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BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA

BY *M. Smith*

IN THE MATTER OF A SUSPENDED MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
MERYL D. ROSE, )  
Bar No. 015546 )  
RESPONDENT. )

No. 00-1408

DISCIPLINARY COMMISSION  
REPORT

Procedural History

This matter originally came before the Disciplinary Commission of the Supreme Court of Arizona on March 9, 2002, pursuant to Rule 56(a) Ariz. R. S. Ct., for review 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 December 17, 2001, providing for a three-year suspension, retroactive to July 5, 2000,<sup>1</sup> with two years served immediately and one year deferred, and upon reinstatement, one year of probation and costs.

The Commission filed an Order for Modification of Agreement on April 5, 2002, requesting the parties amend their Agreement and Joint Memorandum to reflect a three-year suspension, retroactive to May 11, 2001,<sup>2</sup> and upon reinstatement, one year of probation to include the participation in the Member Assistance Program (MAP), the obtaining of a practice monitor (PM), and costs.

Respondent's counsel filed an informal motion for reconsideration on April 12, 2002, which requested the Commission reconsider the proposed date of retroactivity. An

<sup>1</sup> The date of Respondent's sentencing for her criminal conviction and the date the parties state Respondent voluntarily removed herself from the practice of law.

1 Amended Agreement was filed April 19, 2002, but it did not comply with the Commission's  
2 Order of Modification filed April 5, 2002. The Judgment and Order Suspending Sentence  
3 and Imposing Conditions and Probation for the felony convictions and affidavits were  
4 submitted to substantiate the request for a retroactive suspension. Respondent demonstrated  
5 that she honored the automatic suspension imposed after a felony conviction, pursuant to  
6 Rule 57(b).  
7

8 The matter was again scheduled for consideration by the Commission on May 11,  
9 2002, for review of the Amended Agreement and Amended Joint Memorandum, filed April  
10 19, 2002, providing for a three-year suspension, retroactive to July 5, 2000,<sup>3</sup> with two years  
11 served immediately and one year deferred, and upon reinstatement, one year of probation  
12 and costs. The Amended Agreement did not comply with the Order of Modification;  
13 therefore, the Commission filed a second Order of Modification on May 20, 2002,  
14 requesting the parties again modify the Amended Agreement to reflect a sanction of a three-  
15 year suspension, retroactive to July 15, 2000,<sup>4</sup> and upon reinstatement, one year of probation  
16 to include the participation in MAP, the obtaining of a practice monitor, and costs of the  
17 disciplinary proceedings, with specific terms of probation to be addressed during  
18 reinstatement proceedings.<sup>5</sup>  
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21 Respondent's counsel then filed a second Motion for Reconsideration on June 4,  
22 2002 in support of the deferred suspension, and requested oral argument. The Commission  
23 granted the Respondent's counsel's Motion for Reconsideration and oral argument was  
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25 <sup>2</sup> The date Respondent was placed on interim suspension.

26 <sup>3</sup> The sentencing date for the criminal conviction.

27 <sup>4</sup> This date represents ten days from the date of the Respondent's criminal conviction, which  
28 was the date of her automatic suspension, pursuant to Rule 57(b), Ariz. R. S. Ct.

1 heard on July 13, 2002. Respondent, Respondent's counsel and State Bar counsel were  
2 present.

3  
4 On July 13<sup>th</sup>, the seven<sup>6</sup> members of the Commission, by a majority of six,<sup>7</sup>  
5 reaffirmed the Commission's previous Order of Modification, filed May 20, 2002 and a  
6 Third Order of Modification was filed on August 13, 2002. In its third order, the  
7 Commission again requested that the parties file an amended Agreement and amended Joint  
8 Memorandum that reiterated the terms set forth in the Commission's May 20, 2002, Order  
9 of Modification reflecting a three-year suspension retroactive to July 15, 2000, and upon  
10 reinstatement one year of probation to include participation in MAP, the obtaining of a  
11 practice monitor, and costs. Specific terms of probation were to be addressed upon  
12 reinstatement.  
13

14 The Commission opposed a one-year deferred suspension given the seriousness of  
15 Respondent's misconduct and because the presumptive sanction for her misconduct is  
16 disbarment. Moreover, the Commission was not convinced the public would be protected  
17 by the agreed upon sanction and determined probation with formal participation in MAP  
18 would not only protect the public but also assist Respondent in her rehabilitation efforts.  
19 With the proposed one-year deferred suspension, Respondent would have been eligible for  
20 reinstatement in April 2002. The Commission also discussed the issue of truth in sentencing  
21 and found that the sanction really being advocated was a two-year suspension.  
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25 <sup>5</sup> Respondent's counsel stated he inadvertently did not realize that the Commission had not  
26 agreed to the one-year deferred suspension.

27 <sup>6</sup> Commissioner Choate did not participate in these proceedings. Commissioner Mehrens  
28 recused.

<sup>7</sup> Commissioner Nelson was opposed and supported the sanction reflected in the Amended  
Agreement and Amended Joint Memorandum, filed April 19, 2002.

1 The parties did not timely file an amended Agreement or Joint Memorandum and on  
2 September 4, 2002, the Commission filed an Order Upon Recommendation of Rejection of  
3 Agreement for Discipline by Consent. On September 13, 2002, an Amended Conditional  
4 Tender of Admissions and Agreement for Discipline by Consent and Amended Joint  
5 Memorandum In Support of Agreement for Discipline by Consent was filed. Although the  
6 amended agreement was untimely, good cause was shown and the matter was again set for  
7 review.  
8

9 **Decision**

10 On October 19, 2002, the nine members of the Commission unanimously  
11 recommended vacating the Order Upon Recommendation of Rejection of Agreement for  
12 Discipline by Consent filed September 4, 2002, and recommended accepting the Amended  
13 Conditional Tender of Admissions and Agreement for Discipline by Consent and Amended  
14 Joint Memorandum In Support of Agreement for Discipline by Consent <sup>8</sup> filed September  
15 13, 2002, providing for a three -year suspension retroactive to July 15, 2000, and upon  
16 reinstatement one year of probation to include participation in MAP, obtain a practice  
17 monitor, and costs with specific terms of probation to be addressed during formal  
18 reinstatement proceedings.  
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21 **Discussion**

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24 <sup>8</sup> These documents are not incorporated as they contained errors, which mistakenly  
25 referenced the original agreed upon sanction: See Agreement, p. 3 item #2 and Joint Memo,  
26 p. 10 item #2. Respondent will be eligible for reinstatement ninety days prior to July 15,  
27 2003 not July 15, 2002; See also Joint Memo, p. 4 item II *Conditional Admissions* which  
28 does not list additional violations of SCRs 51(a) and 57; and also Joint Memo p. 4 item III  
*Agreed Upon Sanction*, which reflects the one-year deferred sanction that was previously  
rejected by the Commission. The correct agreed upon sanction is however reflected in the  
Agreement, p. 9, and the Joint Memo, Conclusion, p. 10 item #1.

1           Based on Respondent's admissions as set forth in the Agreement, the Commission  
2 agreed that clear and convincing evidence is present that Respondent violated Rule 42, Ariz. R.  
3 S. Ct., specifically: ER 8.4 misconduct and SCR 51(a) conviction of a misdemeanor involving  
4 a serious crime or of any felony, and SCR 57 discipline of lawyers convicted of a crime.  
5

6           Respondent was summarily suspended for nonpayment of dues on April 20, 2001, and  
7 remains suspended.

8           Respondent's misconduct arose in the performance as trustee for her brothers' trust  
9 funds. From 1995 through 1998, Respondent and her husband misappropriated funds totaling  
10 approximately \$103,000. Respondent established that she suffered from a mental disability  
11 during this period. Respondent has sought therapy for this disability and continues treatment as  
12 a term of her criminal probation.  
13

14           On March 29, 2000, Respondent and her husband pled guilty to theft, a Class 3 felony.  
15 Respondent was sentenced to five years of probation and 500 hours of community service and  
16 fined \$2,500 on July 5, 2002. To date, Respondent has made complete restitution, fulfilled the  
17 community service requirement and paid the court fine. Her probation officer has also  
18 petitioned the court for early termination of probation.  
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20           The Arizona Supreme Court and the Disciplinary Commission utilize the American  
21 Bar Association's Standards For Imposing Lawyer Discipline (ABA STANDARDS) to assist in  
22 determining the appropriate sanction in discipline proceedings. *In re Augenstein*, 178 Ariz.  
23 133, 871 P.2d 254 (1994). In imposing a sanction after a finding of misconduct,  
24 consideration is given to the duty violated, the lawyer's mental state, the actual or potential  
25 injury caused by the misconduct and the existence of aggravating and mitigating factors.  
26 *See ABA STANDARDS 3.0.*  
27  
28

1 The Commission considered ABA STANDARD 5.0 Violations of Duties Owed to the  
2 Public and 5.1 Failure to Maintain Personal Integrity, which provides that absent  
3 aggravating and mitigating factors, 5.11 Disbarment is generally appropriate when:

4 a lawyer engages in serious criminal conduct a necessary  
5 element of which includes intentional interference with the  
6 administration of justice, false swearing, misrepresentation,  
7 fraud, extortion, misappropriation, or theft;

8 Respondent's criminal conduct and ethical violations were the result of theft and  
9 misappropriation of funds from the trusts of her brothers.

10 The Commission, having concluded that disbarment is warranted, reviewed ABA  
11 STANDARDS 9.22 and 9.32, aggravating and mitigating factors to determine if a reduction in  
12 the presumptive sanction is appropriate. Aggravating and mitigating circumstances serve to  
13 increase or decrease the degree of discipline imposed. *Matter of Ockrassa*, 165 Ariz. 576,  
14 799 P.2d 1350 (1990).

15 The Commission agreed that one aggravating factor is present in the record: 9.22 (b)  
16 dishonest or selfish motive. Eight factors are present in mitigation: 9.32(a) absence of a  
17 prior disciplinary history, (c) personal or emotional problems,<sup>9</sup> (d) timely good  
18 faith effort to make restitution or to rectify consequences of misconduct,<sup>10</sup> (e) full and free  
19 disclosure to disciplinary board or cooperative attitude toward proceedings, (g) character or  
20 reputation,<sup>11</sup> (i) mental disability,<sup>12</sup> (k) imposition of other penalties or sanctions and (l)

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25 <sup>9</sup> Respondent experienced personal and emotional problems as a result of her dysfunctional  
26 family situation.

27 <sup>10</sup> Respondent made restitution greater than the amount misappropriated and prior to any  
28 criminal investigation or inquiry by the State Bar. Restitution totaled \$186,000,  
approximately \$83,000 more than the original misappropriation. Respondent also sought  
treatment for her addiction.

<sup>11</sup> Several letters were provided to support this factor.

1 Commission is satisfied its recommended sanction of a three year suspension retroactive to  
2 July 15, 2000, and upon reinstatement, one year of probation (MAP with PM) and costs of  
3 the disciplinary proceedings is within the range of reasonableness and that the public will be  
4 protected by the terms of probation.

5  
6 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of November 2002.

7 PETER CAHILL  
8 Peter Cahill, Chair  
9 Disciplinary Commission

10 Original filed with the Disciplinary Clerk  
11 this 15<sup>th</sup> day of November 2002.

12 Copy of the foregoing mailed  
13 this 14<sup>th</sup> day of November 2002, to:

14 Geoffrey M.T. Sturr  
15 Hearing Officer 8X  
16 2929 North Central, Suite 2100  
17 P.O. Box 36379  
18 Phoenix, AZ 85067-6379

19 Mark I. Harrison  
20 Respondent's Counsel  
21 Two North Central, Suite 2200  
22 Phoenix, AZ 85004-4406

23 Copy of the foregoing hand-delivered  
24 this 15<sup>th</sup> day of November 2002.

25 Yigael M. Cohen  
26 Senior Bar Counsel  
27 State Bar of Arizona  
28 111 West Monroe, Suite 1800  
Phoenix, AZ 85003-1742

by M. Smith

/mps

Copy of the foregoing hand-delivered  
this 9<sup>th</sup> day of November, 2002.

Yigael M. Cohen  
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State Bar of Arizona  
111 West Monroe, Suite 1800  
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by *MS*

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