



BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA

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IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, ) No. 00-2172  
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)  
**HARRY P. FRIEDLANDER,** )  
**Bar No. 005244** ) **DISCIPLINARY COMMISSION**  
) **REPORT**  
RESPONDENT. )  
\_\_\_\_\_ )

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 11, 2003, pursuant to Rule 56(a), Ariz. R. S. Ct., for consideration of the Tender of Admissions and Agreement for Discipline by Consent (Agreement) and Joint Memorandum in support of Agreement for Discipline by Consent (Joint Memorandum), filed December 30, 2002, providing for a censure, one (1) year of probation with the Law Office Management Assistance Program (LOMAP) and participation in fee arbitration, and costs of these disciplinary proceedings.

Decision

The nine<sup>1</sup> members of the Commission unanimously recommend accepting and incorporating by reference the Agreement<sup>2</sup> and Joint Memorandum providing for a censure,

<sup>1</sup> J. Conrad Baran, an attorney and Hearing Officer from Navajo County, participated as an ad hoc member.  
<sup>2</sup> The parties requested to make several changes to the Agreement during oral argument. First, ¶11 should be stricken from the record because ¶18 through 25 more accurately address the amounts that were supposed to be held in the Respondent's trust account, as well as the balance on those various days. In addition, the parties requested to include an additional sentence in ¶21, as follows; "The balance in Respondent's trust account was in excess of \$6,591.01 between March 23, 2000 and April 16, 2000." In the same paragraph, the parties noted that the correct balance on April 27, 2000 was the same as the balance on

one (1) year of probation (LOMAP), and costs of these disciplinary proceedings. The terms of probation are as follows:

**Terms of Probation**

1. Respondent will, within thirty (30) days of the issuance of the Judgment and Order by the Supreme Court of Arizona, contact the director of the Law Office Management Assistance Program (LOMAP) at the State Bar of Arizona to schedule a trust account review and an audit of his communication procedures and policies. The LOMAP director or her designee will complete a review of Respondent's trust account and communication procedures and policies no later than ninety (90) days after issuance of a Judgment and Order by the Supreme Court of Arizona. Following that review, Respondent agrees to comply with any and all recommendations of the LOMAP director or her designee and enter into a Memorandum of Understanding, which will include but not be limited to: monthly or quarterly reports; periodic reviews by, or meetings with, the director or her designee; use of a practice monitor; and attendance at the Trust Account Ethics Enhancement Program;
2. Respondent will participate in fee arbitration with Sylvia Cannon through the State Bar of Arizona Fee Arbitration Program (if she files a petition for fee arbitration within three (3) months of the entry of the Judgment and Order by the Supreme Court of Arizona in this matter and the Program has jurisdiction);
3. In the event Respondent fails to comply with any of the foregoing terms, and information thereof is received by the State Bar, bar counsel shall file with the Disciplinary Commission a Notice of Non-Compliance. The Disciplinary Clerk shall then assign a Hearing Officer. The Hearing Officer shall conduct a hearing at the earliest possible date, but in no event less than thirty (30) days following receipt of notice, to determine whether a condition of probation has been breached and, if so, to recommend an appropriate sanction.
4. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the

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April 26, 2000. See oral argument transcript, pp. 4:24-5:20. The Commission accepts these changes.

State Bar to prove non-compliance by a preponderance of the evidence.

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2 The Commission placed great weight on the information provided by the parties  
3 during oral argument. Sufficient information regarding the facts surrounding Respondent's  
4 conduct was not included in the Agreement. The Commission further applies *Standard*  
5 4.12, which states:

6 Suspension is generally appropriate when a lawyer knows or  
7 should know that he is dealing improperly with client property  
8 with client property and causes injury or potential injury to a  
9 client.

10 Respondent should have known he was dealing improperly with client property, when he  
11 allowed his secretary to disburse earned fees in a contingency fee case prior to the fees being  
12 earned. Respondent failed to perform an appropriate check to assure the disbursement was  
13 appropriate.<sup>3</sup> The Commission concludes that although the presumptive sanction in this  
14 matter is suspension, consideration of the mitigating factors<sup>4</sup> reduce the appropriate sanction  
15 to censure and probation.

16 RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of February 2003.

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19 Jessica G. Funkhouser, Chair  
20 Disciplinary Commission

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25 <sup>3</sup> See oral argument transcript, pp. 15:21-16:12.

26 <sup>4</sup> The Commission takes notice of the Respondent's remorse demonstrated at oral argument and throughout the proceedings.

Original filed with the Disciplinary Clerk  
this 4<sup>th</sup> day of February 2003.

Copy of the foregoing mailed  
this 4<sup>th</sup> day of February 2003, to:

Harry P. Friedlander  
Respondent  
*Gibson Matheson Lalliss & Friedlander L.L.P.*  
1837 South Mesa Drive, Suite C-100  
Mesa, AZ 85210-6219

Copy of the foregoing hand-delivered  
this 4<sup>th</sup> day of February 2003.

James D. Lee  
Senior Bar Counsel  
State Bar of Arizona  
111 West Monroe, Suite 1800  
Phoenix, AZ 85003-1742

by Karen Weigand

/kdl