

BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA

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IN THE MATTER OF A MEMBER) Nos. 02-0560, 02-1015
OF THE STATE BAR OF ARIZONA,)
)
BARBARA T. BROWN,)
Bar No. 006166) **DISCIPLINARY COMMISSION**
) **REPORT**
)
RESPONDENT.)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on February 21, 2004, pursuant to Rule 58(e), Ariz. R. S. Ct., for consideration of the Hearing Officer's Report filed December 1, 2004, recommending censure, restitution, and costs of these disciplinary proceedings.

Decision

The Commission's standard of review is set forth in Rule 58(b), which states that the Commission reviews questions of law *de novo*. In reviewing findings of fact made by a hearing officer, the Commission applies a clearly erroneous standard.

The nine¹ members of the Commission unanimously recommend adopting and incorporating by reference the Hearing Officer's findings of fact, conclusions of law, and recommendation² for censure, restitution to client Denise Barregarye in the amount of

¹ Commissioner Choate did not participate in these proceedings. Bruce G. MacDonald, a hearing officer from Tucson, participated as an ad hoc member.
² The Commission did not adopt the Hearing Officer's recommended sanction in its entirety. The Commission determined that given Respondent's ongoing client representation in a federal case, a term of probation was warranted. See Hearing Officer Report, p. 25, paragraph 2; and hearing transcript dated September 15, 2003, p. 15.

1 \$1,696.00 with interest at the statutory rate of 10% per annum from February 15, 2002, and
2 costs of these disciplinary proceedings.

3 The Commission however, found *de novo*, that the 4-pronged criteria necessary for
4 application of mitigating factor 9.32(i) mental disability was not met.³ Sufficient medical
5 evidence was not offered in support of this factor. Respondent testified that she has been
6 diagnosed and is being treated with medication for a serious mental illness and submitted a
7 copy of an Award of Disability from Social Security, *See* Hearing Officer's Report and
8 Recommendation, p. 17, and Respondent's Exhibit #7. The record however is void of any
9 medical records necessary to support consideration of a psychiatric disability and to
10 establish successful rehabilitation. Thus, the Commission considered Respondent's health
11 problems under the lesser standard of mitigating factor 9.32(c) personal and emotional
12 problems.

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14 In addition, the Commission notes that although Respondent's prior disciplinary
15 offenses are found to be remote, this matter involves similar misconduct with clients
16 including a failure to communicate (ER 1.3), lack of diligence (ER 1.4), and a failure to
17 decline or terminate representation (ER 1.16).

18 Based on Respondent's personal and emotional problems and moreover,
19 Respondent's resistance to a transfer to disability inactive status,⁴ the Commission further
20 recommends that in order to ensure protection of the public and payment of restitution, that
21 Respondent be placed on two years of probation with the State Bar's Law Office
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24 ³ *See ABA Standards for Imposing Lawyer Sanctions*, subsection 9.3 Mitigation, as amended
25 in February 1992. The factor currently requires medical evidence of a disability, causation
26 established between the misconduct and the disability, a demonstrated sustained period of
successful rehabilitation, and that a recurrence of the misconduct is unlikely.

⁴ *See* hearing transcript dated October 9, 2003, pp. 219-221.

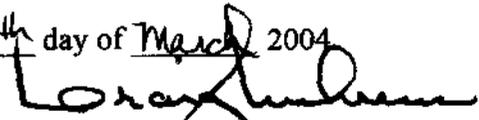
1 Management Assistance Program (LOMAP) and the State Bar's Member Assistance
2 Program (MAP). The terms and conditions of probation are as follows:

3 **Terms of Probation**

- 4 1. Respondent shall be placed on two years of probation effective the date of the
5 signing of the probation contract, and shall pay all costs and expenses
6 associated with compliance of terms of probation, including those incurred by
7 the State Bar as a result of the administration and enforcement of the terms of
8 probation.
- 9 2. Respondent shall contact the Director of LOMAP within 30 days of the date
10 of the final Judgment and Order to schedule an audit of her law office.
11 Respondent thereafter shall enter into a LOMAP contract based on
12 recommendations made by the LOMAP Director or designee.
- 13 3. Respondent shall contact the Director of MAP, within 30 days of the date of
14 the final Judgment and Order and submit to an assessment. Respondent
15 thereafter will enter into a MAP contract based upon recommendations made
16 by the MAP Director or designee and pay costs associated
- 17 4. During the period of probation, Respondent shall pay restitution to Denise
18 Barregarye in the amount of \$1,696.00 with interest at the statutory rate of
19 10% per annum from February 15, 2002. Respondent shall contact the
20 LOMAP Director within 30 days of the final Judgment and Order and submit
21 a scheduled re-payment plan. Probation may also be renewed for an
22 additional two years if restitution is outstanding, pursuant to 60(a)(5)(A).
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5. In the event the State Bar receives information that Respondent has failed to comply with any of the foregoing conditions, bar counsel shall file with the hearing officer a notice of non-compliance, pursuant to 60(a)(5)(C). The hearing officer shall conduct a hearing within 30 days after the receipt of said notice to determine whether a condition of probation has been breached and if so, to recommend an appropriate sanction therefore.
6. In the event there is an allegation that any of these terms have been breached, the burden of proof shall be on the State Bar to prove non-compliance by clear and convincing evidence.

RESPECTFULLY SUBMITTED this 9th day of March 2004



Craig B. Mehrens, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 9th day of March 2004.

Copy of the foregoing mailed
this 9th day of March 2004 to:

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Barbara T. Brown
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Phoenix, AZ 85016-0001

Copy of the foregoing hand-delivered
this 9th day of March 2004 to:

Christine M. Powell
Bar Counsel
State Bar of Arizona
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By K. Weigand

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