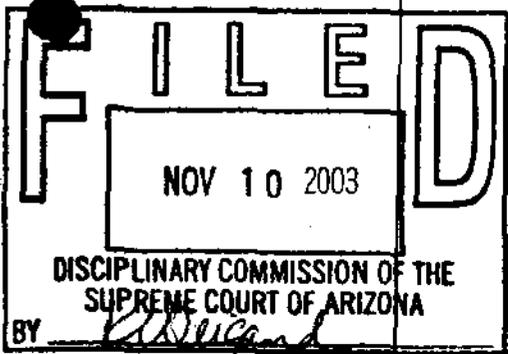


1 Christine M. Powell, Bar No. 010260
2 Staff Bar Counsel
3 State Bar of Arizona
4 111 West Monroe, Suite 1800
5 Phoenix, Arizona 85003-1742
6 Telephone (602) 340-7250



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

9 IN THE MATTER OF A MEMBER) File No. 02-1867
10 OF THE STATE BAR OF ARIZONA,) **TENDER OF ADMISSIONS**
11) **AND AGREEMENT FOR**
12) **DISCIPLINE BY CONSENT**
13)
14) **STUART REILLY,**)
15) **Bar No. 005275**)
16) Respondent.) (Assigned to Hearing Officer 7X,
17) John Pressley Todd)

18 The State Bar of Arizona, through undersigned counsel, and Respondent
19 hereby submit this Tender of Admission and Agreement for Discipline by
20 Consent ("Agreement"), pursuant to Rule 56(a), Ariz.R.S.Ct., and the
21 Guidelines for Discipline by Consent issued by the Disciplinary Commission of
22 the Supreme Court of Arizona. Subject to review and acceptance by the
23 Disciplinary Commission and the Arizona Supreme Court, Respondent agrees
24 to accept a censure, two (2) years probation with terms and conditions including
25 participation in the Law Office Management Assistance ("LOMAP") and the
Membership Assistance Program ("MAP"), and the payment of costs and
expenses associated with disciplinary proceedings. There is no restitution in
this matter.

1 response to the Motion for Summary Judgment was due on or before August 14,
2 2001.

3
4 7. On August 15, 2001, Respondent filed a response to the Motion for
5 Summary Judgment, but failed to serve a copy on *Carondelet's* counsel.
6 *Carondelet*, on September 7, 2001, moved for summary determination of the
7 motion, unaware that a response had been filed.

8
9 8. On September 17, 2001, Respondent advised *Carondelet's* counsel
10 that a response to the Motion had been filed and provided *Carondelet's* counsel
11 with a copy of the response. On September 25, 2001, *Carondelet* withdrew its
12 Motion for Summary Judgment.

13
14 9. Respondent failed to file or serve a Rule 26.1 Disclosure Statement
15 or provide any disclosure during the course of the proceedings.

16
17 10. On September 18, 2001, Respondent met with *Carondelet's* counsel
18 and stated he would recommend that his client dismiss the action in its entirety,
19 pending receipt from the individual doctor defendants that they were uninsured at
20 the time of the events that gave rise to the lawsuit.

21
22 11. On September 24, 2001, the individual doctors' counsel provided
23 Respondent with proof that his clients lacked insurance coverage. Counsel for the
24 individual doctors then attempted to follow up with Respondent on September 26,
25

1 2001 and November 2, 2001 regarding the dismissal of the case, but Respondent
2 failed to respond.

3
4 12. Respondent neither sought an answer from the individual doctors nor
5 sought a default against them.

6 13. On November 1, 2001, *Carondelet* filed its notice of non-parties at
7 fault.

8
9 14. On November 2, 2001, the court issued an inactive notice stating that
10 the case would be dismissed without further notice unless there was a motion to
11 set or a motion to continue the case on the inactive calendar filed or a final
12 judgment issued within sixty days. Respondent failed to file a motion to set, a
13 motion to continue, or a final judgment within the sixty days.

14
15 15. On January 14, 2002, counsel for the individual doctor defendants
16 submitted a Stipulation for Dismissal to Respondent. However, Respondent never
17 signed or returned the Stipulation to counsel for the individual doctor defendants.

18
19 16. On January 21, 2002, during Plaintiff's deposition, counsel for
20 *Carondelet* read into the record a fax from the individual doctors' counsel
21 explaining that he had submitted proof to Respondent that the individual doctor
22 defendants were uninsured. Counsel further stated he had prepared and submitted
23 a stipulation to dismiss the individual doctor defendants that Respondent had not
24

25

1 signed and that the individual doctors would be seeking attorneys' fees and court
2 costs as a result.

3 17. On January 23, 2002, the court dismissed the case for lack of
4 prosecution.
5

6 18. On March 1, 2002, counsel for the individual doctor defendants
7 wrote to Respondent and stated that they would not pursue their attorneys' fees
8 and costs if Respondent assured them that he would not reinstate the case as to the
9 individual doctor defendants. Respondent failed to respond to this request.
10

11 19. In a letter to the Plaintiff, dated March 5, 2002, Respondent
12 suggested that his client agree to dismiss the case due to the lack of insurance by
13 the doctors. Respondent failed to inform his client the case had already been
14 dismissed on January 23, 2002.
15

16 20. On March 12, 2002, counsel for *Carondelet* wrote to Respondent
17 and stated that they would not pursue their attorneys' fees and costs if Respondent
18 assured them that he would not reinstate the case as to *Carondelet*. Respondent
19 failed to respond to this request.
20

21 21. On April 26, 2002, Respondent was suspended from the practice of
22 law for a period of six (6) months, as a result of ethical violations in file numbers
23 94-0924, 95-0772, 96-0748, 96-2328, and 97-1334. Respondent failed to notify
24
25

1 his client, the court or opposing counsel of the suspension nor did Respondent
2 move to withdraw from the case.

3
4 22. On July 11, 2002, *Carondelet* filed its Motion for Attorneys' Fees
5 and Costs against Respondent. The individual doctor defendants filed their
6 motion, along with the affidavit for the fees, on August 5, 2002.

7
8 23. On September 23, 2002, the court adopted *Carondelet's* proposed
9 findings of fact and conclusions of law and awarded the fees and costs against
10 Respondent in the sum of \$7,182.92 for *Carondelet* and \$1,482.89 for the
11 individual doctor defendants due to the "groundless nature" of the prior pleadings
12 signed by Respondent.

13
14 **COUNT TWO (PRIOR DISCIPLINE)**

15 24. Respondent has previously been sanctioned for violations of the
16 Rules of Professional Conduct. Specifically, in file numbers 94-0924, 95-0772,
17 96-0748, 96-2328 and 97-1334, Respondent was suspended for six months on
18 April 26, 2002, by Order of the Supreme Court, for violation of ERs 1.1, 1.3, 1.4,
19 1.4(a), 1.8(a), 1.8(e), 1.15, 3.2, 8.4 and 8.4(c). Respondent was reinstated on
20 December 30, 2002.
21

22 ///

23 ///
24
25

1 Program (LOMAP) to schedule an audit of his law office. The
2 LOMAP director or his/her designee shall conduct an audit of
3 Respondent's law office no later than thirty (30) days thereafter.
4 Respondent shall comply with all recommendations of the LOMAP
5 director or his/her designee.
6

7 b. Respondent shall continue meeting with his Practice
8 Monitor and shall comply with all recommendations of the Practice
9 Monitor.
10

11 c. Prior to February 26, 2004, Respondent shall contact the
12 director of the State Bar's Membership Assistance Program (MAP)
13 to schedule an assessment of his condition to practice law. The
14 MAP director or his/her designee shall schedule the assessment of
15 Respondent to take place no later than thirty (30) days thereafter.
16

17 d. Respondent shall remain under the care of a psychiatrist
18 and shall continue to take all prescribed medications as directed by
19 the psychiatrist. The psychiatrist shall file a report with the director
20 of MAP every three (3) months, detailing the Respondent's
21 compliance with his medication regime, as well as noting any
22 changes in Respondent's mental status.
23
24
25

1 e. Respondent shall continue meeting with a therapist on a
2 regular basis, but not less than twice per month, unless otherwise
3 recommended by the therapist. Respondent's therapist shall file a
4 report with the director of MAP every month, detailing Respondent's
5 progressing in addressing issues impacting his mental health. In
6 addition, the therapist shall contact the director of MAP immediately
7 should Respondent fail to appear for appointments, absent a valid
8 excuse.
9
10

11 f. In the event Respondent fails to comply with any of the
12 foregoing terms, and the State Bar receives such information, bar
13 counsel will file with the Hearing Officer a Notice of Non-
14 Compliance. The Hearing Officer will conduct a hearing at the
15 earliest possible date, but in no event later than thirty (30) days
16 following receipt of notice, to determine whether a condition of
17 probation has been breached and, if so, to recommend an appropriate
18 sanction.
19
20

21 g. In the event there is an allegation that any of these terms
22 have been breached, the burden will be on the State Bar to prove
23 non-compliance by a preponderance of the evidence.
24
25

1 3. Respondent will pay the costs incurred by the State Bar in these
2 disciplinary proceedings, as set forth in the attached Statement of Costs and
3 Expenses.
4

5 4. Respondent does not owe any restitution in this case.

6 Respondent conditionally admits that he has engaged in the conduct set
7 forth above and the rule violations indicated, in exchange for the form of
8 discipline agreed to.
9

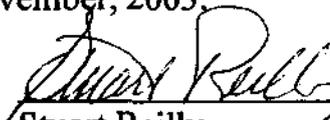
10 Respondent, by entering into this agreement, waives his right to a formal
11 disciplinary hearing that he would otherwise be entitled to pursuant to Rule 53(c)
12 (6), Ariz.R.S.Ct., as well as the right to testify or present witnesses on his behalf at
13 a hearing. Respondent further waives all motions, defenses, objections, or requests
14 which he has made or raised, or could assert hereinafter, if the conditional
15 admissions and stated form of discipline are approved. Respondent is not
16 represented by counsel in these proceedings but acknowledges that he has
17 carefully read this Agreement and has received a copy of it. Respondent submits
18 this Agreement with conditional admissions freely and voluntarily, and without
19 coercion or intimidation.
20
21

22 This Tender of Admissions and Agreement for Discipline by Consent will
23 be submitted to the Disciplinary Commission for review. Respondent understands
24 that the Disciplinary Commission may request his presence at a hearing for
25

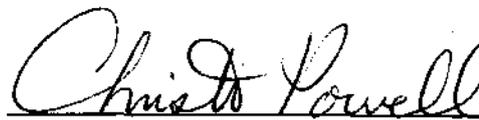
1 presentation of evidence and/or argument in support of this Agreement.
2 Respondent further recognizes that the Disciplinary Commission may reject this
3 Agreement and the Arizona Supreme Court may accept or reject the Disciplinary
4 Commission's recommendations. If the Agreement is rejected at any time,
5 Respondent's conditional admissions are withdrawn.
6

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

11 DATED this 10th day of November, 2003.

12 
13 _____
14 Stuart Reilly
15 Respondent

16 DATED this 10th day of November, 2003.

17 
18 _____
19 Christine M. Powell
20 Staff Bar Counsel

21 Approved as to form and content:

22 
23 _____
24 Robert Van Wyck
25 Chief Bar Counsel

1 Original filed this 10th day of
2 November, 2003 with:

3 Disciplinary Clerk of the Supreme Court
4 Certification and Licensing Division
5 1501 W. Washington, #104
6 Phoenix, Arizona 85007-3329

7 Copy of the foregoing mailed this
8 10th day of November, 2003 to:

9 Stuart Reilly
10 P.O. Box 80410
11 Phoenix, AZ 85060-0410
12 Respondent

13 John Pressley Todd
14 Hearing Officer 7X
15 1275 W. Washington
16 Phoenix, Arizona 85007-2997

17 Copy of the foregoing hand delivered this
18 10th day of November, 2003 to:

19 Lawyer Regulation Records Manager
20 State Bar of Arizona
21 111 West Monroe Street, Suite 1800
22 Phoenix, Arizona 85003

23 by: Lynn Boardman
24 CMP:lb
25



Statement of Costs and Expenses
STUART REILLY, Respondent

No. 02-1867

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

Total for Investigator/Auditor Charges \$ -0-

SCREENING INVESTIGATIONS

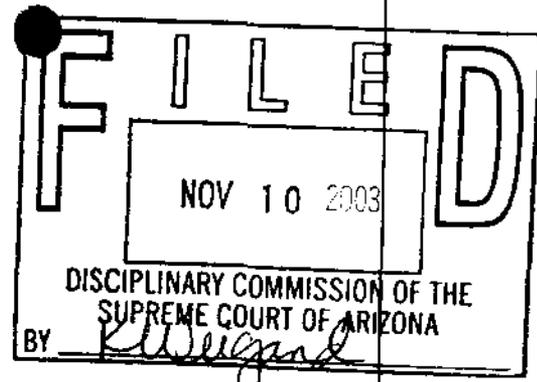
Total Costs and Expenses for each matter over 5 cases: \$120 x 0 = \$0.00

Total Costs and Expenses Incurred by the State Bar of Arizona \$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: Lynn Boardman
Lynn Boardman

November 10, 2003
Date



Christine M. Powell, Bar No. 010260
Staff Bar Counsel
State Bar of Arizona
111 West Monroe, Suite 1800
Phoenix, Arizona 85003-1742
Telephone (602) 340-7250

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

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
STUART REILLY,)
Bar No. 005275)
)
Respondent.)

File No. 02-1867

**JOINT MEMORANDUM IN
SUPPORT OF AGREEMENT
FOR DISCIPLINE BY CONSENT**

(Assigned to Hearing Officer 7X,
John Pressley Todd)

The State Bar, through undersigned counsel, and Respondent hereby submit this Joint Memorandum in support of the Agreement for Discipline by Consent filed contemporaneously herewith.

As reflected in the Tender of Admissions and Agreement for Discipline by Consent, Respondent did not competently represent his client, did not adequately communicate the status of the case to his client, did not expedite the litigation, did not provide discovery as required by the court, did not notify the court, opposing counsel or his client of his suspension on April 26, 2002, all of which constitutes conduct prejudicial to the administration of justice. Respondent's

1 conduct in this matter violates Rule 42, Ariz.R.S.Ct., ERs 1.1, 1.4, 3.2, 3.4,
2 8.4(d), and Rule 63, Ariz.R.S.Ct.

3
4 Respondent has agreed to the imposition of a censure and two (2) years
5 probation with terms and conditions as set forth in the Tender of Admissions
6 and Agreement for Discipline by Consent. In addition, Respondent agrees to pay
7 the costs and expenses incurred by the State Bar in this matter. Restitution is not
8 required in this case.
9

10 **STANDARDS**

11
12 In determining the appropriate sanction, the parties considered both the
13 American Bar Association's *Standards for Imposing Lawyer Sanctions*
14 ("*Standards*") and Arizona case law. Although not required, a review of the
15 *Standards* will assist in determining the appropriate sanction. *In Matter of*
16 *Brady*, 186 Ariz. 370, 374, 923 P.2d 836, 840 (1996). In applying the
17 *Standards*, the Supreme Court considers (a) the duty violated; (b) respondent's
18 mental state; (c) the injury to the client; and (d) any aggravating or mitigating
19 factors. *In re Tarlitz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA *Standard* 3.0.
20
21 In cases of multiple charges of misconduct, the *Standards* suggest the attorney
22 be sanctioned for the most serious misconduct with the additional instances of
23 misconduct treated as aggravating factors. See Theoretical Framework of the
24
25 ABA *Standards*.

1 As stated in the Theoretical Framework of the ABA *Standards*, the most
2 important ethical duties relate to duties owed to clients. In the instant case,
3 Respondent's failure to provide competent representation and adequately
4 communicate with his client violates *Standards* 4.4 and 4.5. *Standard* 4.43
5 states:
6

7 Reprimand is generally appropriate when a lawyer is negligent and
8 does not act with reasonable diligence in representing a client,
9 causing injury or potential injury to a client.
10

11 *Standard* 4.53 states:

12 Reprimand is generally appropriate when a lawyer:

13 (a) demonstrates failure to understand relevant legal
14 doctrines or procedures and causes injury or potential
15 injury to a client; or
16

17 (b) is negligent in determining whether he or she is
18 competent to handle a legal matter and causes injury or
19 potential injury to a client.
20

21 Although Respondent did apparently discuss with his client the viability
22 of proceeding with the case if the doctors did not have malpractice insurance,
23 Respondent should have obtained that information early on in the proceedings.
24 Further, once Respondent learned the doctors did not have insurance, he failed
25

1 to communicate this to his client and obtain authorization to dismiss the case.
2 Instead, Respondent did nothing and simply allowed the court to dismiss for
3 lack of prosecution. Fortunately for the client, attorneys' fees were assessed
4 directly against Respondent, rather than his client.
5

6 Respondent's failure to comply with discovery requirements and to
7 dismiss the action once he learned recovery was not likely, given the doctors'
8 lack of insurance, violates Respondent's duty to the legal system. *Standard 6.23*
9 states:
10

11 Reprimand is generally appropriate when a lawyer fails to comply
12 with a court order or rule, or causes injury or potential injury to a
13 client or other party, or causes interference of potential interference
14 with a legal proceeding.
15

16 The parties agree that censure is the presumptive sanction for the conduct
17 alleged. Following a determination of the presumptive sanction, it is appropriate
18 to evaluate factors which are enumerated under the *Standards* as justifying an
19 increase or decrease in the presumptive sanction. *Standard 9.0; In re Ockrassa,*
20 *165 Ariz. 576, 799 P.2d 1350 (1990).*
21

22 The parties agree that two aggravating factor should be considered as
23 follows:
24
25

1 9.22(a) prior disciplinary offenses.

2 9.22(i) substantial experience in the practice of law. Respondent
3 has been an attorney since 1978.
4

5 The parties agree that the following mitigating factors should be
6 considered:

7 9.32(b) absence of a dishonest or selfish motive.

8 9.32(c) personal or emotional problems. See Exhibit 1
9

10 9.32(d) timely good faith effort to make restitution or to rectify
11 consequences of misconduct. Although not paid in full,
12 Respondent is making good faith efforts to repay the \$8,665.81
13 judgment against him resulting from his conduct in the *Carondelet*
14 matter.
15

16 9.32(e) full and free disclosure to disciplinary board or cooperative
17 attitude toward proceedings. Throughout these proceedings,
18 Respondent has provided all information requested, including
19 making his current therapist available for undersigned counsel to
20 confer with. Respondent has readily agreed to all safeguards
21 proposed by the State Bar as part of any term of probation imposed.
22 In addition, Respondent has been very forthcoming concerning the
23
24
25

1 mental illnesses he suffers from and the need to continue with his
2 current treatment.

3 9.32(l) remorse. Respondent has shown great remorse throughout
4 these proceedings.
5

6 PROPORTIONALITY

7 To have an effective system of professional sanctions, there must be
8 internal consistency, and it is appropriate to examine sanctions imposed in cases
9 that are factually similar. *In re Shannon*, 179 Ariz. 52, 876 P.2d 548 (1994).
10 However, the discipline imposed must be tailored to the individual case, as
11 neither perfection nor absolute uniformity can be achieved. *In re Riley*, 142
12 Ariz. 604, 691 P.2d 695 (1984). Where there are multiple acts of misconduct,
13 the Respondent should receive one sanction consistent with the most serious
14 instance of misconduct, and the other acts should be considered as aggravating
15 factors. *In re Cassalia*, 173 Ariz. 372, 843 P.2d 654 (1992).
16
17
18

19 The most serious instance of misconduct in this case involves
20 Respondent's failure to provide competent representation to and adequately
21 communicate with his client. The following cases may be instructive in
22 determining the appropriate sanction.
23

24 In *In the Matter of William C. Loftus*, 2001 Ariz. LEXUS 50, Supreme
25 Court No. SB-01-0070-D (2001), the Respondent received a censure and

1 probation for conduct similar to and more egregious than that of the Respondent
2 in the present case. In *Loftus*, there were five aggravating factors present,
3 including prior suspension for similar misconduct. In the present case, the
4 mitigating factors far outweigh the aggravating factors, further justifying the
5 imposition of censure rather than suspension.
6

7 In *In the Matter of Gove L. Allen*, 2000 Ariz. LEXUS 138, Supreme
8 Court No. SB-00-0097-D (2000), *Allen* was censured for conduct that was more
9 serious than Respondent's. The Disciplinary Commission found four
10 aggravating and five mitigating factors present.
11

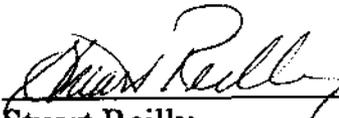
12 Finally, in *In the Matter of Phillip D. Hineman*, 2000 Ariz. LEXUS 134,
13 Supreme Court No. SB-00-0094-D (2000), *Hineman* received a censure for
14 incompetence and lack of diligence in his representation of three separate
15 criminal defendants. In fact, at least one member of the Disciplinary
16 Commission believed *Hineman's* conduct warranted the imposition of an
17 informal reprimand.
18
19

20 Based on the foregoing case law and *Standards*, it appears that the
21 recommended sanction of censure and probation is within the range of
22 appropriate sanctions for the admitted conduct. The recommended sanction
23 serves to instill confidence in the public and maintain the integrity of the Bar.
24
25

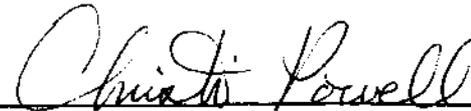
1 simply going through the motions. Respondent currently has a practice monitor,
2 David Dodge, and has a limited caseload at the present time. Finally,
3 Respondent is acutely aware that any future ethical violations may well result in
4 his removal from the practice of law for a significant period of time.
5

6 Recognizing that it is the prerogative of the Disciplinary Commission to
7 determine the appropriate sanction, the State Bar and Respondent assert the
8 objectives of discipline will be met by the imposition of the proposed sanction of
9 a censure, two years probation, and costs.
10

11
12 **DATED** this 10th day of November, 2003.

13
14 
15 Stuart Reilly
16 Respondent

17
18 **DATED** this 10th day of November, 2003.

19
20 
21 Christine M. Powell
22 Bar Counsel

23
24 Approved as to form and content:

25

Robert Van Wyck
Chief Bar Counsel

1 Original filed this 10th day of
2 November, 2003 with:

3 Disciplinary Clerk of the Supreme Court
4 Certification and Licensing Division
5 1501 W. Washington, #104
6 Phoenix, Arizona 85007-3329

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8 10th day of November, 2003 to:

9 Stuart Reilly
10 P.O. Box 80410
11 Phoenix, AZ 85060-0410
12 Respondent

13 John Pressley Todd
14 Hearing Officer 7X
15 1275 W. Washington
16 Phoenix, Arizona 85007-2997

17 Copy of the foregoing hand-delivered this
18 10th day of November, 2003 to:

19 Lawyer Regulation Records Manager
20 State Bar of Arizona
21 111 West Monroe Street, Suite 1800
22 Phoenix, Arizona 85003

23 by: Lynn Boardman
24 CMP:lb
25