

**FILED**  
JUN - 2 2004  
HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
*[Signature]*

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

IN THE MATTER OF A MEMBER ) Nos. 02-0281, 02-0703, 02-1170  
OF THE STATE BAR OF ARIZONA, ) 02-1294, 02-1324, 02-1623  
)  
MICHAEL L. GERTELL, )  
Bar No. 009458 )  
)  
RESPONDENT. ) **HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

Probable Cause Orders were filed on October 8, 2003 and October 17, 2003. A Complaint was filed on December 19, 2003. Respondent filed an Answer on February 13, 2004. A settlement conference was held on March 30, 2004. The parties filed a Tender of Admissions and Agreement for Discipline by Consent and a Joint Memorandum in Support of Agreement for Discipline by Consent on May 5, 2004. The complainants have been notified of this agreement. No hearing has been held.

**FINDINGS OF FACT**

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on May 12, 1984.

1           2. Respondent has previously been sanctioned for violations of the Rules  
2 of Professional Conduct. Specifically, in files numbered 98-2503 and 98-1952,  
3 Respondent received a four-month suspension, two years of probation and costs,  
4 by order filed on March 28, 2002, for violation of Rule 42, ERs 1.4 and 1.15, and  
5 Rules 43 and 44, Ariz. R. S. Ct. The entire record in that case may be reviewed by  
6 the hearing committee or hearing officer, with or without Respondent's consent,  
7 following a decision on the merits, pursuant to Rule 53(c) and Rule 54(k)(4),  
8 Ariz. R. S. Ct.  
9

10  
11           3. There was a formal complaint filed with respect to the underlying  
12 facts contained in this agreement.  
13

14                           **COUNT ONE (File No. 02-0281/Benjamin)**

15           4. On August 28, 2002, Respondent was asked by Bar Counsel to  
16 respond to a bar charge regarding certain issues pertaining to his handling of  
17 Complainant's two personal injury auto cases, but Respondent did not respond  
18 to Bar Counsel.  
19

20           5. Detailed questions were asked of Respondent regarding these  
21 allegations, but Respondent never responded.  
22

23           6. On or about September 26, 2002, Respondent requested an  
24 extension indicating he would be able to respond by October 1, 2002.  
25 Respondent, however, did not respond on October 1, 2002.

1           7.    Respondent failed to respond to Bar Counsel regarding  
2 Complainant's second complaint in violation of ER 8.1(b) and Rule 51(h)  
3 and (i).  
4

5                                   **COUNT TWO (File No. 02-0703/Welsh)**

6           8.    Respondent was retained by Dean J. Kakes to represent him in his  
7 dissolution of marriage.

8           9.    On June 28, 2001, Respondent, on behalf of his client, and his  
9 client's spouse both filed for divorce. Respondent filed in Maricopa County,  
10 Arizona, and the client's spouse filed in Cook County, Illinois.

11           10. Respondents' client's petition for dissolution was filed on June 28,  
12 2001, at 3:16 pm Mountain Standard Time (MST).  
13

14           11. The client's spouse filed her petition for dissolution on June 28,  
15 2001, at 12:27 pm CDT (10:27 am MST).  
16

17           12. On October 10, 2001, Respondent filed an affidavit with the  
18 Circuit Court of Cook County stating that he had filed the petition for his client  
19 in Arizona at 9:00 am MST on June 28, 2001. Specifically, the affidavit stated  
20 "I filed a dissolution of marriage proceeding on June 28, 2001 at 9:00 a.m. in  
21 the State of Arizona." Even though this statement was eventually proven to be  
22 incorrect, Respondent believed at the time he signed the affidavit that the  
23 petition had been filed earlier in the morning as that was the time the petition  
24  
25

1 was given to the runner for filing and, thus, he believed the affidavit to be true.

2 In addition, Respondent notified local Illinois counsel immediately upon  
3 learning of the inaccuracy.  
4

5 13. The Honorable Judge Daniel J. Sullivan of the Circuit Court of  
6 Cook County reviewed these jurisdictional issues, the affidavits filed, and the  
7 affidavit filed by the Respondent and concluded in a letter dated March 28,  
8 2002, to the Illinois Supreme Court Discipline Commission that "Dean's  
9 attorney [Respondent] committed a fraud upon the Circuit Court of Cook  
10 County..."  
11

12 14. On July 17, 2001, the client's spouse effectuated service on  
13 Respondent's client by the Maricopa County Sheriff's Office.  
14

15 15. On September 12, 2001, Respondent effectuated service upon the  
16 client's spouse at her sister's home.  
17

18 16. Respondent then proceeded to obtain and did obtain a default  
19 judgment in Arizona on December 14, 2001. The matter was later settled and  
20 satisfactorily resolved.  
21

22 17. Respondent admits he sloppily, but not intentionally, controverted  
23 an issue without a good-faith basis in fact, thereby violating ER 3.1.  
24

25 18. Respondent engaged in conduct that is prejudicial to the  
administration of justice, thereby violating ER 8.4(d).

1           19. Respondent's conduct as described in this count violated Rule 42,  
2 Ariz.R.S.Ct., specifically ERs 3.1 and 8.4(d).

3  
4                           **COUNT THREE (File No. 02-1170/York)**

5           20. In November 2001, Complainant, Paul York, retained Respondent  
6 to represent him in his dissolution of marriage. The divorce included child  
7 custody issues. At that time, Complainant paid Respondent \$2,250.00 in  
8 advance fees.

9           21. During the course of the representation, Complainant contacted  
10 Respondent's office several times via facsimile and telephone and requested  
11 information regarding the status of his case and an accounting statement  
12 regarding the Respondent's earning of the advanced fees he had received.  
13

14           22. Complainant received a letter from Respondent dated April 9,  
15 2002, stating that Respondent had been suspended from the practice of law for  
16 120 days, and that he had arranged for another attorney to take over  
17 Complainant's case during that time.  
18

19           23. Following the April 9, 2002, letter from Respondent, Complainant  
20 again contacted Respondent several times to request a billing statement and  
21 refund of any unused portion of his retainer and a copy of his file. Respondent  
22 did not directly respond.  
23  
24  
25

1           24. On June 14, 2002, Complainant filed his charge against the  
2 Respondent with the State Bar of Arizona.

3           25. Approximately one week after filing the charge, Complainant  
4 received an accounting and a billing statement from Respondent, showing that  
5 Complainant owed Respondent an additional \$402.20.  
6

7           26. Respondent failed to abide by his client's decisions concerning the  
8 objectives of representation, thereby violating ER 1.2.  
9

10          27. Respondent failed to act with reasonable diligence and promptness  
11 in representing his client, thereby violating ER 1.3.

12          28. Respondent failed to keep his client reasonably informed about the  
13 status of the matter and did not promptly comply with reasonable requests for  
14 information, thereby violating ER 1.4.  
15

16          29. Respondent's conduct as described in this count also violated ERs  
17 1.15 and 1.16.  
18

19                           **COUNT FOUR (File No. 02-1294/Sansing)**

20          30. On or about November 2000, Respondent was appointed to  
21 represent Complainant, John Sansing, in a Juvenile Court dependency case  
22 involving Complainant's children.  
23

24          31. On or about April 11, 2002, Respondent filed a Notice of Change  
25 of Attorney Within the Firm, designating Bert Roos as the new attorney for

1 Complainant. Complainant states he never received the notice. The notice also  
2 did not indicate that it was mailed to the Complainant.

3  
4 32. On or about May 7, 2002, Respondent's assistant, Kim Jackson,  
5 contacted Complainant via telephone. During the telephone call, Ms. Jackson  
6 informed Complainant that Respondent would not be at the hearing scheduled  
7 for May 8, 2003, and that another attorney, Bert Roos, would cover the hearing.

8  
9 33. Complainant asserted he never received notice of the change of  
10 attorneys and did not know that Respondent was no longer his assigned  
11 attorney.

12  
13 34. On or about May 8, 2002, there was a Report and Review hearing  
14 on the dependency matter in front of Judge Thomas Dunevant III. Complainant  
15 attended this hearing via telephone and was represented by Bert Roos.

16  
17 35. At the May 8, 2002, hearing, Judge Dunevant ordered that:  
18 "Father shall file any written response no later than May 20, 2002" and  
19 Respondent, therefore, believed a written response was not required but was  
20 optional.

21  
22 36. Complainant made efforts to contact Respondent and Bert Roos  
23 through telephone, letters, and his criminal defense attorney regarding the  
24 response to the motion, but neither the Respondent nor Bert Roos contacted the  
25

1 Complainant. Complainant eventually wrote his own response and sent it to the  
2 judge on July 2, 2002.

3  
4 37. As of July 1, 2002, Respondent had lost his legal services contract  
5 with the county and was no longer under active contract that would have  
6 allowed him to provide Complainant's representation in dependency or  
7 severance matters in Maricopa County Juvenile Court.

8  
9 38. Respondent conditionally admits that he failed to notify his client  
10 in this matter that his license to practice law had been suspended, and that he  
11 was disqualified to act as a lawyer, within ten (10) days after the court order, by  
12 registered or certified mail, return receipt requested, thereby violating Rule 63.

13  
14 39. Respondent failed to keep his client reasonably informed about the  
15 status of the matter and did not promptly comply with reasonable requests for  
16 information, thereby violating ER 1.4.

17  
18 **COUNT FIVE (File No. 02-1324/Lino)**

19  
20 40. On or about January 2002, Complainant, Joel Lino, retained  
21 Respondent to represent him in two separate cases.

22  
23 41. On or about January 2002, Complainant gave Respondent three  
24 checks as a retainer for legal services. These were: check number 1477 in the  
25 amount of \$1000.00, check number 1721 in the amount of \$1100.00, and check  
number 1659 in the amount of \$1600.00.



1           42.    After retaining Respondent, Complainant made several attempts to  
2 contact Respondent regarding the status of his case. Respondent did not  
3 personally return any of the Complainant's telephone calls.  
4

5           43.    Thereafter, Respondent, or Respondent through his assistant,  
6 informed Complainant that Respondent was in an automobile accident and was  
7 on disability.  
8

9           44.    On or about May 4, 2002 Complainant faxed Respondent a letter  
10 discharging Respondent from the representation, and requesting the return of his  
11 file along with an accounting and refund of his retainer fee.  
12

13           45.    When Complainant went to pick up his file and the retainer from  
14 Respondent, Respondent indicated that he had been sick and requested another  
15 chance for his office to file the court papers. Complainant stated he decided to  
16 give the Respondent another chance, but Respondent did little further on the  
17 case.  
18

19           46.    Thereafter, Complainant stated that he again fired the Respondent  
20 on or about May 25, 2002. As of that time, Complainant's cases still had not  
21 been filed with the court.  
22

23           47.    Complainant never received a billing statement nor any accounting  
24 regarding any work Respondent may have performed on his cases. However,  
25 Respondent did refund all of the Complainant's monies except for the filing fee.

1           48.    Respondent failed to abide by his client's decisions concerning the  
2 objectives of representation, thereby violating ER 1.2.

3           49.    Respondent failed to act with reasonable diligence and promptness  
4 in representing his client, thereby violating ER 1.3.

5           50.    Respondent failed to keep his client reasonably informed about the  
6 status of the matter and did not promptly comply with reasonable requests for  
7 information, thereby violating ER 1.4.

8           51.    Respondent failed to promptly deliver to his client any funds or  
9 other property that his client was entitled to, and failed to render a full  
10 accounting regarding the property of his client that was held in Respondent's  
11 possession, thereby violating ER 1.15.

12   **COUNT SIX (File No. 02-1623/Deutsch)**

13           52.    On May 14, 2002, Complainant Suzanne Deutsch, met with  
14 Respondent and an office assistant, Kim Jackson, to discuss the case. During  
15 this meeting, Respondent requested a \$1500.00 retainer fee, which Complainant  
16 paid on that same date.

17           53.    Respondent states he advised Complainant that he was suspended  
18 and on disability and, if her case were to require a court appearance, Bert Roos  
19 would handle it.  
20  
21  
22  
23  
24  
25

1 54. Complainant filed a complaint with the State Bar of Arizona on  
2 August 20, 2002, complaining, in part, that she was never told of the suspension.

3 55. Respondent failed to act with reasonable diligence and promptness  
4 in representing his client, thereby violating ER 1.3.  
5

6 56. Respondent failed to keep his client reasonably informed about the  
7 status of the matter and did not promptly comply with reasonable requests for  
8 information, thereby violating ER 1.4.  
9

10 57. After filing her complaint with the State Bar of Arizona,  
11 Complainant received a full refund of her retainer from Respondent.  
12

13 58. When Complainant went to pick up her retainer refund,  
14 Respondent's office had her sign a document releasing Bert Roos as her  
15 attorney.  
16

17 59. Though Complainant believed she was not told of Respondent's  
18 suspension, there was evidence presented in the form of two affidavits from two  
19 eyewitnesses that affirm Respondent's statement that she was told of his  
20 suspension.  
21

### 22 CONDITIONAL ADMISSIONS

23 Respondent, in exchange for the stated form of discipline, conditionally admits  
24 that his conduct as set forth in each of the respective counts stated above violates  
25 Rule 42, Ariz. R. S. Ct., specifically:

Count One - ER 8.1(b), and Rule 51(h) and (i);

1 Count Two - ERs 3.1 and 8.4(d);  
2 Count Three - ERs 1.2, 1.3, 1.4, 1.15 and 1.16;  
3 Count Four - ER 1.4, and Rule 63;  
4 Count Five - ERs 1.2, 1.3, 1.4, 1.15 and 1.16; and,  
5 Count Six - ERs 1.3 and 1.4.

6 **DISMISSED ALLEGATIONS**

7 The State Bar does not believe it could prove by clear and convincing  
8 evidence violations of the following ERs and therefore conditionally dismisses  
9 same:

10 Count One - ERs 1.1, 1.2, 1.3, 1.4, 1.5 and 3.2;  
11 Count Two - ERs 3.3, 4.1 and 8.4(c);  
12 Count Three - ERs 1.5 and 3.2;  
13 Count Four - none;  
14 Count Five - ER 5.5, and Rule 63; and,  
15 Count Six - ERs 1.2, 5.5 and 8.4(c), Rule 51(e) and (k), and Rule 63.

16 **ABA STANDARDS**

17 In determining the appropriate sanction, the parties considered both the  
18 American Bar Association's Standards for Imposing Lawyer Sanctions  
19 ("Standards") and Arizona case law. The Standards provide guidance with  
20 respect to an appropriate sanction in this matter. The Court and Commission  
21 consider the Standards a suitable guideline. In re Rivkind, 164 Ariz. 154, 157,  
22 791 P.2d 1037, 1040 (1990); In re Kaplan, 179 Ariz. 175, 177, 877 P.2d 274,  
23 276 (1994).  
24  
25

1 In determining an appropriate sanction, both the Court and the  
2 Commission consider the duty violated, the lawyer's mental state, the actual or  
3 potential injury caused by the misconduct and the existence of aggravating and  
4 mitigating factors. Matter of Tarletz, 163 Ariz. 548, 789 P.2d 1049 (1990); ABA  
5 Standard 3.0.  
6

7 Given the conduct in this matter, it was appropriate to consider Standards  
8 4.1, 4.4, 6.0 and 7.0.

9 Suspension is generally appropriate when a lawyer knowingly engages in  
10 conduct that is a violation of a duty owed as a professional, and causes injury or  
11 potential injury to a client, the public or the legal system. Standard 4.13.  
12

13 Suspension is generally appropriate when a lawyer knowingly fails to  
14 perform services for a client and causes injury or potential injury to a client.  
15 Standard 4.42.  
16

17 Reprimand is generally appropriate when a lawyer is negligent in  
18 determining whether statements or documents are false and causes injury or  
19 potential injury to a client, or causes an adverse or potentially adverse effect on  
20 the legal proceeding. Standard 6.13  
21

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

1 Respondent admits that he failed to respond to a bar complaint; failed to act  
2 diligently and communicate adequately; negligently controverted an issue  
3 without a good-faith factual basis; and failed to provide timely accountings.  
4 Such conduct diminishes the integrity of the profession. Maintaining the  
5 integrity of the profession is a duty owed as a professional. See Standards, at 5.  
6

7 Based on the foregoing, the presumptive sanction for the admitted  
8 conduct is a term of suspension. After determining the presumptive sanction, it  
9 is appropriate to evaluate factors enumerated in the Standards that would justify  
10 an increase or decrease in the presumptive sanction.  
11

#### 12 AGGRAVATING AND MITIGATING FACTORS

13  
14 This Hearing Officer then considered aggravating and mitigating factors  
15 in this case, pursuant to *Standards* 9.22 and 9.32, respectively. This Hearing  
16 Officer agrees with the parties that four aggravating factors apply and should be  
17 considered in this matter: (a) prior disciplinary offenses - In April 2003,  
18 Respondent received a four-month suspension for violations of ERs 1.4 and  
19 1.15, and Rules 43 and 44, Ariz. R. S. Ct.; (c) a pattern of misconduct; (d)  
20 multiple offenses; and, (i) substantial experience in the practice of law -  
21 Respondent has been practicing law for twenty years and is aware that there is  
22 an important responsibility of an officer of the court to communicate effectively  
23 with his clients and to be prompt and truthful. This Hearing Officer agrees with  
24  
25

1 the parties that three factors are present in mitigation: (c) personal or emotional  
2 problems - Respondent suffered serious problems as the result of an automobile  
3 accident (resulting in six surgical procedures during the last two years), a rare  
4 wrist disease and other physical ailments that rendered him disabled for much of  
5 the time during his handling of the underlying cases and during the State Bar's  
6 investigation of the charges concerning these matters. [See the attached medical  
7 records of the Respondent marked and sealed as Exhibit "A" to the Joint  
8 Memorandum] These physical maladies and the prior suspension combined to  
9 seriously impair the Respondent's financial condition; Respondent's ability to  
10 handle the underlying matters; Respondent's ability to deal with the State Bar's  
11 investigation; and Respondent's responsibilities to his family and spouse; (d)  
12 timely good faith effort to make restitution or to rectify consequences of  
13 misconduct - Respondent made a good-faith effort to rectify the consequences of  
14 his action by making restitution (via refunds and fee arbitration) both before and  
15 after being confronted with the bar charge; and, (l) remorse - Respondent also  
16 expressed in a letter to bar counsel that he regretted his conduct and further  
17 explained the circumstances surrounding his disability and his failure to respond.  
18  
19  
20  
21  
22

23 The parties have identified what they believe to be the relevant  
24 aggravating and mitigating factors. The parties do not believe that these factors  
25

1 justify a decrease or an increase in the presumptive sanction in this case. This  
2 Hearing Officer agrees.

### 3 PROPORTIONALITY REVIEW

4  
5 To have an effective system of professional sanctions, there must be  
6 internal consistency, and it is appropriate to examine sanctions imposed in cases  
7 that are factually similar. In re Shannon, 179 Ariz. 52, 71, 876 P.2d 548, 567  
8 (1994) (quoting In re Wines, 135, Ariz. 203, 207 (1983)). However, the  
9 discipline in each case must be tailored to the individual case, as neither  
10 perfection nor absolute uniformity can be achieved. Matter of Riley, 142 Ariz.  
11 604, 615, 691 P.2d 695 (1984).  
12

13  
14 Respondent and the State Bar of Arizona have agreed to the imposition of  
15 a ninety-day suspension and a two-year term of probation. Respondent's  
16 misconduct involved controverting an issue without a good-faith factual basis,  
17 failure to communicate, a failure to provide accountings, and a failure to timely  
18 respond to the State Bar's screening investigation.  
19

20 There are a number of prior cases that involve similar misconduct.  
21 However, none of the cases are exactly on point as they involve other  
22 violations, and different aggravation and mitigation. Nonetheless, the cases are  
23 instructive.  
24  
25



1 In Matter of Odneal, SB 02-0085-D (2002), the attorney was suspended  
2 for ninety days and placed on probation (LOMAP) for misconduct in three  
3 matters, including violations of ERs 1.4, 1.15, 1.16(d), 8.1(b), 8.4(c), and Rule  
4 51(h) and (i) for failing to promptly return client funds and making a false  
5 statement to the court. The attorney had a prior discipline history of a censure  
6 and probation for similar misconduct.  
7

8 In Matter of Herbert, SB-00-0014-D (2000), the attorney received a  
9 thirty-day suspension for misconduct in one matter involving violation of ERs  
10 1.15 and 1.16(d). In determining that suspension was appropriate, the Court  
11 applied ABA Standard 4.12. Mr. Herbert had been disciplined previously  
12 approximately four years prior to that case.  
13  
14

15 In Matter of Weisling, SB-01-0038-D (2001), the attorney received a  
16 two-year retroactive suspension for misconduct in three matters, including  
17 violations of ERs 1.2, 1.3, 1.4, 1.15, 1.16(d) and 3.2, and Rule 51(h) and (i). It  
18 should be noted that Weisling also involved several other violations, and the  
19 attorney had a prior suspension.  
20

21 In Matter of Sodikoff, SB-01-0109 (2001), the attorney received a  
22 censure for misconduct in two matters including violations of ER 1.15(b) for  
23 failure to provide an accounting, and violation of Rule 51(h). The attorney had  
24 a prior discipline history.  
25

1 The State Bar also notes that failure to cooperate with a discipline  
2 investigation is, standing alone, worthy of a censure. In Matter of Anderson,  
3 SB-01-0173 (2001), the attorney received a censure for failing to respond to the  
4 discipline investigation in two cases. There was no other misconduct in that  
5 matter.  
6

7 Based upon the foregoing, it appears that a ninety-day suspension and  
8 probation is proportionate to the sanctions in several prior cases, in light of the  
9 particular facts of the case, and Respondent's discipline history. In this matter,  
10 Respondent has fully participated in the formal proceedings. Respondent has  
11 further indicated he will participate in all remedial programs required as a part  
12 of the sanction. For these reasons, considering the totality of the circumstances  
13 present in this case, including the underlying facts as well as the mitigating  
14 factors, the parties believe that the purposes of discipline will be served by a  
15 ninety-day suspension, along with probation.  
16  
17  
18

19 **RECOMMENDATION**

20 The purpose of lawyer discipline is not to punish the lawyer, but to protect  
21 the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859  
22 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the  
23 public, the profession and the administration of justice. *In re Neville*, 147 Ariz.  
24 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in  
25

1 the bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361  
2 (1994).

3  
4 In imposing discipline, it is appropriate to consider the facts of the case, the  
5 American Bar Association's *Standards for Imposing Lawyer Sanctions*  
6 (*"Standards"*) and the proportionality of discipline imposed in analogous cases.  
7 *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

8  
9 Upon consideration of the facts, application of the *Standards*, including  
10 aggravating and mitigating factors, and a proportionally analysis, this Hearing  
11 Officer recommends acceptance of the Tender of Admissions and Agreement for  
12 Discipline by Consent and the Joint Memorandum in Support of Agreement for  
13 Discipline by Consent providing the following:  
14

15 1. Respondent shall be suspended for ninety-days. This suspension shall  
16 be effective 30 days after the date of the final judgment and order entered in this  
17 matter.  
18

19 2. Respondent shall be placed on probation for two years under the  
20 following terms and conditions:

- 21 a. Respondent shall contact the director of the State Bar's Law  
22 Office Management Assistance Program (LOMAP) within 30  
23 days of the date of the final judgment and order. Respondent  
24 shall submit to a LOMAP audit of his office's client  
25

1                   communications, billing and accounting practices. The  
2                   Director of LOMAP shall develop a probation contract, and its  
3                   terms shall be incorporated herein by reference.  
4

5                   b. Respondent shall find a qualified practice monitor (PM),  
6                   approved by bar counsel and the LOMAP Director, within 30  
7                   days of the effective date of probation. The practice monitor  
8                   shall be an attorney who will supervise the Respondent's law  
9                   practice and monitor Respondent's caseload, the quality of the  
10                  services rendered by Respondent and his communication with  
11                  clients. The practice monitor will report to the State Bar any  
12                  manifestations of relapse, unusual behavior or conduct falling  
13                  below minimum standards of the profession as set forth in the  
14                  Rules of Professional Conduct, Rule 42, Ariz. R. S. Ct.  
15

16  
17                  c. Respondent shall obtain and maintain contact with the practice  
18                  monitor for the duration of his probation.  
19

20                  d. Respondent shall have contact with the practice monitor on a  
21                  weekly basis and the practice monitor will report to the State  
22                  Bar the Respondent's activities on a monthly basis.  
23

24                  e. In the event that Respondent fails to comply with any of the  
25                  foregoing conditions, and the State Bar receives information,

1 bar counsel shall file with the Hearing Officer a Notice of  
2 Non-Compliance, pursuant to Rule 60(a)5, Ariz. R. S. Ct. The  
3 Hearing Officer shall conduct a hearing within thirty days  
4 after receipt of said notice, to determine whether the terms of  
5 probation have been violated and if an additional sanction  
6 should be imposed. In the event there is an allegation that any  
7 of these terms have been violated, the burden of proof shall be  
8 on the State Bar of Arizona to prove non-compliance by clear  
9 and convincing evidence.  
10  
11

12 DATED this 2nd day of June, 2004.

13  
14   
15 Sandra L. Slaton  
16 Settlement Officer 8S

17 Original filed with the Disciplinary Clerk  
18 this 2nd day of June, 2004.

19 Copy of the foregoing was mailed  
20 this 2nd day of June, 2004, to:

21 Robert J. Stephan, Jr.  
22 Hearing Officer 9R  
23 371 East Monte Vista Road  
24 Phoenix, AZ 85004-1438

24 Michael L. Gertell  
25 Respondent  
P.O. Box 33021  
Phoenix, AZ 85067

1 John A. Furlong  
2 Bar Counsel  
3 State Bar of Arizona  
4 111 West Monroe, Suite 1800  
5 Phoenix, AZ 85003-1742

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
by: K. W. Lizard