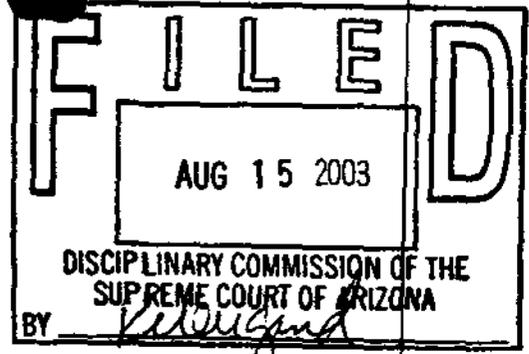


1 Alison L. Maloney, Bar No. 019434
2 Staff Bar Counsel
3 State Bar of Arizona
4 111 West Monroe, Suite 1800
5 Phoenix, Arizona 85003-1742
6 Telephone: (602) 340-7244



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

9 IN THE MATTER OF A MEMBER) Nos. 00-1591, 00-2301, 01-0404
10 OF THE STATE BAR OF ARIZONA,)
11)
12 **WILLIAM L. KENDRICK JR.,**) **TENDER OF ADMISSIONS**
13 **Bar No. 012037**) **AND AGREEMENT FOR**
14) **DISCIPLINE BY CONSENT**
15 **Respondent.**)
16) (Assigned to Hearing Officer 7M)

17 This Agreement is entered into between the State Bar of Arizona through
18 undersigned counsel and Respondent William L. Kendrick, Jr., represented by
19 Joseph B. Swan, Jr. It is submitted pursuant to Rule 56(a), Ariz.R.S.Ct. and the
20 guidelines for discipline by consent issued by the Disciplinary Commission of the
21 Supreme Court of Arizona. Respondent agrees to accept the imposition of
22 censure, one year of probation, and payment of the costs and expenses of the
23 disciplinary proceedings: Restitution is not applicable in this matter.
24 Respondent understands that this agreement is subject to review and acceptance
25 by the Disciplinary Commission.

1 Further, Respondent contends that he did not receive any fees or payment from
2 either Draughton or the clients in the following cases, because Respondent
3 expected to be paid from the Trustee upon completion and confirmation of the
4 clients' Chapter 13 plans. The State Bar has been unable to locate Draughton
5 during its investigation of these charges.
6

7
8 **COUNT ONE (01-0404)**

9 1. On or about July 25, 2000, Paula Rushano paid Robert Draughton
10 \$500.00 to file a bankruptcy petition on her behalf. Draughton gave Ms. Rushano
11 a receipt for the \$500.00. Respondent's name appeared at the top of the receipt.
12 At that time, Ms. Rushano had not met Respondent.
13

14 2. On or about September 5, 2000, Ms. Rushano gave Robert
15 Draughton an additional \$200.00 for the filing fee required by the Bankruptcy
16 Court. Draughton gave Ms. Rushano a receipt for the \$200.00 fee. Respondent's
17 name appeared at the top of the receipt. Respondent contends that he did not
18 receive any portion of the monies paid to Draughton. At that time, Ms. Rushano
19 still had not met Respondent.
20

21 3. Between September 5, 2000 and December 12, 2000, Ms. Rushano
22 left Draughton many phone messages, which were not returned.
23
24
25

1 4. On or about December 12, 2000, Draughton brought Ms. Rushano a
2 copy of the bankruptcy schedule to be filed. Draughton told Ms. Rushano to
3 make necessary modifications and to sign the schedule.
4

5 5. Draughton told Ms. Rushano he would return the next day,
6 December 13, 2000, to pick up the schedule and file it. Draughton did not return.
7

8 6. Since Draughton did not pick up the bankruptcy schedule, Ms.
9 Rushano mailed it to a post office box number Draughton had previously
10 provided to her.

11 7. Ms. Rushano spoke to Draughton on or about December 22, 2000.
12 Ms. Rushano advised Draughton that she mailed the schedule to the post office
13 box. Draughton said he would pick up the schedule from the post office box. On
14 or about January 26, 2001, Ms. Rushano received the schedule, returned to her in
15 the mail, marked "Return to Sender" as it had never been retrieved from the post
16 office box.
17

18 8. On or about February 12, 2001, Ms. Rushano filed the bankruptcy
19 action, prepared by Draughton, on her own behalf and paid the Court the required
20 \$200.00 filing fee.
21

22 9. On or about February 21, 2001, Ms. Rushano spoke to the
23 Bankruptcy Court. The Court informed Ms. Rushano that Respondent was the
24
25

1 attorney representing her. Ms. Rushano did not know Respondent, had not met
2 him, did not hire him and did not know Respondent was representing her.

3
4 10. On or about February 23, 2001, Ms. Rushano spoke to Respondent.
5 Respondent informed Ms. Rushano his name was not supposed to be on the
6 bankruptcy petition. Respondent also informed Ms. Rushano some of her money
7 would be returned.

8
9 11. After February 23, 2001, Respondent did not refund any of Ms.
10 Rushano's money and did not return Ms. Rushano's phone calls.

11 12. Respondent contacted Draughton and insisted the Draughton return
12 Ms. Rushano's fee.

13
14 13. On March 8, 2001, the State Bar of Arizona advised Respondent of
15 the allegations against him.

16 14. Ms. Rushano received a full refund from Draughton on March 9,
17 2001.

18
19 15. Prior to Draughton's actions in this matter, Respondent knew or
20 should have known that Draughton was engaging in the unauthorized practice of
21 law. Based on the events that took place with respect to clients Allen and Glenna
22 Thomas (see Count Two below), and the State Bar of Arizona's investigation in
23 file number 00-1591 (see Count Three below), Respondent was aware or should
24 have been aware that Draughton was engaging in a pattern of preparing and filing
25

1 legal documents using Respondent's name without Respondent's permission or
2 supervision.

3
4 **COUNT TWO (00-2301)**

5 16. Allen and Glenna Thomas' home was going to be foreclosed upon.

6 17. To avoid the foreclosure action, Allen and Glenna Thomas hired
7 Robert Draughton to file a bankruptcy petition on their behalf. On or about
8 May 29, 2000, the Thomases paid Draughton \$1,000.00. The Thomases believed
9 Draughton was an attorney.
10

11 18. Draughton gave the Thomases a receipt for the money paid.
12 Respondent's name appeared at the top of the receipt. At that time, the Thomases
13 had not met Respondent and did not know Respondent.
14

15 19. On or about June 30, 2000, the Thomases' bankruptcy petition was
16 dismissed because required actions were not performed.
17

18 20. The Thomases spoke to a trustee at the Bankruptcy Court who
19 informed them that an attorney did not represent them in the bankruptcy action, as
20 the petition was filed "pro se."
21

22 21. Thereafter, Allen and Glenna Thomas met with Draughton. They
23 asked Draughton if he was an attorney. Draughton said he was an attorney.
24

25 22. The Thomases asked Draughton to refile the bankruptcy petition.

2 Thomases paid this amount over several dates between July 12, 2000 and
3 September 22, 2000.

4
5 24. Draughton gave the Thomases receipts for the money paid.
6 Respondent's name was on the receipts. The Thomases acknowledge that
7 Respondent did not sign the receipts. Respondent contends that he did not
8 receive a portion of any of the monies paid to Draughton.
9

10 25. On or about October 6, 2000, the Thomases' second bankruptcy
11 petition was dismissed due to required actions not being performed.

12 26. The Thomases' home was sold in a foreclosure action. The
13 Thomases believed the bankruptcy would protect their home. Since the
14 bankruptcy petition was dismissed, the Thomases' home was not protected.
15

16 27. The Thomases contacted Respondent since his name was on the
17 receipts. Respondent informed the Thomases he would try to help them.
18

19 28. Upon request by Respondent, Draughton refunded approximately
20 \$500 of the Thomases' money.

21 29. Prior to Draughton's actions in this matter, Respondent knew or
22 should have known that Draughton was engaging in the unauthorized practice of
23 law. Based upon his communications with the Thomases, and the State Bar of
24 Arizona's investigation in file number 00-1591 (see Count Three below),
25

1 Respondent was aware or should have been aware that Draughton was engaging
2 in a pattern of preparing and filing legal documents using Respondent's name
3 without Respondent's permission or supervision.
4

5 **COUNT THREE (00-1591)**

6 30. On or about July 28, 2000, the Chief Deputy of the United States
7 Bankruptcy Court, Michael Temple, advised the State Bar of Arizona that Robert
8 Draughton filed a bankruptcy petition with Respondent's name apparently
9 stamped on the petition, but with Draughton's address. Mr. Temple alleged that
10 Draughton had used other attorneys' names in the past to file unauthorized
11 pleadings, and implied that he was again doing so using Respondent's signature.
12

13 31. By letter, the State Bar of Arizona advised Respondent of the charges
14 on or about September 5, 2000. The letter to Respondent set forth the charges
15 that he violated Rule 42, Ariz.R.S.Ct., specifically ERs 5.3 and 5.5(b).
16 Respondent responded to the State Bar of Arizona on or about October 25, 2000.
17 In the response, Respondent indicated Robert Draughton had done "legal research
18 and the like" for him in the past. Respondent's response as to the signature on the
19 pleadings was vague, however, Respondent stated that he never gave permission
20 to Draughton to file pleadings on his behalf.
21
22

23 32. After Respondent's response, while investigating the charges, the
24 State Bar of Arizona obtained copies of documents from the Bankruptcy Court.
25

1 These documents indicate Respondent was the attorney of record in
2 approximately 13 files that were dismissed for failure to perform required action.
3
4 The files all arose after Respondent had received the above-referenced charge
5 putting him on notice that Draughton was committing the unauthorized practice
6 of law using Respondent's name.

7
8 33. Count Three of the formal complaint in this matter contained charges
9 relating to thirteen client matters. After discovery, and because many of the
10 clients could not be located or will not participate, the parties have agreed that
11 misconduct occurred in the following five client matters:

12 a. William and Helen Gabel initially met with Robert Draughton
13 concerning filing for bankruptcy protection. The Gabels paid Draughton \$1,200
14 to file their petition. The Gabels were then referred to Respondent. Respondent
15 contends that he did not receive any of the monies the Gabels paid to Draughton.
16
17 On or about September 27, 2000, Respondent filed a voluntary petition in the
18 United States Bankruptcy Court on behalf of the Gabels. Respondent represented
19 the Gabels until approximately February 2002. At that time, the Gabels decided
20 not to proceed with their bankruptcy, and agreed to allow their case to be
21 dismissed. The Gabels did not receive a refund from Draughton or Respondent.
22
23

24 During the Gabels' initial consultation with Draughton, Draughton
25 took the Gabels' pertinent information in order for the petition to be filed in

1 addition to taking their fee of \$1,200. Respondent claims he had no knowledge of
2 the Gabels' payment to Draughton, and also claims that he performed a
3 substantial amount of work on their behalf. Respondent contends that the reason
4 the Gabels' petition was dismissed was that the Gabels had substantially
5 understated their monthly income in their bankruptcy questionnaire. Respondent
6 also claims that the Gabels deliberately misled him, as well as the Court,
7 concerning their income, and that when confronted about the matter, they opted
8 not to pursue their bankruptcy. However, for purposes of this Agreement, the
9 Respondent admits that by allowing Draughton to perform the initial consultation
10 with the Gabels, he assisted in the unauthorized practice of law. In addition,
11 Respondent was on notice regarding Draughton's pattern of misconduct based on
12 the State Bar of Arizona's September 5, 2000 letter. By failing to take any
13 affirmative action concerning Draughton's conduct, Respondent assisted
14 Draughton in the unauthorized practice of law.

15
16
17
18
19 b. Deborah Ann Leyva met with Robert Draughton concerning filing
20 for bankruptcy protection. Draughton indicated that he was working with
21 Respondent. Ms. Leyva paid Draughton \$1,000 for her petition to be filed.
22 Draughton took the information Respondent needed concerning Ms. Leyva's
23 petition. At some point, Ms. Leyva did speak with Respondent on the telephone,
24 but never met with him in person. On or about September 1, 2000, Respondent
25

1 filed a voluntary petition in the United States Bankruptcy Court on behalf of Ms.
2 Leyva. On or about October 13, 2000, the Bankruptcy Court dismissed Ms.
3 Leyva's petition because she did not pay her filing fee. Respondent contends that
4 he did not receive any of the fees paid by Ms. Leyva to Draughton. Ms. Leyva
5 did not receive a refund from Draughton or Respondent.
6

7 By allowing Draughton to perform the initial consultation with Ms.
8 Leyva, he assisted in the unauthorized practice of law. In addition, Respondent
9 was on notice regarding Draughton's pattern of misconduct based on the State
10 Bar of Arizona's September 5, 2000 letter. By failing to take any affirmative
11 action concerning Draughton's conduct, Respondent assisted Draughton in the
12 unauthorized practice of law.
13
14

15 c. Michael and Michelle Scholler met with Draughton concerning
16 filing for bankruptcy protection. The Schollers paid Draughton approximately
17 \$1,100. Draughton gave the Schollers a receipt with Respondent's name on it.
18 The signature on the receipt is not Respondent's. On August 24, 2000, a
19 voluntary petition was filed in United States Bankruptcy Court on behalf of the
20 Schollers. Respondent's name appeared on the petition as the Schollers' attorney.
21 On or about October 3, 2000, the Schollers prepared and filed an Objection to a
22 Motion to Lift Stay concerning their home. Respondent was not aware that he
23 was listed as the attorney of record for the Schollers. The address for Respondent
24
25

1 on the petition was a P.O. Box used by Draughton. Draughton contacted
2 Respondent on or about October 14, 2000 concerning the Schollers. Draughton
3 informed Respondent that the Schollers had been represented and later abandoned
4 by Michael T. Smith. Respondent therefore agreed to appear at the hearing on the
5 Schollers' behalf and argue their Objection to Motion to Lift Stay. At the
6 hearing, the judge ruled in favor of the creditor, and thereafter Respondent had no
7 further contact with the Schollers. The Schollers never met Respondent. The
8 Scholler's case was dismissed because the required schedules and statements
9 were not timely filed. The Schollers did not receive a refund from Draughton or
10 Respondent.
11
12

13
14 Respondent was on notice regarding Draughton's actions based on
15 the State Bar of Arizona's September 5, 2000 letter. By failing to take any
16 affirmative action concerning Draughton's conduct, Respondent assisted
17 Draughton in the unauthorized practice of law. Respondent did not diligently
18 represent his clients or communicate with them.
19

20 d. David M. Samons met with Robert Draughton concerning filing
21 for bankruptcy protection. Mr. Samons paid Draughton \$1,200 to file his
22 petition. Samons never met or had contact with Respondent. On August 22,
23 2000, a voluntary petition was filed in United States Bankruptcy Court on behalf
24 of Mr. Samons. Respondent's name appeared on the petition as Mr. Samons'
25

1 attorney. The address on the petition was a P.O. Box used by Draughton. On or
2 about October 24, 2000, the Bankruptcy Court dismissed Mr. Samons' petition
3 because the required fees were not paid to the Bankruptcy Court. Respondent
4 contends that he had never met Samons, never agreed to represent him, was
5 initially unaware that his name appeared on the petition as Samons' attorney, and
6 did not receive any portion of the monies Samons paid to Draughton. Mr.
7 Samons did not receive a refund from Draughton or Respondent.
8
9

10 Respondent was on notice regarding Draughton's actions based on
11 the State Bar of Arizona's September 5, 2000 letter. By failing to take any
12 affirmative action concerning Draughton's conduct, Respondent assisted
13 Draughton in the unauthorized practice of law.
14

15 e. Rick and Karen Gowing met with Robert Draughton concerning
16 filing for bankruptcy protection. The Gowings paid Draughton \$1,060 to file
17 their petition. On May 1, 2000, a voluntary petition was filed in United States
18 Bankruptcy Court on behalf of the Gowings. Michael T. Smith's name appears
19 on the Gowings' petition as the attorney of record. On or about May 31, 2000,
20 Respondent filed a notice of appearance on behalf of the Gowings for the limited
21 purpose of providing the Gowings representation at an accelerated hearing on a
22 creditor's Motion to Lift Stay. The Motion to Lift Stay was granted, and
23 Respondent had no further dealings with the Gowings. The Gowings never met
24
25

1 or had contact with Respondent. The Gowings never attempted to contact
2 Respondent. It appears that the Gowings' case was dismissed because they failed
3 to attend their scheduled 341 Creditors hearing. Respondent contends that he did
4 not receive any of the monies paid to Draughton. The Gowings did not receive a
5 refund from Draughton or Respondent.
6

7 Respondent was on notice regarding Draughton's actions based on the
8 State Bar of Arizona's September 5, 2000 letter. By failing to take any
9 affirmative action concerning Draughton's conduct, Respondent assisted
10 Draughton in the unauthorized practice of law. Respondent did not diligently
11 represent his clients or communicate with them.
12

13 CONDITIONAL ADMISSIONS

14 Respondent conditionally admits that his conduct, as set forth above,
15 violated the following Rules of Professional Conduct and Rules of the Supreme
16 Court:
17

18 ER 5.5(b): 7 violations (Counts I, II and III)

19 ER 8.4(d): 7 violations (Counts I, II and III)

20 ER 1.3: 2 violations (Count III)

21 ER 1.4: 2 violations (Count III)

22 Respondent's admissions are being tendered in exchange for the form of
23 discipline stated below.
24
25

1 a. Respondent shall submit to a LOMAP audit within thirty (30)
2 days of the Supreme Court's judgment and order. Respondent shall enter into a
3 Memorandum of Understanding consistent with the findings of the LOMAP
4 Director or her designee.

5
6 b. Respondent shall refrain from any conduct that would violate the
7 Rules of Professional Conduct or other rules of the Supreme Court of Arizona.

8
9 c. In the event of non-compliance by Respondent with the terms of
10 probation, Respondent shall pay the costs and expenses incurred by the State Bar
11 of Arizona resulting from such non-compliance.

12
13 d. Respondent shall pay the administrative costs imposed by the
14 Disciplinary Commission, the Disciplinary Clerk's Office, and the Arizona
15 Supreme Court in this matter.

16 3. Respondent shall pay the costs and expenses of the State Bar of
17 Arizona in the amount of \$628.12 within 30 days of the Order approving the
18 settlement. A Statement of Costs is attached hereto as "Exhibit A".

19
20 4. In the event Respondent fails to comply with any of the foregoing
21 terms, and information thereof is received by the State Bar of Arizona, Bar
22 Counsel shall file a Notice of Non-compliance with the imposing entity pursuant
23 to Rule 52(a)(6)(C), Ariz.R.S.Ct. The matter may be referred to a hearing officer
24 to conduct a hearing at the earliest practical date, but in no event more than thirty
25

1 (30) days following receipt of said Notice. If the matter is referred to a hearing
2 officer, the hearing officer shall determine whether the terms of probation have
3 been breached and, if so, to recommend appropriate action and response to such
4 breach. If there is an allegation that Respondent failed to comply with any of the
5 foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove
6 non-compliance by a preponderance of the evidence.
7

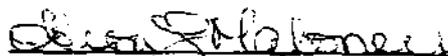
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9 Respondent is represented by counsel in this matter. Respondent, by
10 entering into this Agreement, waives his right to a formal disciplinary hearing that
11 he would otherwise be entitled to pursuant to Rule 53(c)(6), Ariz.R.S.Ct., and the
12 right to testify or present witnesses on his behalf at a hearing. Respondent further
13 waives all motions, defenses, objections, or requests which he has made or raised,
14 or could assert hereinafter, if the conditional admissions and stated form of
15 discipline are approved. Respondent acknowledges that he has read this
16 Agreement and has received a copy of it.
17

18
19 This Tender of Admissions and Agreement for Discipline by Consent will
20 be submitted to the Disciplinary Commission for approval. Respondent
21 understands that the Disciplinary Commission may order a hearing officer to
22 conduct an evidentiary hearing, if necessary. Respondent further understands that
23 the Disciplinary Commission may recommend rejection of this Agreement or
24 may propose modifications. Respondent further understands the Disciplinary
25

1 Commission must approve this Agreement and that this matter will become final
2 upon judgment and order of the Supreme Court of Arizona. If the Agreement is
3 rejected, the parties' conditional admissions are withdrawn.
4

5 DATED this 17th day of August, 2003.

6 STATE BAR OF ARIZONA

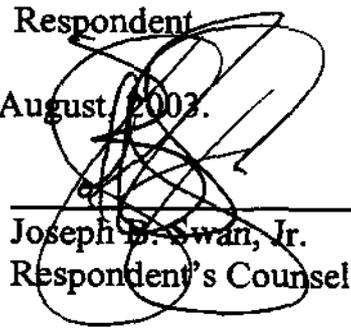
7 
8 Alison L. Maloney
9 Staff Bar Counsel

10 This agreement, with conditional admissions, is submitted freely and
11 voluntarily and not under coercion or intimidation. I am aware of the Rules
12 of the Supreme Court with respect to discipline and reinstatement.
13

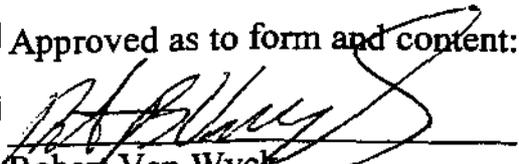
14 DATED this 14th day of August, 2003.

15 
16 William L. Kendrick
17 Respondent

18 DATED this 14 day of August, 2003.

19 
20 Joseph B. Swan, Jr.
21 Respondent's Counsel

22 Approved as to form and content:

23 
24 Robert Van Wyck
25 Chief Bar Counsel

25 : : :

1 Original filed with the Disciplinary Clerk
2 this 15th day of August, 2003

3 by: Gwendolyn Burke

4 Copy mailed via first class mail
5 this 15th day of August, 2003, to:

6 Daniel P. Beeks
7 Hearing Officer 7M
8 2800 North Central, Suite 1100
9 Phoenix, Arizona 85004-1043

10 Frederick C. Berry, Jr.
11 Settlement Officer 9S
12 350 East Virginia, Suite 200
13 Phoenix, Arizona 85004-1208

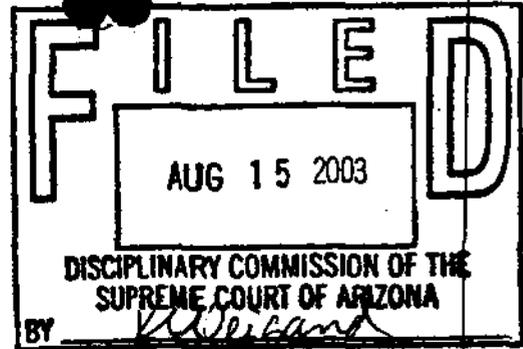
14 Joseph B. Swan, Jr.
15 Respondent's Counsel
16 3101 North Central, Suite 1300
17 Phoenix, Arizona 85012-2643

18 Copy hand delivered
19 this 15th day of August, 2003, to:

20 Dee Steadman
21 Lawyer Regulation Records Manager
22 State Bar of Arizona
23 111 West Monroe, Suite 1800
24 Phoenix, Arizona 85004-1742

25 by Gwendolyn Burke
ALM:gb

1 Alison L. Maloney, Bar No. 019434
2 Staff Bar Counsel
3 State Bar of Arizona
4 111 West Monroe, Suite 1800
5 Phoenix, Arizona 85003-1742
6 Telephone: (602) 340-7244



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

9 IN THE MATTER OF A MEMBER) Nos. 00-1591, 00-2301, 01-0404
10 OF THE STATE BAR OF ARIZONA,)
11)
12 **WILLIAM L. KENDRICK JR.,**) **JOINT MEMORANDUM IN**
13 **Bar No. 012037**) **SUPPORT OF AGREEMENT FOR**
14) **DISCIPLINE BY CONSENT**
15 Respondent.)
16) (Assigned to Hearing Officer 7M)

17 The State Bar of Arizona and Respondent, William L. Kendrick, Jr., who is
18 represented by Joseph B. Swan, Jr. in these proceedings, hereby submit their Joint
19 Memorandum in Support of the Agreement for Discipline by Consent filed
20 contemporaneously herewith.

21 As reflected in the Tender of Admissions and Agreement for Discipline by
22 Consent, Respondent's misconduct in this matter includes assisting in the
23 unauthorized practice of law and failing to diligently represent or adequately
24 communicate with several clients. Respondent conditionally admits the facts as
25 set forth in the Tender of Admissions and Agreement for Discipline by Consent.

In this memorandum, the parties address the issue of the appropriate form
of sanction. The sanctions agreed upon by the State Bar and Respondent are a

1 censure, probation, and the payment of costs incurred in the disciplinary
2 proceeding.

3 In arriving at the agreed upon sanctions, the parties have considered the
4 American Bar Association Standards for Imposing Lawyer Sanctions
5 ("Standards"), particularly Standards 4.4, 7.0, and 9.1, as well as applicable case
6 law.
7

8 STANDARDS

9
10 The Standards provide guidance with respect to an appropriate sanction in
11 the matter. The Supreme Court and the Disciplinary Commission are consistent
12 in utilizing the Standards to determine appropriate sanctions for attorney
13 discipline. In re Kaplan, 179 Ariz. 175, 877 P.2d 274 (1994). The Standards
14 provide that four factors should be considered in determining the sanction: the
15 duty violated, the lawyer's mental state, the actual or potential injury, and
16 aggravating and mitigating factors. Where there are multiple acts of misconduct,
17 the Respondent should receive one sanction that is consistent with the most
18 serious instance of misconduct, and the other acts should be considered as
19 aggravating factors. In re Cassalia, 173 Ariz. 372, 843 P.2d 654 (1992).
20
21

22 The most serious violations present in this matter involve Respondent's
23 assisting in the unauthorized practice of law. In that regard, Respondent engaged
24 in a pattern of neglect, which caused injury or potential injury to his clients and
25

1 the public. Standard 7.3 is applicable to those violations: "Reprimand (censure in
2 Arizona) is generally appropriate when a lawyer negligently engages in conduct
3 that is a violation of a duty owed to the profession, and causes injury or potential
4 injury to a client, the public, or the legal system." Standard 7.3.

6 Respondent also admits that he failed to diligently represent the interests of
7 several unrelated clients or adequately communicate with them in their
8 bankruptcy proceedings. In that regard, Respondent engaged in a pattern of
9 neglect which caused injury or potential injury to these clients.

11 Standard 4.43 is applicable to those violations: "Reprimand (censure in
12 Arizona) is generally appropriate when a lawyer is negligent and does not act
13 with reasonable diligence in representing a client, and causes injury or potential
14 injury to a client". Standard 4.43.

16 Accordingly, pursuant to the Standards, censure is the presumptive sanction
17 in this matter. Following a determination of the presumptive sanction, it is
18 appropriate to review factors that may be considered to aggravate or mitigate the
19 presumptive sanction.

21 A review of Standard 9.22 indicates the following aggravating factors are
22 present:

24 1. 9.22(c) pattern of misconduct: This factor is applicable as
25 Respondent assisted in the unauthorized practice of law with regard to seven

1 separate clients in the instant matter. Respondent also failed to diligently
2 represent the interests of two unrelated clients or adequately communicate with
3 them.
4

5 2. 9.22(i) substantial experience in the practice of law: Respondent has
6 been a practicing attorney for forty-four (44) years, having been admitted to
7 practice in Massachusetts in 1959, and admitted to practice in Arizona in 1988.
8

9 A review of Standard 9.32 indicates the following mitigating factors are
10 present:

11 1. 9.32(a) absence of prior disciplinary record: Respondent does not
12 have a prior discipline history.

13 2. 9.32(a) absence of a dishonest or selfish motive: There is no
14 evidence that Respondent acted in an intentional manner with a dishonest or
15 selfish motive.
16

17 3. 9.32(e) cooperative attitude toward proceedings: Respondent fully
18 cooperated with the State Bar throughout these proceedings.
19

20 4. 9.32(g) character or reputation: Respondent has submitted evidence
21 of good reputation in the legal community and good character. (See letters
22 attached hereto as Exhibit "A").

23 5. 9.32(l) remorse: Respondent has demonstrated remorse, and
24 indicated that he should have handled these matters differently. Respondent now
25 realizes that he neglected his duty to the public and the State Bar. Once he was

1 on notice from the Bar, he should have followed up by finding out exactly what
2 Draughton was doing in the Bankruptcy Court as it affected the Respondent.

3
4 It is the parties position that the aggravating and mitigating factors do not
5 necessitate an increase or decrease in the presumptive sanction. Based on the
6 aggravating and mitigating factors present, the parties agree that Respondent
7 should receive the presumptive sanction of a censure.

8 PROPORTIONALITY

9
10 To have an effective system of professional regulation, there must be
11 internal consistency and it is therefore appropriate to examine sanctions imposed
12 in cases that are factually similar. In re Shannon, 179 Ariz. 52 (1994) (quoting In
13 re Wines, 135 Ariz. 203 (1983)), In re Pappas, 159 Ariz. 516, 768 P.2d 1161
14 (1988). However, the discipline in each situation must be tailored to the
15 individual case, as neither perfection nor absolute uniformity can be achieved.
16
17 Matter of Riley, 142 Ariz. 604, 615 (1984).

18
19 Respondent and the State Bar have agreed to the imposition of a censure
20 and a one-year term of probation. Respondent's conduct involved neglect in
21 several client matters concerning the assistance in the unauthorized practice of
22 law, and failure to diligently represent or adequately communicate with clients in
23 two matters.
24
25

1 There are a number of prior cases in which sanctions were imposed for
2 misconduct involving neglect similar to that present in this case.

3
4 In Matter of Seplow, SB-02-0108-D, Seplow hired Robert Draughton as a
5 legal assistant in his office. That case also involved the filing of various
6 bankruptcy petitions by Draughton, and Seplow's subsequent failure to supervise
7 him, which allowed Draughton to create numerous problems for various clients.
8
9 There were six mitigating factors, and six aggravating factors. Seplow received a
10 censure and probation for violations of ERs 1.1, 1.2, 1.3, 1.4, 1.15, 3.2, 3.3,
11 3.4(c), 5.3, 5.5, 8.4(a), (d) and (e), and Supreme Court Rule 51(h).

12
13 In the instant matter, Draughton was not physically present in
14 Respondent's office as in Seplow. However, Draughton referred clients to
15 Respondent, and Respondent was put on notice that there were problems
16 concerning bankruptcy petitions that had been filed either by himself, or by
17 Draughton, when he received phone calls directly from clients and complaints to
18 the State Bar.

19
20 In Matter of Olds, SB-00-0089-D, Olds hired a paralegal to assist him in
21 bankruptcy cases. The paralegal represented himself to clients as an attorney,
22 signed a retainer agreement with a client as an attorney, utilized business cards
23 that indicated he was an attorney, all while employed by Olds. Olds was unaware
24 of the conduct. There were two aggravating factors, and three mitigating factors.
25

1 He received a censure and probation for violation of ERs 1.3, 5.3(b), 5.5(b),
2 7.1(a), and 7.1(g).

3 Matter of Lustig, SB-01-0149-D, is also instructive in this matter.

4
5 Lustig failed to supervise two non-lawyers in his office who represented
6 themselves as attorneys, and facilitated the unauthorized practice of law
7 concerning various collection matters. Lustig also assisted in dishonesty, fraud,
8 deceit or misrepresentation. There were two aggravating factors and three
9 mitigating factors. He received a censure for violation of ERs 5.3(b), 5.5(b),
10 7.5(d), 8.3 and 8.4(a).

11
12 An analysis of the above cases reveals that a censure is an appropriate
13 sanction given the particular facts involved here.

14
15 In this matter, Respondent has fully participated in the disciplinary
16 proceedings. Respondent has further indicated that he will participate in all
17 remedial programs required as a part of the sanction. For these reasons,
18 considering the totality of the circumstances present in this case, including the
19 underlying facts as well as the mitigating factors, the parties believe that the
20 purposes of discipline will be served by a censure, along with probation.

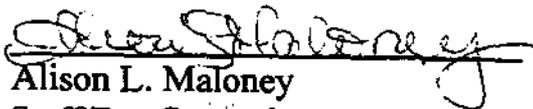
21 22 CONCLUSION

23
24 Recognizing that the objective of lawyer discipline is not to punish the
25 lawyer, but to protect the public, the profession, and the administration of justice,

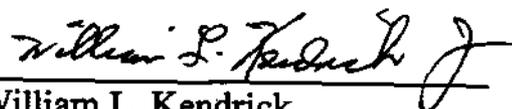
1 (In re Neville, 147 Ariz. 106, 708 P.2d 1297 (1985)), and giving consideration to
2 the facts in this case, the Standards, and the prior decisions of the Arizona
3 Supreme Court, a censure and probation is an appropriate sanction in this matter.
4 This sanction supports the purposes of attorney discipline. Respondent and the
5 State Bar of Arizona respectfully request that the Disciplinary Commission accept
6 this Agreement for Discipline by Consent.
7

8
9 DATED this 14th day of August, 2003.

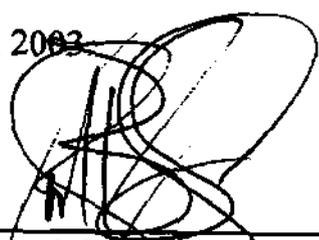
10 STATE BAR OF ARIZONA

11
12 
13 Alison L. Maloney
14 Staff Bar Counsel

15 DATED this 14th day of August, 2003.

16 
17 William L. Kendrick
18 Respondent

19 DATED this 14 day of August, 2003

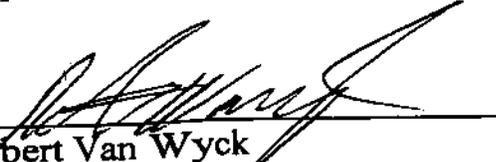
20
21 
22 Joseph B. Swan, Jr.
23 Respondent's Counsel
24
25

1 Approved as to form and content:

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3

4


Robert Van Wyck
Chief Bar Counsel

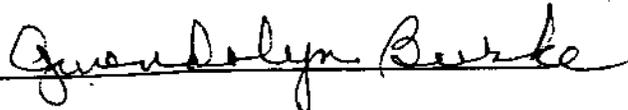
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Original filed with the Disciplinary Clerk
this 15th day of August, 2003

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by: 

9

Copy mailed via first class mail
this 15th day of August, 2003, to:

10

11

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Copy hand delivered
this 5th day of August, 2003, to:

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by Gwendolyn Burke
ALM:gb