

FILED

JUN 25 2007

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY WJ

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

**IN THE MATTER OF A
SUSPENDED MEMBER OF THE
STATE BAR OF ARIZONA,**

**STEPHEN J. ALEXANDER,
Bar No. 006878**

Respondent.

File No. 05-0783

**HEARING OFFICER'S REPORT
AND RECOMMENDATION**

(Assigned to Hearing Officer 8A,
Kraig J. Marton)

I. PROCEDURAL HISTORY

The probable cause order in this matter was filed on January 19, 2006, and the complaint was filed on March 31, 2006. On April 4, 2006, in accordance with Rule 47(c), Ariz.R S.Ct, the complaint was served on Respondent by certified mail/delivery restricted to addressee, and regular first class mail, to Respondent's address of record. Respondent failed to answer Respondent was placed on interim suspension in Arizona on April 17, 2006.

On June 19, 2006, the Disciplinary Clerk filed a Notice of Default pursuant to Rule 57(d), Ariz.R S.Ct. Respondent failed to answer or otherwise defend, and the Disciplinary Clerk filed the Entry of Default on July 14, 2006

1 After both parties requested it, an aggravation/mitigation hearing was
2 conducted on September 27, 2006 At this hearing, Respondent testified
3 telephonically and numerous exhibits were received into evidence.

4 **II. FINDINGS OF FACT**

5 **A. MATTERS DEEMED ADMITTED**

6
7 Because Respondent did not file an answer in this matter and default was
8 entered against him, the factual allegations in the complaint (paragraphs 1
9 through 12) are deemed admitted pursuant to Rule 57(d), Ariz.R.S.Ct. and are set
10 forth *verbatim* below, with added footnotes
11

12 **GENERAL ALLEGATIONS**

13 1. At all times relevant, Respondent was a lawyer licensed to practice
14 law in the state of Arizona having been first admitted to practice in Arizona on
15 October 7, 1981.

17 2. At all times relevant, Respondent was a lawyer licensed to practice
18 law in the state of California and he was residing in California.

19
20 3. Upon receiving a certified copy of the judgment of conviction as
21 described hereafter, the State Bar of California placed Respondent on interim
22 suspension. As of the date of filing of the Complaint, Respondent remains on
23 inactive status and on interim suspension in California.
24
25

1 4. On April 26, 2005, the State Bar of Arizona (“State Bar”) received
2 notification from the State Bar of California, that on April 22, 2005, Respondent
3 had been convicted of filing a false tax return in violation of 26 U.S.C. §
4 7206(1)¹

5
6 5. The conviction resulted from Respondent willfully subscribing to a
7 false United States Individual Income Tax Return, Form 1040, for the 1997
8 calendar year (the “1997 Tax Return”)

9
10 6. The Indictment, filed on August 22, 2004 in the United States
11 District Court for the Central District Of California, charges that Respondent
12 verified by a written declaration that the 1997 Tax Return was made under the
13 penalties of perjury, that it was filed with the Internal Revenue Service and that
14 Respondent did not believe the 1997 Tax Return to be true and correct as to
15 every material matter contained therein²

16
17 7. The Indictment states that Respondent reported in his 1997 Tax
18 return that during 1997 his total income was \$14,885.00, when in fact
19 Respondent well knew and believed his total income in 1997 was substantially
20 higher.
21

22
23 ¹ 26 U S C § 7206 “Any person who – (1) Declaration under penalties of perjury -- Willfully makes and subscribes
24 any return, statement or other document, which contains or is verified by a written declaration that it is made under
the penalties of perjury, and which he does not believe to be true and correct as to every material matter,”

25 ² See Indictment, SBA Bates 017 (“SBA Bates” refers to the Bates number of the exhibits introduced at the
Aggravation/Mitigation hearing by the State Bar No exhibits were offered by Respondent)

1 8. The Indictment further states that the grand jury alleged that the tax
2 loss resulting from Respondent's offense was approximately \$70,000³.

3 9. On December 30, 2005, the State Bar obtained a certified copy of a
4 judgment and commitment order ("the Judgment") against Respondent for
5 Subscribing to a False Tax Return in violation of Title 26 U.S.C. § 7206(1). The
6 Judgment was entered on September 28, 2005, in a criminal case captioned,
7 *United States of America v Stephen J Alexander*, No. CR 04-1164-GHK, in the
8 United States District Court, Central District of California.⁴
9

10
11 10. The Judgment states that Respondent pled not guilty; however, the
12 verdict returned by the jury was guilty and Respondent was sentenced to
13 probation and a prison term of six months.⁵
14

15 11. The State Bar of California, having placed Respondent on interim
16 suspension pending the resolution of Respondent's appeal of the criminal
17 conviction, was contacted and staff counsel indicated that this matter would be
18 an automatic disbarment in California.
19

20 12. On or about March 31, 2006, the State Bar of Arizona obtained a
21 copy of a memorandum decision filed March 9, 2006, by the United States Court
22

23
24 ³ See SBA Bates 017

25 ⁴ See SBA Bates 216

⁵ The State Bar's complaint erroneously refers to a finding of guilt by a grand jury but this has been corrected in these findings. See SBA Bates 207 and 216

1 of Appeals for the Ninth Circuit in docket 05-50618 concerning the appeal of
2 case number CR-04-01164-WJR-01 from the United States District Court for the
3 Central District of California indicating that the conviction of Respondent has
4 been affirmed.

5
6 **B. OTHER FACTUAL FINDINGS**

7 13 The following additional facts are found, based on the record at the
8 mitigation/aggravation hearing:

9
10 14. On February 5, 1997 Respondent opened a client trust account in
11 California. See Timeline of Transactions, SBA Bates 192, which was used as
12 evidence during the criminal proceedings, SBA Bates 22 (“Timeline”)

13
14 15. On that same day, the Respondent deposited \$1,255,000.00 by
15 cashier’s check into the newly opened trust account and on February 11, 1997 an
16 additional \$100,000 00 check was deposited into the same account. See
17 Timeline

18
19 16. The trust account was labeled “Attorney-Client Trust Account” and
20 was used to receive funds that were provided to Respondent as part of “business
21 arrangements” that never involved legal services. See SBA Bates 211.

22
23 17. Respondent received those funds from Maryanne Baumgarten and
24 previously testified that she asked him to deposit those funds on behalf of a
25 group of investors that she represented. See SBA Bates 305.

1 18. Respondent also testified that Ms. Baumgarten requested that those funds
2 be maintained in an account in which the interest goes to the State Bar See SBA
3 Bates 306 and 437.

4 19. Maryanne Baumgarten was never a client of Respondent. The
5 money Respondent placed into the trust account never involved receipt for
6 payment for legal services. See SBA Bates 211 and 444

7 20. From May 1997 through September 1997, Respondent wired and
8 otherwise transferred those funds to various persons and accounts as apparently
9 directed by Ms. Baumgarten. See Timeline.

10 21. The Respondent claims that his sole responsibility in this matter was
11 to receive and disburse money from investors who wanted to set up an offshore
12 bank and then set up an offshore insurance company. See SBA Bates 925.

13 22. While the transfers involved, in part, funds being wired to offshore
14 accounts, the federal government never charged Respondent with money
15 laundering or wrongdoing related to those transfers (R T. ⁶ p. 25), nor has anyone
16 else been charged, either. SBA Bates 514.

17 23. The State Bar implied that the transfers were wrongful (R.T. p. 17-
18 18) but the transfers were not part of the charges in the State Bar's complaint,
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⁶ R T refers to the Reporter's Transcript of the Mitigation/Aggravation Hearing held September 27, 2006

1 and no adverse implication will be made here because of those transfers since
2 offshore transfers can be lawful and there is no evidence that these were not.

3 24. Ultimately, through various transactions, Respondent personally
4 received a total of \$200,000.00 of the funds provided to him from Ms.
5 Baumgarten as his fee for conducting these transactions. See Timeline and SBA
6 Bates 474.

7
8 25. All of that \$200,000 was received by Respondent in 1997 and
9 Respondent testified that he "earned the money." (Timeline and R T. p. 51).

10
11 26. The Respondent signed a U.S. Individual Tax Return Form 1040 for
12 the year 1997, which was received and filed by the Internal Revenue Service on
13 September 27, 1998. On that 1040 Form the Respondent claimed "total income"
14 in the amount of \$14,885 00. See SBA Bates 179.

15
16 27 The Respondent was convicted by a jury of Subscribing to a False
17 Tax Return in violation of title 26 U.S.C. § 7106(1) as a result of failing to list
18 the \$200,000.00 in question on his 1997 Income Tax Return. See Indictment,
19 SBA Bates 17-18, and Verdict, SBA Bates 207.

20
21 28. The State Bar has not proved that any back taxes are owing arising
22 out of this failure to declare income.

23
24 29. At the Aggravation/Mitigation Hearing, Respondent testified that he
25 did not believe he owed any back taxes (R.T p. 25).

1 30. To some extent, the record confirms that Respondent does not owe
2 any back taxes. During the criminal proceedings the Prosecutor never sought
3 payment of any back taxes, and such a payment was not part of the sentence
4 imposed or restitution required (R.T. p. 25 and SBA Bates 216-217). In addition,
5 the Internal Revenue Service knew about the \$200,000.00 income as early as
6 2001, and actively participated in the criminal trial, yet it has not requested
7 payment nor audited Respondent as of September 2006 (R.T. p. 25, 30-31).
8

9 31. While logic would dictate that a failure to report \$200,000.00 would
10 result in back taxes being due, the record also reflects that Respondent incurred
11 expenses, without saying how much (e.g. SBA Bates 905) and that three different
12 lawsuits were brought against Respondent where others claimed entitlement to
13 that \$200,000.00. There was a suit by Smith Barney (SBA Bates 004) that was
14 settled for an unknown amount, but "below litigation costs" (SBA Bates 004); a
15 suit by a trustee in bankruptcy (SBA Bates 1158) that Respondent settled for
16 around \$3,000.00 (SBA Bates 314), and a suit by Ms. Baumgarten (SBA 004)
17 the results of which are not reflected in the record.
18
19
20

21 32. It would be pure speculation to claim taxes are due when there is no
22 proof of same
23
24
25

1 33 The only mention in the entire record that taxes might be due is in
2 the indictment where it alleges that “the loss resulting from this offense was
3 approximately \$70,000”, SBA Bates 018.

4 34. This mention in the indictment of a “loss” is surplusage and not
5 evidence for a number of reasons. First, there was no evidence offered during
6 the criminal trial about whether there was any tax due, much less the amount of
7 those taxes. See, SBA Bates 020-505 and (R.T. p. 32). Second, when the
8 prosecutor in those proceedings described the charges and the indictment, she did
9 not mention that any taxes were due, SBA Bates 25. Finally, the offense charged
10 -- a violation of 26 U.S.C. § 7206(1) -- does not require any loss for there to be a
11 conviction. As a result, the indictment does not prove a loss. See *US v*
12 *Salazar*, 455 F.3d 1022, 1024 (9th Cir. 2006) (“Insofar as the language of an
13 indictment goes beyond alleging elements of the crime, it is mere surplusage that
14 need not be proved.”)

15 **III. SANCTION**

16 In determining an appropriate sanction, our disciplinary system considers
17 the facts of the case, the American Bar Association’s *Standards for Imposing*
18 *Lawyer Sanctions* (“Standards”) and the proportionality of discipline imposed in
19 analogous cases. *In re Kaplan*, 179 Ariz. 175, 177, 877 P.2d 274, 276 (1994); *In*
20
21
22
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25

1 *re Bowen*, 178 Ariz. 283, 286, 872 P 2d 1235, 1238 (1994); *In re Rivkind*, 164
2 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

3 **A. ABA Standards**

4 The *Standards* are designed to promote consistency in sanctions by
5 identifying relevant factors the court should consider and then applying those
6 factors to situations in which lawyers have engaged in various types of
7 misconduct *Standard 1.3, Commentary*.

8 In determining an appropriate sanction, these factors should be considered.
9
10 1) the duty violated; 2) the lawyer's mental state; 3) the potential or actual injury
11 caused by the lawyer's conduct; 4) the existence of aggravating or mitigating
12 factors. *Standard 3.0*.

13
14 **1. Duty violated and Applicable Standards**

15 In this case, Respondent was convicted of the felony offense of "Willfully
16 Subscribing to a False Tax Return" The applicable *Standard* is 5.1 which states:
17 "absent aggravating or mitigating circumstances, upon application of the factors
18 set out in *Standard 3.0*, the following Sanctions are generally appropriate in
19 cases involving commission of a criminal act that reflects adversely on the
20 lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in
21 cases with conduct involving dishonesty, fraud, deceit or misrepresentation:
22
23
24

25 5.11 Disbarment is generally appropriate when.

1 (a) a lawyer engages in serious criminal conduct a necessary
2 element of which includes intentional interference with the
3 administration of justice, false swearing, misrepresentation,
4 fraud, extortion, misappropriation, or theft; or the sale,
5 distribution or importation of controlled substances, or the
6 intentional killing of another; or an attempt or conspiracy or
7 solicitation of another to commit any of these offenses, or

8 “A lawyer who engages in any of the illegal acts listed [in *Standard 5 11*]
9 has violated one of the most basic professional obligations to the public, the
10 pledge to maintain personal honesty and integrity.” *Standard 5.11, Commentary.*

11 Respondent willfully filed a false tax return in order to avoid paying taxes
12 on \$200,000.00 of income he earned in 1997. According to the Ninth Circuit,
13 there was evidence that Respondent “knowingly and deliberately subscribed to a
14 false tax return.” SBA Bates 263. Respondent was convicted of Subscribing to a
15 False Tax Return in violation of Title 26 U.S.C. § 7206(1), a serious felony
16 involving dishonesty, fraud, deceit or misrepresentation, which reflects adversely
17 on his honesty, trustworthiness or fitness as a lawyer. As a result, disbarment is
18 the presumptive sanction for Respondent’s misconduct.

19 **2. Respondent’s Mental state**

20 Although Respondent claimed otherwise, the record in the criminal
21 proceeding establishes that his mental state was knowing and willful. He was
22 convicted by a jury of violating 26 U.S.C. § 7206(1) (“Any person who . . . under
23 penalties of perjury . . . willfully makes and subscribes any return . . . which he
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25

1 does not believe to be true and correct as to every material matter” is guilty of a
2 felony). This finding was affirmed on appeal by the Ninth Circuit.

3 **3. Potential or actual injury**

4 ABA *Standard* 5.1 presumes disbarment for “serious criminal conduct”
5 coupled with “false swearing” and so a finding of potential or actual injury is not
6 required for a presumptive disbarment
7

8 It should be noted, however, that the record does not reflect any actual
9 injury here. While a potential injury seems likely, there is still no record to show
10 that any taxes were ever due.
11

12 **4. Aggravating Factors**

13 The facts admitted by default in this case and the evidence adduced during
14 the aggravation/mitigation hearing establish the following aggravating factors:
15

- 16 • *Standard* 9.22(b) dishonest or selfish motive. Respondent was found
17 guilty of willfully filing a false tax return and a reasonable inference is that
18 he did so with the intent to benefit himself financially.
- 19 • *Standard* 9.22(i) substantial experience in the practice of law. Respondent
20 has been practicing law for over 25 years, having been first admitted to
21 practice law in Arizona on October 7, 1981 and he had 16 years of experience
22 at the time of the offense. He has both a law degree and an MBA, and was
23 also a licensed real estate broker
24
25

1 • *Standard* 9.22(k) illegal conduct. Respondent was convicted of
2 Subscribing to a False Tax Return in violation of Title 26 U.S.C. § 7206(1), a
3 serious felony offense.

4
5 **5. Mitigating Factors**

6 The record provides evidence of the following mitigating factors:

7 • *Standard* 9.32(a) absence of a prior disciplinary record. Respondent has
8 no prior disciplinary record in Arizona. Respondent is currently under
9 interim suspension in Arizona and California but these are because of this
10 matter. While the California proceedings suggest investigations into other
11 unrelated charges, none have resulted in any discipline.

12
13 • *Standard* 9.32(g) character or reputation While Respondent chose not to
14 offer character evidence, the record still reflects that he served as the mayor
15 of Azusa, California and on its city council for a total of seven years. SBA
16 Bates 456. Providing public service in such a capacity is a positive factor.

17
18 • *Standard* 9.32(k) imposition of other penalties or sanctions. As a result of
19 his felony conviction, Respondent was sentenced to a term of six months in
20 prison followed by six months house arrest and three years probation. SBA
21 Bates 216-217.

22
23 • *Standard* 9.32(m) remoteness of prior offenses. The State Bar acted
24 expeditiously in pursuing this matter, so *Standard* 9.32(j) (delay in
25

1 disciplinary proceedings) does not apply. However, this matter entirely
2 involves Respondent's activities in 1997 and a tax return he signed on
3 September 24, 1998. The passage of almost nine years is a mitigating factor.

4 **6. Inapplicable factors**

5
6 The following factors, suggested by the parties, are rejected as neither
7 aggravating nor mitigating

8 • *Standard 9.22(e)* bad-faith obstruction of the disciplinary proceedings.

9
10 The State Bar points out that Respondent failed to file an answer to the
11 formal complaint or otherwise defend in the formal disciplinary proceedings
12 until the mitigation hearing and so this factor could apply. However,
13 Respondent began his six months of jail time on March 10, 2006⁷ and the
14 complaint here was served on March 31, 2006 so the failure to respond can
15 not be called bad faith. Further, Respondent did timely respond when first
16 contacted by the State Bar, SBA Bates 003, and he did participate in these
17 proceedings when released. As a result, this factor does not apply.

18
19
20 • *Standard 9.22(g)* refusal to acknowledge wrongful nature of conduct.

21 While the State Bar suggests that Respondent denied any misconduct in this
22 matter, his testimony was more in the nature of an explanation of what
23
24
25

⁷ While this date is not in the record, we take judicial notice of the pleadings in the U S District Court, Central District of California, Western Division, case number CR-04-1164-WJR-01

1 occurred. He said he was “not disputing the conviction” (R.T. p. 29). He
2 also said he was “very sorry” and “apologized to everyone” (R T. p. 37).

3 • *Standard 9.22(j) indifference to making restitution*. While the State Bar
4 points out that Respondent has not paid any back taxes, penalties and/or fines
5 to the United States Internal Revenue Service, there is no evidence that he
6 owes any
7

8 • *Standard 9.32(j) interim rehabilitation*. While Respondent claimed to have
9 been rehabilitated because of the time he spent in jail and the sentence
10 imposed (R.T p. 36-37) he gave no evidence or explanation, and spending
11 time in jail is not enough to prove rehabilitation.
12

13 • *Standard 9.32(l) remorse*. Respondent did testify that he is “extremely
14 remorseful about the situation and I’ve apologized to everyone. I understand
15 the seriousness of this And I obviously want to repair any damage that’s
16 been done.” (R.T. p. 37). However, this is the only evidence in the record of
17 remorse. It is too little too late, and not enough to be used in mitigation.
18
19

20 **7. Discussion:**

21 The four mitigating factors slightly outweigh the three aggravating factors

22 Respondent committed a felony and was convicted That felony offense
23 involved a dishonest and selfish motive and he knew better. This was a serious
24 offense and one that can not be ignored.
25

1 On the other hand, this was Respondent's first and only offense after more
2 than 16 years of practicing law and none have been cited since. It happened
3 almost ten years ago, and Respondent has a record of public service. He has
4 already paid a heavy price for his wrongdoing.
5

6 The presumptive sanction for Respondent's conduct is disbarment. While
7 he has more mitigating than aggravating factors, the mitigating factors, alone,
8 just barely overcome that presumption. What tips the scales in favor of
9 suspension is the proportionality analysis.
10

11 **B. Proportionality/Case Law**

12 The purpose of lawyer discipline is not to punish the lawyer, but to protect
13 the public and to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187,
14 859 P.2d 1315, 1320 (1993). When imposing lawyer sanctions, the court is
15 guided by the principle that an effective system of professional sanctions must
16 have internal consistency. *In re Pappas*, 159 Ariz. 516, 526, 768 P 2d 1161, 1171
17 (1998). Therefore, a review of cases that involve conduct of a similar nature is
18 warranted.
19
20

21 A comprehensive review of prior similar disciplinary cases implies a
22 suspension, rather than disbarment, is the appropriate remedy

23 * *A five year suspension was imposed in In re Wines*, 135 Ariz 203,
24 660 P.2d 454 (1983). Wines pled guilty to a misdemeanor violation of 26 U.S.C.
25

1 § 7203 (1976), willful failure to supply information relating to income taxes. He
2 was sentenced to one year in prison, which was suspended, and he was placed on
3 unsupervised probation with three months in a work release program. The
4 disciplinary board found he had engaged in fraudulent, deceitful and dishonest
5 acts by knowingly misrepresenting his income. The Court found that while
6 Wines was convicted of only a misdemeanor, the facts and circumstances leading
7 to the conviction involved moral turpitude. The court found:
8

9
10 The law requires proper recording and proper reporting of income,
11 and we believe that an attorney who has knowingly failed to adopt
12 procedures which would bring him into compliance and has
13 employed various artifices to avoid these requirements has not
14 only violated the law but has been guilty of fraud, dishonesty and
15 misrepresentation of such a nature as to make suspension
16 reasonable if not absolutely necessary. *Id* at 206, 457.

17 [W]e see no significant moral distinction between willfully
18 defrauding and cheating for personal gain a client, an individual,
19 or the government. Cheating one's client and defrauding the
20 government are reprehensible in equal degree. *Id* at 208, 459.

21 Respondent Wines was suspended for five years for violating Disciplinary Rule
22 DR 1-102(A)(3) and (4), and Rule 29(c), Ariz.R.S.Ct.

23 * A six month suspension was imposed in *In re Scholl*, 200 Ariz. 222,
24 25 P.3d 710 (2001). Scholl, a judge, developed a gambling habit and for several
25 years he failed to report income attributable to gambling. He was found guilty
and convicted in federal court of seven felony offenses including four counts of
filing a false tax return in violation of 26 U.S.C. § 7206(1), and three counts of

1 structuring currency transactions to avoid treasury reporting requirements in
2 violation of 31 U.S.C. § 5324. He was sentenced to six months home arrest and
3 five years probation. The court found that Scholl's convictions caused harm to
4 the public, the justice system, and the legal profession. *Id.* at 225, 713. Three
5 aggravating factors were found: dishonest or selfish motive, a pattern of
6 misconduct and substantial experience in the practice of law. Four mitigating
7 factors were found: absence of a prior disciplinary record, full and free disclosure
8 to disciplinary board or cooperative attitude toward proceedings, good character
9 or reputation, and imposition or other penalties or sanctions. Scholl presented
10 strong evidence of rehabilitation, and Scholl was suspended for six months for
11 violating Rule 42, Ariz.R.S.Ct., specifically ER 84(b) and Rule 51(a),
12 Ariz R.S Ct.

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14
15
16 * A two year suspension was imposed in *In re Savoy*, 181 Ariz. 368,
17 891 P.2d 236 (1995). Savoy was convicted of one count of perjury based on
18 statements he made while testifying before the Arizona State Grand Jury. Savoy
19 was sentenced to two years' probation and fined \$15,000.00. The court found
20 that: "Savoy's conviction of perjury is a serious matter, one that should result in
21 disbarment in most cases, . . . the circumstances [of this case] are unusual." *Id.* at
22 371, 239. No aggravating factors were found. Five mitigating factors were
23 found: 1) full and free disclosure to disciplinary board or cooperative attitude
24
25

1 toward proceedings; 2) remoteness of prior offenses; 3) no dishonest or selfish
2 motive; 4) character or reputation; 5) and imposition of other penalties or
3 sanctions. The court also gave mitigating weight to Savoy's actions in
4 contacting his clients after his conviction and notifying them that they might
5 need substitute counsel. Savoy was suspended for two years for violating Rule
6 42, Ariz.R.S.Ct., specifically, ERs 3 3(a)(1) and 8.4(b), (c) and (d), and Rule
7 51(a), Ariz.R.S.Ct.
8

9
10 * A *censure* was imposed by agreement in *In re Jack Levine*, SB-99-
11 0049-D (1999) after he was convicted of two counts of willful failure to pay
12 income tax, in violation of 26 U.S.C. § 7203, See the Disciplinary Case Matrix
13 found at <http://www.supremestateaz.us/dc/Matrix/1999.pdf>
14

15 * A *six month suspension* was imposed in *In re Stanley E. Munger*,
16 SB-86-0024-D (1986) after he failed to file income tax returns and lied on an
17 annual questionnaire with the Iowa Disciplinary Commission regarding those
18 taxes. See, <http://www.supremestateaz.us/dc/Matrix/1986.pdf>
19

20 A review of an Annotation on this topic reveals that the vast majority of
21 jurisdictions impose a suspension rather than disbarment on attorneys with
22 similar convictions as here. See, Anno, 63 A.L.R.3d 512, *Federal income tax*
23 *conviction as constituting nonprofessional misconduct warranting disciplinary*
24 *action against attorney*. While counting cases may not be the best approach, we
25

1 count 111 reported decisions where a suspension, rather than disbarment, was
2 imposed on a similar conviction.⁸ The suspensions were generally for two to five
3 years. While that annotation cites a handful of cases from other jurisdictions
4 where attorneys were disbarred, most of those disbarments occurred because
5 disbarment is mandatory in some jurisdictions on conviction of a felony See,
6 e.g., *In re Birdwell*, 20 S.W.3d 685 (Tex. 2000) and *Oklahoma Bar Assoc v*
7 *Houts*, 420 P.2d 498 (Okla. 1966).
8

9
10 In arguing for disbarment, the State Bar cited a number of cases. Almost
11 all of those cases involved suspensions rather than disbarments See the
12 following cases cited by the State Bar: *In re Wines*, 135 Ariz. 203, 660 P.2d 454
13 (1983) (five year suspension); *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001)
14 (six month suspension); *In re Savoy*, 181 Ariz. 368, 891 P.2d 236 (1995) (two
15 year suspension); *In re Piccioli*, SB-05-0144-D (2005) (two year suspension),
16 and *In re Spear*, 160 Ariz. 545, 774 P.2d 1335 (five year suspension)
17

18 The State Bar did cite three cases where disbarment was imposed. *In re*
19 *Friedman*, SB-98-0038-D (1998), *In re Jenkins*, 168 Ariz. 70, 811 P.2d 322, and
20 *In re Goldman*, 124 Ariz. 105, 602 P.2d 486 (1979), plus two disbarment cases
21 from other jurisdictions, *In re Kazanas*, 96 S.W.3d 803 (2003) and *Attorney*
22
23
24

25 ⁸ To the same effect, and again citing an overwhelming number of suspensions rather than disbarments, see, Anno ,
63 A L R 3d 476, *Federal income tax conviction as involving moral turpitude warranting disciplinary action*
against attorney

1 *Grievance Com'n of Maryland v Deutsch et al*, 294 Md. 353, 450 A.2d 1265
2 (1982), but none are particularly helpful.

3 The scant record on *Friedman* reflects he pled guilty to one count of
4 Falsification of a Personal Income Tax Return, a class 5 felony, *plus* two counts
5 of Fraudulent Schemes and Artifices, class 2 felonies, and consented to
6 disbarment with costs. The record does not reflect the nature of the schemes or
7 why Friedman consented.
8

9 The scant record in the *Jenkins* case reflects far more than just a tax
10 matter, as he was also found guilty of conflicts of interest, practicing law under
11 an association not a legal entity, and failing to cooperate with Bar counsel. 168
12 Ariz. 70, 811 P.2d 322
13

14 The *Goldman* case reflects that Goldman was guilty of theft by
15 embezzlement, mail fraud, wire fraud, and false oral and written statements to a
16 bank, all felonies, and the court relied on what was then Rule 29(c), Ariz.R.S Ct.
17 At that time, Rule 29(c) required disbarment on conviction of a felony.⁹
18

19 As for the two cases from other jurisdictions, *In re Kazanas* involved far
20 more than a tax conviction – he also embezzled funds over a long period of time
21 and was convicted of that, too. 96 S.W.3d at 807. The last case cited, *Attorney*
22
23

24 _____
25 ⁹ The current rules do not require automatic disbarment on conviction of a felony. See, Rule 53, Ariz R S Ct (a lawyer “shall be disciplined as the facts warrant upon conviction of a misdemeanor involving a serious crime or of any felony”), See, also, Rule 36, Ariz R S Ct (a felony conviction creates a presumption against bar admission that can be overcome with clear and convincing evidence)

1 *Grievance Com'n of Maryland v Deutsch* is more like this one, but it involved
2 charges against two attorneys in partnership who, over 5 years, hid their income
3 from the United States Internal Revenue Service every year by taking fees and
4 recoveries in cash. However, as noted above, the vast majority of jurisdictions
5 impose a suspension, rather than disbarment on attorneys convicted of tax-related
6 offenses.
7

8 This Hearing Officer concludes that imposing disbarment here would be
9 inconsistent with prior decisions in this and other jurisdictions, and would be
10 inappropriate and disproportionate
11

12 A recommendation of a suspension is not an easy one to make when the
13 presumptive sanction is disbarment and when the mitigating factors, alone,
14 barely overcome the aggravating factors. But when similar or worse conduct has
15 repeatedly resulted in suspensions rather than disbarments, the system would be
16 ill-served to disbar here.
17

18 **IV. RECOMMENDED SANCTION**

19 The purpose of discipline is “to protect the public from further acts by
20 respondent, to deter others from similar conduct, and to provide the public with a
21 basis for continued confidence in the Bar and the judicial system.” *In re Hoover*
22 155 Ariz. 192, 197, 745 P.2d 939, 944 (1987).
23
24
25

1 After reviewing all of the facts of this matter, the applicable *Standards*,
2 including the relevant aggravating and mitigating factors, as well as the
3 proportional case law, this Hearing Officer recommends that Respondent be
4 suspended for a period of three years measured from April 17, 2006, which is
5 when his license was suspended.
6

7 To be reinstated, Respondent must demonstrate that he has completed his
8 probation and fully complied with all of the terms of his criminal sentence. No
9 restitution is required, but Respondent must also pay the costs of these
10 proceedings.
11

12 DATED this 25th day of June, 2007

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16

Kraig J. Marton
Hearing Officer 8A
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19

20 Original filed with the Disciplinary Clerk
21 of the Supreme Court
22 this 25th day of June, 2007

23 and copy delivered to:

24 Lawyer Regulation Records Manager
25 State Bar of Arizona
4201 N. 24th Street, Suite 200
Phoenix, Arizona 85016-6288

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Copy of the foregoing mailed
this 25th day of June, 2007 to:

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State Bar of Arizona
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Phoenix, Arizona 85016-6288

Stephen J. Alexander
21 Sagebrush Way
Azusa, California 91702-6256
Respondent

n2j wst
By _____