

**FILED**

JAN - 9 2006

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA

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

*[Signature]*

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3 IN THE MATTER OF A MEMBER )  
4 OF THE STATE BAR OF ARIZONA, )  
5 )  
6 **JOHN DANIEL ROLPH,** )  
7 **Bar No. 021302** )  
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RESPONDENT. )

Nos. 04-0039, 04-1193

**DISCIPLINARY COMMISSION  
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on November 19, 2005, pursuant to Rule 58, Ariz. R. S. Ct., for consideration of the Hearing Officer's Report filed May 11, 2005 recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent (Tender) and Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memorandum) providing for a 90 day suspension, two years of probation effective upon the signing of the probation contract with the State Bar's Law Office Management Assistance Program (LOMAP) including a practice monitor, the State Bar's Member Assistance Program (MAP), and costs of these disciplinary proceedings. The Disciplinary Commission requested oral argument. Respondent, Respondent's Counsel and Counsel for the State Bar were present.

**Decision**

The eight members<sup>1</sup> of the Disciplinary Commission by a majority of five,<sup>2</sup> recommend accepting and adopting the Hearing Officer's findings of fact, conclusions of law, and recommendation for a 90 day suspension, two years of probation effective upon the signing of the probation contract (LOMAP including a practice monitor and MAP), and costs

<sup>1</sup> Commissioner Nelson did not participate in these proceedings.

<sup>2</sup> Commissioners Choate, Gutierrez and Mehrens were opposed. See dissenting opinions below.

of these disciplinary proceedings.<sup>3</sup> The State Bar shall notify the Disciplinary Clerk of the date of commencement of probation. The terms of probation<sup>4</sup> are as follows:

**Terms of Probation**

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3           1.       Respondent currently has a probation contract in effect in File No. 03-1358  
4 as of April 14, 2004. The contract is attached as Exhibit A to the Tender. The terms of that  
5 probation contract shall be held in abeyance during Respondent's period of suspension.  
6

7           2.       Respondent shall contact the director of LOMAP 30 days prior to filing his  
8 application for reinstatement pursuant to Rule 64, Ariz. R. S. Ct. Respondent shall submit  
9 to a LOMAP audit of his office procedures within 30 days from the date he is reinstated by  
10 order of the court. The director of LOMAP shall develop any additional terms of probation  
11 to be incorporated with or including in an addendum to the existing probation contract. The  
12 final probation contract, and its terms shall be incorporated therein by reference. Probation  
13 will commence upon Respondent signing the probation contract for a period of two years.  
14 Bar Counsel will notify the Disciplinary Clerk of the date on which the probation term  
15 begins. A failure to comply with any term of the LOMAP contract will result in a notice of  
16 noncompliance as a violation of a term of probation.  
17

18           3.       Within 30 days of signing the consent documents, Respondent shall submit to  
19 an evaluation by the director of MAP. The MAP director shall develop a therapeutic  
20 contract stating the terms of treatment, if he deems such a contract is appropriate. The MAP  
21 contract shall be incorporated into this agreement by reference. A failure to comply with  
22 any term of the MAP contract will result in a notice of noncompliance as a violation of a  
23 term of probation.  
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26 <sup>3</sup> The Hearing Officer's Report is attached as Exhibit A.

<sup>4</sup> The terms of probation in File No. 03-1358 are to be held in abeyance during this suspension.

1 4. Respondent shall be assigned a practice monitor for the period of his  
2 probation term. The reporting terms shall be developed by the Director of LOMAP and  
3 included in the probation contract which shall be incorporated therein by this reference.

4 Respondent shall refrain from engaging in any conduct that would violate the Rules of  
5 Professional Conduct or other rules of the Supreme Court of Arizona.

6 5. In the event that Respondent fails to comply with any of the foregoing  
7 conditions, and the State Bar receives information, bar counsel shall file with the Hearing  
8 Officer a Notice of Non-Compliance, pursuant to Rule 60(a)5, Ariz. R. S. Ct. The Hearing  
9 Officer shall conduct a hearing within 30 days after receipt of said notice, to determine  
10 whether the terms of probation have been violated and if an additional sanction should be  
11 imposed. In the event there is an allegation that any of these terms have been violated, the  
12 burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and  
13 convincing evidence.  
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15 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of January, 2006.

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Cynthia L. Choate, Chair  
Disciplinary Commission

19 **Commissioners Gutierrez and Mehrens dissenting:**

20 This dissent is based on a fundamental quality evident in Respondent's disciplinary  
21 record and in his oral argument: his seeming inability to learn from the consequences of his  
22 previous actions. Most notably:  
23

24 Respondent was conditionally admitted and under probation. Despite this, he violated  
25 basic Ethical Rules (responsibility to clients) and did not respond to the State Bar's notices  
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1 regarding his behavior. Remember, Respondent was on probation, which would make one  
2 think he would pay attention to any notice from the Bar. Yet this natural assumption does not  
3 hold true in this case

4 Although personal and emotional problems are not identified as mitigation,  
5 Respondent raises his battle with depression as a key factor contributing to his unethical  
6 behavior. Respondent suffered from depression previously, and had been on medication for  
7 this condition, understanding that it has historically created life problems and work problems  
8 for him. Despite this knowledge and experience, Respondent is unable to recognize the  
9 symptoms and the resultant problems, and so does not seek treatment until it is made a  
10 condition of his probation. Again, there seems to be a lapse in Respondent's ability to learn  
11 from his past situations and decisions. He seems to ignore recurring problem situations until  
12 his is made accountable by external agents such as the State Bar or the Disciplinary  
13 Commission.  
14

15 Given these qualities, it would seem that continued risk of ethical violations is  
16 probable and that Respondent will be before this disciplinary body in the near future. The  
17 writers of this dissent would, therefore, have supported a longer suspension with provision for  
18 evidence of rehabilitation of the emotional and personal problems that Respondent raised.

19 **Commissioner Choate dissenting:**  
20

21 I respectfully dissent from the majority for two reasons. First, the Respondent was  
22 conditionally admitted and failed to live up to his signed agreement with the State Bar.  
23 Second, and perhaps more distressing, the Respondent then chose to ignore the Bar's request  
24 for a response to disciplinary charges after only practicing law for approximately one year.  
25 On its face, this agreement for a 90 day suspension and probation seems to adequately protect  
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1 the public; however, I am hesitant to give the Respondent another chance without a lengthier  
2 suspension that would require he demonstrate a clear understanding of the errors of his ways  
3 and that he has taken appropriate steps to make sure he has overcome those weaknesses. See  
4 *Matter of Arrotta*, 208 Ariz. 509, 96 P.3d 213 (2004).

5 Original filed with the Disciplinary Clerk  
6 this 9<sup>th</sup> day of January, 2006.

7 Copy of the foregoing mailed  
8 this 9<sup>th</sup> day of January, 2006, to:

9 Honorable Armando de Leon  
10 Hearing Officer 6Q  
11 *Gonzalez Law Firm, P.C.*  
12 3342 North Camino Rio Colorado  
13 Tucson, AZ 85712-6027

14 Cheryl A. Brown  
15 *Cheryl A. Brown, L.L.C.*  
16 Respondent's Counsel  
17 7141 North 51<sup>st</sup> Avenue, Suite A  
18 Glendale, AZ 85301

19 Maret Vessella  
20 Deputy Chief Bar Counsel  
21 State Bar of Arizona  
22 4201 North 24<sup>th</sup> Street, Suite 200  
23 Phoenix, AZ 85016-6288

24 by: K. Weigand

25 /mps  
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