

BEFORE A HEARING OFFICER

IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,

No. 01-2294

DALE R. GWILLIAM,
Bar No. 004979

RESPONDENT.

HEARING OFFICER'S REPORT
AND RECOMMENDATION

Relevant Procedural History

On February 27, 2002, a probable cause order directed the State Bar to prepare and file a complaint against Respondent for ethical violations. On May 3, 2002, the State Bar filed a one-count complaint asserting Respondent engaged in the unauthorized practice of law, conduct involving dishonesty, fraud, misrepresentation, or deceit, conduct prejudicial to the administration of justice and failed to cooperate with a disciplinary investigation. Following a Notice of Default, Respondent, pro per, filed a response to the complaint on June 10, 2001, admitting the allegations of unauthorized practice of law. Settlement discussions were held on August 28, 2002, and September 11, 2002, but the parties were unable to resolve the issue of an appropriate and just sanction. A hearing was held on September 26, 2002, at which Respondent appeared pro per and the State Bar was represented by counsel. Two witnesses testified at the hearing: Respondent and Marty Leinberger, the administrator of the State Bar's Mandatory Continuing Legal Education (MCLE) section.

Background Information

Respondent has been a member of the State Bar of Arizona for over a quarter of a century, having been admitted on October 8, 1977. Because the State Bar failed to receive Respondent's MCLE Affidavit of Compliance for the 1999/2000 Education Year, Respondent was administratively suspended March 12, 2001. Respondent was reinstated June 14, 2002. Respondent is a solo practitioner who, for about seven years, has devoted most of his time to

1 an Internet venture with his sons and several employees. Their website is "Adoption.Com."
2 His office is at 2141 E. Broadway, Suite 214 in Tempe.

3 In the mid-1990s, Respondent started his representation of Carlton Shank and Sherrie
4 Shank in litigation against Rock Resources, Inc. involving the use of property on the northeast
5 corner of Pima Road and Frank Lloyd Wright Boulevard. During the litigation, the
6 Department of Transportation constructed the 101 expressway through a portion of this
7 property. Respondent testified that he performed his legal services for free until various
8 appeals were filed requiring the association of appellate counsel. The Bar's complaint is based
9 solely on Respondent's conduct during of portion of this litigation. Robert R. Bauer, who
10 represented Rock Resources, Inc. during the litigation, filed the bar complaint against
11 Respondent.

12 Findings of Fact

13 1. *For the MCLE Educational Year 1999/2000, Respondent timely completed all his*
14 *continuing legal education requirements.* The State Bar does not dispute this fact.
15 Respondent completed his affidavit of compliance dated August 22, 2000 stating he had
16 completed all his CLE requirements and had an additional 4.75 carry forward hours. Before
17 the date Respondent's affidavit was required to be filed, the State Bar's MCLE data base gave
18 the State Bar constructive notice that Respondent had completed 14.5 mandatory continuing
19 legal education hours, including 5.5 hours of ethics. This is because Respondent had attended
20 8.5 hours at State Bar seminars that are shown in the data base and had 5.75 earned carried
21 forward hours from the 1998/1999 Education Year. Additionally, Respondent had completed
22 5.5 hours in June 2000 that were not in the State Bar's MCLE data base because the seminars
23 had been sponsored by the Maricopa Bar Association.

24 2. *The State Bar did not credit Respondent with having filed his affidavit of*
25 *compliance dated August 22, 2000.* The record is not clear whether the affidavit was never
26 mailed or never received.

1 3. *It was not until late April 2001 that Respondent first learned of the problem, after*
2 *he had been administratively suspended on March 12, 2001.* On October 25, 2000, and again
3 on December 6, 2000, the State Bar sent "Mandatory Continuing Legal Education
4 Delinquency Notices" to Respondent's correct address informing him of the delinquency and
5 that he would be summarily suspended if the bar did not receive his affidavit and a \$125.00
6 delinquency fee (October) or a \$150.00 delinquency fee (December). Again on January 5,
7 2001, the State Bar sent Respondent, at his correct address, a letter informing him that he
8 would be suspended if he did not file a verified response showing good cause why he should
9 not be suspended. This letter was sent return receipt requested. Then on March 13, 2001, the
10 State Bar sent Respondent, at his correct address, notice that he had been summarily
11 suspended the previous date, March 12, 2001.

12 While Respondent is presumed to have received each of these notices, he testified that
13 he did not. His signature did not appear on the post office's return requested card. Because
14 he was in compliance with his mandatory continuing education requirements, there is no
15 apparent reason why he would not want to provide the State Bar with the required affidavit
16 that he had previously completed. And certainly no motive not to send a verified response
17 showing good cause why he should not be suspended. Respondent discovered the delinquency
18 when the State Bar returned his \$540 check for his 2001 annual dues. The reason the State
19 Bar gave for returning check was that Respondent was "suspended for MCLE." (Hearing
20 Exhibit 4.) According to the State Bar's records, it's check was dated April 17, 2001. (*Id.*)
21 Thus, Respondent did not have actual notice of his suspension until after April 17, 2001.

22 4. *Upon learning of the problem in late April, Respondent immediately attempted to*
23 *correct the delinquency, but through no fault of his was unable to do so.* Respondent testified
24 that he contacted the State Bar in April and was told he needed to provide the Bar with
25 certificates establishing that he had in fact been in compliance for the 1999-2000 Educational
26 Year. When he was unable to find his own compliance file in an off-site storage facility, he

1 obtained replacement certificates from the Maricopa County Bar Association for the seminars
2 they sponsored. He was unable to obtain similar replacement certificates from the State Bar.
3 The State Bar has two "distinct separate" departments that concern continuing legal
4 education—the CLE department that sponsors the programs and the MCLE department that is
5 concerned with the annual compliance. (Tr. 9/26/02, at 69.) Ms. Leinberger, who has been
6 the administrator for the relevant time period of the compliance department, had no memory of
7 Respondent contacting the unit in April 2001. Because of the State Bar's database, she was
8 unaware of any requirement that an attorney needed to submit CLE certificates for State Bar
9 seminars because that information would already be in the Bar's data base. Respondent
10 testified that when he was reinstated in June 2002, he submitted the same materials he had
11 available in April 2001. (*Id.* at 49.) Ms. Leinberger did not recall what Respondent submitted
12 as "proof of cure" in June 2002, but normally she requires certificates from the course, the fee
13 (in this case \$375) and the affidavit. (*Id.* at 71–72.) If the reinstatement was based on a
14 seminar sponsored by the State Bar, Ms. Leinberger testified that she could have "easily"
15 checked the database. (*Id.* at 71.)

16 *5. After April 2001, Respondent failed to take any action to resolve his suspension—a*
17 *period of about 14 months—when he wrote Yigael M. Cohen on June 5, 2002, about a month*
18 *after the complaint had been issued in this case.*

19 *6. After learning of his suspension in late April 2001, although Respondent did not*
20 *seek any new legal business, he continued to practice law in the Shank litigation.*
21 Respondent, in his answer to the complaint, admitted that he continued to practice law in the
22 Shank litigation in the trial and appellate courts after he learned of his suspension. In the
23 appellate court litigation, he asserts and the record supports that his practice of law was
24 somewhat limited. Respondent had associated with Donn Kessler in January 2000 and when
25 Kessler left the Ulrich law firm in February 2000, Paul Ulrich directed the appellate litigation
26 until the end of July 2002. During this period, Respondent represented to the Arizona Court

1 of Appeals that he "became primarily responsible for the matters that related to this appeal that
2 took place in the Trial Court." (Hearing Exhibit 7, Affidavit Regarding Attorney's Fees filed
3 Oct. 2, 2001, at 2.) Respondent withdrew from the case on November 21, 2001 after David
4 D. Dodge was retained to represent the Shanks. Thus, based on the exhibits presented at the
5 hearing, it appears that the period of time that Respondent was acting alone as counsel for the
6 Shanks after his suspension was a period of time between August and November 2001.

7 The evidence in the record, in addition to Respondent's testimony, supporting the
8 unauthorized practice of law allegations is found at Hearing Exhibits 6 through 9. Respondent
9 was listed as co-counsel on a stipulation filed on May 10, 2001. (Hearing Exhibit 6.) There is
10 no evidence that he signed or drafted the stipulation. On July 3, 2001, Respondent filed in the
11 trial court a response and cross-motion on behalf of his clients. (Hearing Exhibit 9.) For the
12 period from May through September 2001, Respondent claimed he had earned \$2,240 in
13 connection with his work on behalf of the Shanks. (Hearing Exhibit 7, Affidavit Regarding
14 Attorney's Fees.) Respondent prepared and filed papers concerning a bond issue for the
15 Shanks on October 1, 2001. On October 3, 2001, Respondent appeared and argued the issue
16 to the trial court. Respondent's name appears on a notice filed October 31, 2001 by Paul
17 Ulrich (even though the hearing exhibits include Paul Ulrich's motion to withdraw filed July
18 20, 2001). (Hearing Exhibit 9, Motion to Withdraw as Co-counsel for Defendants.) In late
19 October 2001, through November 2001, it appears that Respondent was involved in
20 negotiations on behalf of the Shanks with Robert Bauer. (Hearing Exhibit 9.) Respondent
21 appeared with David Dodge before the court of appeals on November 2, 2001. (*Id.*)

22 *7. Respondent did not inform the Court of Appeals, the trial court, the Shanks, his co-*
23 *counsel, or his opposing counsel in these matters of his suspension.* In his answer,
24 Respondent admitted that he did not inform these individuals of his suspension. According to
25 testimony at the hearing, opposing counsel learned of the suspension and informed the court
26 and co-counsel. In a letter dated November 21, 2001, Robert Bauer explained to David

1 Dodge that when Dodge had offhandedly mentioned to Respondent that he could not find his
2 telephone number in the new bar directory, Respondent replied that he omission was due to a
3 "typographical" error. (Hearing Exhibit 1.) This explanation did not "ring true" to Bauer who
4 then contacted the State Bar.

5 8. *Respondent failed to cooperate with the disciplinary investigation.* Respondent
6 was informed of the unauthorized practice of law allegations in a letter dated December 11,
7 2001, that requested he submit a written response by December 31, 2001. When Respondent
8 failed to respond to the December letter, the State Bar sent a letter dated January 14, 2002. In
9 response to this letter, Respondent requested a copy of the original complaint and requested
10 additional time to respond. By a letter dated March 1, 2002, Respondent stated he would be
11 seeking counsel and indicated that Tim Burke would be representing him. Respondent was
12 given until April 4, 2002 to respond. By letter dated April 4, 2002, Tim Burke informed the
13 State Bar that he would not be representing Respondent. No response to the allegations were
14 ever submitted by Respondent until after the formal Complaint was filed in May.

15 **Conclusions of Law**

16 There is clear and convincing evidence that Respondent violated Rule 42, Ariz.
17 R.S.Ct., specifically: ER 5.5(a) (unauthorized practice of law); ER 8.1 (failing to respond to
18 demand for information); ER 8.4(a) (violate rules of professional conduct); and Rules 31(a)(3)
19 (held himself out as one who may practice law), 33(c) (unauthorized practice), 51(h) (failure to
20 respond promptly to bar inquiry).

21 **Discussion of Sanctions**

22 The State Bar believes that Respondent's conduct warrants a 4-month suspension.
23 Such a recommendation is entitled to serious consideration. *In Matter of Kleindienst*, 132
24 Ariz. 95, 102, 644 P.2d 249, 256 (1982).

25 The ABA's *Standards for Imposing Lawyer Sanctions* (1991) [hereinafter cited as
26 "*Standards*"], can be a useful starting point in deciding what would be an appropriate and just

1 sanction, although the Arizona Supreme Court has not held that the *Standards* are the only
2 method for deciding an appropriate sanction. See *In Matter of Brady*, 186 Ariz. 370, 374, 923
3 P.2d 836, 840 (1996).

4 A.B.A. STANDARDS

5 In applying the *Standards* the Supreme Court considers "(a) the duty violated; (b)
6 respondent's mental state; (c) the injury to the client; and (d) any aggravating or mitigating
7 factors." *In Matter of Spear*, 160 Ariz. 545, 555, 774 P.2d 1335, 1345 (1989); see also ABA
8 MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT (1993).

9 The purpose of State Bar discipline is not to punish the offending attorney. *In Matter*
10 *of Couser*, 122 Ariz. 500, 502, 596 P.2d 26, 28 (1979). Rather, the purpose is threefold: (1)
11 to protect the public from harm by unethical, dishonest or disabled attorneys, (2) to foster
12 professional integrity in part through deterrence, and (3) to maintain the public's confidence in
13 the State Bar and the administration of justice. See *id.*; *In re Hoover (II)*, 161 Ariz. 529, 533-
14 34, 779 P.2d 1268, 1272-73 (1989); see also *In re Scholl*, 200 Ariz. 222, 25 P.3d 710, ¶ 29
15 (2001); *In Matter of Riches*, 179 Ariz. 212, 215, 877 P.2d 785, 788 (1994).

16 *Standard*

17 Where there are multiple acts of misconduct, a respondent generally should receive
18 one sanction that is consistent with the most serious instance of misconduct and any other acts
19 should be considered as an aggravating factor. *In re Cassalia*, 173 Ariz. 372, 375, 843 P.2d
20 654, 657 (1992). Although Respondent violated several rules, there are only two violations:
21 unauthorized practice of law and failure to promptly respond to the Bar's inquiry, the more
22 serious being the unauthorized practice of law. The parties agree that the appropriate
23 governing standard for this matter is *Standard 7.0*, violations of duties owed to the profession.
24 The State Bar urges that *Standard 7.2* should apply.
25
26

1 Suspension is generally appropriate when a lawyer *knowingly* engages in
2 conduct that is a violation of a duty owed to the profession, *and causes injury*
3 *or potential injury* to a client, the public, or the legal system.

4 (Emphasis added.) It is undisputed that Respondent knowingly violated a duty owed the
5 profession. The question is—in the context of this case—whether his conduct *caused* injury or
6 potential injury to a client, the public, or the legal system. In the context of what occurred in
7 this case, there is no evidence that Respondent's conduct caused such injury or potential injury.

8 *Aggravating and Mitigating Circumstances*

9 The *Standards* employ a series of aggravating and mitigating circumstances that serve
10 to increase or decrease the degree of discipline imposed. *Standards* § 9.0; *see also, e.g., In re*
11 *Ockrassa*, 165 Ariz. 576, 799 P.2d 1350 (1990). These circumstances must be supported by
12 reasonable evidence. *In Matter of Varbel*, 182 Ariz. 451, 455, 897 P.2d 1337, 1341 (1995).

13 **Aggravation:** The State Bar suggests that there are four aggravating circumstances
14 present in this case:

15 Prior Disciplinary Offenses [*Standard* 9.22(a)]: In August 2000 Respondent
16 received an informal reprimand for failure to adequately communicate with a client and to
17 respond to the bar complaint. (Hearing Exhibit 5.) Respondent was placed on probation for
18 one year and ordered to pay \$589 in costs and expenses for the proceedings. He was also
19 ordered to submit to a LOMAP audit. Nothing in the record indicates he failed to comply with
20 these orders. It was also in August 2000, that Respondent's MCLE affidavit was dated. After
21 the Hearing, the disciplinary clerk furnished evidence of an additional informal reprimand filed
22 in July 1991 for failure to close a relatively simple estate in a timely manner.

23 Selfish/Dishonest Motive [*Standard* 9.22(b)]: The evidence does not establish
24 that Respondent's motive was dishonest or selfish. Based upon the evidence submitted at the
25 hearing, it appears that Respondent's primary motive for remaining on the case after his
26 suspension was to protect his long-standing clients, the Shanks. While the record reflects that

1 he may have received over \$2,000 for his work on the Shanks' case during the months he was
2 suspended, given the nature of his work with his Internet venture and his undisputed testimony,
3 his pecuniary interests in the case, which he was originally pursuing pro bono, was not a
4 driving force. Therefore, I do not find this aggravating factor.

5 Bad Faith Obstruction of the Process [*Standard 9.22(e)*]: The State Bar
6 established that Respondent failed to promptly respond to the State Bar's requests for a
7 response to the allegations. The State Bar, however, has not established this aggravating
8 circumstance that requires a showing of "bad faith obstruction" of the disciplinary proceeding
9 by "intentionally failing to" comply with "rules or orders of the disciplinary agency." In a letter
10 dated December 11, 2001, the State Bar informed Respondent of the complaint and asked for
11 a response within 20 days. (Hearing Exhibit 1.) On January 14, 2002, the State Bar sent a
12 second letter again asking for a response in 20 days. (*Id.*) On January 21, 2002, Respondent
13 answered the second letter by FAX claiming that he had not received the first letter thus did
14 not have the materials necessary for a response. (*Id.*) In a letter dated March 1, 2002 to the
15 State Bar following the probable cause determination, Respondent explained his efforts to
16 obtain counsel and reasons why he did not want to respond until he was able to retain counsel.
17 (*Id.*) At the hearing, Respondent testified that he was "emotionally paralyzed," he spent
18 \$5,000 on his prior proceeding and that attorneys he consulted explained to him that it would
19 cost in excess of \$10,000 to defend him in this proceeding. In March 2002, Tim Burke
20 informed the Bar that he would be representing Respondent in this matter, but a month later he
21 withdrew. Having observed Respondent's testimony, I find his statement that he was
22 "emotionally paralyzed" credible. I also find credible that he believed that it was necessary to
23 consult with counsel before formally responding to the State Bar's inquiry. While there may
24 well have been an element of procrastination in Respondent's failure to promptly respond, I do
25 not find that there was bad faith.
26

1 Substantial Experience [Standard 9.22(i)]: Respondent does have substantial
2 experience in the practice of law. He should have known better than to wait before resolving
3 the MCLE issue, the suspension, and then the Bar complaint. Conversely, his prior discipline
4 record is minor despite his many years practicing law. Given the totality of the circumstances,
5 I do not find his prior experience as aggravating circumstance.

6 **Mitigation:** the State Bar suggested one mitigating circumstance.

7 Personal/emotional problems: [Standard 9.32(c)]: The State Bar did not
8 contest Respondent's claim of personal and emotional problems influencing his conduct that
9 led to this complaint. According to Respondent, some months before his suspension he
10 learned that he had cancer, that his marriage of 28 years ended in a very difficult divorce, and
11 he suffered several financial setbacks in his internet venture. While his health is now better, he
12 has remarried, and has not had to file bankruptcy, these events may well have caused
13 Respondent to focus on things other than his State Bar obligations.

14 In addition to this factor, there are other mitigating circumstances I have considered.

15 Absence of a dishonest/selfish motive [Standard 9.32(b)]: For the reasons
16 stated above, I also find this mitigating circumstance.

17 Timely good faith effort to rectify consequences of misconduct [Standard
18 9.32(d)]: Respondent testified that after he received the Bar complaint, he apologized to all
19 the attorneys involved in the litigation, to the court, and to his clients. This is entitled to some
20 weight.

21 Cooperative Attitude [Standard 9.32(e)]: Respondent's answer admitted his
22 wrongdoing and it appears he did cooperate from that point forward. This is entitled to some
23 weight.

24 Imposition of other penalties or sanctions [Standard 9.32(k)]: Respondent
25 suggests that the penalties assessed for his tardy proof of MCLE compliance should be
26 weighed as mitigation. Those penalties, however, were not for the unauthorized practice of

1 law that is the central claim of this disciplinary proceeding. He also suggests, that because he
2 was administratively suspended for his failure to file his MCLE affidavit, he should not be
3 punished again with another suspension. As the State Bar noted, Respondent, however, did
4 practice law during his suspension; thus, it was not a true suspension. Additionally,
5 Respondent pointed to how a suspension would penalize his clients. Assuming that this is true,
6 it is not the type of other penalty that is appropriate for consideration as mitigation. *See In re*
7 *Shannon*, 179 Ariz. 52, 70–71, 876 P.2d 548, 566 (1994) (the pain caused by a suspension and
8 its effect of an attorney's practice and livelihood is not a mitigating factor). Thus, I do not find
9 this mitigating circumstance.

10 Remorse [Standard 9.32(l)]: Having observed and heard Respondent, I believe
11 he is sincerely remorseful for his conduct and recognizes the gravity of it.

12 PROPORTIONALITY REVIEW

13 Although not required by rule, in the past the Arizona Supreme Court often consulted
14 similar cases in an attempt to assess the proportionality of the sanction. *See In Matter of*
15 *Struthers*, 179 Ariz. 216, 226, 877 P.2d 789, 799 (1994). At one time, the Court thought it
16 helpful if the commission's orders set forth proportionality considerations in its sanction
17 recommendations. *In Matter of Pappas*, 159 Ariz. 516, 526, 768 P.2d 1161, 1171 (1988).
18 More recently, the Arizona Supreme Court has criticized the concept of proportionality review
19 as "an imperfect process." *In Matter of Owens*, 182 Ariz. 121, 127, 893 P.2d 1284, 1290
20 (1995). This is because no two cases "are ever alike." *Id.*; *see also State v. Salazar*, 173 Ariz.
21 399, 417, 844 P.2d 566, 584 (1992) (abandoning proportionality review in death penalty
22 cases).

23 In support of its recommendation of suspension, the State Bar cited five other cases
24 where the Arizona Supreme Court's judgment imposed a suspension from practice. *In the*
25 *Matters of: Michael L. Rhees, James O. Kistler, Rowland Stevens, Ronald Kalish, and*
26 *Cynthia H. Allred*. All of these cases are unreported, except *In the Matter of Stevens*, 178

1 Ariz. 261, 872 P.2d 665 (1994). Although generally unreported decisions are not entitled to
2 be treated as precedent, *see* Rule 28(c), R. Civ. App. P., in Bar proceedings they are
3 considered for guidance. Of the cases cited by the State Bar, only the unpublished *Rhees*
4 decision appears to concern conduct sufficiently analogist to this case to bear directly on the
5 issue of proportionality. Like Respondent, Rhees had taken the required CLE courses, but had
6 failed to file his affidavit. On November 7, 2001, the Arizona Supreme Court entered an order
7 suspending Rhees from the practice of law for a period of 4 months, retroactive to April 20,
8 2001. The reason that the suspension was made retroactive was that Rhees had *consented* to
9 that sanction in February 2001. Moreover, in that case, the Respondent had lied to a court
10 when it questioned him about his status as an active attorney. (Tender of Admissions and
11 Agreement for Discipline by Consent, at ¶¶ 10-12, 18.) Additionally, Respondent had
12 remained attorney-of-record for 18 clients for which he filed motions and pleadings during this
13 suspension. (*Id.* at ¶15.) Four mitigating circumstances existed: absence of prior disciplinary
14 record; full and free disclosure and cooperative attitude toward the proceedings; mental
15 disability; and, remorse.

16 This case is remarkably unlike Rhees. While Respondent was deceitful in not informing
17 others that he was suspended from the practice of law, he did not affirmatively lie to any court.
18 The record does not reflect that his practice of law involved clients other than the Shanks,
19 unlike Rhees. And, during a large portion of the Shank litigation, he was associated with a
20 licensed attorney. The mitigating circumstances were similar, although Respondent had been
21 practicing law longer than Rhees and had two informal reprimands. While Rhees agreed to the
22 4-month suspension, Respondent has sought an independent evaluation of the appropriateness
23 of the State Bar's proposed sanction.
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CONCLUSION AND RECOMMENDATION

1 Upon consideration of the facts and equities of this case, as well as the application of
2 the *Standards* (including the aggravating and mitigating circumstances) and the proportionality
3 of the proposed sanction, I respectfully recommend:

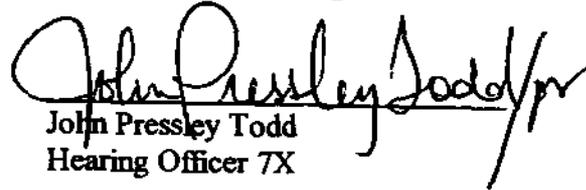
4 1. Respondent shall receive a public censure. I do not find evidence that
5 Respondent's knowing conduct caused injury, or potential injury, to a client, the public, or the
6 legal system under the circumstances of this case. It was grievously wrong for Respondent to
7 practice law while suspended. But the purpose of State Bar discipline is not to punish the
8 attorney. There is nothing in the facts of this record that persuades me to conclude that the
9 public needs to be protected from Respondent. Nor do I feel that any higher sanction would
10 foster professional integrity through deterrence. Rather, members of the Bar—given the
11 underlying facts of this case—might well view a suspension as overreaching. This is not a case
12 where an out-of-state attorney or disbarred attorney is practicing law without a license, or even
13 an attorney who has failed to comply with the mandatory continuing education requirements.
14 This is an attorney whose MCLE affidavit was not properly filed and he did not persevere in
15 his efforts to correct the situation. Unlike the out-of-state attorney, the disbarred attorney, the
16 suspended attorney who had not completed his mandatory continuing education requirements,
17 Respondent met the Bar's requirements for practice of law in Arizona. And has done so for 25
18 years. Nor do I believe that a higher sanction is necessary in order to maintain the public's
19 confidence in the State Bar and the administration of justice. In my opinion, a greater sanction
20 would not be just.

21 2. I do not recommend probation. I do not believe that probation would be a good use
22 of resources. Respondent's failure to resolve the MCLE issue is not to be the type of error
23 that will be repeated or that a period of probation would significantly affect.

24 3. Restitution is not applicable.
25
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1 4. I recommend that Respondent and the State Bar each pay half of the costs and
2 expenses associated with the hearing itself. The only contested issue at the hearing was the
3 appropriate sanction. Because the State Bar did not prevail on this issue, in my opinion,
4 Respondent should not bear the entire expense for the hearing. Respondent, however, should
5 pay all the other costs and expenses associated with these proceedings.

6 DATED this 11th day of October, 2002.

7
8 
9 John Pressley Todd
Hearing Officer TX

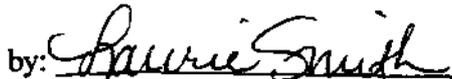
10 Original filed with the Disciplinary Clerk
11 this 11th day of October, 2002.

12 Copy of the foregoing mailed
13 this 11th day of October, 2002, to:

14 Dale R. Gwilliam
15 Respondent
16 2141 East Broadway Road, Suite 214
17 Tempe, AZ 85282-1931

18 Copy of the foregoing mailed
19 this 11th day of October, 2002, to:

20 Amy K. Rehm
21 Bar Counsel
22 State Bar of Arizona
23 111 West Monroe, Suite 1800
24 Phoenix, AZ 85003-1742

25 by: 
26