



two years of probation, and costs. The terms<sup>3</sup> of probation are as follows:

- 1) Respondent shall, within thirty days of the Supreme Court's final judgment and order, contact the director of LOMAP to schedule an audit of his law office. Following the audit, Respondent shall enter into a Memorandum of Understanding that will be effective for a period of two years from the date upon which all parties have signed the Memorandum. Respondent shall comply with all recommendations of the LOMAP director or designee.
- 2) In the event Respondent fails to comply with any of the foregoing terms and information thereof is received by the State Bar, bar counsel shall file a Notice of Non-Compliance with the Disciplinary Commission. The Disciplinary Commission may refer the matter to a hearing officer to conduct a hearing at the earliest possible date, but in no event later than thirty days following receipt of said notice. If the matter is referred to a hearing officer, the hearing officer shall determine whether the terms of probation have been breached, and if so, to recommend appropriate action and response to such breach.
- 3) If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of December 2003.



Jessica G. Funkhouser, Chair  
Disciplinary Commission

<sup>3</sup> The Commission notes that the standard compliance language was inadvertently omitted from the Agreement. The parties stipulated to addition of it. See Commission transcript, p. 6:11-24.

Original filed with the Disciplinary Clerk  
this 3<sup>rd</sup> day of December 2003.

Copy of the foregoing mailed  
this 3<sup>rd</sup> day of December 2003 to:

Thomas A. Zlaket  
Respondent's Counsel  
310 S. Williams Blvd., Suite 170  
Tucson, AZ 85711-4446

Copy of the foregoing hand-delivered  
this 3<sup>rd</sup> day of December 2003 to:

Shauna R. Miller  
Senior Bar Counsel  
State Bar of Arizona  
111 West Monroe, Suite 1800  
Phoenix, AZ 85003-1742

By K Weigand

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

7 Thomas A. Zlaket, Bar No. 001819  
8 Thomas A. Zlaket, P.L.L.C.  
9 310 S. Williams Blvd., Suite 170  
10 Tucson, Arizona 85711-4446  
11 Telephone 520-750-0250  
12 Respondent's Counsel

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

15 **IN THE MATTER OF A MEMBER**  
16 **OF THE STATE BAR OF ARIZONA**

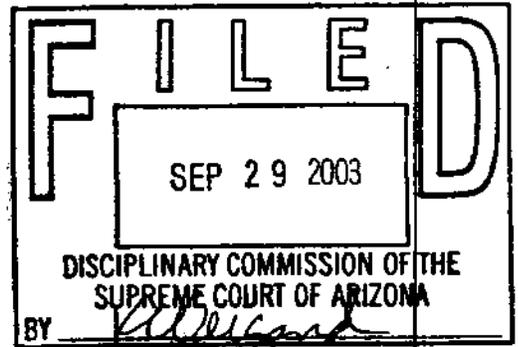
17 **MICHAEL J. VINGELLI**  
18 **Bar No. 002899,**

19 **Respondent.**

20 File No. 01-0098

21 **TENDER OF ADMISSIONS**  
22 **AND AGREEMENT FOR**  
23 **DISCIPLINE BY CONSENT**

24 This agreement is entered into between the State Bar of Arizona and  
25 respondent Michael J. Vingelli, who is represented by Thomas A. Zlaket, and is  
submitted pursuant to Rule 56(a), Ariz.R. S. Ct. and the guidelines for discipline  
by consent issued by the Disciplinary Commission of the Supreme Court of  
Arizona. Respondent's admissions to the charges are being tendered in exchange  
for the form of discipline stated herein, subject to review and acceptance by the  
Disciplinary Commission.



1 Respondent failed to safeguard funds on deposit in his trust account and  
2 failed to maintain his trust account in accordance with the Rules of Professional  
3 Conduct. Respondent will receive a censure for his conduct and be placed on two  
4 year's probation. As part of his probation, respondent shall undergo a LOMAP  
5 audit of his trust account and shall comply with all recommendations resulting  
6 from the audit.  
7

8 This agreement serves the purposes of discipline in that it protects the  
9 public and will deter other lawyers from engaging in similar misconduct.  
10 Restitution is not applicable in this matter. Respondent shall pay all costs and  
11 expenses incurred in these discipline matters. The Joint Memorandum in Support  
12 of Agreement by Consent is filed contemporaneously herewith.  
13  
14

#### 15 FACTS

- 16 1. Respondent was admitted to practice law in Arizona on September 25, 1971.
- 17 2. A probable cause order was entered in this matter on June 17, 2002 (Exhibit  
18 A). A formal complaint has not been filed.
- 19 3. Respondent represented Crystal Blackmon in a personal injury lawsuit, which  
20 was filed on May 8, 1996.
- 21 4. At the time of the accident Ms. Blackmon was a minor and her medical bills  
22 were mostly paid by her parents' insurance coverage prior to respondent's  
23 involvement in the case.  
24  
25

- 1 5. Ms. Blackmon and her mother agreed to settle the case in May 1997, for  
2 \$40,000.00.
- 3  
4 6. It was agreed that respondent would contest the claim by the parents'  
5 insurance provider for reimbursement, because Ms. Blackmon had reached  
6 majority and had not signed an agreement to reimburse the provider.
- 7  
8 7. Respondent notified the insurance provider that Ms. Blackmon was  
9 contesting their subrogation claim and the disputed money would be held in  
10 respondent's trust account until the matter was resolved.
- 11  
12 8. Respondent held the disputed funds in his trust account from May 20, 1997  
13 until September 23, 2002, when he filed an interpleader action in Pima  
14 County Superior Court. During nineteen of the sixty-four months respondent  
15 was holding the disputed funds, the amount in the trust account fell below the  
16 disputed amount.
- 17  
18 9. Respondent was asked on December 13, 2001, and again on May 9, 2002, to  
19 provide documentation demonstrating the disputed funds were held in a trust  
20 account during the time of the dispute. On May 17, 2002, respondent  
21 provided the year-end trust account statements for the years 1999, 2000 and  
22 2001.
- 23  
24 10. The State Bar was informed in a November 11, 2002 letter that respondent  
25 did not maintain individual ledger cards. The State Bar was also provided

1 with the remainder of the trust account bank statements that showed that from  
2 May 20, 1997 until September 23, 2002 respondent's trust account did not  
3 continuously contain the disputed funds.  
4

5 11. Respondent failed to safeguard disputed funds as the disputed funds were not  
6 always in the trust account and the balance dipped below the disputed amount  
7 on some occasions.

8  
9 12. Respondent did not promptly resolve the dispute regarding the funds and  
10 either the client or a third party did not promptly receive the funds they were  
11 entitled to receive.

12  
13 13. Respondent failed to maintain complete trust account records and exercise  
14 due professional care over his trust account.

### 15 CONDITIONAL ADMISSIONS

16 Respondent conditionally admits that his conduct as described above  
17 violated Rule 42, Ariz.R.S.Ct., specifically, ER 1.15(a), (b), and (c) and Rules 43  
18 and 44.  
19

### 20 SANCTION

21 Respondent and the State Bar agree that on the basis of the conditional  
22 admissions contained herein, the appropriate disciplinary sanction is as follows:  
23

24 1. Respondent shall receive a censure for violating Rule 42 Ariz. R. S. Ct.,  
25 specifically ER 1.15(a), (b), and (c), and Rules 43 and 44.

- 1 2. Respondent shall, within thirty (30) days of the Supreme Court's final  
2 judgment and order, contact the director of the State Bar's Law Office  
3 Management Assistance Program (LOMAP) to schedule an audit of his law  
4 office. Following the audit, Respondent shall enter into a Memorandum of  
5 Understanding that will be effective for a period of two years from the date  
6 upon which all parties have signed the Memorandum. Respondent shall  
7 comply with all recommendations of the LOMAP director or her designee.  
8  
9  
10 3. Respondent shall be assessed the costs and expenses incurred in these  
11 disciplinary matters, pursuant to Rule 52(a)(8), Ariz. R. S. Ct. A statement of  
12 costs and expenses is attached hereto (Exhibit B).  
13

14 Respondent, by entering into this agreement, waives his right to a formal  
15 disciplinary hearing that he would otherwise be entitled to pursuant to Rule  
16 53(c)6, Ariz.R.S.Ct., and the right to testify or present witnesses on his behalf at a  
17 hearing. Respondent further waives all motions, defenses, objections, or requests  
18 which he has made or raised, or could assert hereafter, if the conditional  
19 admissions and stated form of discipline are approved. Respondent does have the  
20 assistance of counsel in these proceedings. Respondent acknowledges that he has  
21 read this agreement and received a copy of it.  
22  
23

24 This tender of admissions and agreement for discipline by consent will be  
25 submitted to the Disciplinary Commission for approval. Respondent realizes that

1 the Commission may request his presence at a hearing for presentation of  
2 evidence and/or oral argument in support of this agreement. He further recognizes  
3 that the Commission may recommend rejection of this agreement, and that the  
4 Arizona Supreme Court may accept or reject the Commission's recommendation.  
5 If the Arizona Supreme Court or the Disciplinary Commission rejects this  
6 agreement, respondent's conditional admissions are withdrawn.  
7

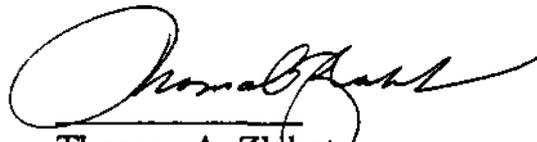
8 **This agreement, with conditional admissions, is submitted freely and**  
9 **voluntarily and not under coercion or intimidation. I am aware of the Rules**  
10 **of the Supreme Court with respect to discipline and reinstatement.**

11 DATED this 24 day of Sept, 2003.  
12

13   
14 Michael J. Vingelli  
15 Respondent  
16

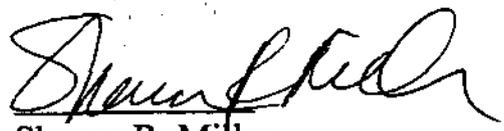
17 DATED this 25 day of September, 2003.  
18

19 **THOMAS A. ZLAKET, P.L.L.C.**

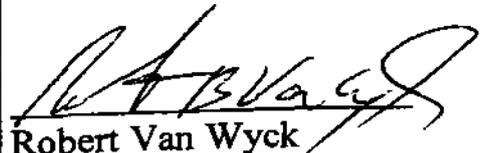
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21 Thomas A. Zlaket  
22 Respondent's Counsel  
23  
24  
25

1 DATED this 26<sup>th</sup> day of September, 2003.

2 STATE BAR OF ARIZONA

3  
4   
5 Shauna R. Miller  
6 Senior Bar Counsel

7  
8 Approved as to form and content:

9   
10 Robert Van Wyck  
11 Chief Bar Counsel

12  
13 Original filed this 29<sup>th</sup> day  
14 of September, 2003, with:

15 Disciplinary Clerk's Office  
16 Supreme Court of Arizona  
17 Certification and Licensing Division  
18 1501 W. Washington #104  
Phoenix, AZ 85007-3329

19 Copy of the foregoing hand delivered  
20 this 29<sup>th</sup> day of September, 2003, to:

21 Lawyer Regulation Records Manager  
22 111 West Monroe St., Suite 1800  
Phoenix, AZ 85003

23  
24 . . .  
25 . . .

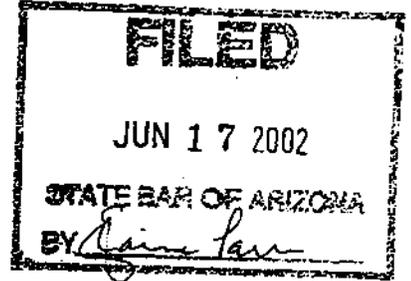
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Copy of the foregoing mailed  
this 29<sup>th</sup> day of September, 2003, to:

Thomas A. Zlaket  
Thomas A. Zlaket, P.L.L.C.  
310 S. Williams Blvd., Suite 170  
Tucson, Arizona 85711-4446  
Respondent's Counsel

by: Barbara T. Chandler  
SRM/

# EXHIBIT A



BEFORE THE PROBABLE CAUSE PANELIST  
OF THE STATE BAR OF ARIZONA

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

No. 01-0098

MICHAEL J. VINGELLI  
Bar No 002899

PROBABLE CAUSE ORDER

Respondent.

The Probable Cause Panelist of the State Bar, having reviewed this matter pursuant to Rule 53(b), Ariz.R.S.Ct., finds that probable cause exists to issue a complaint against respondent for violations of Rule 42, Ariz.R.S.Ct., including but not limited to ERs 1.15, 8.1(b) and Rules 43, 44 and 51(h) and (i).

IT IS THEREFORE ORDERED that the State Bar prepare and file a complaint with the Disciplinary Clerk.

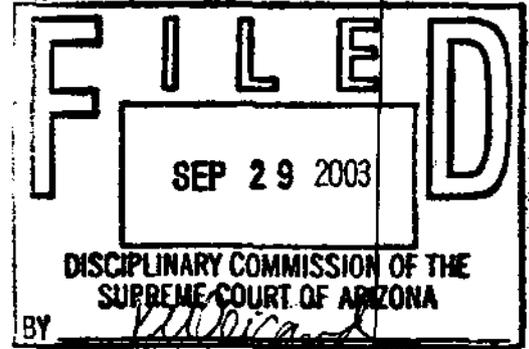
DATED this 7 day of June, 2002.

Pamela A. Treadwell-Rubin  
Probable Cause Panelist  
State Bar of Arizona

Copies mailed/hand-delivered this 17<sup>th</sup> day of June, 2002, to:

Michael J. Vingelli  
33 N. Stone, Suite 1800  
Tucson, AZ 85701-1415

by: Karen S. Nelson  
JNS/ksn



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

7 Thomas A. Zlaket, Bar No. 001819  
8 Thomas A. Zlaket, P.L.L.C.  
9 310 S. Williams Blvd., Suite 170  
10 Tucson, Arizona 85711-4446  
11 Telephone 520-750-0250  
12 Respondent's Counsel

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

15 **IN THE MATTER OF A MEMBER**  
16 **OF THE STATE BAR OF ARIZONA**  
  
17 **MICHAEL J. VINGELLI**  
18 **Bar No. 002899,**  
19  
20 **Respondent.**

21 File No. 01-0098

22 **JOINT MEMORANDUM IN**  
23 **SUPPORT OF AGREEMENT FOR**  
24 **DISCIPLINE BY CONSENT**

25 The State Bar of Arizona and respondent Michael J. Vingelli, who is represented by Thomas A. Zlaket, hereby submit their Joint Memorandum in Support of the Agreement for Discipline by Consent. Respondent failed to safeguard funds on deposit in his trust account and failed to maintain his trust account in accordance with the Rules of Professional Conduct. Respondent will receive a censure for his conduct and be placed on two year's probation. This agreement serves the purposes of discipline in that it protects the public and will deter other lawyers from engaging in similar misconduct. Restitution is not

1 applicable in this matter. Respondent shall pay all costs and expenses incurred in  
2 these discipline matters. The Tender of Admission and Agreement for Discipline  
3 by Consent is filed contemporaneously herewith.  
4

5 In arriving at the agreed upon sanctions, consideration was given to the  
6 ABA Standards for Imposing Lawyer Sanctions ("ABA Standards"), Rule  
7 52(a)(11), Ariz. R. S. Ct., and Arizona case law.  
8

### 9 ABA STANDARDS

10 The *ABA Standards* are designed to promote consistency in the imposition of  
11 sanctions by identifying relevant factors that courts should consider and then  
12 applying these factors to situations where lawyers have engaged in various types of  
13 misconduct. *ABA Standard 1.3, Commentary.*  
14

15 In this matter, consideration was given to *ABA Standard 4.13*. Censure is  
16 generally appropriate when a lawyer is negligent in dealing with client property  
17 and causes injury or potential injury to a client.  
18

19 Respondent was supposed to be holding disputed funds in his trust account.  
20 The dispute was between his client and a union, which paid for the client's  
21 medical expenses incurred due to an automobile accident. The dispute went on  
22 for approximately three years. The disputed funds did not always remain in the  
23 trust account and the balance dipped below the disputed amount on some  
24 occasions. Additionally, respondent did not resolve the dispute in a timely manner  
25

1 as respondent received the funds in May 1997 and did not interplead the funds  
2 with the court until September 2002. Finally, respondent did not have all of the  
3 trust account records that he is required to keep under Rule 43(d), Ariz.R.S.Ct.  
4

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

8 *Matter of Tarletz*, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA Standard 3.0.  
9

10 Although respondent violated his fiduciary duty with regard to his trust account, it  
11 was not intentional. Rather, respondent's conduct was negligent and no clients  
12 were harmed due to respondent's failure to properly maintain his client trust  
13 account and there was minimal harm to a third party due to respondent's lack of  
14 diligence in resolving the dispute between the client and the third party.  
15

16 In deciding what sanction to impose the following aggravating and mitigating  
17 circumstances should be considered.  
18

19 **In aggravation:**

20 Standard 9.22(a) prior disciplinary offenses. Respondent received a private  
21 informal reprimand on January 14, 1987. Respondent also received an informal  
22 reprimand on March 28, 1997 for violation of ER 8.4(c). The prior misconduct  
23 should be given little weight. The private informal reprimand in 1987 is remote,  
24 and the informal reprimand in 1997 is not the same kind of misconduct that  
25

1 occurred in this matter. In the 1997 matter, respondent was sanctioned for  
2 misleading his client to believe that the opposing party's offer had been accepted  
3 when in fact it was not, and by misleading the client to believe the opposing party  
4 had reneged on the purported deal.  
5

6 Standard 9.22(i) substantial experience in the practice of law. Respondent has  
7 been in practice thirty-two years in the State of Arizona.  
8

9 **In mitigation:**

10 Standard 9.32(b) absence of a dishonest or selfish motive. Respondent did not  
11 misuse his trust account in order to harm his clients and benefit himself.  
12

13 Standard 9.32(j) delay in disciplinary proceedings. The State Bar first received  
14 the charge in this matter on January 16, 2001 and the probable cause order was  
15 entered on June 2002. The State Bar did not proceed in an expeditious manner  
16 after receiving the probable cause order.  
17

18 Standard 9.32(m) remorse. Respondent is remorseful for his actions. He is  
19 determined to correct the situation described above so that it does not reoccur. He  
20 recently had his trust account audited by a certified public accountant. He has  
21 replaced his office bookkeeper and is installing a ledger system for the trust  
22 account.  
23  
24  
25



1 in the maintenance of his trust account, failed to only disburse from his trust  
2 account with pre-numbered checks, and failed to conduct a monthly reconciliation  
3 of his trust account. In Serra and the State Bar submitted a consent agreement,  
4 agreeing that a censure, two years probation and costs were the appropriate  
5 sanction. The Disciplinary Commission unanimously recommended accepting the  
6 agreement and the Supreme Court accepted the recommendation of the  
7 Disciplinary Commission without discretionary review.  
8  
9

10 In this case, respondent failed to safeguard disputed funds that he held in his  
11 trust account for approximately three years. The disputed funds did not always  
12 remain in the trust account and the balance dipped below the disputed amount on  
13 numerous occasions. Respondent did not resolve the dispute regarding the funds  
14 in a timely manner and he failed to maintain complete trust account records and  
15 exercise due professional care.  
16

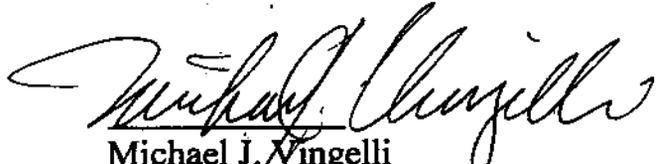
17 Based on the aforementioned, the State Bar and respondent agree that  
18 respondent's conduct in this matter warrants a censure, two years probation, and  
19 the costs and expenses incurred in these disciplinary matters and respectfully  
20 request the imposition of same herein.  
21

### 22 CONCLUSION

23 Recognizing that it is the prerogative of the Disciplinary Commission to  
24 determine the appropriate sanction, it is nevertheless the belief of the State Bar  
25

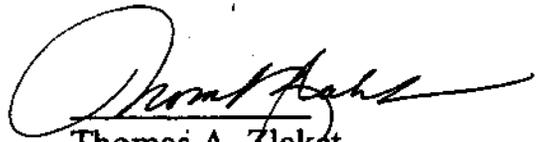
1 and respondent that the objectives of discipline will be met by the imposition of a  
2 censure, two-year probation, and the costs and expenses of these proceedings.

3 DATED this 24 day of Sept, 2003.  
4

5   
6 Michael J. Yingelli  
7 Respondent

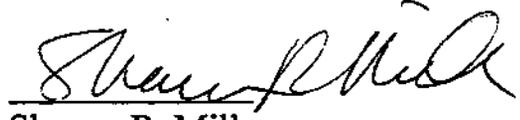
8 DATED this 25 day of September, 2003.  
9

10 THOMAS A. ZLAKET, P.L.L.C.

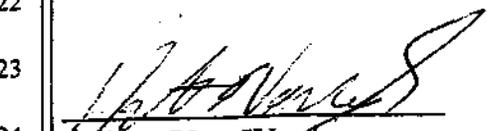
11   
12 Thomas A. Zlaket  
13 Respondent's Counsel

14 DATED this 26<sup>th</sup> day of September, 2003.  
15

16 STATE BAR OF ARIZONA

17   
18 Shauna R. Miller  
19 Senior Bar Counsel  
20

21 Approved as to form and content:

22   
23 Robert Van Wyck  
24 Chief Bar Counsel  
25

1 Original filed this 29<sup>th</sup> day  
2 of September, 2003, with:

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4 Supreme Court of Arizona  
5 Certification and Licensing Division  
6 1501 W. Washington #104  
7 Phoenix, AZ 85007-3329

8 Copy of the foregoing hand delivered  
9 this 29<sup>th</sup> day of September, 2003, to:

10 Lawyer Regulation Records Manager  
11 111 West Monroe St., Suite 1800  
12 Phoenix, AZ 85003

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17 310 S. Williams Blvd., Suite 170  
18 Tucson, Arizona 85711-4446  
19 Respondent's Counsel

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24  
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by: Barbara T. Chandler  
SRM/