

FILED

SEP 26 2006

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY: *S. Dominguez*

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

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3 IN THE MATTER OF A MEMBER) Nos. 04-1246, 05-2151
4 OF THE STATE BAR OF ARIZONA,)
5)
6 **JOHN DUKE HARRIS,**)
7 **Bar No. 007407**) **DISCIPLINARY COMMISSION**
8) **REPORT**
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RESPONDENT.)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on August 12, 2006, pursuant to Rule 58, Ariz. R. Sup. Ct., for consideration of the Hearing Officer's Report filed May 12, 2006, recommending censure, one year of probation with the State Bar's Member Assistance Program (MAP), the Trust Account Program (TAP), and costs.

Decision

The eight members¹ of the Disciplinary Commission by a majority of six,² recommend accepting and adopting the majority of Hearing Officer's findings of fact and conclusions of law,³ and recommendation for censure, one year of probation (MAP and TAP), and costs of these disciplinary proceedings.⁴ The terms of probation are as follows:

¹ One public member seat remains vacant.

² Commissioners Choate and Osborne dissent having concluded that suspension was the appropriate sanction given that Respondent received remedial trust account training with his prior disciplinary offenses and was on probation at the time the misconduct occurred in the instant matter. Commissioners Choate and Osborne also question how Respondent's mental state could be deemed negligent based on his repeated misconduct involving trust account violations.

³ The Commission determined that there is insufficient evidence in the record for application of mitigating factor 9.32(j) delay as no harm or prejudice was established; however, the absence of this factor does not affect the overall outcome.

⁴ A copy of the Hearing Officer's Report is attached as Exhibit A.

Terms of Probation

1 1. Within 30 days from the date of the final Judgment and Order, Respondent
2 shall contact the MAP director and schedule and assessment. Respondent thereafter shall
3 enter into a MAP contract based upon the recommendations by the MAP director or
4 designee and pay costs associated with MAP.

5 2. Within 30 days from the date of the final Judgment and Order, Respondent
6 shall contact Gloria Barr, Staff Examiner and participate in TAP.

7 3. In the event that Respondent fails to comply with any of the foregoing
8 conditions, and the State Bar receives information regarding Respondent's non-
9 compliance, bar counsel shall file with the Hearing Officer a Notice of Non-Compliance,
10 pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Hearing Officer shall conduct a hearing
11 within thirty days after receipt of said notice, to determine whether the terms of probation
12 have been violated and if an additional sanction should be imposed. In the event there is an
13 allegation that any of these terms have been violated, the burden of proof shall be on the State
14 Bar of Arizona to prove non-compliance by clear and convincing evidence.
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Discussion of Decision

17 Historically, great weight is given to the recommendations of the hearing officer.
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19 *Matter of Owens*, 182 Ariz. 121, 126, 893 P.2d 1284 (1995). Because Respondent was on
20 probation for similar violations when this misconduct occurred, the majority concluded a
21 short term suspension *may have been* appropriate. Nonetheless, having found no clear error
22 in the Hearing Officer's Report except for the application of mitigating factor 9.32(j), the
23 Commission adopts the Hearing Officer's recommended sanction of censure and probation.
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1 However, on these same facts, had the Hearing Officer's recommendation been a 30-day
2 suspension the Commission would have adopted the Hearing Officer's recommendation.

3 RESPECTFULLY SUBMITTED this 26th day of September, 2006.

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Barbara A. Atwood, Chair
7 Disciplinary Commission

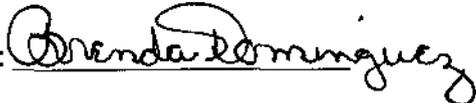
8 Original filed with the Disciplinary Clerk
9 this 26th day of September, 2006.

10 Copy of the foregoing mailed
11 this 26th day of September, 2006, to:

12 John Pressley Todd
13 Hearing Officer TX
14 *Office of the Attorney General*
15 1275 West Washington
16 Phoenix, AZ 85007-2997

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26 by: 

/mps