

1 Maret Vessella, Bar No. 019350
2 Deputy Chief Bar Counsel
3 State Bar of Arizona
4 111 West Monroe, Suite 1800
5 Phoenix, AZ 85003-1742
6 Telephone: (602) 340-7272

7 **BEFORE THE DISCIPLINARY COMMISSION**
8 **OF THE SUPREME COURT OF ARIZONA**

9 IN THE MATTER OF A MEMBER) No. 02-2305
10 OF THE STATE BAR OF ARIZONA,) **TENDER OF ADMISSIONS**
11 **LEAH S. DAVIS**) **AND AGREEMENT FOR**
12 **Bar No. 013807**) **DISCIPLINE BY CONSENT**
13 Respondent.)
14)

15 This Agreement is entered into between the State Bar of Arizona, through
16 undersigned counsel, and Respondent, Leah S. Davis. It is submitted pursuant to
17 Rule 56(a), Ariz.R.S.Ct., and the Guidelines for Discipline by Consent issued by
18 the Disciplinary Commission of the Supreme Court of Arizona.
19

20 Respondent conditionally admits that she disobeyed an obligation under
21 the rules of a tribunal, engaged in conduct prejudicial to the administration of
22 justice and failed to respond to demands for information from a disciplinary
23 authority. Respondent conditionally admits that her conduct violated ER 3.4(c),
24 ER 8.1 and ER 8.4(d), Rule 42, Ariz.R.S.Ct., and Rules 51(e), (h), (i) and (k),
25

1 Ariz.R.S.Ct. The parties agree that the appropriate sanction is a censure, a term of
2 probation and the imposition of costs. There were no issues of restitution
3 presented in this case. The parties understand that this agreement is subject to
4 review and acceptance by the Disciplinary Commission and the Supreme Court of
5 Arizona.

7 **FACTS**

8
9 1. At all times relevant hereto, Respondent was a member of the State
10 Bar of Arizona, licensed to practice law on October 26, 1991.

11 **COUNT ONE (02-2305)**

12 2. On or about December 14, 2001, Respondent was ordered to act as
13 arbitrator in a civil case captioned *Hartford Fire Insurance Company v. Howard*
14 *Jones*, filed in the Superior Court of Maricopa County.

15 3. On or about June 19, 2002, Respondent was ordered by the
16 Honorable Robert D. Myers to conduct an arbitration in the case within sixty
17 days.
18

19 4. Despite the efforts of counsel, Respondent did not move to set the
20 arbitration in this matter as ordered by the Court.
21

22 5. On October 7, 2002, Respondent was ordered to appear on
23 November 17, 2002, and show cause why she should not be held in contempt for
24 failure to comply with the Court's order dated June 19, 2002.
25

1 6. On November 18, 2002, Respondent failed to appear for the
2 scheduled order to show cause hearing. The court ordered another hearing for
3 December 17, 2002 to give Respondent yet another opportunity to explain her
4 conduct and referred the matter to the State Bar of Arizona.
5

6 7. By letter dated December 11, 2002, the State Bar advised
7 Respondent of the allegations concerning her professional conduct. Respondent
8 was advised to respond to the allegations within twenty days of the date of the
9 letter.
10

11 8. Respondent failed to respond to the State Bar's letter dated
12 December 11, 2002.
13

14 9. On December 17, 2002, Respondent appeared at the second order to
15 show cause hearing. Respondent had no explanation for her violation of the
16 court's June 19, 2002 order and no explanation for her failure to appear at the
17 November 18, 2002, hearing.
18

19 10. The court held Respondent in contempt. The court ordered
20 Respondent to preside over four arbitration cases in 2003 in order to purge herself
21 of the contempt.
22

23 11. On or about January 8, 2003, the State Bar staff investigator
24 contacted Respondent. Respondent advised the State Bar that it should mail
25 copies of its correspondence to her home address.

1 conduct an evaluation no later than sixty (60) days thereafter. If following a MAP
2 Assessment it is determined that a therapeutic contract is necessary, the Director of
3 MAP or its designee shall draft a Memorandum of Understanding requiring
4 Respondent's participation in a course of treatment. Respondent shall comply with
5 all recommendations of the MAP director or its designee.
6

7 3. Respondent shall pay all costs and expenses incurred by the State Bar
8 in these proceedings within thirty days of the Supreme Court's final judgment and
9 order. A Statement of Costs is attached hereto as "Exhibit A".
10

11 In the event Respondent fails to comply with any of the foregoing terms, and
12 information thereof is received by the State Bar of Arizona, Bar Counsel shall file a
13 Notice of Noncompliance with the imposing entity pursuant to Rule 52(a)(6)(C),
14 Ariz.R.S.Ct. The matter may be referred to a hearing officer to conduct a hearing at
15 the earliest practical date, but in no event more than thirty (30) days following
16 receipt of said Notice. If the matter is referred to a hearing officer, the hearing
17 officer shall determine whether the terms of probation have been breached and, if
18 so, to recommend appropriate action and response to such breach. If there is an
19 allegation that Respondent failed to comply with any of the foregoing terms, the
20 burden of proof shall be on the State Bar of Arizona to prove non-compliance by a
21 preponderance of the evidence.
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1 Respondent conditionally admits that she has engaged in the conduct set
2 forth above and the rule violations indicated, in exchange for the form of
3 discipline as set forth above.
4

5 Respondent, by entering into this agreement, waives her right to a formal
6 disciplinary hearing that she would otherwise be entitled to pursuant to Rule 53(c)6,
7 Ariz.R.S.Ct., and the right to testify or present witnesses on her behalf at a hearing.
8

9 Respondent has chosen not to seek the assistance of counsel and is not
10 represented in these proceedings. Respondent waives all motions, defenses,
11 objections, or requests that she has made or raised, or could assert hereinafter, if the
12 conditional admissions and stated form of discipline are approved. Respondent has
13 read this agreement and has received a copy of this agreement.
14

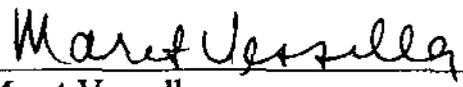
15 This Tender of Admissions and Agreement for Discipline by Consent will
16 be submitted to the Disciplinary Commission for approval. Respondent
17 understands that the Disciplinary Commission may order a hearing officer to
18 conduct an evidentiary hearing, if necessary. Respondent further understands that
19 the Disciplinary Commission may recommend rejection of this Agreement or may
20 propose modifications. Respondent further understands the Disciplinary
21 Commission must approve this Agreement and that this matter will become final
22 upon judgment and order of the Supreme Court of Arizona. If the Agreement is
23 rejected, the parties' conditional admissions are withdrawn.
24
25

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

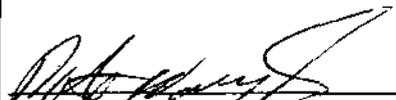
4 DATED this 26th day of November, 2003.

5 
6 _____
7 Leah S. Davis
8 Respondent

9 DATED this 26th day of November, 2003.

10 
11 _____
12 Maret Vessella
13 Deputy Chief Bar Counsel

14 Approved as to form and content:

15 
16 _____
17 Robert Van Wyck
18 Chief Bar Counsel

19
20 Original filed this 26 day of
21 November, 2003 with:

22 Disciplinary Clerk of the Supreme Court
23 Certification and Licensing Division
24 1501 W. Washington, #104
25 Phoenix, Arizona 85007-3329

1 **Copy of the foregoing mailed this**
2 26 day of November, 2003 to:

3 Leah S. Davis
4 10410 North 31st Avenue, Ste. 405
5 Phoenix, AZ 85051-1300
6 Respondent

6 **Copy of the foregoing hand-delivered this**
7 26 day of November, 2003 to:

8 Lawyer Regulation Records Manager
9 State Bar of Arizona
10 111 West Monroe Street, Suite 1800
11 Phoenix, Arizona 85003

11 by: Aston
12 MV:cs

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Statement of Costs and Expenses
Leah Davis, Respondent

No(s). 02-2305

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

09/30/03	Choice Point; Auto TrackXP; Investigator database	\$ 5.00
09/19/03	Prepare Memo to Bar Counsel	\$ 56.24
09/15/03	Various attempts to locate and serve Respondent	\$154.66
01/17/03	Attempt to locate Respondent; review court files	\$ 63.27
01/08/03	Call Respondent; Prepare Memo to Bar Counsel	\$ 28.12
01/07/03	Travel 24 miles	\$ 8.28

Total for Investigator/Auditor Charges \$315.57

SCREENING INVESTIGATIONS

Total Costs and Expenses for each matter over 5 cases: \$120 x 0 = \$ 0.00

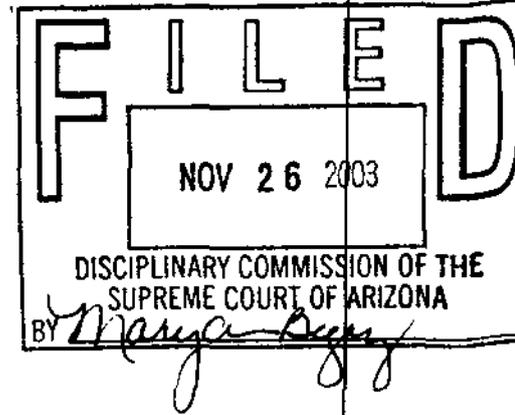
Total Costs and Expenses Incurred by the State Bar of Arizona \$915.57*

*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: Cristie Seaton
Cristie Seaton, Legal Secretary

Date: 11/20/03

1 **Maret Vessella, Bar No. 019350**
2 **Deputy Chief Bar Counsel**
3 **State Bar of Arizona**
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7 **BEFORE THE DISCIPLINARY COMMISSION**
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9 **IN THE MATTER OF A MEMBER)**
10 **OF THE STATE BAR OF ARIZONA,))**
11 **LEAH S. DAVIS,)**
12 **Bar No. 013807)**
13 **Respondent.)**

File No. 02-2305

JOINT MEMORANDUM IN
SUPPORT OF AGREEMENT
FOR DISCIPLINE BY
CONSENT

14 The State Bar of Arizona, through undersigned counsel and Respondent,
15 Leah S. Davis, hereby submit their Joint Memorandum in Support of the
16 Agreement for Discipline by Consent filed contemporaneously herewith.
17

18 As reflected in the Tender of Admissions and Agreement for Discipline by
19 Consent, Respondent disobeyed an obligation under the rules of a tribunal,
20 engaged in conduct prejudicial to the administration of justice and failed to
21 respond to demands for information from a disciplinary authority. Respondent
22 conditionally admits that her conduct violated ER 3.4(c), ER 8.1, ER 8.4(d) and
23 Rules 51(e), (h), (i) and (k), Ariz.R.S.Ct.
24
25

1 The State Bar of Arizona and Respondent agree that Respondent shall be
2 censured, placed on probation for two years, and pay the costs incurred in this
3 disciplinary proceeding. There are no issues of restitution in this matter.
4

5 In determining the appropriate sanction, the parties considered both the
6 American Bar Association's *Standards for Imposing Lawyer Sanctions*
7 ("*Standards*") and Arizona case law. The *Standards* provide guidance with
8 respect to an appropriate sanction in this matter. The Court and Commission
9 consider the *Standards* a suitable guideline. *In re Rivkind*, 164 Ariz. 154, 157, 791
10 P.2d 1037, 1040 (1990); *In re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274, 276
11 (1994).
12
13

14 In determining an appropriate sanction, both the Court and the Commission
15 consider the duty violated, the lawyer's mental state, the actual or potential injury
16 caused by the misconduct and the existence of aggravating and mitigating factors.
17
18 *Matter of Tarlitz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA *Standard* 3.0.

19 Given the conduct in this matter, it was appropriate to consider *Standards* 6.0
20 and 7.0. Suspension is generally appropriate when a lawyer knowingly violates a
21 court order or rule, and there is injury or potential injury to a client or a party, or
22 interference or potential interference with a legal proceeding. *Standard* 6.22.
23 Respondent concedes that she knew and understood that she was required to comply
24 with the court orders in this matter. Respondent violated a court order to act as an
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1 arbitrator and a court order compelling her appearance to explain her conduct.
2 Respondent's failure to act as an arbitrator in the underlying case delayed the
3 proceeding. Furthermore, her conduct compelled the court to issue an order to show
4 cause hearing for her failure to arbitrate the underlying case, which in turn served to
5 delay the matter further. Respondent's conduct is addressed by *Standard 6.22*.
6

7 It is also appropriate to review *Standard 7.0, Violations of Other Duties*
8 *Owed as a Professional*. Suspension is generally appropriate when a lawyer
9 knowingly engages in conduct that is a violation of a duty owed as a professional,
10 and causes injury or potential injury to a client, the public, or the legal system.
11 *Standard 7.2*.
12

13 In the present case, Respondent knowingly failed to respond to the State
14 Bar's inquiries, and only began to participate after the formal complaint was filed.
15 Respondent's conduct mirrored her behavior in the arbitration case in that she
16 avoided participating at the outset of both matters.
17

18 Based on the foregoing, the presumptive sanction for the admitted conduct
19 is a term of suspension. After determining the presumptive sanction, it is
20 appropriate to evaluate factors enumerated in the *Standards* that would justify an
21 increase or decrease in the presumptive sanction.
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1 Substantial mitigation may justify a decrease in the presumptive sanction.
2 The conduct giving rise to the instant matter was not the product of a selfish or
3 dishonest motive. *Standard 9.32(b)*.
4

5 Respondent explained to bar counsel that at the time these matters occurred
6 she was taking antidepressant medication and continues with drug therapy to date.
7 Respondent explained that in late 2000, she suffered the deaths of both her best
8 friend to cancer and her mother just two months later. At that time, Respondent
9 maintained a contract for dependency cases. Her caseload was demanding and
10 because she was so emotionally challenged, it was all she could do to maintain her
11 functioning. *Standard 9.32(c)*.
12

13 Additionally, Respondent was subjected to the imposition of a penalty by the
14 court. The court ordered that Respondent be appointed to arbitrate four cases in
15 2003 as a sanction. *Standard 9.32(k)*. Bar counsel confirmed that Respondent is
16 currently complying with the court's order.
17

18 Respondent has expressed remorse for the situation her conduct caused both
19 in respect to the underlying civil matter as well as the resulting disciplinary case.
20 *Standard 9.32(l)*.
21

22 Respondent was informally reprimanded in 1997 for violations of ER 1.1, ER
23 1.3, and ER 1.4 in a single case. The sanction is somewhat remote in time as it was
24 ordered six years ago. The conduct as stated herein is not similar to the conduct that
25

1 warranted the informal reprimand. Since the imposition of the informal reprimand
2 in 1997, Respondent has received no other complaints about her conduct other than
3 the instant matter. *Standard 9.32(m)*.
4

5 The parties also concluded that three aggravating factors should be
6 considered in this matter. Respondent does have a prior disciplinary record as set
7 forth above. *Standard 9.22(a)*. Given that the conduct at issue in that matter is
8 not similar to the conduct herein and the fact that the 1997 informal reprimand is
9 somewhat remote in time, this factor should be given little weight.
10

11 A second aggravating factor is that Respondent failed to cooperate in the
12 State Bar's investigation. Although Respondent eventually began participating in
13 this case, her initial failure to respond to reasonable requests for information
14 served to obstruct the disciplinary process. *Standard 9.22(e)*.
15

16 Finally, Respondent has been a practicing lawyer since 1991. Her
17 experience is substantial. Her conduct cannot be attributed to the sometimes-
18 imprudent decisions of a lawyer lacking in experience. *Standard 9.22(i)*.
19

20 This case presents a considerate amount of mitigation. The parties
21 recognize that the mitigation is somewhat tempered by certain aggravating
22 factors. However, in considering the weight that should be attributed to each
23 factor, the parties believe that the mitigation justifies a downward deviation from
24 a suspension to a censure.
25

1 misconduct was admitted by default. The failure to participate in any way during
2 the proceedings gave rise to the overriding concern that the lawyer was not fit to
3 practice law thereby necessitating a reinstatement proceeding.
4

5 In *Matter of Bingham*, SB-02-0040-D (2002) the lawyer was appointed to
6 serve as an arbitrator but the lawyer failed to set or conduct a hearing. Bingham
7 was ordered to set or conduct the arbitration hearing on or before a specific date,
8 which he failed to do. The court eventually removed him as arbitrator, and
9 ordered him to appear at an order to show cause hearing for failing to comply
10 with his duties as arbitrator. Bingham failed to appear. In addition, he failed to
11 respond to State Bar inquiries.
12

13
14 The Commission found two aggravating factors in that case; bad faith
15 obstruction of the disciplinary proceeding by intentionally failing to comply with
16 rules or orders of the disciplinary agency and substantial experience in the
17 practice of law. Bingham had no prior disciplinary record and that factor was the
18 only one considered in mitigation. Again, Bingham did not participate in any
19 way during the disciplinary proceedings. His conduct was admitted by default.
20

21 The above-cited cases involve identical conduct to Respondent's. The
22 main divergence and the major distinction in both is Respondent's appearance at
23 the second order to show cause hearing to explain her conduct to the court and her
24 participation in the formal disciplinary proceeding. Neither Merchant and
25

1 Bingham appeared when the court ordered the show cause hearings, nor did they
2 participate in any way during the disciplinary proceedings. This distinction is
3 critical in that Merchant and Bingham required reinstatement proceedings to
4 determine their fitness to practice law.
5

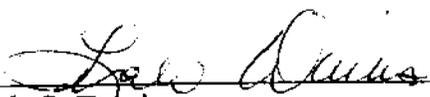
6 This agreement considers the appropriate measures to ensure that
7 Respondent is acting in accordance with the Rules of Professional Conduct. In
8 doing so it serves to protect the public, instill confidence in the public and
9 maintain the integrity of the Bar.
10

11 The distinguishing factors between the instant case and *Merchant* or
12 *Bingham* justify the imposition of a censure and do not require a suspension to
13 serve the purposes of discipline.
14

15 CONCLUSION

16 The objective of lawyer discipline is not to punish the lawyer, but to protect
17 the public, the profession, and the administration of justice. *In re Neville*, 147 Ariz.
18 106, 708 P.2d 1297 (1985). Recognizing it is the prerogative of the Disciplinary
19 Commission to determine the appropriate sanction, the State Bar and Respondent
20 assert the objectives of discipline will be met by the imposition of the proposed
21 sanction of a censure, two years of probation and costs.
22
23
24
25

1 DATED this 26th day of November, 2003.

2
3 
4 Leah S. Davis
5 Respondent

6 DATED this 26th day of November, 2003.

7
8 
9 Maret Vessella
10 Deputy Chief Bar Counsel

11 Approved as to form and content:

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14 Robert Van Wyck
15 Chief Bar Counsel

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24 10410 North 31st Avenue, Ste. 405
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Respondent

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3 **Lawyer Regulation Records Manager**
4 **State Bar of Arizona**
5 **111 West Monroe Street, Suite 1800**
6 **Phoenix, Arizona 85003**

7 by: *CS*
8 *ston*
9 **MV:cs**

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