

FILED

JUN 19 2007

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

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

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

Nos. 04-2135, 05-1221

5 **MICHAEL C. SHAW,**)
6 **Bar No. 014044**)

**DISCIPLINARY COMMISSION
REPORT**

7 **RESPONDENT.**)
8)

9 This matter first came before the Disciplinary Commission of the Supreme Court of
10 Arizona on May 19, 2007, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the
11 Corrected Hearing Officer's Report filed July 13, 2006. At that time, the Commission
12 rejected the Agreement and remanded the matter for further proceedings.¹

13 This matter again came before the Commission for consideration of the Hearing
14 Officer's Supplemental Report filed March 29, 2007, recommending acceptance of the
15 Tender of Admissions and the Agreement for Discipline by Consent (Tender) and the Joint
16 Memorandum (Joint Memorandum) in Support of Agreement for Discipline by Consent
17 providing for censure, one year of probation with the State Bar's Trust Account Program
18 (TAP), Trust Account Ethics Enhancement Program (TAEEP), Law Office Management
19 Assistance Program (LOMAP), and Member Assistance Program (MAP) and costs.
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24 ¹ The Commission concluded that based on Respondent's conditional admissions, the
25 presumptive sanction for a pattern of neglect and knowing failure to perform services for a client is
26 suspension. The Commission also requested that the record be supplemented to include the degree
of harm if any caused by Respondent's misconduct.

Decision

1 The eight members² of the Disciplinary Commission unanimously recommend
2 accepting and adopting the Hearing Officer's findings of fact,³ conclusions of law, and
3 recommendation for censure, one year of probation (TAP, TAEEP, LOMAP and MAP)
4 and costs of these disciplinary proceedings.⁴ The Commission is now satisfied that the
5 Agreement and recommended sanction fulfills the purposes of discipline. The terms of
6 probation as set forth in the Tender of Admissions and Agreement for Discipline by
7 Consent are as follows:

Terms of Probation

10 1. Respondent shall within 30-days of the date of the final Judgment and
11 Order, contact the Director of LOMAP to schedule an audit of his office procedures.
12 Respondent thereafter, shall enter into a probation contract that will be effective for one
13 year from the date Respondent signs the probation contract. The probation contract shall
14 include the selection of a practice monitor, subject to the approval by the LOMAP director
15 or designee. Respondent shall comply with all recommendations of the director of
16 LOMAP or designee.

18 2. Respondent shall complete TAEEP during the probationary period. If
19 Respondent completes TAEEP prior to the commencement of the probationary period,
20 Respondent shall provide proof of completion of TAEEP as satisfaction of the requirement
21 of this paragraph.
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23 ² Commissioner Horsley did not participate in these proceedings.

24 ³ Including those changes set forth in the Notice of Errata.

25 ⁴ A copy of the Hearing Officer's Reports are attached as Exhibit A. Although the Hearing Officer
26 inadvertently stated that Respondent's mitigating factors justify imposition of an informal
reprimand, it is clear from the remainder of the Report and consent documents that censure is the
intended discipline. *See Report, p. 11.*

3. Respondent shall within 30-days of the date of the final Judgment and Order contact the State Bar's staff investigator for trust accounts, Gloria Barr, to schedule an assessment of Respondent's trust account procedures. Following the assessment, Respondent thereafter will enter into a TAP contract based upon recommendations made by Gloria Barr. The TAP contract shall be effective for a period of one year from the date Respondent signs the TAP contract. Respondent shall comply with all recommendations or requirements made by Gloria Barr.

4. Respondent shall within 30-days of the date of the final Judgment and Order contact Hal Nevitt at the State Bar's MAP. Respondent shall undergo a MAP assessment and shall enter into a therapeutic contract incorporating the recommendations of the MAP director or designee. The MAP contract shall be effective for a period of one year from the date Respondent signs the MAP contract.

5. Respondent shall pay all costs incurred by the State Bar in connection with these proceedings including the LOMAP assessment and applicable monitoring of the probation contract, and any costs associated with the TAP and MAP contracts.⁵

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

⁵ Respondent shall also pay those costs incurred by the Disciplinary Clerk's Office.

clear and convincing evidence.

RESPECTFULLY SUBMITTED this 19th day of June, 2007.

Daisy Flores
Daisy R. Flores, ~~Vice-Chair~~
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 19th day of June, 2007.

Copy of the foregoing mailed
this 19th day of June, 2007, to:

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