

BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

MAR 21 2003

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *K. Weigand*

1
2 IN THE MATTER OF A MEMBER)
3 OF THE STATE BAR OF ARIZONA,) No. 01-2359
4)
4 **DAVID W. COUNCE,**)
5 **Bar No. 010822**) **DISCIPLINARY COMMISSION**
6) **REPORT**
7)
8)
9 **RESPONDENT.**)
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14)

15 This matter came before the Disciplinary Commission of the Supreme Court of
16 Arizona on February 8, 2003, pursuant to Rule 53(d), Ariz. R. S. Ct., for consideration of the
17 Hearing Officer's Amended Report, filed January 2, 2003, recommending a six (6) month
18 and one (1) day suspension, two (2) years of probation with the Law Office Management
19 Assistance Program (LOMAP) upon reinstatement, and costs.

20 Decision

21 The Commission's standard of review is set forth in Rule 53(d)2, which states that
22 the Commission reviews questions of law *de novo*. In reviewing findings of fact made by a
23 hearing officer, the Commission applies a clearly erroneous standard.

24 Therefore, having found no findings of fact clearly erroneous, the nine¹ members of
25 the Commission unanimously recommend adopting and incorporating by reference the
26 Hearing Officer's findings of fact, conclusions of law, but amend the recommendation to

¹ Commissioners Nelson and Gutierrez did not participate in these proceedings. One attorney member seat remains vacant. Donald H. Bayles, Jr., Jack L. Potts, M.D., and Maria Hoffman participated as ad hoc members.

1 reflect a six (6) month and one (1) day suspension, two (2) years of probation (LOMAP)
2 upon reinstatement; however, because the State Bar failed to file a Statement of Costs and
3 Expenses, the State Bar's costs will not be assessed against the Respondent. The terms of
4 probation are as follows:

- 5 1) If Respondent successfully applies for reinstatement,
6 he shall be placed on probation for two (2) years
7 following such reinstatement with a practice monitor
8 and full compliance with the recommendations of the
9 LOMAP director or her designee. The terms shall be
10 more specifically determined upon reinstatement.
- 11 2) In the event Respondent fails to comply with any of
12 the foregoing terms, and information thereof is
13 received by the State Bar, bar counsel shall file with
14 the Hearing Officer a Notice of Non-Compliance. The
15 Hearing Officer shall conduct a hearing at the earliest
16 possible date, but in no event later than thirty (30) days
17 following receipt of notice, to determine whether a
18 condition of probation has been breached and, if so, to
19 recommend an appropriate sanction.
- 20 3) If there is an allegation that Respondent failed to
21 comply with any of the foregoing terms, the burden of
22 proof shall be on the State Bar to prove non-
23 compliance by a preponderance of the evidence.

24 RESPECTFULLY SUBMITTED this 21st day of March 2003.

25 

26 Jessica G. Funkhouser, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 21st day of March 2003.

1 A copy of the foregoing mailed
2 this 21st day of March 2003.

3 Patricia E. Nolan
4 Hearing Officer 7Y
5 2702 N. 3rd Street, Suite 3000
6 Phoenix, AZ 85004-4607

7 David W. Counce
8 Respondent
9 15201 North 19th Way
10 Phoenix, AZ 85022

11 A copy of the foregoing hand-delivered
12 this 21st day of March 2003.

13 Shauna R. Miller
14 Bar Counsel
15 State Bar of Arizona
16 111 West Monroe, Suite 1800
17 Phoenix, AZ 85003-1742

18 By Kel Weigand

19 /kdl
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