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JUL 19 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. 03-0507
4	OF THE STATE BAR OF ARIZONA,)	
5	DANIEL INSERRA,)	
6	Bar No. 017284)	DISCIPLINARY COMMISSION
7)	REPORT
	RESPONDENT.)	
	_____)	

8 This matter first came before the Disciplinary Commission of the Supreme Court of
9 Arizona on September 11, 2004, pursuant to Rule 58, Ariz. R. S. Ct., for consideration of the
10 Hearing Officer's Report filed June 23, 2004, recommending acceptance of the Tender of
11 Admissions and Agreement for Discipline by Consent (Tender) and Joint Memorandum in
12 Support of Agreement for Discipline by Consent (Joint Memorandum) providing for a
13 censure, one year additional probation with the State Bar's Law Office Management
14 Assistance Program (LOMAP) including a practice monitor, and costs of these disciplinary
15 proceedings. The Disciplinary Commission requested oral argument and allowed the parties
16 to file simultaneous briefs addressing Respondent's mental state and the actual or potential
17 injury caused by Respondent's misconduct. See Notice filed September 16, 2004 and Order
18 filed September 21, 2004.

20 The matter then came on for oral argument on November 13, 2004. Respondent,
21 Respondent's Counsel and Counsel for the State Bar were present. The Disciplinary
22 Commission unanimously rejected the Tender and Joint Memorandum and remanded the
23 matter to the Hearing Officer for further proceedings. The Disciplinary Commission
24 determined that the evidence was insufficient to support mitigating factor 9.32(c) personal
25 and emotional problems, participation in the Member's Assistance Program (MAP) was
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1 appropriate, and clarification of the appropriate ABA *Standard* including if any injury
2 occurred was needed. The Disciplinary Commission concluded that should the consent
3 documents be amended and the record supplemented, the Commission would be more
4 inclined to accept it. See Disciplinary Commission Report filed December 17, 2004.

5 This matter again came before the Disciplinary Commission on July 9, 2005,
6 pursuant to Rule 58, Ariz. R. S. Ct., for consideration of the Hearing Officer's Report filed
7 April 18, 2005 recommending acceptance of the Amended Tender and Amended Joint
8 Memorandum providing for a censure, one year of probation effective upon the signing of a
9 Memorandum of Understanding (MOU) with LOMAP and MAP, and costs of these
10 disciplinary proceedings. The Disciplinary Commission determined that the concerns
11 previously expressed were adequately addressed.

12 **Decision**

13 The eight¹ members of the Disciplinary Commission unanimously recommend
14 accepting and adopting the Hearing Officer's findings of fact, conclusions of law, and
15 recommendation for censure, one year of probation effective upon the signing of a MOU
16 with LOMAP and MAP, and costs.² The terms of probation are as follows:

17 **Terms of Probation**

18 1. Respondent shall submit to a LOMAP audit that will focus on diligence,
19 communication and office procedures and shall enter into a probation contract with the State
20 Bar which shall include recommendation based on the LOMAP audit.
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¹ Commissioner Flores did not participate in these proceedings.

² The Hearing Officer's Report is attached as Exhibit A.

1 2. Respondent shall submit to a MAP assessment and shall enter into a
2 probation contract with the State Bar which shall include recommendation based on the
3 MAP assessment.


4 3. Within 30 days from the execution of the MOU, Respondent shall obtain a
5 qualified practice monitor, approved by LOMAP and bar counsel.

6 4. In the event the State Bar receives a charge during Respondent's probation
7 period that involves conduct that occurred during the effective period of probation, the term
8 of this probation shall be extended until such charge has been investigated and a
9 determination made by bar counsel and/or the Probable Cause Panelist regarding disposition
10 of such charge.

11 5. Respondent shall advise LOMAP, MAP, and the Director of Membership Records of
12 the State Bar, in writing, of any changes in his address or employment status.

13 6. In the event that Respondent fails to comply with any of the foregoing conditions,
14 and the State Bar receives information, bar counsel shall file with the Hearing Officer a
15 Notice of Non-Compliance, pursuant to Rule 60(a)5, Ariz. R. S. Ct. The Hearing Officer
16 shall conduct a hearing within 30 days after receipt of said notice, to determine whether the
17 terms of probation have been violated and if an additional sanction should be imposed. In the
18 event there is an allegation that any of these terms have been violated, the burden of proof shall
19 be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence.
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21 RESPECTFULLY SUBMITTED this 19th day of July, 2005.

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25 Cynthia L. Choate, Chair
26 Disciplinary Commission

1 Original filed with the Disciplinary Clerk
this 19th day of July, 2005.

2 Copy of the foregoing mailed
3 this 19th day of July, 2005, to:

4 Frederick C. Berry, Jr.
5 Hearing Officer 9S
350 East Virginia, Suite 200
6 Phoenix, AZ 85004-1208

7 Timothy J. Burke
8 Respondent's Counsel
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9 Shauna R. Miller
10 Senior Bar Counsel
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12 Phoenix, AZ 85016-6288

13 by: *Ke Weigand*

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