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NOV 14 2005

BEFORE THE DISCIPLINARY COMMISSION OF THE
OF THE SUPREME COURT OF ARIZONA
DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY: *[Signature]*

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3	IN THE MATTER OF A SUSPENDED MEMBER)	Nos. 03-0944, 04-0815
4	OF THE STATE BAR OF ARIZONA,)	
5	EDMUND Y. NOMURA,)	
6	Bar No. 007209)	
7	RESPONDENT.)	DISCIPLINARY COMMISSION
		REPORT

8 This matter came before the Disciplinary Commission of the Supreme Court of
9 Arizona on October 15, 2005, pursuant to Rule 58, Ariz. R. S. Ct., for consideration of the
10 Hearing Officer's Report filed March 24, 2005 recommending a two year suspension, two
11 years of probation upon reinstatement with the State Bar's Law Office Management
12 Assistance Program (LOMAP) including a practice monitor, the State Bar's Trust Account
13 Ethics Enhancement Program (TAEPP), maintenance of malpractice insurance, restitution
14 and costs of these disciplinary proceedings. Respondent and the State Bar both filed an
15 objection and requested oral argument. Respondent, Respondent's Counsel and Counsel for
16 the State Bar were present.

18 Respondent admits he should not have used funds from his trust account to pay
19 personal bills after placing the \$35,000 deposit from the St. Germaines into his trust account.
20 Respondent maintains the funds represented earned fees and the St. Germaines suffered no
21 actual harm, but concedes there was at least potential harm. Respondent further contends
22 that violations of ERs 1.1, 1.2, 1.3, 1.4, 1.5, 1.7 and 8.1 were not proven by clear and
23 convincing evidence and a two year suspension is harsh given Respondent's absence of prior
24 disciplinary offenses in over 23 years of practice.
25
26

1 Respondent argues that as a matter of law the Hearing Officer, the Disciplinary
2 Commission, and the court lacks the jurisdiction to award restitution in this matter. He
3 contends that the Hearing Officer lacks the authority to refer the issue of disgorgement of
4 the \$40,000 paid in the *Scorpion* matter to the Bankruptcy Court and Respondent is entitled
5 to have a determination of the reasonableness of the fees under ER 1.5 in this forum.
6 Respondent contends the agreed upon hourly rate is reasonable and covered by the \$40,000.

7 The State Bar argues that disbarment or a long term suspension of three or four years
8 is warranted and supported by case law. The Hearing Officer's recommendation of a two
9 year suspension should be increased because the evidence supports a violation of ERs 8.4(c)
10 and (d). The Hearing Officer erred in his conclusions of law that a violation of ER 8.4(c)
11 requires an intentional state of mind; the Hearing Officer's findings of fact support a
12 knowing violation. The Hearing Officer further erred in his conclusions of law that ER
13 8.4(d) did not apply to Respondent's conduct; the Hearing Officer's facts support that there
14 was prejudice to the administration of justice in the *Scorpion* bankruptcy and in
15 Respondent's own bankruptcy. The State Bar contends that Respondent caused additional
16 time and expense to the legal system and such conduct is inherently prejudicial to the
17 administration of justice.
18

19 Lastly, the State Bar argues that the Hearing Officer erred in his conclusion that
20 aggravating factor 9.22(i) substantial experience in the practice of law, did not apply.
21

22 **Decision**

23 The Disciplinary Commission's standard of review is set forth in Rule 58(b), Ariz. R.
24 S. Ct., which states that it applies a clearly erroneous standard to findings and reviews
25 questions of law *de novo*. The Commission may also recommend restitution to persons
26 financially injured. See Rule 60, Ariz. R. S. Ct.

1 The nine members of the Disciplinary Commission unanimously recommend
2 accepting and adopting the majority of the Hearing Officer's findings of fact and
3 conclusions of law, but based on a proportionality analysis, modify *de novo* the
4 recommended sanction to reflect a three year suspension, two years of probation upon
5 reinstatement (LOMAP with PM and TAEEP),¹ maintenance of malpractice insurance, as to
6 Count One a referral of this matter to the Bankruptcy Court for restitution or disgorgement
7 of the \$40,000 paid in the *Scorpion* matter,² as to Count Two restitution to Stephen and
8 Sherry Fry in the amount of \$2,051.60, and costs of these disciplinary proceedings.³

9 Discussion of Decision

10 The Disciplinary Commission determined that the Hearing Officer erred in his
11 conclusion that aggravating factor 9.22(i) substantial experience in the practice of law is not
12 present. *See* Hearing Officer's Report, p. 43. Respondent was admitted to practice law in
13 Arizona on May 5, 1982 and his misconduct involved a failure to comply with bankruptcy
14 requirements. Respondent is an experienced bankruptcy lawyer and used the bankruptcy
15 laws to his advantage and against the interests of his clients. Relevant case law holds that
16 misconduct is less likely to occur the more experienced the lawyer is. *Matter of Savoy*, 181
17 Ariz. 368, 371, 891 P.2d 236, 239 (1995). Respondent's prior disciplinary offenses also
18 involve violations of ERs 1.4, 8.1, 1.15 and SCR 53 (formerly 51).
19

20
21 The Disciplinary Commission then reviewed the cases offered for a proportionality
22 analysis regarding the appropriate sanction. Previous sanctions involving similar
23 misconduct support a range of suspension from two to four years and a term of probation.
24

25 ¹ The specific terms of probation shall be determined at the time of reinstatement. *See* Hearing
26 Officer's Report, p. 46, item #4.

² *See* Hearing Officer's Report, p. 34 ¶ 141, and *In re Crimson Investments, N.V.*, 109 B.R. 397
(Bkrtcy. D. Az. 1989).

³ The Hearing Officer's Report is attached as Exhibit A.

1 reinstatement (LOMAP with PM and TAEEP), maintenance of malpractice insurance, as to
2 Count One a referral of this matter to the Bankruptcy Court for restitution or disgorgement
3 of the \$40,000 paid in the *Scorpion* matter, as to Count Two restitution to Stephen and
4 Sherry Fry in the amount of \$2,051.60, and costs.

5 RESPECTFULLY SUBMITTED this 14th day of November, 2005.

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8 _____
9 Cynthia L. Choate, Chair
10 Disciplinary Commission

11 Original filed with the Disciplinary Clerk
12 this 14th day of November, 2005.

13 Copy of the foregoing mailed
14 this 15th day of November, 2005, to:

15 Mark S. Sifferman
16 Hearing Officer 9J
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by: K. Weigand

/mps