

1 Upon review, the Disciplinary Commission determined that additional mitigating
2 factor 9.32(k) imposition of other penalties and sanctions is present in the record. The
3 record supports that Respondent was held in direct and indirect criminal contempt, Class 2
4 misdemeanors, for his conduct. Respondent was incarcerated for a period of three days in
5 the Yavapai County jail and ordered to pay fines and costs. The Commission also notes that
6 in the companion case, attorney Robert Fruge received an informal reprimand in File No.
7 04-1978 effective June 6, 2005, for violating ERs 3.5, 4.4 and 8.4(d).

8 Other jurisdictions have found the imposition of other penalties or sanctions as
9 mitigating, thereby justifying a lesser sanction when the sanctions were disciplinary or
10 punitive in nature. In *In re Lamberis*, 93 Ill.2d 222, 66 Ill.Dec. 623, 443 N.E.2d 549 (1982),
11 the Illinois Supreme Court imposed a censure rather than suspension on an attorney who
12 plagiarized portions of an LL.M. thesis based in part on the disciplinary sanctions imposed
13 by the attorney's university. In *Matter of Garrett*, 272 Ind. 477, 399 N.E.2d 369 (1980), the
14 Indiana Supreme Court imposed a reprimand on an attorney convicted of a second criminal
15 violation where the attorney's initial suspension had been extended in light of the new case.
16 *See also, In re Levine*, 174 Ariz. 146, 847 P.2d 1093 (1993), which held that the imposition
17 of other sanctions and fees by the court, to the extent that the attorney had paid them or will
18 pay them in the future, justified reduced sanction.

19 The Commission therefore, gives great weight to this mitigating factor and
20 recommends a 30 day suspension and two years of probation rather than a ninety day
21 suspension and two years of probation. The terms of probation are as follows:
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23 **Terms of Probation**

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25 1. Respondent shall contact the director of MAP within thirty days of entry of the
26 final Judgment and order and enter into a probation contract.

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Michael L. Rubin
Hearing Officer 7K
230 Anderson Road
Prescott, AZ 86303

Robert Blakey
Respondent's Counsel
118 North McCormick Street
P.O. Box 4161
Prescott, AZ 86301

Clarence E. Matherson, Jr.
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: *K Weigand*

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