



TABLE OF CONTENTS

1		
2		
3	<b>COVER</b>	<b>i</b>
4	<b>TABLE OF CONTENTS</b>	<b>ii</b>
5	<b>TABLE OF AUTHORITIES</b>	<b>iii</b>
6	<b>REPLY</b>	<b>1</b>
7	<b>Bar Counsel misleads this Honorable Court regarding Kossack's alleged plea</b>	<b>1</b>
8		
9	<b>The direction of the fact finding hearing changed</b>	<b>1</b>
10	<b>Kossack never benefitted, knew of, or encouraged any of Michelle's actions which caused one client a \$4,000.00 loss</b>	<b>3</b>
11	<b>Bar Counsel's cited cases are not on point but do suggest Kossack's sanction be less than a suspension</b>	<b>10</b>
12		
13	<b>No suspension may be imposed absent proof of the concurrence of four Panel members</b>	<b>13</b>
14	<b>Kossack committed no wrong entrusting Sharon with Michelle's keys</b>	<b>14</b>
15	<b>The public will not be "protected" by suspending Kossack</b>	<b>14</b>
16	<b>The Supreme Court should consider adding a rule to more clearly define the duties of an attorney to routinely audit his books</b>	<b>15</b>
17	<b>CONCLUSION</b>	<b>15</b>
18		
19	<b>CERTIFICATE OF COMPLIANCE</b>	<b>16</b>
20	<b>CERTIFICATE OF MAILING</b>	<b>17</b>
21	....	
22	....	
23	....	
24	....	
25	....	
26	....	
27	....	
28	....	

1 **TABLE OF AUTHORITIES**

2  
3 **Supreme Court Rules**

4 SCR 102.5(3)(f).....3  
5 SCR 105(2)(d).....14  
6 SCR 113.....1

7 **Nevada Rules of Professional Conduct**

8 Rule 1.15.....10  
9 Rule 5.3(a).....7  
10 Rule 5.3(b).....7  
11 Rule 5.3(c).....7

12 **Cases**

13 *Coppock v. State Bar*, 749 P.2d 1317 (Cal. 1988).....12  
14 *Disciplinary Counsel v. Crosby*, 921 N.E.2d 225 (Ohio 2009).....12  
15 *Florida Bar v. Riggs*, 944 So.2d 167 (2006).....12  
16 *In re Cater*, 887 A. 1 (D.C. 2005) .....11  
17 *In re Discipline of Lerner*, 197 P.3d 1067 (Nev. 2008).....7, 8  
18 *In re Shamers*, 873 A.2d 1089, 1097 (Del. 2005).....12  
19 *Interim Funding, Inc. v. Robert Kossack*, Eighth Judicial District Court  
20 Case No. A611455.....10  
21 *In the Matter of Discipline of William W. Seegmiller*, Order Imposing Public  
22 Reprimand, Case No. 45537 (December 8, 2005) unpublished.....13  
23 *Louisiana Claims Adj. Bureau v. State Farm*, 877 So.2d 294, 299 (La.Ct.App. 2004).....8  
24 *Matter of Stransky*, 612 A.2d 373, 374 (N.J., 1992).....11, 15  
25  
26  
27  
28

1           **REPLY**

2           **Bar Counsel misleads this Honorable Court regarding Kossack's alleged plea.**

3           Appellant Robert J. Kossack ("Kossack") never entered into a Conditional Guilty  
4 Plea agreement, nor was one ever offered or discussed, and something is amiss in Bar  
5 Counsel's Statement of the Case,

6           This is an automatic *de novo* appeal of a Conditional Guilty Plea pursuant to  
7 Supreme Court Rule (SCR) 113 as adopted in the Findings and  
8 Recommendations of the duly designated Formal Hearing Panel ("Panel")  
9 of the Southern Nevada Disciplinary Board, filed on April 18, 2011. *See*,  
10 Answering Brief, p. 2, ll. 3-6.

11           A conditional guilty plea is, indeed, governed by SCR 113 regarding discipline  
12 by consent. Bar Counsel failed to cite with reference to the record to any Conditional  
13 Guilty Plea. Bar Counsel attempted to convince this Honorable Court that Kossack  
14 agreed he should be suspended, and no further deliberation is therefore necessary.

15           **The direction of the fact finding hearing changed.**

16           Bar Counsel failed to address if at first Kossack was to receive a public reprimand  
17 if he received none of the money and suspension or disbarment if he did, why a fact  
18 finding mission became a persecution to force Kossack out of his profession. The facts  
19 adduced at the hearing were supportive of the Answer Kossack gave in response to the  
20 Bar's Complaint. Kossack had been fully cooperative. Bar Counsel knew Kossack's  
21 secretaries, Michelle Haehnel ("Michelle") and Susan Gutierrez ("Susan"), not Kossack,  
22 made off with the money, but something changed Bar Counsel's prosecutorial direction.

23           Bar Counsel states that Kossack never reviewed his bank statements or canceled  
24 checks from his general account from October, 2004, to February, 2011. Bar Counsel  
25 omits to mention that Michelle destroyed the cancelled checks and fails to initially  
26 mention that the cost Kossack was cited by the bank to reproduce his cancelled checks  
27 was prohibitive. Kossack's bookkeeper, Kay Foster ("Foster"), had the check ledgers  
28 Michelle fabricated to match the bank statement withdrawals; Foster never had the  
cancelled checks. Bar Counsel implies he invited Kossack's to review his cancelled  
checks as soon as they had been received by the Bar pursuant to a subpoena. Kossack

1 was never notified of the issuance of the Bar's subpoena or the bank's response. Bar  
2 Counsel never notified Kossack the Bar had copies of his cancelled checks. None of the  
3 cancelled checks were produced by the Bar until the hearing. Bar Counsel was obscure in  
4 his Designation of Witnesses and Summary of Evidence mentioning nothing of having  
5 any of Kossack's bank records or cancelled checks. See, I, 32, i.e., "Any and all  
6 documentation contained in the State Bar of Nevada's file regarding grievance file 08-  
7 169-0125, except for screening materials and Bar Counsel work product." Witness  
8 description is equally vague. See, I, 32-33, i.e., "Kay Foster is expected to provide  
9 testimony consistent with the facts alleged in Case Nos. 08-169-0124 and 09-217-0125."  
10 There is no indication Foster was found. Paragraph 8 of the Complaint states,

11           8.     The State Bar is informed and believes that during this time  
12           Respondent employed Kay Foster ("Foster") as his bookkeeper. At some  
          point, Foster retired and moved out of state.... (I, 3)

13           Bar Counsel claims Kossack was paid \$20,000 from a wire transfer. Answering  
14 Brief, p. 3, ll. 12-13. Actually, Kossack was paid back \$20,000 from a direct transfer  
15 from Michelle daughter's account. Was Bar Counsel trying to foster the false belief that  
16 Kossack was in on the identity theft schemes when all the evidence adduced at the  
17 hearing proved that not to be the case? Why would Bar Counsel object to the admission  
18 of Michelle's gaming records which showed where all the money actually went?  
19 Michelle gaming records also disprove Michelle's claim that all the money she stole was  
20 spent to provide Kossack with cash and drugs. It was paid to her, her family and Susan.  
21 Kossack received none of it.

22           Bar Counsel claimed that the formal complaint alleged Kossack "allowed"  
23 Gutierrez's money and the money wired in by Interim Funding's principal Michael  
24 Rosenbach ("Rosenbach") to be stolen from his general account citing to paragraphs 10  
25 and 22 of the Complaint in support of that proposition. Answering Brief, p. 3, ll. 17-20.  
26 Paragraphs 10 and 22 of the Complaint mention nothing about Kossack *allowing* any  
27 action causing any loss suffered. Kossack was alleged to have failed to properly review  
28 his statements and cancelled checks which then would have led him to take action.

1 Paragraph 10 of the Complaint states,

2 The State Bar is informed and believes that Haehnel used  
3 Respondent's trust and general accounts to receive wire transfers of large  
4 sums of money derived from stealing the identity of clients and obtaining  
5 fraudulent loans from litigation lending companies. Respondent failed to  
6 properly review his account statements or confirm the purpose and propriety  
7 of such transfers.

8 Paragraph 22 of the Complaint states,

9 Based upon a review of Respondent's trust account records and his  
10 response to the State Bar, it appears that the check was deposited on or  
11 about May 2006, transferred to the general account, and then eleven (11)  
12 general account checks were written out for various amounts of attorney's  
13 fees. Respondent failed to properly review his accounts to discover this  
14 activity and to confirm its legitimacy.

15 Count 1 of the Complaint arising from grievance 09-217-0125 involves the  
16 Gutierrez matter. (I, 3-5) Count 2 of the Complaint arising from grievance 08-169-0125  
17 involves the Kissner matter. (I, 5-6) There is no third count as Rosenbach made no  
18 complaint. No uncharged count regarding Rosenbach should not be held against  
19 Kossack. Rosenbach was not a client. Had he been, an uncharged client complaint is not  
20 an aggravating or mitigating factor pursuant to SCR 102.5(3)(f).

21 The Answering Brief states at p. 4, ll. 14-15, "Kossack failed to realize for three  
22 (3) years that Foster stopped preparing his tax returns after 2004." Foster prepared  
23 Kossack's 2004 return for filing in April, 2005, and Kossack's 2005 return in April, 2006.  
24 (III, 432, 435) The 2006 return filed in April, 2007, is the one to which Michelle forged  
25 Foster's signature and was never mailed in after Kossack signed it and handed it back to  
26 Susan. (III, 387) Kossack had to re-file his 2006 return and completed his own returns  
27 from tax year 2007 forward. Kossack was unsuccessful in reaching Foster because of  
28 Michelle's burglary of his office to cover her tracks.

**Kossack never benefitted, knew of, or encouraged any of Michelle's actions  
which caused one client a \$4,000.00 loss.**

The record unequivocally traces all stolen funds to Michelle, her family members,  
and Susan. The record shows Michelle and Susan also stole significant amounts of

....

1 money from Kossack and that Michelle began diverting clients from Kossack to other  
2 attorneys, as shown in the Kissner case, probably for an illegal finder's fee.

3 Michelle, already pathetic because of her breast cancer, invited Kossack into her  
4 family and used her kids to solicit his generosity and curry his trust. The same holds true  
5 for Susan who routinely use to bring her grandchildren to the office. Few maxims are  
6 truer than "it takes one to know one." Kossack fault is that he is too honest to recognize  
7 the dishonesty surrounding him, too naive.

8 Kossack was the only authorized signatory on his trust account checks. He had  
9 known Michelle for twelve years; she had no record of dishonesty. Susan could have  
10 clued Kossack in to any wrongdoing; both were left to watch the other. There was an  
11 independent bookkeeper they would have to get around. Kossack had taken what he  
12 thought were reasonable safeguards against intrusion into his client trust fund account. In  
13 retrospect they proved insufficient. Kossack failed to anticipate traitors and conspirators  
14 in his mist, blatant disregard of written directives and outright stealing. It is doubtful the  
15 senior partners of Nevada's largest law firms sit down with their books each month  
16 comparing the cancelled checks to the check ledgers to the bank statements. The  
17 nondelegable duty, in common practice, is often delegated. Michelle and Susan not only  
18 fooled Kossack, they fooled the bookkeeper, they fooled the bank, they fooled the IRS,  
19 they fooled Rosenbach and, to some extent, they fooled the Panel.

20 The bank statements, the cancelled checks, the gaming records, and witnesses,  
21 Kissner, Gutierrez and Rosenbach, criminally implicate Michelle and Susan as having  
22 committed felonies involving dishonesty, perjury, fraud, theft, embezzlement, forgery,  
23 wire fraud, mail fraud and identity theft. If Kissner, Gutierrez and Rosenbach are to be  
24 believed, then Michelle and Susan lied when questioned about their dealings with the  
25 Bar's key witnesses. Thus, only Michelle's and Susan's admissions against their own  
26 interests might have any credibility. The Panel found Michelle's testimony "largely not  
27 credible" when she denied her criminal conduct and the picture she painted of Kossack  
28 with Uncle-Duke like bubbles floating around his head atheistically missing deadlines,

1 ignoring clients, smoking joints, popping pills, faking injuries, consorting with strippers  
2 and tirading in his office. Yet, half of Bar Counsel's case relies on statements made by  
3 Michelle and Susan, and their testimonies are not clear and convincing.

4 Kossack lost tens of thousands of dollars to Michelle's and Susan's scams. He had  
5 cases diverted to other attorneys. He had his name and reputation defamed. He got in  
6 trouble with the IRS. His bank account was cleaned out. He got sued. He became the  
7 subject of the present Bar complaint. He benefitted nothing.

8 Kossack was never aware of or encouraged Michelle's unauthorized practice of  
9 law. Kossack was unaware of the communications Michelle and Susan had with Kissner  
10 and Gutierrez. Michelle represented to Kissner that she was an attorney simply so she  
11 could steal his identity. She had him visit her at her house, fax documentation to her  
12 house, call her on her private cell phone, and with Susan's help keep his existence secret  
13 from Kossack.

14 Michelle (or Susan if you believe Michelle) apparently settled Gutierrez's case  
15 behind Kossack's back and then represented to Gutierrez that her case had settled for next  
16 to nothing simply so she and Susan could steal Gutierrez's settlement money.

17 Kossack had the strictest rules in town with respect to what his secretaries could  
18 and could not discuss with clients, and Kossack's office rules (had they not been  
19 criminally ignored) guaranteed that neither secretary had any advisory or decision making  
20 power with respect to settlements. Kossack's system with respect to settling cases of  
21 personal injury clients was perfectly legal and is summarized as follows:

- 22 1. Kossack would meet with and sign up the client.
- 23 2. The accident report and the medical records would be ordered.
- 24 3. Michelle and/or Susan would attempt to write a demand letter.
- 25 4. Kossack would extensively edit the demand letter, sometimes to the point of  
26 completely re-writing it, until it met his level of competence.
- 27 5. The demand letter would be printed on Kossack's letterhead and go out  
28 under Kossack's original signature. Attached to the demand letter were  
indexed, Bates stamped copies of the police report, accident pictures,

1 vehicle repair estimates, the client's medical records and invoices for  
2 services, and any proof of wage loss.

3 6. A lowball offer would generally come in from the insurance company.

4 7. Michelle was assigned to talk to the insurance company inquiring whether  
5 there was anything additional they needed, and she would go over the  
6 client's medical bills and losses and nag the insurance adjuster to up the  
7 offer; one of the talking points was that Kossack had no reservations suing  
8 on even a small case if the insurance company was not going to be fair.

9 8. Michelle would tell the adjuster that before an offer could be accepted,  
10 Kossack needed to approve it. When the adjuster finally called with the  
11 highest offer Michelle felt she could get, the adjuster would be transferred  
12 to speak to Kossack.

13 9. Kossack would then perform the final negotiations with the insurance  
14 company adjuster, and on a small case, he was usually able to up the  
15 adjuster's offer by at least \$500.00 before he would agree to recommend the  
16 settlement to his client.

17 10. Kossack would call the client, and if the client approved the settlement,  
18 Kossack would accept the insurance company's offer.

19 Since Kossack signed up the client, approved the demand letter, participated in all  
20 final negotiations with the insurance company adjuster, approved the final settlement for  
21 recommendation to his client, and received the client's approval prior to accepting the  
22 offer, Michelle was at no time engaging in the unauthorized practice of law. No client  
23 relied on her in determining their legal rights. The restrictions Kossack put on his  
24 secretaries were the toughest in the business. Kossack discussed with Michelle and Susan  
25 and placed under the glass of their desks the guidelines forbidding either of them from  
26 providing independent judgment on which a client might rely in determining their legal  
27 rights. Michelle and Susan could not sign up a client, offer an opinion on whether there  
28 was a viable case, discuss legal theories, probable value, the statute of limitations, court  
deadlines, court fees, court procedures, the scope of Kossack's representation or the final  
fee. Michelle and Susan were forbidden from explaining the meaning of documents the  
client was being asked to sign or from speculating on the route their case would take or  
whether their case would settle or be tried or be appealed. Instead, Michelle and Susan  
were trained to say to the client, "When would you like to schedule an appointment with  
Mr. Kossack to discuss this?" (II, 162, Ex. A)

1 Any deviation Michelle or Susan made from the guidelines was without Kossack's  
2 authorization, without Kossack's knowledge and only possible because of the collusion  
3 existing between them; the reason the guidelines were violated was not to practice law,  
4 but to embezzle money from the client and from Kossack.

5 Kossack complied with RPC 5.3 (a) and (b) which state in pertinent part,

6 (a) A...lawyer who...possesses...managerial authority in a law firm shall  
7 make reasonable efforts to ensure that the firm has in effect measures  
8 giving reasonable assurance that the person's conduct is compatible  
9 with the professional obligations of the lawyer.

10 (b) A lawyer having direct supervisory authority over the nonlawyer  
11 shall make reasonable efforts to ensure that the person's conduct is  
12 compatible with the professional obligations of the lawyer.

13 Kossack's firm had in effect strict rules which reasonably assured that Michelle's  
14 and Susan's conduct was compatible with Kossack's professional obligations.

15 Kossack is not guilty pursuant to RPC 5.3 (c) which states in pertinent part,

16 A lawyer shall be responsible for conduct of such a person that would be a  
17 violation of the Rules of Professional Conduct if engaged in by a lawyer if:

18 (1) The lawyer orders or, with the knowledge of the specific conduct,  
19 ratifies the conduct involved; or

20 (2) The lawyer...has...managerial authority in the law firm in which the  
21 person is employed, or has direct supervisory authority over the  
22 person, and knows of the conduct at a time when its consequences  
23 can be avoided or mitigated but fails to take reasonable remedial  
24 action.

25 Kossack neither ordered Michelle or Susan to settle cases and steal from him and  
26 his clients, nor ratify their conduct or been able to have taken reasonable remedial action.

27 Kossack's case is nothing like the case of *In re Discipline of Lerner*, 197 P.3d  
28 1067 (Nev. 2008). In *Lerner* the nonlawyer assistant routinely conducted initial client  
consultations, decided whether the representation should be accepted, negotiated clients'  
claims, made legal arguments and served as the clients' sole contact, not at all similar to  
the facts of the present case. All legal arguments would have already been made by  
Kossack in his initial demand letter after he personally signed up the client. Kossack  
would then personally negotiate a settlement and receive his client's approval. With

1 respect to Kissner, his case was kept completely secret from Kossack, not so his case  
2 could be settled with an insurance company, but because Michelle wanted to steal his  
3 personal identifier information.

4 Gutierrez's case was an anomaly. Kossack had difficulty testifying with respect to  
5 Gutierrez's case because Michelle burglarized his office, destroyed Gutierrez's file and  
6 sabotaged Kossack's computer. Almost two years went by before Gutierrez discovered  
7 the theft and reported it to Kossack, and Kossack immediately directed Gutierrez to the  
8 Metro detective handling the overall investigation, and Kossack went looking for  
9 Gutierrez's file to no avail. Neither Michelle nor Susan were authorized to settle  
10 Gutierrez's case or steal her money.

11 Kossack's practices do not closely parallel those of Lerner. One is an advertising  
12 lawyer hustling the uninformed to sign up with his firm and then assigning all the work to  
13 a nonlawyer assistant, on the other hand, Kossack is involved in his client's case from  
14 beginning to end, making the initial assessment, signing up the client, drafting the  
15 demand letter, conducting the final negotiations and gaining the client's approval before  
16 accepting the offered amount. To compare Kossack practices to those of Lerner as stated  
17 in the *Lerner* case is a taunting, rank insult to Kossack.

18 Lerner only received a public reprimand even though this Honorable Court found  
19 he assisted in the unauthorized practice of law and had previously received three private  
20 reprimands for similar activities, including one for identical actions by the same  
21 employee. *Lerner*, at 1075. The case cited in *Lerner* for the proposition that negotiating  
22 a claim with insurance companies constitutes the unauthorized practice of law; to wit,  
23 *Louisiana Claims Adj. Bureau v. State Farm*, 877 So.2d 294, 299 (La.Ct.App. 2004) [*see*,  
24 *Lerner*, at 1074, n. 22], holds,

25 ...when a person who is not an attorney represents another in the negotiation  
26 and settlement of a personal injury claim for consideration, pursuant to a  
27 contingency fee contract, that person has engaged in the unauthorized  
28 practice of law...because the person must advise the client of issues  
concerning the redress of a legal wrong.

.....

1 Michelle was not negotiating and settling cases with an insurance company for a  
2 contingency fee. The only case it appears she or Susan actually settled (as opposed to  
3 Kossack settling with the insurance adjuster to end the negotiation) was Gutierrez's small  
4 personal injury claim (chiropractic bills of about \$4,500), and that was done solely as part  
5 of a roguish crime spree kept secret from Kossack, in which his fee was stolen as well  
6 and, obviously, without his knowledge or consent.

7 Bar Counsel argues with respect to Kossack's Guidelines for Avoiding the  
8 Unauthorized Practice of Law that, "a piece of paper is no substitute for an active and  
9 daily presence..." See, Answering Brief, p. 16, l. 8. Thus, according to Bar Counsel, a  
10 sole practitioner can never be in trial, can never take a vacation, can never be sick and can  
11 never attend an out-of-state Bar conference because to be absent from his office for even  
12 a day would *allow* his secretaries to engage in thefts and scams regardless of the training  
13 they have been given or the rules which have been posted.

14 Unfortunately, a sole practitioner can do little to protect himself from secretaries  
15 trying to play lawyer in his absence if they act in secret conspiracy against him for their  
16 own greedy, criminal purposes. The secretaries know the attorney's schedule, can keep l  
17 track of his movements as they did in this case, and they merely need to schedule any  
18 office appearance to occur when they know the attorney will not be present as happened  
19 in this case when Kissner came to the office and when Gutierrez was called to come pick  
20 up her check. So long as the secretaries answer the phone, they can always divert any  
21 telephone calls and tell their mark that the attorney is unavailable, again, what happened  
22 in this case when Kissner would call to office but was never able to speak to Kossack.

23 No high speed Internet connection at Kossack's office when becoming computer  
24 savvy and using the Internet was becoming more critical to the practice of law combined  
25 with a rehabilitation program due to an auto accident, admittedly caused Kossack to need  
26 to spend a greater amount of time at home. Kossack could not maintain an active and  
27 daily supervisory presence over his secretaries under such circumstances, nor can any  
28 attorney at all times; a certain amount of trust is critical to function.

1 Kossack's clients did not lose a lot of money. Kissner never lost a dime.  
2 Gutierrez was out about \$4,000 which roughly would have been her net from the \$11,000  
3 settlement depending on how much her medical liens were reduced. Rosenbach never  
4 was a client. He was a loanshark who because of his own greed got scammed by  
5 Michelle, a stranger he never met and spoke to only on the telephone. Rosenbach's only  
6 connection to Kossack was that he called and faxed Michelle at Kossack's office  
7 numbers. Rosenbach foolishly wired money to Kossack's general and trust accounts  
8 which Michelle withdrew, in part by forging Kossack's signature. Rosenbach's losses all  
9 occurred within a span of six months. Michelle gambled away all the money before a  
10 biannual audit would have picked up the loss. Kossack notified Rosenbach as soon as  
11 Kossack received Rosenbach's first letter, which had been misdirected to Kossack's  
12 office instead of being sent to the phony office Michelle opened up on Warm Springs  
13 Road after she was banned from entering Kossack's office. (II, 58,62) Kossack owed no  
14 duty to Rosenbach. Rosenbach sued Kossack but dropped his suit midstream because his  
15 own negligence was excessive. *See, Interim Funding, Inc. v. Robert Kossack*, Eighth  
16 Judicial District Court Case No. A611455, dismissed by Stipulation and Order for  
17 Dismissal with Prejudice filed May 31, 2011.

18 RPC 1.15. regarding safekeeping property states in pertinent part,

- 19 (a) A lawyer shall hold funds or other property of clients or third  
20 persons that is in a lawyer's possession **in connection with a**  
21 **representation** separate from the lawyer's own property....  
(**Emphasis added.**)

22 Rosenbach was not Kossack's client, and the money he wired into Kossack's  
23 accounts was not *in connection with a representation*. Rule 1.15 simply does not apply.

24 **Bar Counsel's cited cases are not on point but do suggest Kossack's sanction**  
25 **be less than a suspension.**

26 Bar Counsel cited *In re Cater*, 887 A. 1 (D.C. 2005) in which the attorney received  
27 a 180-day suspension for embezzlement from a client trust account by her secretary  
28 forging her signature coupled with the attorney failing to provide competent

1 representation, failing to respond to letters from bar counsel and orders from the Board on  
2 Professional Responsibility, failing to cooperate with the disciplinary investigation and  
3 refusing to testify on her own behalf. In *Carter*, the secretary embezzled over \$47,000  
4 from two incapacitated clients for whom the attorney was the court-appointed guardian  
5 and conservator. As in this case, the attorney failed to review her bank statements and  
6 cancelled checks. *Carter*, at 7. However, in *Carter*, the secretary was also charged with  
7 the task of preparing the annual accountings for the court filed on behalf of the estates.  
8 There is no indication in *Carter* that, as here, the secretary also needed to elicit the  
9 conspiratorial assistance of another secretary in the office or forge documents to get her  
10 thefts past an independent bookkeeper. Ninety days of Carter's suspension was due to  
11 Carter's failure to cooperate with the Bar's investigation. *Carter*, at 18-19. The theft in  
12 *Carter*, which amounted to ten times Gutierrez's loss, was from extra venerable victims  
13 who the attorney was especially appointed to protect, but the suspension based on the just  
14 the theft was one-twelfth the term of suspension Bar Counsel recommends for Kossack.

15 Bar Counsel's cited case of *Matter of Stransky*, 612 A.2d 373, 374 (N.J., 1992) is  
16 even more distinguishable. In *Stransky*, there was actually a New Jersey rule that the  
17 attorney had to reconcile his trust account on a quarterly basis *Stransky*, at 375. Had  
18 Nevada such a rule, this case would not exist. In *Stransky*, the funds taken from the  
19 attorney's client trust account were used to cover the attorney's office expenses, so the  
20 attorney himself benefitted from the theft. *Stransky*, at 374-375. Further, and most  
21 importantly, in *Stransky*, the attorney actually delegated signatory power over the client  
22 trust account to his wife, so she did not have to forge his signature. *Stransky*, at 375. In  
23 *Stransky* there is no indication that a bank needed to be fooled, that an independent  
24 bookkeeper needed to be fooled or that two or more of the attorney's subordinates needed  
25 to enter into a conspiracy. The *Stransky* court admitted that, "[c]ases involving a  
26 combination of lack of recordkeeping and significant negligent misappropriation have  
27 generally resulted in short-term suspensions," and the *Stransky* court goes on to cite a  
28 couple of suspensions of three months. *Stransky*, at 375.

1 Bar Counsel's cited case of *Disciplinary Counsel v. Crosby*, 921 N.E.2d 225 (Ohio  
2 2009) is inapposite. In *Crosby*, a nonlawyer assistant was given signatory authority over  
3 the attorney's client trust account. Michelle had no such signatory authority over  
4 Kossack's client trust account; she had to forge his signature. In *Crosby*, the attorney  
5 paid personal bills from his client trust account, and his client trust account became  
6 overdrawn. *Crosby*, at 229-230. In *Crosby* the thefts from the attorney's client trust  
7 account personally benefitted the attorney. Here, the thefts from Kossack's client trust  
8 account did not benefit Kossack; he was the victim, not the crook.

9 Bar Counsel's cited case of *Coppock v. State Bar*, 749 P.2d 1317 (Cal. 1988) is  
10 inapposite. There, Coppock set up a trust account for a client to assist the client in  
11 concealing money from the client's judgment creditors, and Coppock then supplied his  
12 client with pre-signed checks and deposit slips to facilitate the client's use of the account.  
13 *Coppock*, at 1320. The *Coppock* court found that Coppock had the "admitted intent to  
14 deceive" and that, "an act by an attorney for the purpose of concealment or other  
15 deception is dishonest and involves moral turpitude..." *Coppock*, at 1325. Coppock was  
16 suspended for 90 days and placed on probation for two years. *Coppock*, at 1331.  
17 Kossack engaged in no such criminal behavior.

18 Bar Counsel cites *Florida Bar v. Riggs*, 944 So.2d 167 (2006) for the proposition  
19 that Kossack should be suspended for three years. In *Riggs*, \$171,174.58 had been wired  
20 into his trust account for the purpose of closing on a client's real estate transaction, and  
21 Riggs failed to pay the \$118,000 mortgage. Riggs then failed to respond to the Bar's  
22 request for his client account records, and Riggs requested the bank not honor the Bar's  
23 subpoena. Riggs also paid \$18,959 of personal expenses from the trust account, and there  
24 was a \$108,836 shortage and a \$9,700 overdraft *Riggs*, at 168-169. Riggs was a crook  
25 and personally benefitted from his use of client funds. Kossack benefitted nothing. Only  
26 misery came his way.

27 Bar Counsel's cited case of *In re Shamers*, 873 A.2d 1089, 1097 (Del. 2005) is  
28 inapposite. In *Shamers*, the attorney filed false certifications of compliance with the

1 Delaware Supreme Court, issued a check from his escrow account to a client on two  
2 separate occasions against insufficient funds, and engaged in criminal income tax evasion  
3 by failing to file his income tax returns for eight years. *Shamers*, at 1092, 1094, 1097.  
4 For that intentional, criminal conduct, Shamers received a two year suspension.  
5 Conversely, in the present case, Kossack filed his income tax returns; he only got in  
6 trouble with the IRS because Michelle and Susan continued to write themselves  
7 paychecks after agreeing to work on a volunteer basis, the IRS then expected to be paid  
8 withholding taxes, which Michelle did not pay; she and Susan stole the money.

9 Bar Counsel's cited cases concern crooked attorneys who personally benefitted by  
10 stealing from client trust accounts. In each case the attorney was much more culpable  
11 than Kossack; in the most similar cases, under more incriminating circumstances, the  
12 attorney was suspended from three to six months. Kossack, who engaged in no criminal  
13 activity and who benefitted not the least, who was a victim, even if due to his own folly  
14 and misplaced trust, should not be suspended at all in comparison.

15 **No suspension may be imposed absent proof of the concurrence of four Panel**  
16 **members.**

17 Bar Counsel inappropriately cites to an unpublished opinion, *In the Matter of*  
18 *Discipline of William W. Seegmiller*, Order Imposing Public Reprimand, Case No. 45537  
19 (December 8, 2005), for the proposition that a pleading signed only by the Chair is  
20 sufficient to meet the requirement that the decision recommending suspension have a  
21 four-member concurrence. Based on the title of the opinion, there was not a suspension  
22 in the *Seegmiller* case. The reason an unpublished opinion cannot be cited or have  
23 precedential value is because it cannot be reviewed or differentiated by opposing counsel.  
24 Suppose, *arguendo*, somewhere in the *Seegmiller* decision the initial recommendation of  
25 the Panel was for suspension, and this Honorable Court held that the Chair's sole  
26 signature was sufficient, it may have been because there was a role call vote in the  
27 transcript of the hearing. In this case there was no role call vote, so we are left *assuming*  
28 the Chair's statement is accurate, a risky assumption considering what is at stake. For a

1 sanction as serious as suspension, Kossack and this court have the right and  
2 responsibility to know for sure whether each Panel member did, indeed, recommend  
3 suspension; here we do not. As there was no roll call vote and as only one member  
4 signed the Panel's decision, and not under oath, a four-member concurrence for the  
5 sanction of suspension has not been proven, and no suspension may be imposed pursuant  
6 to SCR 105(2)(d) .

7 **Kossack committed no wrong entrusting Sharon with Michelle's keys.**

8 Bar Counsel blames Kossack for taking Michelle's office keys and handing them  
9 to her daughter, Sharon, so Sharon could collect his mail and faxes. Sharon was her own  
10 adult. She had a clean record. Kossack had known her since she was a child. Bar  
11 Counsel attempts to ascribe to Sharon the criminal conduct of her mother; if the mother  
12 was a thief, then Kossack should have known Sharon was a thief and should not have  
13 trusted her; that is Bar Counsel's argument, that the wrongs of the mother should have  
14 been visited upon the daughter. Tony Spilotro has a brother who is a noted oral surgeon.  
15 The law does not punish innocent children for the wrongs of their parents or brothers for  
16 the wrongs of their siblings. The fact that Sharon joined in the conspiracy was an entirely  
17 new fact with which Kossack needed to contend, and one of the most disheartening,  
18 tragic facts of this case.

19 **The public will not be "protected" by suspending Kossack.**

20 The public is not going to be "protected" by suspending Kossack. The thieves are  
21 gone. Kossack handles his own books. No further thefts are possible. Suspension would  
22 merely be further punishing Kossack for what Michelle and Susan, acting in conspiracy,  
23 did. Meanwhile, one of the few civil rights attorneys in Nevada, whose work is important  
24 to the public in keeping public officials in line, would be incapacitated to the public's  
25 detriment.

26 What is so ironic is that Gutierrez probably would not have made a Bar complaint  
27 had Kossack been able to pay her, but the IRS cleaned Kossack out and claimed he owned  
28 the government more money. Then a rash of clients did not pay causing about \$150,000

1 in receivables to pile up, and cases were delayed which are now up on appeal or have  
2 pending trial dates. Kossack could not help anyone or pay anyone if he was evicted from  
3 his office and his home and living on the street, but that is precisely where Bar Counsel  
4 wants him placed. Kossack should not be suspended under the facts supported by clear  
5 and convincing evidence.

6 **The Supreme Court should consider adding a rule to more clearly define the**  
7 **duties of an attorney to routinely audit his books.**

8 They do not tell you in law school that once you pass the Bar everyone is going to  
9 lie to you. They do not tell you that once you pass the Clark County line, never trust a  
10 woman who plays video poker. The *Stransky* court made note of a New Jersey rule that  
11 required an attorney to reconcile his trust account on a quarterly basis. *See, Matter of*  
12 *Stransky*, 612 A.2d 373, 375 (N.J., 1992). This Honorable Court should consider making  
13 such a rule part of the Nevada Supreme Court Rules. It may not be popular with the  
14 senior partners of the larger firms, but it would have saved Kossack.

15 **CONCLUSION**

16 In conclusion, Kossack should not be suspended from the practice of law, and a  
17 less severe sanction should be considered.

18 Dated this 3rd day of October, 2011.

19 KOSSACK LAW OFFICES

20  
21 By

  
22 ROBERT J. KOSSACK, ESQ.  
23 Nevada Bar No. 2734  
24 4535 W. Sahara Ave., Suite 101  
25 Las Vegas, Nevada 89102  
26 Ph. (702) 253-7068  
27 Fx. (702) 368-0471  
28 Email rjkossack@cox.net  
*Attorney for Respondent/Appellant*  
*Robert J. Kossack in proper person*



