

**FILED**  
 NOV - 7 2003  
 HEARING OFFICER OF THE  
 SUPREME COURT OF ARIZONA  
 BY *William*

BEFORE A HEARING OFFICER  
 OF THE SUPREME COURT OF ARIZONA

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IN THE MATTER OF A MEMBER )  
 OF THE STATE BAR OF ARIZONA, )  
 )  
 )  
 DAVID J. ESTES, )  
 Bar No. 006857 )  
 )  
 )  
 RESPONDENT. )  
 \_\_\_\_\_ )

Nos. 02-2251 , 02-2359

**HEARING OFFICER'S REPORT  
 AND RECOMMENDATION**

A Probable Cause Order was issued in this matter by the Probable Cause Panelist of the State Bar of Arizona on March 17, 2003. A Complaint was filed by the State Bar of Arizona on April 18, 2003. By Notice of Service of Complaint by Mail, the State Bar of Arizona perfected service of process upon the Respondent on April 21, 2003 by sending a copy of the Complaint to the Respondent by regular first class mail and by certified mail/delivery restricted to Respondent David J. Estes, attorney at law, at 7373 North Scottsdale, Suite E-200, Scottsdale, Arizona 85253-3513.

On April 24, 2003, this matter was assigned to the undersigned, Hearing Officer 9Q, for purposes of further proceedings. On May 7, 2003, the Hearing Officer filed a Notice of Acceptance of Appointment. On May 23, 2003, the Disciplinary Clerk of the Supreme Court filed a Notice of Default as no answer had been received from the Respondent and the time to answer had expired.

On June 18, 2003, the Disciplinary Clerk of the Supreme Court entered Default in this matter.

1           On June 20, 2003, the State Bar of Arizona filed a Request For Hearing  
2 seeking to be heard in aggravation pursuant to Rule 53(c)(3) of the Rules of the  
3 Arizona Supreme Court.

4           On June 24, 2003, Hearing Officer 9Q issued a Notice of Hearing scheduling a  
5 hearing for Wednesday, July 9, 2003 at 2:00 p.m.

6           On July 3, 2003, the State Bar of Arizona filed a Motion To Vacate the hearing  
7 that had been scheduled for July 9, 2003, stating that Respondent and Bar counsel  
8 were conferring for purposes of resolving the matter without the necessity of a  
9 hearing.

10           On July 7, 2003, Hearing Officer 9Q issued an order granting the Motion to  
11 Vacate the hearing and vacated the hearing that had been set for July 9, 2003. The  
12 Hearing Officer further ordered that the parties were to file simultaneous memoranda  
13 on or before Wednesday, July 23, 2003, setting forth their positions, if they had  
14 indeed agreed to resolve the matter.  
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16           On July 23, 2003, the State Bar and Respondent, acting in propria persona,  
17 filed a Joint Aggravation/Mitigation Memorandum.  
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19           On September 9, 2003, Hearing Officer 9Q filed and sent a Notice of Hearing  
20 scheduling a hearing in this matter for Wednesday, September 24, 2003 at 10:00 a.m.  
21 The Hearing Officer was concerned that the Joint Aggravation/Mitigation  
22 Memorandum supplied insufficient information upon which Hearing Officer could  
23 determine the appropriate sanction in this matter. A hearing was held on September  
24 24, 2003, commencing at 10:00 a.m. Present at the hearing were Hearing Officer 9Q,  
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1 Respondent David J. Estes, Esq., and Robert A. Clancy, Esq., Bar Counsel appearing  
2 for the State Bar of Arizona, and Ms. Loretta A. Cross, certified court reporter.

3 Testimony was taken and the matter was concluded. A hearing transcript has  
4 been filed. Having considered the matter, the Hearing Officer makes the following  
5 findings, substantially adopting the proposed Findings of Fact and Conclusions stated  
6 in the Joint Aggravation/Mitigation Memorandum filed by the parties. The Hearing  
7 Officer finds as follows.

8 **Findings of Fact**

9 1. At all times relevant hereto, David J. Estes (Respondent) was an  
10 attorney licensed to practice law in the State of Arizona, having been admitted to  
11 practice in Arizona on October 17, 1981.

12 2. On October 1, 2000, John P. Carretto ("Decedent") died. In his Will,  
13 Mr. Heinz Gruenwald ("Gruenwald") was named Personal Representative.

14 3. The primary beneficiary of the estate was decedent's mother, Dolores  
15 M. Carretto ("Primary Beneficiary").

16 4. Paula Carretto ("Paula") is the daughter of Dolores Carretto and  
17 assisted her mother in matters related to the Decedent's estate.

18 5. Both counts of the complaint in this matter, Counts One and Two,  
19 related to the Respondent's involvement in the probate of Decedent's estate.

20 **Findings of Fact as to Count One (File No. 02-2251)**

21 6. Gruenwald retained Respondent to collect his fees for Gruenwald's  
22 services as Personal Representative of the estate.  
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1           7.       Respondent billed Gruenwald Four Thousand Seven Hundred Seventy-  
2 two and 26/100 Dollars (\$4,772.26) for services rendered and for costs advanced.

3           8.       Gruenwald paid Respondent Four Thousand Two Hundred Sixty-eight  
4 and 26/100 Dollars (\$4,268.26).

5           9.       For a significant period of time, Gruenwald made repeated requests for  
6 copies of correspondence relating to the case, but Respondent failed to provide those  
7 copies to him.

8           10.      In June of 2002, Gruenwald asked Respondent to prepare a petition for  
9 Gruenwald's fees for having acted as a fiduciary in the estate. Respondent promised  
10 to prepare that petition and forward it to Gruenwald for his signature within a few  
11 days.  
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13           11.      On July 25, 2002, Gruenwald had not yet received the documents  
14 Respondent had promised to prepare. On that date, Gruenwald sent Respondent an  
15 e-mail asking for the status of the matter.

16           12.      The next day Respondent, by e-mail back to Gruenwald, apologized for  
17 the delay and promised that the petition would be delivered to Gruenwald within the  
18 next week.  
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20           13.      On August 2, 2002, Gruenwald again e-mailed Respondent seeking  
21 information as to the status of the matter.

22           14.      The next day Respondent responded to Gruenwald's e-mail,  
23 apologized for the delay, and promised to deliver the documents to Gruenwald during  
24 the week of August 12, 2002.  
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15. On August 8, 2002, Gruenwald e-mailed Respondent a request for analysis of some apparent errors in bills that had been submitted to Gruenwald by Respondent, and Respondent did not reply.

16. Gruenwald again sent an e-mail to Respondent and requested an accounting of the time Respondent had billed on the case.

17. On October 11, 2002, Respondent sent an e-mail to Gruenwald in which he said that he had received a letter which he was forwarding to Gruenwald. Respondent also inquired, in that e-mail, "what progress, if any, you have made attempting to work out a settlement" with Paula regarding the payment of Gruenwald's fees. Respondent also asked Gruenwald questions concerning the preparation of an approval for fees for filing with the court. Respondent also promised to send Gruenwald copies of his billing statement within a week or so.

18. On October 17, 2002, Gruenwald sent Respondent a detailed e-mail requesting advice on how to proceed. He told Respondent that in order for him to make a decision as to what he needed to do; he needed copies of certain documents which were in Respondent's file. Gruenwald also questioned multiple billing entries on a recent statement he had received, and asked for an explanation of them.

19. On October 25, 2002, Gruenwald sent Respondent a letter requesting information concerning the case, and again questioned certain billing entries.

20. On November 1, 2002, Respondent sent an e-mail to Gruenwald. The e-mail states in pertinent part:

I have received your letter. I anticipate getting a response out to you next Monday or Tuesday. If there is anything you need

me to do with respect to the estate [sic] matter itself, please let me know.

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2           21. On November 11, 2002, in response to a voice mail left by Gruenwald,  
3 Respondent again e-mailed Gruenwald. The e-mail was unresponsive to  
4 Gruenwald's request for information. Instead, Respondent suggested that Gruenwald  
5 call Respondent on Wednesday, November 13<sup>th</sup>, between 11:00 and 12:00 a.m. or  
6 between 2:30 and 5:00 p.m. to discuss the case. Respondent asked Gruenwald to  
7 send him a confirming e-mail as to when Gruenwald was going to call.  
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9           22. On November 12, 2002, Gruenwald send an e-mail to Respondent.  
10 The e-mail expressed Gruenwald's concern about Respondent's lack of  
11 communication and guidance in the case. The e-mail also confirmed that Gruenwald  
12 would call Respondent on November 13, 2002 at 11:00 a.m.  
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14           23. On November 13, 2002, Gruenwald called Respondent at 11:01 a.m.  
15 Respondent did not take the call. Instead, Gruenwald was connected to  
16 Respondent's voice mail and received a message that Respondent was unavailable.  
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18           24. On November 13, 2002, Gruenwald e-mailed Respondent asking why  
19 Respondent did not take the call from Gruenwald at 11:01 a.m.  
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21           25. Respondent did not respond to Gruenwald's inquiry as to the call.  
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23           26. On November 18, 2002, Gruenwald again e-mailed Respondent asking  
24 for information concerning the status of the case.  
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26           27. On November 19, 2002, Respondent e-mailed Gruenwald, but  
Respondent's e-mail was unresponsive to Gruenwald's request for information.

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28. On November 22, 2002, Gruenwald again e-mailed Respondent. The e-mail expressed frustration at Respondent's lack of diligence and communication regarding the case. The e-mail said that Gruenwald would file a complaint with the State Bar of Arizona.

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29. On November 27, 2002, Gruenwald e-mailed Respondent one last time. This e-mail says that Gruenwald had left a voice mail message for Respondent on November 26, 2002 and that, as of the time of the e-mail, Respondent had not called Gruenwald back.

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30. On December 3, 2002, Gruenwald filed a complaint with the State Bar of Arizona, which is the subject of these proceedings.

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31. On December 20, 2002, the State Bar of Arizona sent a letter to Respondent requesting that he respond to the allegations made by Gruenwald in his complaint.

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32. Respondent did not respond to the State Bar of Arizona's letter of January 31, 2003.

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33. On February 12, 2003, Bar counsel called Respondent. In that telephone conversation, Respondent said that he would send his response to the Gruenwald and another complaint, a complaint filed by Carretto, on or about February 13, 2003. Bar counsel sent a letter confirming that discussion to Respondent.

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34. Despite Respondent's representation that he would send his response within a day, Respondent did not do so.



1 letters and phone calls from attorney John Pattullo, who was representing the  
2 primary beneficiary in the dispute over the Personal Representative's fees.

3 45. On December 5, 2002, the State Bar of Arizona sent Respondent a  
4 letter requesting that he respond to the allegations made by Carretto.

5 46. Respondent failed to respond to the State Bar of Arizona's letter of  
6 December 5, 2002.

7 47. On January 31, 2003, the State Bar of Arizona sent Respondent a  
8 second letter requesting that he respond to the allegations made by Carretto.

9 48. Respondent failed to respond to the State Bar of Arizona's letter of  
10 January 31, 2003.

11 49. On February 12, 2003, Bar Counsel called Respondent. In the  
12 telephone conversation, as previously noted, Respondent said that he would send  
13 a response to the Gruenwald and Carretto complaints on or about February 13,  
14 2003. Bar counsel sent a letter to Respondent confirming that conversation.

15 50. Despite Respondent's statement that he would send his response  
16 within a day, he did not do so.

17 51. On February 19, 2003, Bar Counsel sent Respondent one final letter  
18 indicating that his failure to respond would result in a request for an order of  
19 probable cause, as noted above.

20 52. Respondent did not respond to this letter.

21 53. Respondent did not act with reasonable diligence and promptness in  
22 his representation of Gruenwald in the fee dispute, in violation of ER 1.3.  
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1           54.   Respondent did not make reasonable efforts to expedite the fee  
2   dispute litigation, in violation of ER 3.2.

3           55.   Respondent made a false statement of material fact in connection  
4   with a discipline matter, in violation of ER 8.1(a).

5           56   Respondent failed to respond to the State Bar of Arizona, in  
6   violation of Rule 51(h) and Rule 51 (i).

7           57.   Respondent engaged in conduct that is prejudicial to the  
8   administration of justice in violation of ER 8.4(d).

9           58.   A formal complaint was filed by the State Bar of Arizona against  
10   Respondent, David J. Estes ("Estes") on April 18, 2003.

11           59.   The State Bar of Arizona served the complaint on Respondent  
12   pursuant to Rule 55(b) of the Rules of the Arizona Supreme Court.

13           60.   Respondent did not file a timely answer or other responsive  
14   pleading.

15           61.   The Disciplinary Clerk filed a Notice of Default on May 23, 2003.

16           62.   The Disciplinary Clerk filed an Entry of Default on June 18, 2003.

17           63.   The Entry of Default renders all of the allegations in the complaint  
18   admitted.

19           64.   At the hearing in this matter, Respondent explained his conduct in  
20   dealing with Gruenwald, his client, as follows:

21           All that was occurring at a time when I was extremely busy with  
22   other matters. I was trying to respond to his request for  
23   information and say, yes, I will try to get the information to you as  
24   quickly as I can or tomorrow or next week or whatever, and then  
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was unable to do so. I was trying to get the information to him, but trying to juggle too many other things at the same time.

Reporter's transcript of proceedings September 24, 2003 (hereinafter RT), pgs. 9, 10.

Respondent continued at the hearing, testifying in narrative:

I was trying to get some things done for him and simply didn't because of time pressures on other matters. November, December last year were not good months for me, professionally.

THE HEARING OFFICER: You want to tell me why?

MR. ESTES: I had just an enormous number of things going on at that time that were all under big time pressures, you know, several other big matters; negotiations, litigations, things that were going on that were overwhelming my ability to get all of the things done.

RT, pg. 11.

On questioning by Bar Counsel, Respondent testified as follows:

MR. CLANCY: Just a couple of questions. During the time period when you basically said you had more work that you could accomplish, did you have any other clients complain to you about the handling of their cases?

MR. ESTES: I had one other matter that I was working on, you know, and it was a co-counsel arrangement which we were doing some very extensive settlement negotiations and such. And I was working with co-counsel in that place and in sort of mid to late December, we had a big settlement conference. I'm going to say in November or early December and then we were doing all of the follow up of all the settlement documents. And I was in the middle of, I wasn't say primary drafter on anything, but in the middle of those things.

And, again, so much was going on that they became frustrated with, you know, my inability to respond as quickly as they wanted to when we were exchanging drafts and such. In the midst of that, I did get my – there wasn't anything more for me to do, so they sort of terminated my employment in that particular matter. You know, again, it was just more – I couldn't be as responsive to them in a timely manner as they wanted.

1 MR. CLANCY: Other than that one other case, was there anyone  
2 else that complained to you?

3 MR. ESTES: Not that I can recall. I'm not aware of it.

4 MR. CLANCY: Okay. With regard to the fees that Mr. Gruenwald  
5 paid, can you tell us how that dispute with him was resolved?

6 MR. ESTES: Ya, I have reimbursed to Mr. Gruenwald all of the  
7 fees that he paid to my firm. The reimbursement actually  
8 occurred in the beginning of September.

9 THE HEARING OFFICER: Of this year?

10 MR. ESTES: Of this year.

11 RT, pgs. 12, 13, 14.

12 In response to questioning by the Hearing Officer, Mr. Estes testified as  
13 follows:

14 THE HEARING OFFICER: Can you tell me any circumstances  
15 pertaining to why you let this matter go to a default. Why you  
16 didn't file a timely answer?

17 MR. ESTES: No, other than the time problems that I was having  
18 spilled over into the first quarter of this year. I had several big  
19 matters I was still working on. I had a matter in a probate  
20 proceeding that went to trial in mid March. That was taking a lot  
21 of time and such. So, I was having trouble responding in a timely  
22 manner. I talked to Mr. Clancy once about getting the time  
23 extended and still could bring myself to do it in a timely manner.

24 So, the continuation of having, you know, a lot of time pressures  
25 and, frankly, when you look to sit down and respond to this, and  
26 as a default indicates, at the end of the day I didn't dispute any of  
the factual allegations that were made in there in terms of what  
happened, how it happened or didn't happen. There were things  
in there where I took exception for the characterizing of why or  
how something happened, but just the chronology of attempted  
communications and my attempts to respond and failing to do so,  
I didn't dispute. I recognize, in hindsight, I should not have let  
them lapse. I should have contacted Mr. Clancy much sooner  
than I did.

1 THE HEARING OFFICER: Or filed an answer.

2 MR. ESTES: I understand. So, I don't have any great  
3 explanation for why.

4 THE HEARING OFFICER: Is your practice under control?

5 MR. ESTES: I think so.

6 RT, pgs. 14, 15, and 16.

7 The hearing concluded with comments by Bar Counsel as follows:

8 MR. CLANCY: Just a couple quick comments. The Bar is  
9 satisfied with the proposed sanction in this case. We wouldn't  
10 have agreed to it if we thought it was too lenient or too severe.  
11 Though we got off to a slow start, Mr. Estes and I certainly have  
12 cooperated well since the filing of the formal complaint and he  
really has demonstrated an understanding of the seriousness of  
these matters.

13 . . . .

14 We are here telling you it's not a pattern of neglect in a case. I  
15 think that it can be harmonized by pointing out that the negligence  
16 was virtually confined to one case. So while there was pattern of  
misconduct in the sense of one case was neglected repeatedly, it  
did not, fortunately, involve the larger part of Mr. Estes' practice.

17 RT, pgs. 17 and 18.

18 **Sanction**

19 In imposing discipline, it is appropriate to consider the facts of the case, the  
20 American Bar Association standards, and the proportionate discipline imposed in  
21 analogous cases. *The Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238  
22 (1994). In applying the ABA standards, the Supreme Court considers the duty  
23 violated, the lawyer's mental state, the actual or potential injury caused by the  
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misconduct and the existing of aggravating and mitigating factors. *In Re Spear*, 160 Ariz. 545, 555, 774 P.2d 1335, 1345 (1989).

**A. Ethical Rules Violated**

To determine what sanctions should be imposed, it is relevant to summarize the ethical rules violated. Default has been entered and all of the allegations of the complaint have been deemed admitted. Therefore, Respondent violated the following rules:

**Count One (02-2251)**

ER 1.4, ER 1.5, ER 1.15, ER 8.1(a), Rule 51(h), Rule 51(i)

**Count Two (01-1377)**

ER 1.3, ER 3.2, ER 8.1(a), Rule 51(h), Rule 51(i)

**B. Application of the ABA Standards**

The American Bar Association Standards for imposing lawyer sanctions (Standards) provide a useful tool in determining the proper sanctions to be applied, as we have noted. The ABA Standards identify four distinct categories of duties owed by attorneys. They are, in order of importance as follows:

1. **Duties Owed to Clients:** An attorney's most important duties are those owed to clients. Clients are entitled to an attorney's loyalty, diligence, competence and candor.

2. **Duties Owed to the General Public:** Members of the public are entitled to be able to trust lawyers to protect their property, liberty and lives. The community expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty or fraud.

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3. Duties Owed to the Legal System: As officers of the court, attorneys must abide by the rules of substance and procedure which shape the administration of justice.

4. Duties Owed to the Profession: These are duties not inherent in the relationship between the professional and the community, but which nonetheless concern the profession. Some examples of such duties are to prevent the unauthorized practice of law, and to maintain the integrity of the profession.

In the instant case, Respondent violated a number of these duties. Under the circumstances, the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct among a number of violations. It might well be, and generally should be greater than the sanction for the most serious misconduct. See Standards, pg. 6, *Matter of Redeker*, 177 Ariz. 305, 868 P.2d 318 (1984). Here, the Hearing Officer finds, as agreed upon by the parties in the Joint Aggravation/Mitigation Memorandum, that the most serious violations involve the duties of diligence of communication Respondent owed to his client, Heinz Gruenwald.

Standard 4.42 sets forth the appropriate sanction when, as here, a lawyer violates duties owed to his clients. Standard 4.42 states that suspension is generally appropriate where a lawyer engages in a pattern of neglect and causes injury or potential injury to a client. Here, however, there has been no showing of harm and, in fact, full restitution has apparently been made by the attorney to the client in that he has fully repaid any fee paid by the client.

1 Standard 4.43 states that reprimand (censure in Arizona) is generally  
2 appropriate where a lawyer is negligent and does act with reasonable diligence in  
3 representing the client, and causes injury or potential injury to a client.

4 In the instant case, though a suspension is within the range of acceptable  
5 sanctions, the Hearing Officer finds, as set forth in the testimony of Respondent and  
6 the argument of counsel, that Respondent did not act knowingly, but rather acted  
7 negligently, when he neglected the case of his client, Mr. Gruenwald. As to Mr.  
8 Gruenwald, there is no evidence nor was there any argument or information that he  
9 suffered any harm, other than a delay in the completion of the estate matter. His fees  
10 were all refunded to him by respondent, and he did not appear to express any  
11 disagreement with the proposed sanction.  
12

13 Accordingly, the Hearing Officer finds and recommends that censure is the  
14 presumptive, appropriate sanction to be imposed in this matter.

15 ABA Standard 9.0 sets forth aggravating and mitigating factors to be  
16 considered in deciding upon the appropriate sanction to impose. In the present case,  
17 the following aggravating factors are present:  
18

19 **Aggravating Factors Which Are Present**

20 9.22(c) - A Pattern of Misconduct. Respondent first failed to respond to  
21 multiple requests for information from his client, and then failed to respond to multiple  
22 requests for information from the State Bar during the investigation of this matter.  
23

24 9.22(e) - Bad Faith Obstruction of the Disciplinary Proceedings by  
25 Intentionally Failing to Comply with the Rules or Orders of the Disciplinary Agency.  
26

1 Respondent failed to respond to the State Bar of Arizona's investigation in both of the  
2 files. Respondent failed to file an answer to the formal complaint that was filed.

3 9.22(i) – Substantial Experience in the Practice of Law – Respondent was  
4 admitted to practice law in 1981.

5 **Mitigating Factors Which Are Present**

6 9.32(a) – Absence of Prior Disciplinary Record – In his more than 22 years  
7 of practicing law, Respondent has had no prior sanction imposed for any  
8 misconduct.

9 9.32(b) – Absence of Dishonest or Selfish Motives – Respondent did not  
10 act with a dishonest or selfish motive. Indeed, Respondent tried to work for  
11 Gruenwald in an efficient manner in an attempt to keep his legal fees down in the  
12 underlying fee dispute (most of which he and Gruenwald believe were not  
13 directed at Gruenwald, but were directed toward Gruenwald's attorney in the  
14 underlying estate matter), rather than incurring a great deal of additional, perhaps  
15 needless time and fees in the event that Gruenwald had been able to resolve his  
16 underlying fee dispute (as he believed he had on a number of different  
17 occasions). Also, although Respondent believes that the fees charged were  
18 reasonable for the time and effort he extended, Respondent recognized that  
19 Gruenwald has not benefited from the time and effort and has voluntarily agreed  
20 to and has made restitution to Gruenwald in the amount of Four Thousand Two  
21 Hundred Sixty-eight and 26/100 Dollars (\$4,268.26), all of the fees that  
22 Gruenwald paid to Respondent.  
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1 9.32(d), Timely, Good Faith Effort to Make Restitution or to Rectify  
2 Consequences of Misconduct – Although Respondent failed to respond to the  
3 State Bar inquiry, Respondent has agreed to and has paid restitution to  
4 Gruenwald in full.

5 9.32(e), Full and Free Disclosure to Disciplinary Board Or Cooperative  
6 Attitude Toward Proceeding – Although Respondent failed to respond to the State  
7 Bar inquiry in a timely manner, although he failed to file a timely answer,  
8 thereafter Respondent has provided full disclosure to Gruenwald, has acquiesced  
9 in the complaint without dispute, has cooperated with Gruenwald and with the  
10 State Bar of Arizona in preparation of the Joint Aggravation/Mitigation  
11 Memorandum and has not disputed the proposed sanction.  
12

13 9.32(f), Character and Reputation – Respondent has a very good  
14 reputation within the State Bar, both as a practitioner and as someone who has  
15 contributed a great deal of time, effort and expertise to State Bar activities. For  
16 example, Respondent has been a consulting expert to the State Bar on more than  
17 one occasion, and has been involved with section activities, seminars, legislative  
18 efforts, etc.  
19

20 9.32(l), Remorse – Respondent has indicated a great deal of remorse and  
21 desire to do what he can to make this matter right, both with the parties involved  
22 and with the State Bar.  
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24 **Proportionality**

25 In the *Matter of McDonald*, Supreme Court No. SB-00-0021-D (2000),  
26 Respondent failed to act with reasonable diligence and promptness in

1 representing domestic relations clients. Respondent failed to keep the clients  
2 informed as to the status of the case and failed to respond to reasonable requests  
3 for information. Respondent had been instructed by the courts to file certain  
4 documents, but failed to do so. Respondent failed to surrender clients' papers in  
5 a timely manner. Respondent initially failed to cooperate with the State Bar, but  
6 did so after a complaint was filed. Respondent was censured and probation was  
7 extended for a period of six months.

8 Here, Respondent cooperated with the State Bar, and has expressed  
9 significant remorse. It would therefore seem that censure would be the  
10 appropriate and proportional sanction to be imposed here.

11  
12 **Restitution**

13 As Respondent has testified, under oath, that he has fully refunded to Mr.  
14 Gruenwald the fees that were paid in the amount of Four Thousand Two Hundred  
15 Sixty-eight and 26/100 (\$4268.26), it is not necessary to impose any order of  
16 restitution.

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18 **Recommended Sanction**

19 Hearing Officer recommends a sanction of censure and that Respondent  
20 pay all of the costs and expenses incurred in this matter.

21 DATED this 17<sup>th</sup> day of November, 2003.

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23   
24 Steven M. Friedman  
25 Hearing Officer 9Q  
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1 Original filed with the Disciplinary Clerk  
this 7<sup>th</sup> day of November, 2003.

2 Copy of the foregoing mailed  
3 this 7<sup>th</sup> day of November, 2003, to:

4 David J. Estes  
5 Respondent  
6 ROSEPINK & ESTES, PLLC  
7 7373 N. Scottsdale, Suite E-200  
8 Scottsdale, AZ 85253-3513

9 Robert A. Clancy, Jr.  
10 Bar Counsel  
11 State Bar of Arizona  
12 111 W. Monroe, Suite 1800  
13 Phoenix, AZ 85003-1742

14 by: K. Weigand