

FILED

OCT 29 2007

BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

DISCIPLINARY COMMISSION OF
SUPREME COURT OF ARIZONA
BY: *[Signature]*

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IN THE MATTER OF A SUSPENDED MEMBER)	No. 06-1302
OF THE STATE BAR OF ARIZONA,)	05-0783 ms
))
STEPHEN J. ALEXANDER,)	DISCIPLINARY COMMISSION
Bar No. 006878)	REPORT
))
RESPONDENT))
))

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 15, 2007, pursuant to Rule 58, Ariz R Sup Ct, for consideration of the Hearing Officer's Report filed July 3, 2007, recommending a three-year suspension retroactive to April 16, 2006, completion of the criminal probation as imposed by the State of California and costs. No objections were filed.

Decision

The nine members of the Disciplinary Commission by a majority of seven,¹ recommend accepting and adopting the majority of the Hearing Officer's findings of fact and conclusions of law,² and recommendation for a three-year suspension retroactive to April 17, 2006,³ and compliance with criminal sentence and completion of criminal probation, and costs of these disciplinary proceedings.⁴ Based on his felony conviction for subscribing to a false tax return in violation of Title 26 USC § 7106(1), Respondent was placed on interim suspension both here and in California. The Commission notes that

¹ Commissioners Osborne and Todd were opposed. See dissenting opinion below.
² The Commission determined that mitigating factor 9 32(m) remoteness of prior offenses relate to prior attorney discipline offenses. Respondent's conviction occurred over nine years ago and involves the matter at hand.
³ The effective date of Respondent's interim suspension

1 although automatic disbarment is pending in California for the same criminal conduct, this
2 matter does not come before us as a reciprocal discipline matter pursuant to Rule 53(i),
3 Ariz R Sup Ct The Commission considered staying the matter to allow reciprocal
4 discipline proceedings to ensue but concluded that based on the proportionality analysis of
5 analogous cases, a three-year suspension and probation is within the range of acceptable
6 sanctions for similar misconduct

7 RESPECTFULLY SUBMITTED this 21st day of October, 2007

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11 J Conrad Baran, Chair
12 Disciplinary Commission

13 **Commissioners Osborne and Todd dissenting**

14 Respondent Stephen Alexander was convicted of willfully omitting a \$200,000
15 commission from his federal tax return The Ninth Circuit expressly found that the
16 evidence was sufficient to sustain a willful violation *United States v. Alexander*, 173 Fed
17 Appx 558 (9th Cir 2006) (non-published) California will disbar Alexander on September
18 27, 2007 See Ariz Sup Ct R 53 (i)(3) (requiring Arizona to impose "identical or
19 substantially similar discipline" absent certain factors not at issue here)

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21 Nevertheless, the Commission adopted the Hearing Officer's Report
22 recommending a suspension of three years, a very substantial different sanction than
23 disbarment Because, in our view, the record does not support a sanction less than
24 disbarment, we respectfully dissent

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⁴ A copy of the Hearing Officer's Report is attached as Exhibit A

1 The respected Hearing Officer recognized that under the ABA *Standards* the
2 presumptive sanction for this type of offense is disbarment (Rep at 11) The Hearing
3 Officer found three aggravating circumstances (1) dishonest or selfish motive, (2)
4 substantial experience in law, and (3) illegal conduct (*Id* at 11-12) The Hearing Officer
5 also found four mitigating circumstances (1) absent of a prior record, although noted that
6 investigations appear to be continuing in California, (2) character and reputation based on
7 the fact that he had been a Mayor of AZUSA, California and City Councilman, (3)
8 imposition of other penalties resulting from his conviction, and (4) remoteness of prior
9 offenses based on the criminal conduct at issue here occurred in 1997 (*Id* at 13-14) The
10 Commission did not consider this last factor because there were no prior offenses

11 The Hearing Officer found that the mitigating factors (including the fourth factor),
12 slightly outweighed the aggravating factors We disagree The dishonest or selfish
13 aggravator alone substantially outweighs all the mitigation Moreover, the Hearing Officer
14 and the Commission based its conclusion primarily on a proportionality analysis Again,
15 we disagree

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17 The Hearing Officer and the Commission acknowledged that there are cases where
18 attorneys are disbarred for similar offenses, but focus on cases like *In re Scholl*, 200 Ariz
19 222, 25 P 3d 710 (2001), *In re Savoy*, 181 Ariz 368, 891 P 2d 236 (1995), *In re Jack*
20 *Levine*, SB-99-0049-D (1999), and *In re Stanley E Munger*, SB-86-0024-D (1986) Even
21 disregarding the fact that each case is unique, in our view these cases suggest why
22 proportionality review should not be the decisive factor in arriving at a just sanction that
23 protects the public, maintains the integrity of the bar, and deters future misconduct
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1 Years ago, in capital cases, the Arizona Supreme Court abandoned proportionality
2 review finding it unworkable *State v Salazar*, 173 Ariz 399, 417, 844 P 2d 566 (1992)
3 Likewise, the United States Supreme Court has found no constitutional necessity for such a
4 procedure in capital cases *Pulley v Harris*, 465 U S 37, 43-44 and n 6 (1984) Of
5 course, when punishing a defendant for the same offense, there should be an effort to keep
6 the punishment in a general range taking into account the specific factors of the crime and
7 the mitigating circumstances of the defendant The proportionality review that the Hearing
8 Officer and the Commission engaged in this case is far more subjective

9 More importantly, the role of State Bar Discipline proceedings *is not to punish* the
10 Respondent Rather, it is to maintain the integrity of the State Bar in the eyes of the public,
11 to protect the public, and to deter others for committing similar violations Given these
12 purposes, proportionality review as currently conducted makes even less sense The effort
13 to meet these purposes cannot be frozen forever in time Because the public's perception
14 of the Bar varies over time as does the need to send a strong message to the public and the
15 members of the Bar, the Arizona Supreme Court's discipline must remain flexible What
16 message is sent to the public with California believing that a felony conviction for
17 dishonesty warrants disbarment and Arizona believes it warrants only a suspension?
18 Proportionality review in a case such as this should not over-ride the presumptive sanction
19 and the very strong aggravating circumstances

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22 Original filed with the Disciplinary Clerk
23 this 29th day of October, 2007

24 Copy of the foregoing mailed
25 this 29th day of October, 2007, to
26

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15 by *[Signature]*

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