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SEP 21 2005

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 MEMBER) No. 03-0109
4 OF THE STATE BAR OF ARIZONA,)
5 **JOSEPH P. ROCCO,**)
6 **Bar No. 009284**) **DISCIPLINARY COMMISSION**
7 **RESPONDENT.**) **REPORT**

8 This matter came before the Disciplinary Commission of the Supreme Court of
9 Arizona on August 20, 2005, pursuant to Rule 58, Ariz. R. S. Ct., for consideration of the
10 Hearing Officer's Report filed March 21, 2005 recommending an informal reprimand, one
11 year of probation effective upon the signing of the probation contract with the State Bar's
12 Law Office Management Assistance Program (LOMAP), the State Bar's Trust Account
13 Program (TAP), the State Bar's Trust Account Ethics Enhancement Program (TAEHP) and
14 costs of these disciplinary proceedings.
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16 The State Bar objected and Respondent requested oral argument. Respondent,
17 Respondent's Counsel and Counsel for the State Bar were present. The State Bar argued
18 that the Hearing Officer erred in the application of the law as to the dismissal of Count Two
19 and the violation of SCR 53(f) failure to furnish information. The State Bar argued that
20 Respondent engaged in a gross pattern of neglect by his failure to safeguard client funds and
21 his failure to maintain trust account records. These violations occurred over a three year
22 period and were not short term violations. Respondent failed to provide any information as
23 to how client funds were transferred between two banking institutions, failed to produce or
24 fully explain three-way reconciliations, and failed to maintain computer records.
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1 The State Bar further argued that the aggravating and mitigating factors found by the
2 Hearing Officer are balanced and do not merit a downward departure from the presumptive
3 sanction of censure. In addition, the Hearing Officer placed too much weight to
4 Respondent's mitigating factors, specifically 9.32(a) absence of a prior disciplinary history

5 Respondent argued for acceptance of the Hearing Officer's recommendation, as it is
6 proportional and appropriate; or in the alternative, that diversion is also an appropriate
7 sanction for similar violations.

8 **Decision**

9 The nine¹ members of the Disciplinary Commission by a majority of five,²
10 recommend accepting and adopting the Hearing Officer's findings of fact, conclusions of
11 law,³ and recommendation for an informal reprimand, one year of probation effective upon
12 the signing of the probation contract (LOMAP, TAP, and TAEPP), and costs.⁴ The terms of
13 probation are as follows:
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15 **Terms of Probation**

- 16 1. Respondent shall contact LOMAP and schedule an audit. Thereafter,
17 Respondent shall comply with any recommendations made by the LOMAP director or
18 designee.
- 19 2. Respondent shall participate in TAP.
- 20 3. Respondent shall complete TAEPP within the one year period of probation
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23 ¹ Commissioner Atwood did not participate in these proceedings. Former Commissioner William
24 Rubin, an attorney from Tucson, participated as an ad hoc member.

25 ² Commissioners Baran, Choate, Funkhouser, and Osborne were opposed and determined that
26 censure and probation were appropriate.

³ In his Conclusions of Law, the Hearing Officer inadvertently listed a violation of SCR 53(f) failure
to furnish information; however, his findings and overall conclusions support that the State Bar did
not prove this violation by clear and convincing evidence. See Hearing Officer's Report, pp. 4-6.

⁴ The Hearing Officer's Report is attached as Exhibit A.

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