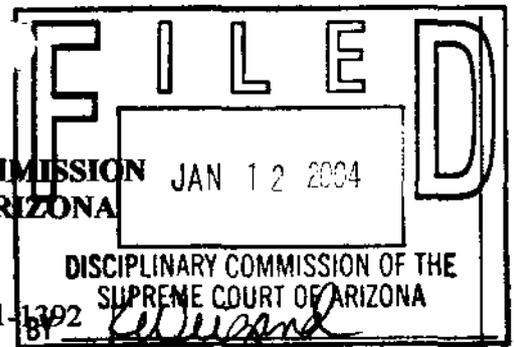


BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA



1
2 IN THE MATTER OF A SUSPENDED MEMBER)
3 OF THE STATE BAR OF ARIZONA,)
4)
4 **RICHARD A. ALCORN,**)
5 **Bar No. 006657**)
6)
7 **RESPONDENT.**)

No. 01-1292
BY *[Signature]*
**DISCIPLINARY COMMISSION
REPORT**

8 This matter came before the Disciplinary Commission of the Supreme Court of
9 Arizona on December 13, 2003, pursuant to Rule 56(a), Ariz. R. S. Ct., for consideration of
10 the Tender of Admissions and Agreement for Discipline by Consent (Agreement) and Joint
11 Memorandum in Support of Agreement for Discipline by Consent (Joint Memorandum)
12 filed October 16, 2003 providing for a three month suspension, retroactive to May 4, 2003,¹
13 one year of probation upon reinstatement (continued participation with the State Bar's Law
14 Office Management Assistance Program (LOMAP) as imposed in File No. 99-2053), and
15 costs of these disciplinary proceedings. Respondent and counsel for the State Bar were
16 present.
17

18 **Decision**

19 The seven² members of the Commission unanimously recommend accepting and
20 incorporating by reference the Agreement and Joint Memorandum³ providing for a three
21

22
23 ¹ The date that Respondent was eligible to apply for reinstatement from his previous
24 suspensions in File Nos. 96-1092 and 99-2053. The State Bar supports the retroactivity as
25 Respondent has voluntarily refrained from applying for reinstatement until this instant
26 matter is final. See Commission transcript, p. 7.

² Commissioner Funkhouser recused. Commissioner Gutierrez did not participate in these proceedings. Gary Bonwell, M.D., a former commissioner from Tucson, participated as an ad hoc member. One public member seat remains vacant.

1 month suspension, retroactive to May 4, 2002,⁴ one year of probation (LOMAP) upon
2 reinstatement, and costs of these disciplinary proceedings. The terms of probation imposed
3 in *Matter of Alcorn*, SB-02-0097-D (2002) apply in this matter and are as follows:

4 **Terms of Probation**

- 5 1. Respondent shall be placed on probation for a period of one year upon
6 reinstatement.
- 7 2. Respondent shall within 30 days of the final Judgment and Order, contact the
8 Director of LOMAP or designee to schedule a LOMAP audit. The Director
9 shall prepare a probation contract based on the audit, including a practice
10 monitor and Respondent shall comply with all of the terms therein.
- 11 3. In the event Respondent fails to comply with any of the foregoing terms, and
12 information thereof is received by the State Bar, bar counsel shall file with
13 the Hearing Officer a Notice of Non-Compliance. The Hearing Officer shall
14 conduct a hearing at the earliest possible date, but in no later than 30 days
15 following receipt of notice, to determine whether a condition of probation has
16 been breached and, if so, to recommend an appropriate sanction.
- 17 4. In the event there is an allegation that any of the terms have been breached,
18 the burden shall be on the State Bar to prove non-compliance by a
19 preponderance of the evidence.

20 Restitution is not appropriate as the record reflects that Respondent repaid the client the
21 entire amount of the loan plus interest within 30 days of the demand letter. *See* Agreement,
22 p. 2 and Commission transcript, p. 9. In addition, Respondent paid the clients' subsequent
23 attorney a substantial fee in regards to the demand for payment. Respondent stated at oral
24 argument that he questioned how the \$4,000.00 fee was calculated, but given his violation of

25 ³ The Joint Memorandum, p. 4 inadvertently refers to the one month suspension in File No.
26 96-1092 and should read File No. 99-2053. Additionally on p. 4, remorse is cited as
mitigating factor 9.32(m) and should read 9.32(l).

⁴ The retroactive date reflected in the Agreement was miscalculated and should read May,
2003, instead of April 4, 2000. *See* Commission transcript, p. 5:8.

1 ER 1.8, he was in no position to challenge the demand for payment and acquiesced to the
2 fee. See Commission transcript, p. 8:3.

3 RESPECTFULLY SUBMITTED this 12th day of January 2004.

4 

5 Craig B. Mehrets, Chair
6 Disciplinary Commission

7 Original filed with the Disciplinary Clerk
8 this 12th day of January 2004.

9 Copy of the foregoing mailed
10 this 13th day of January 2004 to:

11 Richard A. Alcorn
12 Respondent
13 *Smith & Feola*
14 2800 N. Central Ave., Suite 1400
15 Phoenix, AZ 85004-1019

16 Copy of the foregoing hand-delivered
17 this 13th day of January 2004 to:

18 Shauna R. Miller
19 Senior Bar Counsel
20 State Bar of Arizona
21 111 West Monroe, Suite 1800
22 Phoenix, AZ 85003-1742

23 By K. Weigand

24 /mps
25
26