



BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,

WILLIAM B. FORTNER,
Bar No. 004923

RESPONDENT.

Nos. 00-1999, 02-0790, 02-2093,
03-0097

**DISCIPLINARY COMMISSION
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 13, 2003, pursuant to Rule 56(a), Ariz. R. S. Ct., for consideration of the Tender of Admissions and Agreement for Discipline by Consent (Agreement) and Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memorandum) filed June 27, 2003, providing for a censure, two years of probation with the Law Office Management Assistance Program (LOMAP) and a practice monitor, and costs of these disciplinary proceedings. Respondent, Respondent's counsel and counsel for the State Bar were present.

Decision

The seven¹ members of the Commission unanimously recommend accepting and incorporating by reference the Agreement² and Joint Memorandum providing for a censure,

¹ Commissioner Choate recused and Commissioner Gutierrez abstained.

² The Commission notes that further information on the screening matters should have been provided by the parties in the Agreement.

two years of probation,³ and costs. The terms⁴ of probation are as follows:

- 1) Respondent shall, within thirty days of the Supreme Court's final judgment and order, contact the director of LOMAP to schedule an audit of his law office. The LOMAP director or her designee will conduct an audit of Respondent's law office no later than sixty days thereafter. Following the audit, Respondent shall enter into a Memorandum of Understanding that will be effective for a period of two years from the date upon which all parties have signed the Memorandum. Respondent shall comply with all recommendations of the LOMAP director or her designee.
- 2) Respondent shall find a practice monitor who shall be approved by the State Bar. The practice monitor shall be an attorney who will supervise Respondent's quality of services rendered, Respondent's supervision of non-attorney staff and Respondent's supervision of his trust account. The practice monitor shall submit quarterly reports to the State Bar, and the practice monitor will agree to report to the State Bar and manifestation or relapse, unusual behavior, or conduct falling below minimum standards of the profession as set forth in the Rules of Professional Conduct, Rule 42, Ariz. R. S. Ct.
- 3) Respondent shall be responsible for the costs and expenses associated with his participation in the LOMAP program.
- 4) In the event Respondent fails to comply with any of the foregoing terms and information thereof is received by the State Bar, bar counsel shall file a Notice of Non-Compliance with the Disciplinary Commission. The Disciplinary Commission may refer the matter to a hearing officer to conduct a hearing at the earliest possible date, but in no event later than thirty days following receipt of said notice. If the matter is referred to a hearing officer, the hearing officer shall determine whether the terms of probation have been breached, and if so, to recommend appropriate action and response to such breach.
- 5) If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

³ The parties stipulated at oral argument that the State Bar will file a notice with the Commission when the Memorandum of Understanding has been signed and probation has commenced.

⁴ The Commission notes that the standard compliance language contained in the Agreement inadvertently states that a hearing will be conducted "in no event less than thirty (30) days" and should read "in no event later than thirty (30) days." See Agreement, p.17 item 2(d).

RESPECTFULLY SUBMITTED this 9th day of October 2003.

Jessica Funkhouser

Jessica G. Funkhouser, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 9th day of October 2003.

Copy of the foregoing mailed
this 9th day of October 2003 to:

Bruce G. MacDonald
Hearing Officer 6M
5151 East Broadway Blvd., Suite 1550
Tucson, AZ 85711-3787

J. Scott Rhodes
Respondent's Counsel
201 E. Washington Street, Suite 11th Floor
Phoenix, AZ 85004-2385

Copy of the foregoing hand-delivered
this 9th day of October 2003 to:

Karen Clark
Senior Bar Counsel
State Bar of Arizona
111 West Monroe, Suite 1800
Phoenix, AZ 85003-1742

By K Weigand

/kdl