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MAR 13 2006

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

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3 IN THE MATTER OF A SUSPENDED MEMBER) No. 05-1489
4 OF THE STATE BAR OF ARIZONA,)
5)
6 **FRANK GOTTSMAN,**)
7 **Bar No. 021799**)
8) **DISCIPLINARY COMMISSION**
9) **REPORT**
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This matter came before the Disciplinary Commission of the Supreme Court of Arizona on February 11, 2006, pursuant to Rule 58, Ariz. R. S. Ct., for consideration of the Hearing Officer's Report filed January 3, 2006, recommending disbarment and costs of these disciplinary proceedings.

Decision

The nine¹ members of the Disciplinary Commission unanimously recommend accepting and adopting the majority of Hearing Officer's findings of fact and conclusions of law, but modify the recommendation to reflect a three year suspension and costs of these proceedings.²

Discussion

The Disciplinary Commission's standard of review is set forth in Rule 58(b), which states that it applies a clearly erroneous standard to findings and reviews questions of law *de novo*. The Commission also gives great deference to the Hearing Officer's Report and recommendation. *Matter of Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1989).

¹ Commissioner Flores concurs that suspension is appropriate, but would have recommended a shorter suspension. The State Bar sought a six month and one day suspension.

² The Hearing Officer's Report is attached as Exhibit A.

1 The Commission, as well as the Hearing Officer, found clear and convincing evidence
2 that Respondent violated Rule 53(c), (d), (e), (f) and (g), Ariz. R. S. Ct.

3 Respondent was conditionally admitted to the practice of law on October 24, 2003, and
4 consented to terms involving the filing of quarterly reports concerning his financial obligations.
5 Respondent failed to comply with the conditions of his admission and failed to respond to the
6 State Bar's investigations. Respondent was subsequently placed on probation for violating ER
7 8.1 and SCR 53(f) and (g). Respondent thereafter, failed to comply with the terms of his
8 probation contract and failed to cooperate with the State Bar's investigations.

9 In determining the appropriate sanction, our Supreme Court considers the ABA
10 *Standards for Imposing Lawyer Sanctions* ("*Standards*") a suitable guideline. *In re Kaplan*,
11 179 Ariz. 175, 877 P.2d 274 (1994). The Supreme Court and the Disciplinary Commission
12 are consistent in utilizing the *Standards* to determine appropriate sanctions for attorney
13 discipline. In imposing a sanction after a finding of misconduct, consideration is given to
14 the duty violated, the lawyer's mental state, the actual or potential injury caused by the
15 misconduct, and the existence of aggravating and mitigating factors. *See Standard 3.0*.

16 On the facts deemed admitted by default, the Disciplinary Commission determined
17 that the Hearing Officer erroneously applied ABA *Standard 7.1*. *Standard 7.1* provides that:
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19 Disbarment is generally appropriate when a lawyer knowingly
20 engages in conduct that is a violation of a duty owed as a
21 professional with the intent to obtain a benefit for the lawyer
22 or another, and causes serious or potentially serious injury to a
client, the public, or the legal system.

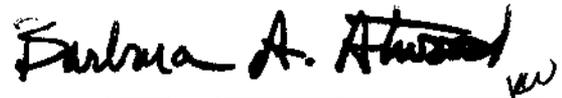
23 The Disciplinary Commission finds no evidence to support there was the intent to obtain a
24 benefit by Respondent or another, or that serious injury occurred. The Disciplinary
25 Commission therefore, finds *de novo* that ABA *Standard 7.2* is more applicable to
26 Respondent's particular misconduct. *Standard 7.2* provides that:

1 imposed, the Commissions gave appropriate weight to these factors and concluded that a
2 three year suspension is within the range of sanctions for similar misconduct.

3 **Conclusion**

4 Therefore, based on the findings and conclusions, application of the *Standards* and a
5 proportionality analysis, the Disciplinary Commission recommends a three year suspension
6 and costs.

7 RESPECTFULLY SUBMITTED this 13th day of March, 2006.

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10 Barbara A. Atwood, Chair
Disciplinary Commission

11 Original filed with the Disciplinary Clerk
12 this 13th day of March, 2006.

13 Copy of the foregoing mailed
14 this 13th day of March, 2006, to:

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16 Hearing Officer 7X
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25 /mps
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