by Consent is filed contemporaneously herewith.

3 In arriving at the agreed upon sanctions, consideration was given to the ABA
4 *Standards for Imposing Lawyer Sanctions* ("ABA Standards"), and Arizona case
5 law.
6

7 ABA STANDARDS

8 The ABA Standards are designed to promote consistency in the imposition of
9 sanctions by identifying relevant factors that courts should consider and then
10 applying these factors to situations where lawyers have engaged in various types of
11 misconduct. ABA Standard 1.3, Commentary.
12

13 In this matter, consideration was given to ABA Standard 7.3. Censure is
14 generally appropriate when a lawyer negligently engages in conduct that is a
15 violation of a duty owed as a professional, and causes injury or potential injury to a
16 client, the public, or the legal system.
17

18 Here, respondent was suspended from the practice of law for thirty (30)
19 days. During the actual 30-day suspension, respondent did not practice law.
20 Respondent calculated that the last day of his suspension was June 30, 2002.
21 Respondent filed an affidavit on June 10, 2002 attesting to the fact that he had
22 complied with the provisions of the suspension order and with Rule 63,
23 Ariz.R.S.Ct. Respondent believed that he had completed all the requirement of his
24
25

1 suspension and that he could resume the practice of law. Respondent now realizes
2 that he could not resume the practice of law until he was reinstated by order of the
3 Arizona Supreme Court, as stated in Rule 71(c).
4

5 In determining an appropriate sanction, both the Court and the Commission
6 consider the duty violated, the lawyer's mental state, the actual or potential injury
7 caused by the misconduct, and the existence of aggravating and mitigating factors.
8 *Matter of Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA Standard 3.0.
9 Respondent was negligent in determining that he could resume the practice of law
10 and there was the potential for client harm due to respondent's representation of
11 them while still on suspension.
12

13 In deciding what sanction to impose the following aggravating and
14 mitigating circumstances should be considered.
15

16 **Aggravating factors include:**

17 Standard 9.22 (a) prior disciplinary offenses. Specifically, Respondent
18 received an informal reprimand on May 15, 1998 in file no. 95-2105 for violation
19 of ER 3.3 and Supreme Court Rule 51(c). Respondent received an informal
20 reprimand on November 26, 1997 in file no. 97-0279 for violation of ERs 1.3 and
21 1.4. Respondent was on probation for two years in file no. 97-1171 for violation
22 of ERs 1.3 and 1.4. Respondent was suspended effective June 1, 2002 for 30
23 days for conduct in violation of ERs 1.1, 1.2, 1.3, 1.4, and 8.4(a). Respondent was
24
25

1 ordered to pay restitution to his client in the amount of \$32,098.32. Respondent
2 was also ordered to pay restitution to Pinal County Superior Court in the amount
3 of \$3,284.84. Respondent was censured on June 30, 2003 for violation of ER 8.1
4 and Supreme Court Rule 51 (h) and (i).

5
6 Standard 9.22 (i) substantial experience in the practice of law. Respondent
7 has been a member of the Arizona State Bar for fifteen years.

8
9 **Mitigating factors include:**

10 Standard 9.32 (b) absence of a dishonest or selfish motive. Respondent was
11 not motivated by a dishonest or selfish motive when he resumed the practice of
12 law without being reinstated.

13 Standard 9.32 (e) full and free disclosure. Respondent has cooperated with
14 the State Bar from the initial investigation, up to and including entering into this
15 consent agreement.

16 **PROPORTIONALITY ANALYSIS**

17 Sanctions against lawyers must have internal consistency to maintain an
18 effective and enforceable system; therefore, the court looks to cases that are
19 factually similar to the case before it. *In re Pappas*, 159 Ariz. 516, 526, 768 P.2d
20 1161, 1171, (1988).

21
22 The following two cases are instructive. In *In re Kistler*, SB 00-0098
23 (2000), Kistler failed to withdraw from a court case after his suspension. Kistler
24 did not believe that he was committing UPL. There was only one aggravating
25

1 factor in the case: substantial experience in the practice of law. There were five
2 (5) factors in mitigation: absence of prior discipline, personal problems,
3 cooperation with the State Bar, character and reputation, and remorse. Kistler
4 received a censure and probation.
5

6 In *In re Stevens*, 178 Ariz. 261 (1994), Stevens appeared in court and
7 prepared documents for the court's signature, despite his MCLE suspension.
8 Stevens had been suspended for less than three (3) weeks, and he engaged in
9 unauthorized practice one (1) day after filing his MCLE affidavit, but one week
10 prior to actually being reinstated. Stevens's failure to file his affidavit was
11 intentional, as he intended to file a federal challenge to Rule 45. The Disciplinary
12 Commission found only one (1) aggravating factor: substantial experience in the
13 practice of law. There were six (6) factors in mitigation: no prior discipline
14 history, no dishonest or selfish motive, full cooperation with the State Bar,
15 consenting to discipline prior to a formal complaint, remorse, and an apology to
16 the court. Stevens received a censure.
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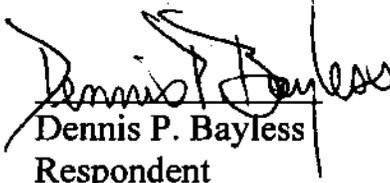
20 In this case, respondent believed that he was reinstated after he filed his
21 affidavit. Respondent did serve the thirty-day suspension and complied with the
22 order of suspension and Rule 63, Ariz.R.S.Ct. There are two mitigating factors
23 and two aggravating factors.
24
25

1 Based on the aforementioned, the State Bar and respondent agree that
2 respondent's conduct in this matter warrants a censure, one year probation, and the
3 costs and expenses incurred in these disciplinary matters and respectfully request
4 the imposition of same herein.
5

6 **CONCLUSION**

7 Recognizing that it is the prerogative of the Disciplinary Commission to
8 determine the appropriate sanction, it is nevertheless the belief of the State Bar
9 and respondent that the objectives of discipline will be met by the imposition of a
10 censure, probation, and the costs and expenses of these proceedings.
11

12 DATED this 14th day of November, 2003.

13
14 
15 Dennis P. Bayless
16 Respondent

17 DATED this 12th day of November, 2003.

18
19 
20 John P. Bruno
21 Respondent's Counsel

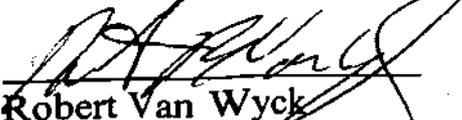
22 DATED this 17th day of November, 2003.

23 STATE BAR OF ARIZONA

24 
25 Shauna R. Miller
Senior Bar Counsel

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Approved as to form and content:


Robert Van Wyck
Chief Bar Counsel

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