

**FILED**  
JUN 16 2008  
DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA  
BY *[Signature]*

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

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4 IN THE MATTER OF A MEMBER ) Nos 06-0230, 06-1633, 07-0013  
OF THE STATE BAR OF ARIZONA, )  
5 )  
6 **WILLIAM D. HOWELL, III,** )  
**Bar No. 020188** ) **DISCIPLINARY COMMISSION**  
7 ) **REPORT**  
RESPONDENT )  
8 \_\_\_\_\_ )

9 This matter came before the Disciplinary Commission of the Supreme Court of  
10 Arizona on May 17, 2008, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the  
11 Hearing Officer's Report filed March 12, 2008, recommending a two-year suspension, two  
12 years of probation with the State Bar's Law Office Management Assistance Program  
13 ("LOMAP"), Member Assistance Program ("MAP"), and costs Respondent filed an  
14 objection and requested oral argument Respondent, Respondent's Counsel, and counsel  
15 for the State Bar appeared  
16

17 Respondent argues that the Hearing Officer found trust account violations by  
18 inference because Respondent failed to provide trust account records and erroneously  
19 found violations that were not alleged in the Complaint Respondent asserts that censure is  
20 an appropriate sanction in this matter and that a lengthy suspension is not warranted  
21 Respondent also requests a remand for a separate mitigation hearing arguing that, because  
22 he represented himself below, he failed to present relevant mitigation evidence  
23

24 The State Bar asserts that Respondent is no stranger to the disciplinary process and  
25 the Hearing Officer's findings of additional violations of ER 8 1 and Rules 53(d) and 53(f)  
26

1 are supported by *In re Tocco*, 194 Ariz 453, 984 P 2d 539 (1999) *Tocco* held that if  
2 certain conduct has been specified in the complaint, the determination of a separate  
3 violation arising out of that conduct is similar to the finding of a lesser included offense  
4 upon an indictment or information in criminal law Here, Respondent had notice of the  
5 additional violations, the conduct was the same as the charged conduct and Respondent  
6 testified regarding this conduct at the hearing

7 The State Bar further asserts that the Hearing Officer's findings of trust account  
8 violations were supported by clear and convincing evidence as those findings were based  
9 on the testimony and the evidence presented, not merely on inferences drawn from  
10 Respondent's failure to comply with a subpoena and produce his Trust account records

#### 11 Decision

12 The eight members<sup>1</sup> of the Disciplinary Commission unanimously recommend  
13 accepting and incorporating the Hearing Officer's findings of fact and conclusions of law,  
14 but modify the recommended sanction to reflect a six-month and one-day suspension, two-  
15 years of probation (LOMAP and MAP), Trust Account Program (TAP), Trust Account  
16 Ethics Enhancement Program (TAEPP), and costs of these disciplinary proceedings<sup>2</sup>

17 The Hearing Officer's findings of trust account violations were supported by clear  
18 and convincing evidence The Hearing Officer did, properly, draw an adverse inference  
19 from Respondent's failure/refusal to produce relevant documents within his control, but  
20 contrary to Respondent's assertions, that was not the only evidence to support those  
21 findings  
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26 <sup>1</sup> One lawyer member seat remains vacant

<sup>2</sup> A copy of the Hearing Officer's Report is attached as Exhibit A

1 The additional violations found in Count Three arose out of the same conduct  
2 alleged in the Complaint and were properly included under *In re Tocco*. The Commission  
3 did not reach the issue of the additional violations found in Count Two because their  
4 inclusion or exclusion would not materially affect the recommended sanction in this case.

5 The recommended terms of probation are as follows:

6 1. Within 30-days of reinstatement, Respondent shall contact the Director of  
7 MAP and schedule a MAP assessment. Respondent thereafter shall enter into a probation  
8 contract based on the recommendations of the MAP director or designee. The period of  
9 probation shall run from the date that all parties have signed the probation contract and will  
10 conclude two-years from that date.

11 2. Within 30-days of reinstatement, Respondent shall contact the Director of  
12 LOMAP and schedule a LOMAP audit. Respondent thereafter shall enter into a probation  
13 contract based on the recommendations of the LOMAP director or designee. The period of  
14 probation shall run from the date that all parties have signed the probation contract and will  
15 conclude two-years from that date.

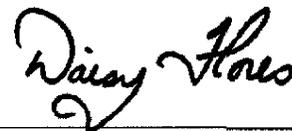
16 3. Within 30-days of reinstatement, Respondent shall contact the Director of  
17 TAP. Respondent shall thereafter enter into a Memorandum of Understanding based on  
18 *recommendations of the TAP director of designee*. Respondent shall also attend TAEPP  
19 during the term of probation. Respondent shall contact Gloria Green, Program  
20 Coordinator, at (602) 340-7278 to schedule his attendance at TAEPP.

21 4. In the event that Respondent fails to comply with any of the foregoing  
22 conditions, and the State Bar receives information, bar counsel shall file with the imposing  
23 entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz R Sup Ct. The  
24  
25  
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1 Hearing Officer shall conduct a hearing within 30-days after receipt of said notice, to  
2 determine whether the terms of probation have been violated and if an additional sanction  
3 should be imposed. In the event there is an allegation that any of these terms have been  
4 violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by  
5 clear and convincing evidence.

6 Although not part of the recommended sanction or probation, the Commission  
7 notes that it would be extremely difficult, if not impossible, for Respondent to establish the  
8 required showing for reinstatement without first fully complying with the Bar's  
9 outstanding subpoena for his trust account records.

10 RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of June, 2008

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14 \_\_\_\_\_  
Daisy Flores, Chair  
Disciplinary Commission

15 Original filed with the Disciplinary Clerk  
16 this 16<sup>th</sup> day of June, 2008

17 Copy of the foregoing mailed  
18 this 16<sup>th</sup> day of June, 2008, to

19 Honorable H. Jeffrey Coker  
20 Hearing Officer 6R  
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