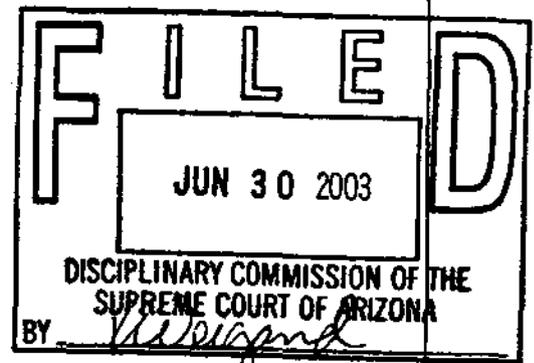


1 Shauna R. Miller, Bar No. 015197  
2 State Bar of Arizona  
3 111 West Monroe, Suite 1800  
4 Phoenix, Arizona 85003-1742  
5 Telephone (602) 340-7278  
6 Senior Bar Counsel

7 Daniel E. Pohto  
8 17695 West Cocoraque Lane  
9 Marana, Arizona 85653  
10 Telephone (520) 682-3201  
11 Respondent



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

14 **IN THE MATTER OF A MEMBER**  
15 **OF THE STATE BAR OF ARIZONA,**

16 File No. 01-1902

17 **DANIEL E. POHTO**  
18 **Bar No. 020266,**

19 **TENDER OF ADMISSIONS AND**  
20 **AGREEMENT FOR DISCIPLINE**  
21 **BY CONSENT**

22 Respondent.

23 This agreement is entered into between the State Bar of Arizona and  
24 respondent Daniel E. Pohto, who is not represented by counsel, and is submitted  
25 pursuant to Rule 56(a), Ariz.R. S. Ct. and the guidelines for discipline by consent  
issued by the Disciplinary Commission of the Supreme Court of Arizona.  
Respondent's admissions to the charges are being tendered in exchange for the  
form of discipline stated herein, subject to review and acceptance by the  
Disciplinary Commission.

1 Respondent failed to comply with the terms of his conditional admission.  
2 Respondent was required to abstain from using alcohol, which he failed to do.  
3  
4 Respondent will be suspended for six months and one day. This agreement serves  
5 the purposes of discipline in that it protects the public and the legal profession.  
6 Restitution is not applicable in this matter. Respondent shall pay all costs and  
7 expenses incurred in these discipline matters before he applies for reinstatement.  
8

9 The Joint Memorandum in Support of Agreement by Consent is filed  
10 contemporaneously herewith.

11 **FACTS**

- 12  
13 1. Respondent was conditionally admitted August 30, 2000 to the State Bar of  
14 Arizona subject to the terms of a therapeutic contract for substance abuse and  
15 financial irresponsibility. The contract was executed between respondent, the  
16 State Bar Member Assistance Program ("MAP") and the Committee on  
17 Character and Fitness ("Committee"). (Exhibit A , MAP Contract.)  
18  
19 2. The length of the therapeutic contract for substance abuse was twelve months.  
20  
21 3. The contract became effective on July 31, 2000. The contract provided that it  
22 would terminate only upon the successful completion of the terms of the  
23 agreement, as determined by the MAP Director. In his report to the  
24 Committee, Dr. Michael Sucher, the Medical Director for MAP, recommended  
25 that respondent be suspended from the practice of law as respondent's

1 substance abuse rendered him unable to safely practice law, including his  
2 inability to reliably meet deadlines and other obligations to clients. (Exhibit B,  
3 Dr. Sucher's report to Diane Ellis dated 7/19/01, Diane Ellis' reports to the  
4 Committee on Character and Fitness dated 7/12/01 and 7/21/01.)

5  
6 4. One of the terms of respondent's contract was that he refrain from using  
7 alcohol. On November 10, 2000, respondent had a positive reading on a  
8 random biological fluids screening for alcohol. Respondent contends that he  
9 objected to the report and that the Committee on Character and Fitness did not  
10 take any action. (Exhibit C, Dr. Sucher's report to Diane Ellis dated 11/17/00,  
11 Dr. Sucher's 11/27/00 email to Diane Ellis.)

12  
13  
14 5. On June 30, 2001, respondent was charged with driving under the influence.  
15 The charges were dismissed without prejudice in August 2001 as part of the  
16 O'Dell litigation<sup>1</sup>, which centered on the accuracy of a particular type of  
17 Breathalyzer being used by law enforcement in Pima County. The charges  
18 were reinstated at some point, but were dismissed with prejudice on October  
19 24, 2001. (Exhibit D, criminal minute entry date not legible, letter to  
20 respondent from his attorney dated August 21, 2001, criminal minute entry  
21 dated October 24, 2001.)  
22  
23  
24

25  

---

<sup>1</sup> Respondent's DUI case was joined with approximately 1,000 other DUI cases in Pima County.  
See *State V. O'Dell*, 202 Ariz. 453, 46 P.3d 1074 (App. 2002).

- 1 6. One of the terms of respondent's contract was that he report in writing to MAP  
2 and the Committee if he failed to comply with the terms of the contract. The  
3 State Bar contends that respondent failed to notify MAP about the positive  
4 screening test and failed to notify the Committee about the DUI charge or  
5 about the positive screening test. Respondent contends that he notified his  
6 MAP monitor, Brick Storts, and the MAP director, Diane Ellis, and was  
7 therefore in compliance with his MAP contract. For purposes of this  
8 agreement, the State Bar does not dispute respondent's contention.  
9  
10  
11 7. Respondent did not successfully complete the therapeutic contract for  
12 substance abuse.  
13

#### 14 CONDITIONAL ADMISSIONS

15 Respondent conditionally admits that his conduct as described above  
16 violated Rule 51(l), Ariz.R.S.Ct.  
17

#### 18 SANCTION

19 Respondent and the State Bar agree that on the basis of the conditional  
20 admissions contained herein, the appropriate disciplinary sanction is as follows:  
21

- 22 1. Respondent shall be suspended for six months and one day for violating  
23 Rule 51(l), Ariz. R. S. Ct.
- 24 2. Respondent shall be assessed the costs and expenses incurred in these  
25 disciplinary matters, pursuant to Rule 52(a)(8), Ariz. R. S. Ct., and shall

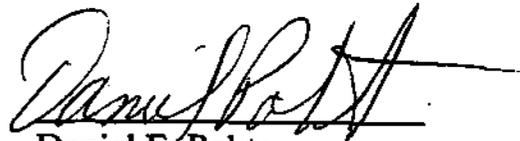
1 make arrangements to pay the assessed costs and expenses before he can be  
2 reinstated. A statement of costs and expenses is attached hereto as Exhibit  
3 E.  
4

5 Respondent, by entering into this agreement, waives his right to a formal  
6 disciplinary hearing that he would otherwise be entitled to pursuant to Rule  
7 53(c)6, Ariz.R.S.Ct., and the right to testify or present witnesses on his behalf at a  
8 hearing. Respondent further waives all motions, defenses, objections, or requests  
9 which he has made or raised, or could assert hereafter, if the conditional  
10 admissions and stated form of discipline are approved. Respondent does not have  
11 the assistance of counsel in these proceedings. Respondent acknowledges that he  
12 has read this agreement and received a copy of it.  
13  
14

15 This tender of admissions and agreement for discipline by consent will be  
16 submitted to the Disciplinary Commission for approval. Respondent realizes that  
17 the Commission may request his presence at a hearing for presentation of  
18 evidence and/or oral argument in support of this agreement. He further recognizes  
19 that the Commission may recommend rejection of this agreement, and that the  
20 Arizona Supreme Court may accept or reject the Commission's recommendation.  
21 If the Arizona Supreme Court or the Disciplinary Commission rejects this  
22 agreement, respondent's conditional admissions are withdrawn.  
23  
24  
25

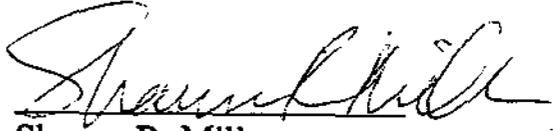
1 This agreement, with conditional admissions, is submitted freely and  
2 voluntarily and not under coercion or intimidation. I am aware of the Rules  
3 of the Supreme Court with respect to discipline and reinstatement.

4 DATED this 23 day of June, 2003.

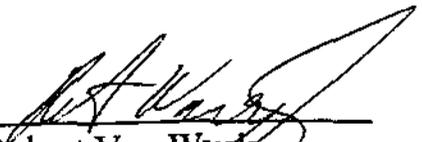
6  
7   
8 Daniel E. Pohto  
9 Respondent

10 DATED this 30<sup>th</sup> day of June, 2003.

12 STATE BAR OF ARIZONA

13  
14   
15 Shauna R. Miller  
16 Senior Bar Counsel

17 Approved as to form and content:

18  
19   
20 Robert Van Wyck  
21 Chief Bar Counsel

22 . . .  
23 . . .

1 Original filed with the Disciplinary Clerk's  
2 Office this 30th day of June, 2003.

3  
4 Copy of the foregoing hand delivered  
5 this 30th day of June, 2003 to:

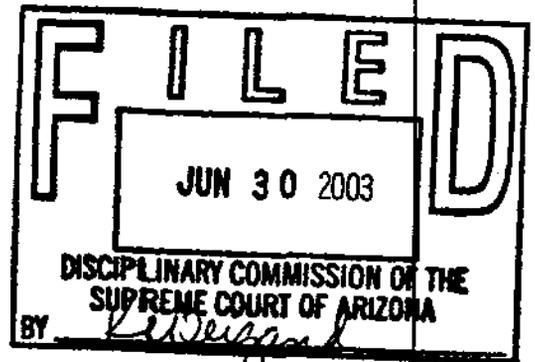
6 Dee Steadman  
7 Lawyer Regulation Records Manager  
8 111 West Monroe St., Suite 1800  
9 Phoenix, AZ 85003

10 Copy of the foregoing mailed  
11 this 30th day of June, 2003 to:

12 Daniel E. Pohto  
13 17695 West Cocoraque Lane  
14 Marana, AZ 85653  
15 Respondent

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
by: Barbara T. Chandler

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2 State Bar of Arizona  
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14 **IN THE MATTER OF A MEMBER**  
15 **OF THE STATE BAR OF ARIZONA,**

16 File No. 01-1902

17 **DANIEL E. POHTO**  
18 **Bar No. 020266,**

19 **JOINT MEMORANDUM IN**  
20 **SUPPORT OF AGREEMENT**  
21 **FOR DISCIPLINE BY CONSENT**

22 Respondent.

23 The State Bar of Arizona and respondent Daniel E. Pohto, who is not  
24 represented by counsel, submit their Joint Memorandum in Support of the  
25 Agreement for Discipline by Consent. Respondent failed to comply with the  
terms of his conditional admission, which included the term that he abstain from  
using alcohol. Respondent will be suspended for six months and one day. This  
agreement serves the purposes of discipline in that it protects the public and the  
legal profession. Restitution is not applicable in this matter. Respondent shall  
pay all costs and expenses incurred in these discipline matters before he may

1 apply for reinstatement. The Tender of Admission and Agreement for Discipline  
2 by Consent is filed contemporaneously herewith.

3 In arriving at the agreed upon sanctions, consideration was given to the  
4 ABA *Standards for Imposing Lawyer Sanctions* ("ABA Standards"), and Rule  
5 51(1), Ariz. R. S. Ct. **ABA STANDARDS**

6  
7 The ABA *Standards* are designed to promote consistency in the imposition of  
8 sanctions by identifying relevant factors that courts should consider, and then  
9 applying these factors to situations where lawyers have engaged in various types of  
10 misconduct. ABA *Standard* 1.3, Commentary.

11  
12 There are no ABA *Standards* to cover this particular situation, since  
13 respondent is charged with violating the terms of his conditional admission to the  
14 bar. However, respondent's conduct is most analogous to a violation of a duty  
15 owed to the profession, which implicates standard 7.12. Suspension is  
16 appropriate when a lawyer knowingly engages in conduct that is a violation of a  
17 duty owed to the profession, and causes injury or potential injury to a client, the  
18 public, or the legal system.

19  
20  
21 Respondent was conditionally admitted to the State Bar of Arizona subject  
22 to the terms of a therapeutic contract for substance abuse and financial  
23 irresponsibility. On November 10, 2000, respondent had a positive reading for  
24 alcohol on a random biological fluids screening. On June 30, 2001, respondent  
25

1 was charged with driving under the influence. The charges were dismissed  
2 without prejudice in August 2001 as part of the O'Dell litigation<sup>1</sup>, which centered  
3 on the accuracy of a particular type of Breathalyzer being used by law  
4 enforcement in Pima County. The Pima County Attorney's Office appealed the  
5 O'Dell decision, which was overturned by the Arizona Court of Appeals. Prior to  
6 the ruling from the Court of Appeals, the charges were reinstated against  
7 respondent, but were later dismissed with prejudice on October 24, 2001.  
8  
9

10 In determining an appropriate sanction, both the Court and the Commission  
11 consider the duty violated, the lawyer's mental state, the actual or potential injury  
12 caused by the misconduct, and the existence of aggravating and mitigating factors.  
13

14 *Matter of Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA *Standard* 3.0.

15 Respondent violated his duty to the public and to the legal profession.

16 Respondent's conduct was knowing, but there was no client harm. There are no  
17 aggravating factors as listed in the ABA *Standards*. There are three mitigating  
18

19 factors:

20 Standard 9.32 (a): absence of a prior disciplinary record;

21 Standard 9.32 (b): absence of a dishonest or selfish motive;  
22  
23  
24

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25 <sup>1</sup> State V. O'Dell, 202 Ariz. 453, 46 P.3d 1074 (App. 2002).

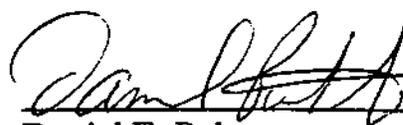


1 Based on respondent's past problems with alcohol and his failure to  
2 successfully complete his conditional admission period, the State Bar and  
3 respondent agree that respondent's conduct in this matter warrants a suspension of  
4 six months and one day. This sanction will require respondent to apply for  
5 reinstatement and show a sustained period of rehabilitation before he will be  
6 readmitted. Before respondent may apply for reinstatement, he will be responsible  
7 to pay the costs and expenses incurred in these disciplinary matters.  
8  
9

### 10 CONCLUSION

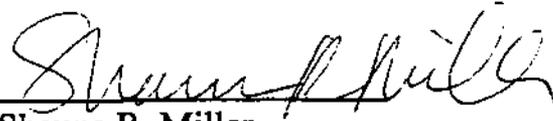
11 Recognizing that it is the prerogative of the Disciplinary Commission to  
12 determine the appropriate sanction, it is nevertheless the belief of the State Bar  
13 and respondent that the objectives of discipline will be met by the imposition of a  
14 six month and one day suspension, and the costs and expenses of these  
15 proceedings.  
16

17 DATED this 23 day of June, 2003.

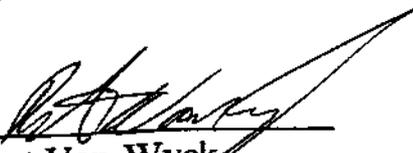
18  
19  
20   
21 Daniel E. Pohto  
22 Respondent  
23  
24  
25

1 DATED this 30<sup>th</sup> day of June, 2003.

2  
3 STATE BAR OF ARIZONA

4   
5 Shauna R. Miller  
6 Senior Bar Counsel  
7

8  
9 Approved as to form and content:

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11 Robert Van Wyck  
12 Chief Bar Counsel

13 Original filed with the Disciplinary Clerk's  
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