

FILED

APR 10 2007

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

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

IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)

Nos. 04-0685, 04-1439, 05-0211,
05-1141

TIMOTHY A. FORSHEY,)
Bar No. 013003)

**DISCIPLINARY COMMISSION
REPORT**

RESPONDENT.)

This matter first came before the Disciplinary Commission of the Supreme Court of Arizona on May 13, 2006 pursuant to Rule 58(e), Ariz. R. Sup. Ct., for consideration of the Hearing Officer's Report filed February 27, 2006, recommending acceptance of the Agreement for Discipline by Consent providing for censure, one year of probation and costs. The Disciplinary Commission rejected the Agreement and remanded the matter for further proceedings including an evidentiary hearing. The Commission determined that Respondent's conditional admission supported a knowing mental state and a pattern of neglect and the record was insufficient to justify a reduction in the presumptive sanction of suspension. See Commission Report and Order of Remand filed June 15, 2006.

This matter then came before the Disciplinary Commission of the Supreme Court of Arizona on March 10, 2007, pursuant to Rule 58(e), Ariz. R. Sup. Ct., for consideration of the Hearing Officer's Report filed December 7, 2006, recommending censure, two years of probation with the State Bar's Law Office Management Assistance Program (LOMAP), continuing legal education course entitled "The Ten Deadly Sins of Conflict," Ethics Enhancement Program (EEP), *pro bono* amendment the conservatorship in the Kissebert matter and providing legal assistance in resolving any outstanding medical claims case, *pro*

1 *bono* attempt to set aside the Judgment in the Sterne matter, File No. FC2004-007929,
2 restitution, and costs.

3 The State Bar filed an objection and requested oral argument. Respondent,
4 Respondent's Counsel, and counsel for the State Bar were present. The State Bar argues
5 that the Hearing Officer erroneously omitted material and relevant facts from his findings
6 in Count One and erroneously included findings of acts in his findings in Count Two
7 which are not supported by the evidence.

8 The State Bar further argues that the Hearing Officer erroneously applied the ABA
9 *Standards* in determining the sanction and that a 60-90 day suspension with stringent terms
10 of probation is the appropriate sanction. In the alternative, the State Bar asserts that a six-
11 month and one day is appropriate.

12 The State Bar urges the Commission to apply the correct ABA *Standards* and
13 reweigh the aggravating and mitigating factors. The State Bar asserts that based on the
14 proper weighing of factors in aggravation and mitigation, the aggravating factors
15 significantly outweigh the mitigating factors and increase the sanction in a corresponding
16 manner.
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18 Respondent argues that pursuant to *In re Tocco*, 194 Ariz. 453, 984 P.2d 539
19 (1999), the Disciplinary Commission cannot made additional findings and pursuant to *In re*
20 *Clarke*, 207 Ariz. 414, 87 P.3d 827 (2004), the Commission cannot reweigh aggravating
21 and mitigating factors.
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23 Respondent further argues that there is no evidence that the Hearing Officer's
24 determination of negligent conduct was clearly erroneous and no evidence that Respondent
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1 misled the court and abandoned clients. Respondent asserts that the State Bar did not carry
2 its burden of proof on the most serious allegations and suspension is not warranted.

3 Decision

4 The eight members¹ of the Disciplinary Commission unanimously recommend
5 accepting and adopting the Hearing Officer's findings of fact, conclusions of law, and
6 recommendation for censure, two years of probation (LOMAP, CLE and EEP), restitution,
7 and costs of these disciplinary proceedings.² The amount of restitution and terms of
8 probation are as follows:

9 Restitution

10 Colleen Robin \$500.00

11 Terms of Probation

12 1. Within 30- days of the date of the final Judgment and Order, Respondent
13 shall contact the LOMAP director and submit to an assessment. Thereafter, Respondent
14 shall enter into a probation contract based on the recommendations of the LOMAP director
15 or designee. The term of probation is effective upon the signing of the probation contract.

16 2. Respondent shall obtain continuing legal education by viewing the course
17 entitled "*The Ten Deadly Sins of Conflict.*"

18 3. Respondent shall complete EEP during the period of probation.

19 4. Respondent shall pay restitution to Colleen Robin in the amount of \$500.00.

20 5. Respondent shall pay the costs incurred in these disciplinary proceedings.

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25 ¹ Commissioner Todd did not participate in these proceedings.

26 ² A copy of the Hearing Officer's Report is attached as Exhibit A. Although the Disciplinary Commission disagrees with the Hearing Officer's analysis regarding the appropriateness of a short term suspension, the Commission agrees with the imposition of censure in this matter.

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

RESPECTFULLY SUBMITTED this 10th day of April, 2007.



J. Conrad Baran, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 10th day of April, 2007.

Copy of the foregoing mailed
this 10th day of April, 2007, to:

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by: Gwendolyn H. Emery
/mps

EXHIBIT

