

FILED

NOV 13 2007

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

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

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IN THE MATTER OF A MEMBER)	Nos	04-1903, 05-0196, 06-2044
OF THE STATE BAR OF ARIZONA,)		
)		
ANDREW D. DIODATI,)		
Bar No. 014394)	DISCIPLINARY COMMISSION	
)	REPORT	
)		
RESPONDENT.)		
_____)		

This matter first 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 18, 2007. The Hearing Officer's Report recommending acceptance of the Tender of Admissions and the Agreement for Discipline by Consent (Tender) and the Joint Memorandum (Joint Memorandum) in Support of Agreement for Discipline by Consent providing for a 60-day suspension, one year of probation with the State Bar's Member Assistance program (MAP), Trust Account Program (TAP), and costs.

The Commission continued the matter and requested that the parties file briefs addressing the status of Respondent's probation in File No. 04-1676. Specifically, Respondent's compliance with the Tucson City Court Order filed May 25, 2004 directing Respondent to pay fines by June 9, 2004 Respondent in the instant matter is conditionally admitting to misconduct involving a failure to comply with court orders. See Commission Order filed September 24, 2007.

A Joint Response to the Commission was filed thereafter, on October 1, 2007 stating that Respondent has not fully complied with his terms of probation as ordered but

1 has entered into a verbal agreement with Judge Honorable Antonio Riojas, Jr , Presiding
2 Magistrate of Tucson City Court, to pay the entire amount owing to the City of Tucson by
3 January 2008 Judge Rojas and court administrative staff have agreed to notify the State
4 Bar if Respondent fails to satisfy the terms of his verbal agreement. The State Bar will
5 thereafter, file a Notice of Non-Compliance with the Disciplinary Clerk if Respondent fails
6 to comply.

7 The matter again came before Commission for consideration on October 13, 2007.

8 **Decision**

9 The eight members¹ of the Disciplinary Commission unanimously recommend
10 accepting and adopting the Hearing Officer's findings of fact, conclusions of law, and
11 recommendation for a 60-day suspension, one year of probation (MAP), (TAP), and costs
12 of these disciplinary proceedings.² The Commission further requests that the State Bar
13 monitor Respondent's fulfillment of the terms of probation as ordered in File No. 04-1676.
14 The terms of probation in the instant matter are as follows:
15

16 **Terms of Probation**

17 1 Respondent shall be placed on one year of probation commencing upon the
18 issuance of the Supreme Court's Order granting reinstatement, and shall continue for one
19 year from the date Respondent signs the probation contract for MAP and TAP, whichever
20 date is later. The term of probation may be renewed for an additional two years, pursuant
21 to Rule 60(a)(5), Ariz.R.Sup.Ct.,
22

23 2 Respondent shall within 30-days from the Supreme Court's Order granting
24 reinstatement, contact the MAP director who will draft a probation contract to include
25

26 ¹ Commissioner Gooding did not participate in these proceedings
² A copy of the Hearing Officer's Report is attached as Exhibit A

1 reporting requirements and any other terms and conditions as recommended by the MAP
2 director. Respondent shall participate in MAP for the entire period of probation and shall
3 sign and return the probation contract to MAP within 10 days from the mailing date. The
4 terms of the probation contract shall constitute the terms of probation.

5 3. Respondent shall within 30-days of the Supreme Court's Order granting
6 reinstatement, contact the State Bar's Staff Bar Examiner to participate in TAP.
7 Respondent shall thereafter enter into a probation contract to include reporting
8 requirements and any other terms and conditions deemed appropriate by the Staff
9 Examiner and shall constitute the terms of probation. Respondent shall participate in TAP
10 for the entire period of probation. The probation contract shall be signed and returned to
11 the Staff Examiner within 10-days from the mailing date.

12 4. Respondent shall within 30-days from the date of the Supreme Court's
13 Order granting reinstatement, contact the Lawyer's Assistance Program director and
14 schedule a LOMAP audit, particularly focusing on, but not limited to workload,
15 calendaring and workflow. The audit is primarily intended to assure that there are no
16 additional improvements needed in Respondent's office management still required after the
17 completion of Respondent's current LOMAP contract. If LOMAP recommends changes,
18 Respondent shall implement those changes and provide evidence of the implementation to
19 LOMAP. LOMAP may further verify changes by conducting an onsite visit
20

21 5. Respondent shall follow all Professional Rules of Conduct and Trust
22 Account Guidelines.
23

24 6 Respondent shall pay all costs incurred in these disciplinary proceedings
25 including those incurred by MAP and TAP and the Disciplinary Clerk.
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7 In the event that Respondent fails to comply with any of the foregoing
1 conditions, and the State Bar receives information, bar counsel shall file with the
2 Disciplinary Clerk a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz.R Sup.Ct.
3 The Hearing Officer shall conduct a hearing within thirty days after receipt of said notice,
4 to determine whether the terms of probation have been violated and if an additional
5 sanction should be imposed. In the event there is an allegation that any of these terms have
6 been violated, the burden of proof shall be on the State Bar of Arizona to prove non-
7 compliance by clear and convincing evidence.
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9 RESPECTFULLY SUBMITTED this 13th day of November, 2007.

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13 J. Conrad Baran, Chair
Disciplinary Commission

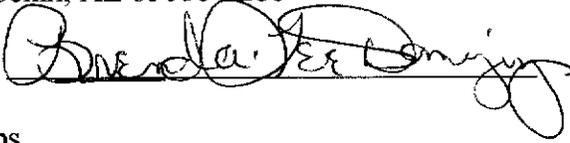
14 Original filed with the Disciplinary Clerk
15 this 13th day of November, 2007.

16 Copy of the foregoing mailed
17 this 13th day of November, 2007, to

18 Douglas H. Clark, Jr.
19 Hearing Officer 7J
20 259 North Meyer
Tucson, AZ 85701-1090

21 Joseph P St Louis
22 *Nesci St Louis & West PLLC*
23 216 Main Avenue
Tucson, AZ 85071
Respondent's Counsel

Roberta L. Tepper
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: 

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