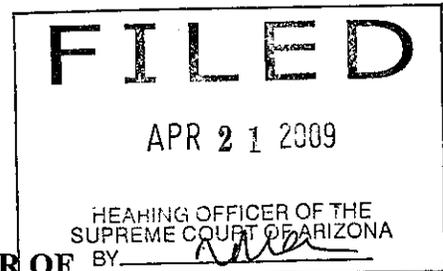


1 Stanley R. Lerner  
Hearing Officer  
2 Stanley R. Lerner, PC  
3707 N. Seventh Street, Suite 250  
3 Phoenix, Arizona 85014



4  
5 **BEFORE A HEARING OFFICER OF**  
6 **THE SUPREME COURT OF ARIZONA**

7 **IN THE MATTER OF A MEMBER OF THE**  
8 **STATE BAR OF ARIZONA,**

No. 08-1225

9 **KEVIN B. SWEENEY,**  
10 **Bar No. 011737**

**HEARING OFFICER'S REPORT ON**  
**TENDER OF ADMISSIONS AND**  
**AGREEMENT FOR DISCIPLINE BY**  
**CONSENT**

11 Respondent.

(Assigned to Hearing Officer 7V, Stanley R.  
Lerner)

12  
13  
14 The State Bar of Arizona, represented by Bar Counsel Harriet Bernick, and Respondent  
15 Kevin B. Sweeney, who represented himself in this matter, submitted their Tender of  
16 Admissions and Agreement for Discipline by Consent pursuant to Rule 56(a), Ariz.R.Sup.Ct.,  
17 and the Guidelines for Discipline by Consent issued by the Disciplinary Commission of the  
18 Arizona Supreme Court.

19 The Hearing officer accepted the Tender of Admissions and Agreement for Discipline  
20 and therefore finds:

21 Respondent admits the following: that he failed to cooperate and respond to the State  
22 Bar disciplinary investigation in violation of Rules 31 and 53(f) and ER 8.1; that he  
23 engaged in the unauthorized practice of law while he was summarily suspended for failure  
24 to comply with MCLE requirements and failure to pay bar dues in violation of ER. 5.5 and  
25 8.4(a); that he engaged in conduct prejudicial to the administration of justice in violation of

1 ER 8.4(d). Complainant has been notified of this consent agreement in compliance with  
2 Rule 52(b)(3), Ariz.R.Sup.Ct.

3 Subject to review and acceptance by the Disciplinary Commission and the Supreme  
4 Court of Arizona, the State Bar and Respondent agreed to the imposition of the following  
5 sanction: censure, two years probation with LOMAP and payment of costs and expenses in  
6 this matter.<sup>1</sup> The State Bar's Statement of Costs is attached hereto as Exhibit "A."

7  
8 **FACTS**

9 1. At all times relevant, Respondent was a lawyer licensed to practice law in the  
10 State of Arizona having been first admitted to practice in Arizona on January 5, 1988.

11 **COUNT ONE (File no. 08-1225)**

12 2. On or about January 18, 2008, the State Bar sent Respondent a letter  
13 informing him that he was delinquent in filing his MCLE affidavit.

14 3. Although this letter was sent to Respondent's address of record,  
15 Respondent asserted and the State Bar does not dispute that he did not receive the letter  
16 because he had closed his office at this location at or close to this time.

17 4. On or about April 10, 2008, Respondent changed his mailing address  
18 with the State Bar from Law Offices of Kevin B. Sweeney PC, 1650 N. First Avenue,  
19 Phoenix, Arizona 85003-0001 to Kevin B. Sweeney at Eckley & Associates PC, The Eckley  
20 Building, 3602 E. Campbell Suite A, Phoenix, Arizona 85018-0001.

21  
22 5. On April 17, 2008, Respondent was sent a letter from the State Bar, to  
23  
24  
25

---

<sup>1</sup> Respondent understands agree that expenses of the Disciplinary Commission, Disciplinary Clerk and Supreme Court of Arizona.

1 his new address, informing him that his dues payment was delinquent because it was required  
2 to be paid on February 1, 2008. Respondent was also advised that to avoid administrative  
3 suspension he needed to have his dues postmarked on or before June 9, 2008.

4         6. Respondent asserted and the State Bar does not dispute  
5 that Respondent told someone in his new firm that his dues needed to be paid. Respondent  
6 showed the employee the letter and expected that his dues would be paid.

7         7. On April 21, 2008, the State Bar sent Respondent a letter to his former  
8 address of record informing him that he would be summarily suspended by the Board of  
9 Governors at their May 30, 2008 meeting. Respondent asserted and the State Bar  
10 conditionally does not dispute that Respondent did not receive this letter as it was sent to the  
11 wrong address.  
12

13         8. On May 22, 2008, a certified letter was sent to Respondent at his  
14 current address of record informing him that his name would be presented to the Board of  
15 Governors to seek his summary suspension on June 17, 2008 for non-payment of dues.  
16 Respondent asserted and the State Bar does not dispute that Karen Eckley, a bookkeeper at  
17 his law firm, signed for this certified letter and put it in Respondent's mailbox for his review.  
18 Respondent asserted and the State Bar does not dispute that Respondent never saw this letter  
19 and therefore, he was unaware that he would suspended for non-payment of dues on June 17,  
20 2008.  
21

22         9. On or about May 29, 2008, Grace Henderson, the MCLE coordinator  
23 for the State Bar, called Respondent and informed him that he was going to be summarily  
24 suspended for failure to comply with his MCLE requirements. Grace Henderson also sent  
25 Respondent an electronic copy of the April 21, 2008 letter.

1           10. On May 30, 2008, Respondent sent Grace Henderson an email  
2 requesting more time to comply with his MCLE requirements.

3           11. Respondent asserted and the State Bar does not dispute that  
4 Respondent never heard back from Grace Henderson at the State Bar regarding additional  
5 time to comply with his MCLE requirements.

6           12. On June 17, 2008, the Board of Governors summarily suspended  
7 Respondent for non-payment of dues and failure to comply with his MCLE requirements.

8           13. On June 25, 2008, the State Bar sent Respondent a letter to his  
9 address of record notifying him that he had been summarily suspended by the Board of  
10 Governors for failure to comply with his MCLE requirements on June 17, 2008. Respondent  
11 asserted and the State Bar does not dispute that Respondent received this letter on or about  
12 June 30, 2008.

13           14. On June 25, 2008, Respondent engaged in the unauthorized practice  
14 of law by defending a deposition in *Deluca v. McMahan*, CV 2006-0152. Respondent  
15 asserted and the State Bar does not dispute that Respondent did not know he was summarily  
16 suspended due to non-payment of dues or MCLE at this time because he had not received  
17 notice of his summary suspension at that time.

18           15. On July 1, 2008, Respondent wrote to Grace Henderson in an attempt  
19 to comply with his MCLE requirements. Respondent provided his MCLE Affidavit, a check  
20 for all delinquent charges, and submitted materials in support of his claimed CLE Affidavit.  
21

22           16. Respondent asserted and the State Bar does not dispute  
23 that Respondent thought he would be reinstated when he initially sent in his MCLE affidavit  
24 on July 1, 2008.  
25

1           17. On July 3, 2008, Respondent filed a Notice of Withdrawal of  
2 Plaintiff's "Motion in Limine RE: Alleged Fault of Pat Monahan". Respondent signed this  
3 pleading even though he was not authorized to practice law since he was summarily  
4 suspended for non-payment of dues and failure to comply with his MCLE requirements.  
5 Respondent asserted and the State Bar does not dispute that Respondent negligently believed  
6 that he was no longer summarily suspended because he thought the dues had been paid and  
7 his MCLE Affidavit had been turned into the State Bar.

8  
9           18. On July 14, 2008, Grace Henderson sent Respondent's MCLE  
10 affidavit, check, and attached materials back to him because he did not comply with the  
11 MCLE requirements. Respondent was short a few credits and needed to take an additional  
12 course.

13           19. On or about July 15, 2008, Respondent took the additional course he  
14 needed in order to have enough MCLE hours.

15           20. On or about July 16, 2008, Respondent resubmitted his MCLE  
16 affidavit, materials and a check.

17           21. On July 18, 2008, Respondent was advised that he had been  
18 reinstated after having been summarily suspended for failure to comply with his MCLE  
19 requirements.

20           22. On July 18, 2008 and July 21, 2008, Respondent participated in court  
21 appearances in *Deluca v. McMahan*, CV2006-0152. Respondent asserted and the State Bar  
22 does not dispute that Respondent did not know that he was summarily suspended for non-  
23 payment of dues at the time he made these court appearances.

24           23. On July 24, 2008, the State Bar wrote to Respondent to inform him  
25

1 that he engaged in the unauthorized practice of law when he was summarily suspended for  
2 non-payment of dues and failure to comply with his MCLE requirements. The State Bar  
3 requested that Respondent submit a written response within twenty days. Respondent failed  
4 to submit a response by the required date.

5           24. On or about July 28, 2008, Respondent learned from opposing  
6 counsel that he was suspended for non-payment of dues.

7           25. On or about July 29, 2008, Respondent paid his bar dues and was  
8 reinstated for non-payment of dues.

9           26. On September 23, 2008, the State Bar again requested that  
10 Respondent submit a written response to the above mentioned allegations within 10 days.  
11 Respondent failed to submit a response by the required date.

12           28. Respondent waived his right to a formal disciplinary hearing that he would  
13 otherwise be entitled to pursuant to Rule 57(i), Ariz.R.Sup.Ct., and the right to testify or present  
14 witnesses on his behalf at a hearing.

15           29. Respondent was not represented in this matter by counsel. Respondent  
16 knowingly and voluntarily waived all motions, defenses, objections or requests that he could  
17 have made or raised, or could assert. Respondent read the agreement and received a copy of  
18 this agreement.

19           30. The Tender of Admissions and Agreement for Discipline by Consent was  
20 submitted to a Hearing Officer and will be submitted to the Disciplinary Commission for  
21 approval.



1 procedures, including, but not limited to, compliance with ERs 5.5, 8.1, 8.4(a)(c) and (d), Rules  
2 31, 52 and 53. The Director of LOMAP shall develop "Terms and Conditions of Probation",  
3 and those terms shall be incorporated herein by reference. The probation period will begin to  
4 run at the time of judgment and order and will conclude one year from the date that Respondent  
5 has signed the "Terms and Conditions of Probation." Respondent shall be responsible for any  
6 costs associated with LOMAP.

7  
8 b. Respondent shall refrain from engaging in any conduct that would violate  
9 the Rules of Professional Conduct or other Rules of the Supreme Court of Arizona.

10 c. In the event that Respondent fails to comply with the foregoing  
11 terms of probation, and the State Bar of Arizona thereof receives information, Bar Counsel  
12 shall file a Notice of Non-Compliance with the imposing entity, pursuant to Rule 60(a)(5),  
13 Ariz.R.Sup.Ct. The imposing entity may refer the matter to a Hearing Officer to conduct a  
14 hearing at the earliest practical time, but in no event later than 30 days after receipt of notice, to  
15 determine whether a term of probation has been breached, and, if so, to recommend an  
16 appropriate action and response. If there is an allegation that Respondent failed to comply with  
17 any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove  
18 non-compliance by a preponderance of the evidence.

19 3. Respondent shall pay all costs incurred by the State Bar in bringing these  
20 disciplinary proceedings. In addition, Respondent shall pay all costs incurred by the  
21 Disciplinary Commission, the Supreme Court of Arizona, and the Disciplinary Clerk's Office  
22 in this matter. The State Bar's Itemized Statement of Costs and Expenses is attached as Exhibit  
23 "A," and is incorporated herein by reference.  
24  
25

1 DATED this 21<sup>st</sup> day of April, 2009.

2  
3 Stanley R. Lerner / NM  
4 Stanley R. Lerner  
5 Hearing Officer 7V

6 Original filed with the Disciplinary Clerk  
7 of the Supreme Court of Arizona  
8 this 21<sup>st</sup> day of April, 2009.

9 Copies of the foregoing mailed  
10 this 22<sup>nd</sup> day of April, 2009, to:

11 Harriet M. Bernick, Bar No. 013462  
12 Staff Bar Counsel  
13 State Bar of Arizona  
14 4201 N. 24<sup>th</sup> Street, Suite 200  
15 Phoenix, Arizona 85016-6288  
16 Telephone 602-340-7244

17 Kevin B. Sweeney  
18 Eckley & Associates, PC  
19 3602 E. Campbell, Suite A  
20 The Eckley Building  
21 Phoenix, Arizona 85018-0001  
22 (Respondent)

23  
24  
25  
26 by: Quelina Lopez

**Exhibit "A"**

1 Statement of Costs and Expenses

2 In the Matter of a Member of the State Bar of Arizona,  
3 Kevin B Sweeney, Bar No.011737, Respondent

4 File No(s). 08-1225

5 Administrative Expenses

6 The Board of Governors of the State Bar of Arizona has adopted a schedule of  
7 administrative expenses to be assessed in disciplinary proceedings. The administrative  
8 expenses were determined to be a reasonable amount for those expenses incurred by the  
9 State Bar of Arizona in the processing of a disciplinary matter. An additional fee of 20% of  
10 the administrative expenses is also assessed for each separate matter over and above five (5)  
11 matters due to the extra expense incurred for the investigation of numerous charges.

12 Factors considered in the administrative expense are time expended by staff bar counsel,  
13 paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone  
14 costs, office supplies and all similar factors generally attributed to office overhead. As a matter  
15 of course, administrative costs will increase based on the length of time it takes a matter to  
16 proceed through the adjudication process.

17 *General Administrative Expenses for above-numbered proceedings = \$600.00*

18 Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary  
19 matter, and not included in administrative expenses, are itemized below.

20 Staff Investigator/Miscellaneous Charges

21	11/14/08	Consult with Bar Counsel; Review attorney calendar on Respondent; iCIS research	\$61.25
22	02/02/09	Attempt to contact Respondent; Call to Karen Eckley; Service of subpoena on Karen Eckley; Request for fed. address information from USPS	\$35.00
23	02/03/09	Service of subpoena on Respondent	\$17.50
24	02/04/09	Call to Denea Hovland; Email to Hovland	\$26.25
25	02/09/09	Cost to obtain copies of transcripts from Yavapai Superior Court	\$168.00
	02/09/09	Atwood Reporting Agency, deposition of K.B Sweeney and K. Eckley	\$666.65

26 Total for staff investigator charges \$974.65

27 **TOTAL COSTS AND EXPENSES INCURRED** **\$1,574.65**

28 Sandra E. Montoya  
29 Sandra E. Montoya  
30 Lawyer Regulation Records Manager

31 3-24-09  
Date