

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

IN THE MATTER OF A MEMBER	)	No. 09-1602
OF THE STATE BAR OF ARIZONA	)	
	)	
<b>JAMES J. MCMAHON, JR.,</b>	)	
<b>Bar No. 022943</b>	)	<b>DISCIPLINARY COMMISSION</b>
	)	<b>REPORT</b>
<b>RESPONDENT.</b>	)	
_____	)	

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on April 10, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer’s Report filed March 10, 2010, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent (“Tender”) and Joint Memorandum (“Joint Memorandum”) providing for censure, one year of probation with the State Bar’s Law Office Management Assistance Program (“LOMAP”), and costs.

**Decision**

The eight members<sup>1</sup> of the Disciplinary Commission unanimously recommend accepting and incorporating the majority of the Hearing Officer’s findings of fact and conclusions of law,<sup>2</sup> and recommendation for censure, one year of probation (LOMAP), and payment of costs of these disciplinary proceedings including any costs incurred by the Disciplinary Clerk’s office.<sup>3</sup> The terms of probation are as follows:

---

<sup>1</sup> Commissioner Katzenberg did not participate in these proceedings.  
<sup>2</sup> Here, while the Commission unanimously accepts the Hearing Officer’s recommendation, it notes that intentionally missing a court appearance can never be a “negligent violation.” See Hearing Officer’s Report, pp. 7-8.  
<sup>3</sup> The Hearing Officer’s Report is attached as Exhibit A. The State Bar’s costs total \$1,261.25.

Terms of Probation

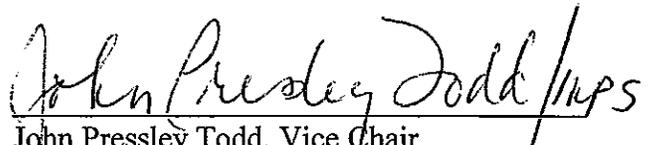
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1. Respondent shall be placed on probation with LOMAP for one year to commence from the signing of the judgment and order in this matter, focusing on Respondent's office management procedures, including logging and accounting for incoming mail and calls, and calendaring to prevent missed appearances and deadlines.

2. Respondent shall refrain from engaging in any conduct that would violate the Rules of professional Conduct or other rules of the Supreme Court of Arizona.

3. In the event that Respondent fails to comply with any of the foregoing conditions, and the State Bar receives information thereof, bar counsel shall file with the imposing entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practicable date, but in no event later than 30 days after receipt of notice, to determine whether the terms of probation have been breached and, if so, to recommend appropriate action and response. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the State Bar of Arizona bears the burden to prove non-compliance by a preponderance of the evidence.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of April, 2010.

  
John Pressley Todd, Vice Chair  
Disciplinary Commission

Original filed with the Disciplinary Clerk  
this 16<sup>th</sup> day of April, 2010.

Copy of the foregoing hand delivered  
this 16<sup>th</sup> day of April, 2010, to:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Hon. Jonathan H. Schwartz  
Hearing Officer 6S  
1501 W. Washington  
Phoenix, AZ 85007

Copy of the foregoing mailed  
this \_\_\_\_\_ day of \_\_\_\_\_, 2010, to:

James J. McMahon Jr.  
Respondent  
P.O. Box 5446  
500 Easy Street  
Carefree, AZ 85377-5446

Edward W. Parker  
Bar Counsel  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 200  
Phoenix, AZ 85016-6288

by: \_\_\_\_\_

/mps

# **EXHIBIT**

**A**

**FILED**

MAR 10 2010

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *[Signature]*

**BEFORE A HEARING OFFICER OF  
OF THE SUPREME COURT OF ARIZONA**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
)  
JAMES J. MC MAHON, )  
Bar No. 022943 )  
)  
RESPONDENT )

No. 09-1602

**HEARING OFFICER'S  
REPORT**

**PROCEDURAL HISTORY**

A Complaint was filed on October 30, 2009. The Hearing Officer was assigned on November 19, 2009. The Initial Case Management Conference was held on December 1, 2009. The parties filed a Notice of Settlement on December 29, 2009. A Tender of Admissions and Agreement for Discipline by Consent and a Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent were filed on January 15, 2010. A hearing was held on February 8, 2010.

**FACTS<sup>1</sup>**

1. Respondent is a lawyer licensed to practice law in the state of Arizona, having been first admitted to practice in Arizona on June 29, 2004; Respondent was previously admitted in New Jersey in 1966 and in New York in 1970. (TR 4:11-21)

---

<sup>1</sup> The facts are found in the Tender of Admissions and the Joint Memorandum in Support of the Tender and in the transcript of the hearing.

1           2.           Respondent failed to pay his State Bar of Arizona annual membership fee for  
2 2009 on or before February 1, 2009, as required by Ariz. R. Sup. Ct., Rule 32(c)(7). (TR  
3 4:22 through 5:2)

4           3.           Respondent failed to pay his annual membership fee within two months after  
5 written notice of delinquency by the State Bar pursuant to Ariz. R. Sup. Ct., Rules 31 and  
6 32(c)(10). (TR 5:3-7)

7           4.           From February 1, 2009 until August 31, 2009, Respondent should have been  
8 aware that he had not paid his annual membership fee. (TR 5:8-12)

9           5.           From February 1, 2009 until August 31, 2009, Respondent was aware that he  
10 was obligated to pay his annual membership fee in order to remain in good standing and to  
11 engage in the practice of law in Arizona, pursuant to Ariz. R. Sup. Ct., Rule 32(c)(3). (TR  
12 5:13-18)

13           6.           Upon Motion of the State Bar pursuant to Ariz. R. Sup. Ct., Rule 32(c)(10),  
14 the State Bar Board of Governors entered an Order of Summary Suspension from  
15 membership in the State Bar, effective against Respondent on April 17, 2009, pursuant to  
16 Ariz. R. Sup. Ct., Rule 62. (TR 6:9-13)

17           7.           Respondent continued to practice law in Arizona while summarily  
18 suspended. (TR 20:15-19)

19           8.           On May 14, 2009, Respondent filed a Notice of Appearance and Plea of Not  
20 Guilty on behalf of a client, Jimmy P. Moore, and a Motion to Continue the matter, in the  
21 Cave Creek Municipal Court in cause # 09-0129. (TR 20:25 through 21:10)

22           9.           Respondent's conduct in filing pleadings in Court on behalf of a client while  
23 suspended constitutes the unauthorized practice of law. (TR 21:11-14)  
24  
25

1           10.       Respondent's conduct in continuing to represent a client while suspended  
2 constitutes the unauthorized practice of law. (TR 21:11-14)

3           11.       The Court scheduled a Pretrial Conference on June 26, 2009. (TR 21:15-19)

4           12.       On June 26, 2009, Respondent failed to appear to represent his client at the  
5 Pretrial Conference; eventually the Court set the matter for a firm bench trial date of August  
6 14, 2009. (TR 21:15 through 22:9)

7           13.       On August 14, 2009, Respondent failed to appear to represent his client at the  
8 trial. (TR 23:19 through 24:4)

9           14.       In addition, Respondent failed to inform the Court, the prosecutor, or his  
10 client that he was suspended from the practice of law. (TR 24:5-10)

11           15.       By engaging in the conduct recited above, Respondent failed to take steps to  
12 the extent reasonably practicable to protect his client's interests, and to avoid prejudice to  
13 the administration of justice, in view of Respondent's status as a suspended lawyer.

14           16.       Respondent was reinstated from his summary suspension effective August  
15 31, 2009. (TR 34:22 through 35:1)

16           17.       On August 7, 2009, Hon. George Preston, Presiding Judge of the Cave Creek  
17 Municipal Court, sent a charge letter to the State Bar with copies of pleadings and orders  
18 from the *Moore* case. (TR 38:23 through 39:9)

19           18.       By letter dated August 26, 2009, addressed to Respondent at his address of  
20 record, the State Bar sent Respondent a copy of the charge letter and its attachments, and  
21 requested a response within twenty days, addressing Ariz. R. Sup. Ct., Rule 42, ER 5.5 and  
22 Rule 31(a) & (b); Respondent failed to respond to the Bar's letter. (TR 39:10; 40:20 through  
23 41:3)  
24  
25

1           19.       By letter dated September 24, 2009, the State Bar notified Respondent that he  
2 had failed to timely respond to the initial inquiry, gave Respondent another ten days to  
3 respond, and informed Respondent that, pursuant to Ariz. R. Sup. Ct., Rule 53(d) & (f),  
4 failure to cooperate with a disciplinary investigation is in itself grounds for discipline;  
5 Respondent failed to respond to this letter. (TR 40:20 through 41:3)

6                           **CONDITIONAL ADMISSIONS/CONCLUSIONS OF LAW**

7           Respondent conditionally admits that his conduct, as set forth above, violated Ariz.  
8 R. Sup. Ct., specifically Rules 31(a) & (b) [unauthorized practice of law], Rule 42, ERs  
9 1.4(a) & (b) [lack of communication with client, not telling his client of Respondent's  
10 summary suspension], 5.5 [unauthorized practice of law], 8.1(b) [failure to respond to  
11 the Bar's inquiry], 8.4(d) [conduct affecting the administration of justice, the August 14,  
12 2009 trial of the client Mr. Moore had to be continued due to Respondent's suspension  
13 and Respondent's failure to earlier inform his client and the court and the opposing  
14 counsel of his suspension] Rules 53(d) & (f) [not cooperating with the Bar by not  
15 responding to the Bar's August 26 and September 24, 2009 letters requesting  
16 information. (TR 30:2-13) The Hearing Officer finds that based on these admissions and  
17 on the testimony at the hearing the Bar has proven the above referenced violations by  
18 clear and convincing evidence.  
19

20                           **CONDITIONAL DISMISSALS**

21           For the purposes of this agreement, the State Bar agrees to dismiss the charges of  
22 Rule 42, ERs 3.3(a)(1), 3.5(d), 4.1(a), and 8.4(c), because the gravamen of these charges  
23 is adequately covered elsewhere in the conditional admissions.  
24  
25

1 **ABA STANDARDS**

2 The *Standards* provide general guidance with respect to an appropriate sanction in this  
3 matter. The Supreme Court and the Disciplinary Commission consider the *Standards* a  
4 suitable guideline. See *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.2d 764, 770, 772 (2004); *In*  
5 *re Rivkind*, 164 Ariz. 154, 157, 791 P. 2d 1037, 1040 (1990).

6 **ER 8.4 (Conduct prejudicial to the administration of justice)**

7 Standard 6.22: Suspension is appropriate when a lawyer knowingly violates a court  
8 order or rule and there is injury or potential injury to a client or party, or interference or  
9 potential interference with a legal proceeding.

10 Standard 6.23: Reprimand (Censure in Arizona) is generally appropriate when a  
11 lawyer negligently fails to comply with a court order or rule, and causes injury or potential  
12 injury to a client or a party, or interference or potential interference with a legal proceeding.

13  
14 In this matter, Respondent failed to comply with Court orders to attend hearings on a  
15 case for which Respondent was attorney of record while under suspension. Respondent's  
16 explanation (Answer, paragraph 6) was that "he had no intention of representing, nor did he  
17 represent, Mr. Moore in the Cave Creek Municipal Court while suspended." This placed a  
18 burden on the judicial system, as the Court was required to appoint replacement counsel for  
19 Respondent's client and to continue the trial.

20 **ER 5.5 (Unauthorized practice of law) and ER 8.1 and Rules 53(d) & (f), (Failure**  
21 **to respond to a request for information)**

22 Standard 7.2: Suspension is generally appropriate when a lawyer knowingly engages  
23 in conduct that is a violation of a duty owed as a professional, and causes injury or potential  
24 injury to a client, the public, or the legal system.  
25

1           Standard 7.3: Reprimand (Censure in Arizona) is generally appropriate when a lawyer  
2 negligently engages in conduct that is a violation of a duty owed as a professional, and  
3 causes injury or potential injury to a client, the public, or the legal system.

4           In this matter, Respondent was aware that he had a responsibility to pay his annual  
5 membership fee for calendar year 2009, but he neglected to pay it. Respondent did not  
6 acknowledge the reminders and notices that the State Bar sent him, some of which were sent  
7 by First Class mail, and others by Certified mail. Respondent testified that he should have  
8 informed the Bar of his new address after he left the office location of 7047 E. Greenway  
9 Parkway, Suite 250, Scottsdale, Arizona. He worked there from 2004 through July 2008.  
10 The Delinquency Notices for Respondent's 2009 bar dues and the Notice of Summary  
11 Suspension (dated May 4, 2009) were sent to the Greenway Parkway address because  
12 Respondent had failed to update the bar with a new address. (TR 7:19 through 9:23; 10:10  
13 through 11:7; 11:20 through 13:4)

14           The Hearing Officer has some concern about the parties' agreement that *Standard 6.2*,  
15 (Abuse of the legal process), is the most appropriate standard. However, *Standard 7.0*  
16 (Violation of Other Duties Owed as a Professional) is also applicable. Respondent could not  
17 appear in court once he was suspended. Rule 72 was not cited by the parties in the Tender of  
18 Admissions or the Joint Memorandum. The evidence shows that Respondent violated his  
19 obligation under Rule 72 when he did not inform his client, the prosecutor or the judge in  
20 the Cave Creek Municipal Court matter of his suspension. (TR 24:1-14) The parties seemed  
21 to have agreed that the Rule 72 obligations were subsumed by ER 8.4 (d), conduct  
22 prejudicial to the administration of justice. (TR 28:10-17) By not notifying his client (also a  
23 violation of ER 1.4 (a)), opposing counsel and the court of his suspension, Respondent  
24  
25

1 caused an interference with the effective administration of justice when his client's trial had  
2 to be continued.

3 Before taking into account the applicable aggravating and mitigating factors, the  
4 parties proposed that the presumptive sanction in this matter is a suspension. The Hearing  
5 Officer determines that Respondent's violation of the Cave Creek's orders to attend hearings  
6 was not knowingly done. The first hearing was a pre-trial conference. Respondent testified  
7 that he forgot about this appearance. He just flat-out missed this court date. (TR 21:15  
8 through 22:9) Respondent knowingly did not attend the trial. But that was because he could  
9 not represent Mr. Moore once Respondent knew he had been suspended. The Hearing  
10 Officer would not call this deliberate failure to attend the trial under these circumstances  
11 "knowingly".

12 Respondent knowingly violated ER 1.4 by not communicating the fact of his  
13 suspension to his client. It is not clear if *Standard 6.22* is referring to an Ethical Rule when it  
14 describes a lawyer violating a "court order or rule". Therefore, the Hearing Officer  
15 concludes that suspension is the presumptive sanction because Respondent's knowing  
16 violations are covered under *Standard 7.2*. Respondent knowingly violated his duty to his  
17 client by not timely informing Mr. Moore of Respondent's suspension. Respondent knew of  
18 his suspension on July 23, 2009, but he did not inform his client Mr. Moore of that fact until  
19 after the August trial in the Cave Creek Municipal Court had to be continued.  
20

21 Respondent's unauthorized practice of law was done negligently and would not  
22 support a presumptive sanction of suspension under *Standard 7.2*.

23 In determining an appropriate sanction, the Supreme Court and the Disciplinary  
24 Commission consider the duty violated, the lawyer's mental state, the actual or potential  
25

1 injury caused by the misconduct and the existence of aggravating and mitigating factors.

2 *See, Peasley*, 208 Ariz. at 35, 90 P.3d at 772.

3 **A. The duty violated**

4 As described above, Respondent conditionally admits that he engaged in conduct in  
5 violation of his duty to the legal system, and of his duty owed as a professional, as follows:

6 Ariz. R. Sup. Ct., Rules 31(a) & (b), Rule 42, ERs 1.4(a) & (b), 5.5, 8.1(b) and  
7 8.4(d), and Rules 53(d) & (f).

8 **B. The lawyer's mental state**

9 The parties conditionally agree and the Hearing Officer finds that Respondent knew  
10 he was obligated to pay his annual membership fee. Respondent asserts that he intentionally  
11 stayed away from attending the *Moore* trial as scheduled on August 14, 2009, so that he  
12 would not appear to be representing Mr. Moore. (TR 23:19 through 24:7) For purposes of  
13 this agreement, the State Bar does not contest that assertion. The parties conditionally agree  
14 and the Hearing Officer finds that the rest of Respondent's conduct was negligent, in that he  
15 should have known he had not paid his Bar dues, that he should have taken the necessary  
16 steps to comply with Supreme Court Rule 72 and to notify the Court, the prosecutor, and his  
17 client of his suspension, and that he should have paid closer attention to regular and certified  
18 letters sent to him by the State Bar.  
19

20 **C. The extent of the actual or potential injury**

21 The parties agree and the Hearing Officer finds that there was actual interference  
22 with a legal proceeding and actual, albeit slight, injury to the other participants in a legal  
23 proceeding. There was potential injury to a client, the public, and the legal system.  
24  
25

1 **D. The aggravating and mitigating circumstances**

2 The following factor should be considered in aggravation:

3 • *Standard 9.22(i)* Substantial experience in the practice of law. Respondent  
4 has been an Arizona attorney since 2004, and was previously admitted in New Jersey in  
5 1966 and New York in 1970.

6 The following factor should be considered in mitigation:

7 • *Standard 9.32(a)* Absence of a prior disciplinary record. Respondent has no  
8 prior discipline in any jurisdiction. This factor should be given great weight, in view of  
9 Respondent's unblemished record in New York since 1970 and New Jersey since 1966.

10 Having reviewed the applicable *Standards*, and the aggravating and mitigating factors,  
11 the Hearing Officer agrees with the parties that a censure, followed by probation for one  
12 year with LOMAP to monitor office management issues, plus costs, is within the range of  
13 sanctions and is appropriate in this matter. Respondent did not intentionally practice law  
14 while he was suspended. He was negligent in not giving the Bar a correct address and in  
15 thinking that he could continue to practice after not paying his bar dues in 2009. However, it  
16 has not been established that Respondent had actual notice of his summary suspension.  
17 Respondent's carelessness should be addressed. But a suspension is not necessary to correct  
18 this situation. Respondent should be able (with a censure and probation with LOMAP  
19 assistance) to make sure he receives all notifications from the Bar and that if he were again  
20 suspended he would not practice law during the suspension and he would immediately  
21 notify his clients, the courts and opposing counsel of his suspension.  
22

23 However, the Hearing Officer is concerned that Respondent, as of the date of the  
24 February 8, 2010 hearing, had not paid his 2010 bar dues. (TR 35:25 through 36:15)  
25

1 Respondent stated that even though he has paying clients, he had not by February 8, earned  
2 enough money to pay \$460 in bar dues. Respondent stated he would try to pay the dues by  
3 the end of the week (February 12, 2010). Now Respondent will have to pay a late fee of an  
4 additional \$75. (TR 37:5-13)

5 Another area of concern has to do with Respondent alleging that he was not receiving  
6 letters from the Bar after he was reinstated on August 31, 2009 and after he had given the  
7 Bar his new address, P. O. Box 5446, Carefree, Arizona. The Bar sent two letters to  
8 Respondent on August 26, 2009 and September 24, 2009 to the Carefree address. Yet  
9 Respondent testified he never got these letters. (TR 39:10 through 41:14) He said his  
10 estranged wife may have been removing mail from the post office box or that he might have  
11 thought that the letters from the Bar were an advertisement. The Hearing Officer hopes that  
12 if Respondent is given an opportunity through a censure and probation with LOMAP  
13 conditions, he will pay his bar dues in a timely fashion and assiduously track his incoming  
14 mail.  
15

#### 16 PROPORTIONALITY REVIEW

17 In the past, the Supreme Court has consulted similar cases in an attempt to assess the  
18 proportionality of the sanction recommended. *See In re Struthers*, 179 Ariz. 216, 226, 887  
19 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept or  
20 proportionality review is "an imperfect process." *In re Owens*, 182 Ariz. 121, 127, 893 P.3d  
21 1284, 1290 (1995). This is because no two cases "are ever alike." *Id.*

22 To have an effective system of professional sanctions, there must be internal  
23 consistency, and it is appropriate to examine sanctions imposed in cases that are factually  
24 similar. *Peasley, supra*, 208 Ariz. at ¶ 33, 90 P.3d at 772. However, the discipline in each  
25

1 case must be tailored to the individual case, as neither perfection nor absolute uniformity can  
2 be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76,  
3 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

4 The cases set forth below demonstrate that a censure, followed by probation with  
5 LOMAP, plus costs, is an appropriate sanction in this matter.

6 *In re Sweeney* – 08-1225 - Mr. Sweeney received a censure and two years probation  
7 with LOMAP. This attorney was suspended for failure to complete MCLE requirements,  
8 but claimed he did not receive the letters notifying him of the suspension. He had closed his  
9 office prior to some of the letters being sent. He did change his address with the State Bar  
10 and received his dues notice. He thought someone in his new office had paid his dues. He  
11 later sent in material to cure his MCLE violation, but was a few credits short. He made  
12 appearances in some matters before curing his default for MCLE. He also claims he did not  
13 know he was suspended for non-payment of dues during this time. When Mr. Sweeney  
14 learned of the suspension, he cured it the next day by paying his dues.  
15

16 Mr. Sweeney failed to respond to the State Bar, at least initially. However, this  
17 ultimately was a consent agreement case. The State Bar dismissed 8.4(c) as it could not  
18 prove a “knowing” violation.

19 *In re Lynch* – 06-1747 – This attorney received an extension to complete his MCLE  
20 credits in 2004. He sent in the required 15 hours, but was lacking one hour in ethics. He was  
21 summarily suspended and received the suspension letter. He completed the ethics requirement,  
22 but waited over 60 days to apply for reinstatement. He was eventually suspended for 90 days.  
23 Mr. Lynch was still showing up as suspended; he later learned he had applied for reinstatement  
24 under the wrong procedure. Mr. Lynch claims he didn’t know he had to apply for  
25

1 reinstatement. He took steps to notify clients and the courts, but for a period of nine days  
2 represented about four clients in various matters. He was later reinstated. He received a  
3 censure as his conduct was not knowing but negligent on this second violation relating to his  
4 reinstatement.

5 *In re Wahl* – 08-0017 –Mr. Wahl was administratively suspended for a period of 14  
6 months for MCLE. He learned of the suspension through a case in arbitration, in which the  
7 arbitrator contacted the State Bar for the lawyer's address. At that point, Mr. Wahl cured the  
8 suspension. It was determined he had appeared in several matters during the suspension.  
9 He did not respond to the State Bar's complaint and the case proceeded by default. He  
10 received a four-month suspension.<sup>2</sup> His mental state was determined to be knowing.

11 In sum, the Hearing Officer determines that the parties' agreement provides for a  
12 sanction that meets the goals of the disciplinary system. The terms of the agreement serve to  
13 protect the public, instill confidence in the public, deter other lawyers from similar conduct  
14 and maintain the integrity of the bar.  
15

#### 16 CONCLUSION/RECOMMENDATION

17 Recognizing that it is the prerogative of the Disciplinary Commission and ultimately  
18 the Supreme Court to determine the appropriateness of sanctions, the Hearing Officer  
19 recommends that, based on the *Standards* and relevant case law, a censure, followed by  
20 probation for one year with LOMAP monitoring, is an appropriate sanction under these  
21 circumstances. In addition, Respondent shall pay the costs and expenses incurred in this  
22

---

23 <sup>2</sup> **The Joint Memorandum in Support of the Tender of Admissions stated that Mr. Wahl received a four month suspension. The hearing officer in that case recommended a four month suspension. The Disciplinary Commission changed that recommendation to a six month and one day suspension, asserting that Mr. Wahl's case deserved a more severe sanction because Mr. Wahl failed to participate in the disciplinary process. The Supreme Court ordered a six month and one day suspension.**  
24  
25

1 disciplinary proceeding, as set forth in Exhibit "A" to the Tender, plus whatever costs may  
2 be imposed by the Disciplinary Commission, the Disciplinary Clerk, and the Supreme Court.

3 The Court and the Commission have repeatedly stated that the purpose of lawyer  
4 discipline is not to punish the offender but to protect the public, the profession and the  
5 administration of justice. *See Peasley*, 208 Ariz. at 41, 90 P.3d at 778; *In re Neville*, 147  
6 Ariz. 106, 708 P.2d 1297 (1988). The proposed sanction will accomplish those goals.

7 SANCTION

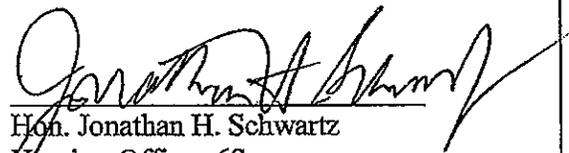
8 Respondent shall be sanctioned as follows:

- 9 1) Respondent shall receive a censure,  
10 2) Respondent shall be placed on probation with LOMAP for one year to commence  
11 from the signing of the Judgment and Order in this matter, focusing on Respondent's office  
12 management procedures, including logging and accounting for incoming mail and calls, and  
13 calendaring to prevent missed appearances and deadlines,  
14 a. Respondent shall refrain from engaging in any conduct that would violate the  
15 Rules of Professional Conduct or other rules of the Supreme Court of Arizona.  
16 b. In the event that Respondent fails to comply with any of the foregoing probation  
17 terms, and information thereof is received by the State Bar of Arizona, Bar  
18 Counsel shall file a Notice of Noncompliance with the imposing entity, pursuant  
19 to Rule 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the matter to a  
20 hearing officer to conduct a hearing at the earliest practicable date, but in no  
21 event later than thirty (30) days after receipt of notice, to determine whether a  
22 term of probation has been breached and, if so, to recommend an appropriate  
23 sanction. If there is an allegation that Respondent failed to comply with any of  
24  
25

1 the foregoing terms, the burden of proof shall be on the State Bar of Arizona to  
2 prove noncompliance by a preponderance of the evidence.

3 3) Respondent shall pay all costs and expenses incurred by the State Bar, the  
4 Disciplinary Commission, the Disciplinary Clerk, and the Supreme Court in these  
5 proceedings.

6 DATED this 10<sup>th</sup> day of March, 2010.

7  
8   
9 Hon. Jonathan H. Schwartz  
10 Hearing Officer 6S

11 Original filed this 10 day of March, 2010, with:

12 Disciplinary Clerk of the Supreme Court of Arizona  
13 1501 W. Washington, Suite 104  
14 Phoenix, AZ 85007

15 Copies of the foregoing mailed this 11 day of March, 2010, to:

16 Mr. James J. Mc Mahon, Jr.  
17 Attorney at Law  
18 P.O. Box 5446  
19 500 Easy Street  
20 Carefree, Arizona 85377-5446  
21 Email: [jmcmjr@hotmail.com](mailto:jmcmjr@hotmail.com)

22 Edward W. Parker  
23 Bar Counsel  
24 State Bar of Arizona  
25 4201 N. 24<sup>th</sup> Street, Suite 200  
Phoenix, AZ 85016-6288



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**EXHIBIT**  
**A**

1 **Statement of Costs and Expenses**

2 In the Matter of a Member of the State Bar of Arizona,  
3 James J. McMahon, Jr., Bar No. 022943, Respondent

4 File No(s). 09-1602

5 **Administrative Expenses**

6  
7 The Board of Governors of the State Bar of Arizona with the consent of the  
8 Supreme Court of Arizona approved a schedule of general administrative  
9 expenses to be assessed in disciplinary proceedings. The administrative  
10 expenses were determined to be a reasonable amount for those expenses  
11 incurred by the State Bar of Arizona in the processing of a disciplinary matter.  
12 \* An additional fee of 20% of the general administrative expenses will be  
13 assessed for each separate file/complainant that exceeds five, where a violation  
14 is admitted or proven.

15 General administrative expenses include, but are not limited to, the following  
16 types of expenses incurred or payable by the State Bar of Arizona:  
17 administrative time expended by staff bar counsel, paralegals, legal assistants,  
18 secretaries, typists, file clerks and messengers; postage charges, telephone  
19 costs, normal office supplies, and other expenses normally attributed to office  
20 overhead. General administrative expenses do not include such things as travel  
21 expenses of State Bar employees, investigator's time, deposition or hearing  
22 transcripts, or supplies or items purchased specifically for a particular case.

23 *General Administrative Expenses for above-numbered proceedings* = \$1200.00

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

26 **Staff Investigator/Miscellaneous Charges**

27	11/03/09	Draft and fax letters to McDowell Mountain & North Valley Justice Courts; Review fax from McDowell Mountain Justice Court; Memo to Bar Counsel	\$43.75
28	11/13/09	Review documents from North Valley Justice Court; Memo to Bar Counsel	\$17.50
29		<b>Total for staff investigator charges</b>	<b>\$61.25</b>

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**TOTAL COSTS AND EXPENSES INCURRED**

**\$1,261.25**

*Sandra E. Montoya*

Sandra E. Montoya  
Lawyer Regulation Records Manager

1-6-10  
Date