

BEFORE THE DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ARIZONA

BY *K. D. O'Connell*

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IN THE MATTER OF A SUSPENDED MEMBER)	Nos. 02-0488, 02-1031, 02-2263
OF THE STATE BAR OF ARIZONA,)	
)	
CARROLL A. CLARK,)	
Bar No. 006563)	DISCIPLINARY COMMISSION
)	REPORT
)	
RESPONDENT.)	
)	

This matter came before the Disciplinary Commission of the Supreme Court of Arizona pursuant to Rule 58(e), Ariz. R. S. Ct., on April 16, 2004, for consideration of the Hearing Officer's Report, filed February 9, 2004, recommending a six (6) month suspension, two years of probation with the Law Office Management Assistance Program (LOMAP) including a practice monitor (PM), restitution and fee arbitration. Respondent filed an objection and requested oral argument. Respondent and counsel for the State Bar were present. Respondent argued for a suspension of no more than 60 days retroactive to his current suspension of 60 days. The State Bar argued for a suspension of less than six (6) months and one (1) day with substantial terms of probation, but acknowledged that a long term suspension would be appropriate and well within the range of reasonableness.

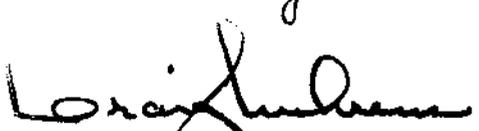
Decision

The Commission's standard of review is set forth in Rule 58(b), which states that the Commission reviews questions of law *de novo*. In reviewing findings of fact made by a hearing officer, the Commission applies a clearly erroneous standard.

1 Therefore, having found no findings of fact clearly erroneous, the eight¹ members of
2 the Commission unanimously recommend adopting and incorporating by reference the
3 Hearing Officer's findings of fact and conclusions of law,² but modified his recommended
4 sanction to reflect a six (6) month and one (1) day suspension, and upon reinstatement, two
5 years of probation (LOMAP with PM), an assessment with the State Bar's Member
6 Assistance Program (MAP), restitution in the amount of \$670.00 to client Ruben Frisby,
7 and binding fee arbitration with clients Sigfried and/or Wuilber Flores.

8 The Commission determined that based on Respondent's prior disciplinary offenses,
9 which involve a previous suspension and similar misconduct, and the significant aggravating
10 factors present in the record and the lack of mitigating factors, a sustained period of
11 rehabilitation is needed in order to protect the public. Respondent, who is familiar with the
12 disciplinary process, failed to cooperate in the screening investigation of this matter, failed
13 to file a disclosure statement, failed to respond to other discovery requests by bar counsel,
14 offered inconsistent testimony regarding repayment of funds, and minimized the harm
15 caused by his misconduct. The Commission determined that Respondent's misconduct is
16 most analogous to *Matter of Weisling*, SB-01-0038-D (2001). Weisling was suspended for
17 two years for similar misconduct in three separate matters and also had a prior suspension.
18

19 RESPECTFULLY SUBMITTED this 13th day of May 2004.
20

21 
22 _____
23 Craig B. Mehrens, Chair
24 Disciplinary Commission

25 ¹ Commissioner Gutierrez recused.

26 ² In Count One, the Hearing Officer inadvertently cited a violation of ER 1.15(d) instead of 1.15(b) and in Counts One, Two and Three, SCR 51(h) instead of 53(d). See Commission Transcript, p. 7 and Rules of Professional Conduct as amended December 1, 2003.

1 Original filed with the Disciplinary Clerk
this 13th day of May 2004.

2 Copy of the foregoing mailed
3 this 13th day of May 2004, to:

4 Jeffrey Messing
5 Hearing Officer 9X
6 2999 N. 44th Street, Suite 500
7 Phoenix, AZ 85018-7252

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9 Respondent
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17 by: K. Weigand

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