

**FILED**

JUL 18 2007

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

HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA

*[Signature]*

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

ANDREW D. DIODATI,  
Bar No. 014394

Nos. 04-1903  
05-0196  
06-2044

**HEARING OFFICER'S REPORT**

**PROCEDURAL HISTORY**

The State Bar filed a Complaint on December 28, 2006. Respondent filed an Answer on March 5, 2007. The parties entered into a Tender of Admissions And Agreement For Discipline By Consent on May 22, 2007. A hearing was held on May 24, 2007 to consider the Agreement For Discipline and the appropriateness of the agreement and the appropriateness and proportionality of the agreed to discipline.

**FINDINGS OF FACT**

At all times relevant hereto, Respondent was a member of the State Bar of Arizona. The parties have reached a Tender of Admissions And Agreement For Discipline By Consent and such is incorporated herein by reference as to the facts admitted to be true and correct and the violations admitted therein. The parties reached a compromise agreement regarding responsibility, proportionality and appropriate discipline for the matters admitted.

**CONCLUSIONS OF LAW**

This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rules 42, 43, 44 and 53, Ariz. R. S. Ct., ERs 1.3, 1.15, 3.4, 8.1(b) and 8.4(d) as set forth in the parties agreement incorporated herein.

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2 **ABA STANDARDS**

3 ABA *Standard* 3.0 provides that four criteria should be considered: (1) the duty  
4 violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the  
5 lawyer's misconduct; and (4) the existence of aggravating or mitigating factors.

6 This Hearing Officer considered *Standard* 3.0 in determining the appropriate sanction  
7 warranted by Respondent's conduct as set forth above and the parties compromise  
8 agreement.

9 This Hearing Officer considered aggravating and mitigating factors in this case,  
10 pursuant to *Standards* 9.22 and 9.32, respectively. The following aggravating factors were  
11 found:

12 (a) prior disciplinary offenses, (b) a pattern of misconduct, (c) multiple offenses, (d)  
13 substantial experience in the practice of law. The following mitigating factors were found:

14 (a) absence of dishonest or selfish motive, (b) personal or emotional problems, (c) timely  
15 good faith effort to rectify consequences of misconduct, (d) full and free disclosure to  
16 disciplinary board or cooperative attitude toward proceedings, (e) character or reputation, (f)  
17 physical disability, (g) mental disability and (h) remorse. No other aggravating or mitigating  
18 factors are found.

19 **PROPORTIONALITY REVIEW**

20 The Supreme Court has held in order to achieve proportionality when imposing  
21 discipline, the discipline in each situation must be tailored to the individual facts of the case  
22 in order to achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454  
23 (1983) and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993).

24 The Hearing Officer, State Bar counsel, Respondent and Respondent's counsel have  
25 all considered various Disciplinary Case Matrixes available through the Arizona State Bar.  
26 All such parties or participants believe the proposed discipline as agreed to is appropriate

1 and proportional.

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1 Medical Director of MAP that will include all applicable terms and reporting requirements.  
2 The terms of the probation contract shall constitute the terms of probation. Respondent will  
3 participate in the MAP program for the entire period of probation. Respondent shall sign the  
4 Probation Contract and return it to MAP within 10 days of the date on which it is mailed to  
5 Respondent.

6 c. Respondent shall, within 30 days of the Supreme Court's order granting  
7 reinstatement, contact the State Bar's Staff Examiner to begin participation in the State Bar's  
8 Trust Account Program ("TAP"). Respondent shall sign a Probation Contract that shall  
9 include all applicable terms of participation including reporting requirements, and shall  
10 constitute the terms of probation. The probation contract shall be signed by Respondent and  
11 returned to the Staff Examiner within 10 days of the date it is mailed to Respondent by the  
12 State Bar. Respondent shall participate in TAP for the entire period of probation.

13 d. Respondent shall, within 30 days of the Supreme Court's order granting  
14 reinstatement, contact the Director of Lawyer Assistance Programs ("LAP") to schedule an  
15 audit by LOMAP, particularly focusing on, but not limited to, workload, calendaring and  
16 workflow. This audit is primarily intended to assure that there are no additional  
17 improvements needed in Respondent's office management still required after the completion  
18 of his current LOMAP contract. If LOMAP recommends changes, Respondent shall  
19 implement those changes, and provide evidence of the implementation of those to LOMAP.<sup>1</sup>

20 e. Pursuant to the provisions of Rule 60(a)(5), Ariz.R.Sup.Ct., the term of  
21 probation may be renewed for an additional two (2) year period.

22 3. Respondent will follow all the rules of Professional Conduct and all Trust  
23 Account Guidelines.

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26 <sup>1</sup>LOMAP may also verify the implementation of the recommended changes by conducting a site  
visit for that purpose

