

**FILED**  
APR 14 2008  
DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA  
BY: *[Signature]*

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

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4 IN THE MATTER OF A MEMBER ) No 06-1378  
5 OF THE STATE BAR OF ARIZONA, )  
6 )  
7 **CARL D. MACPHERSON** )  
8 **Bar No. 006253** ) **DISCIPLINARY COMMISSION**  
9 ) **REPORT**  
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RESPONDENT )

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on March 15, 2008, pursuant to Rule 58, Ariz R Sup.Ct , for consideration of the Hearing Officer's Report filed October 24, 2007, and Supplemental Report filed March 6, 2008, recommending acceptance of the modified Tender of Admissions and the Agreement for Discipline by Consent ("Tender") and the Joint Memorandum ("Joint Memorandum") in Support of Agreement for Discipline by Consent providing for a 30-day suspension, one year of probation with the State Bar's Law Office Management Assistance Program ("LOMAP") including four hours of ethics involving honesty, integrity, and the absolute necessity of candor toward the tribunal, and costs

**Decision**

Having found no facts clearly erroneous, the seven members<sup>1</sup> of the Disciplinary Commission by a majority of six,<sup>2</sup> recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions of law, and recommendation for a 30-day suspension, one year of probation (LOMAP) including four hours of ethics involving

<sup>1</sup> One lawyer member seat remains vacant  
<sup>2</sup> Commissioner Todd was opposed See dissenting opinion below

1 integrity, honesty and the absolute necessity of candor toward the tribunal, and costs of  
2 these disciplinary proceedings<sup>3</sup> The terms of probation as set forth in the Tender<sup>4</sup> filed  
3 February 1, 2008, are as follows

4 **Terms of Probation**

5 1 Respondent shall contact the Director of LOMAP who shall develop a  
6 probation contract with any terms and conditions deemed appropriate by the LOMAP  
7 director or designee Respondent agrees to comply with any recommended terms of  
8 probation At minimum, the LOMAP contract will require Respondent to attend an ethics  
9 class on integrity, honesty and the absolute necessity of candor toward the tribunal

10 2 Respondent agrees to pay for the State Bar's costs in these disciplinary  
11 proceedings Additional costs may also be incurred by the Disciplinary Clerk's office,  
12 which will be assessed pursuant to Rule 60(b), Ariz R Sup Ct ,

13 3. In the event that Respondent fails to comply with any of the foregoing  
14 conditions, and the State Bar receives information, bar counsel shall file with the imposing  
15 entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz R Sup Ct The  
16 Hearing Officer shall conduct a hearing within 30-days after receipt of said notice, to  
17 *determine whether the terms of probation have been violated and if an additional sanction*  
18 *should be imposed* In the event there is an allegation that any of these terms have been  
19 violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by  
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25 <sup>3</sup> A copy of the Hearing Officer's Report is attached as Exhibit A

26 <sup>4</sup> The Hearing Officer's Report did not contain the specific terms of probation reflected in the consent documents



1 In contrast with MacPherson's testimony, in Memorandums dated March 22, 2006,  
2 both Judge Warner and her Judicial Assistant ("JA"), memorialized their recollection of  
3 the events. The JA's memorandum reflects that "shortly" after Judge Warner issued her  
4 order that MacPherson's client testify on Wednesday, she received a call from MacPherson  
5 very upset. The date of the Order is Tuesday, March 21, 2006 and it was filed at 11:30  
6 a.m. that morning. The Judge's Order was faxed to MacPherson. According to the JA's  
7 memorandum, she received MacPherson's phone call on Tuesday, March 21, 2006.

8 Also according to her memorandum, prior to the afternoon session on Tuesday,  
9 rather than Wednesday, MacPherson, and counsel for the state and defense appeared in  
10 chambers about allowing MacPherson's client to appear on Friday. "Carl MacPherson  
11 stated that he had a doctor's appointment at 1:00 p.m." (Memo, 3/22/08). When the court  
12 suggested that they could reschedule her testimony for later Wednesday afternoon, "Carl  
13 responded that he didn't know how long he would be at the doctor, asking the Judge,  
14 'Have you been to the doctor's lately?' He then explained that he had a rotator cuff injury  
15 and was scheduled to have an MRI on Wednesday afternoon." (*Id.*)

16 Judge Warner's Memorandum, also dated March 22, 2006, confirms the same  
17 information. She added that she made a comment at the Tuesday meeting that MacPherson  
18 must not be playing golf any more. "He added that, in addition, he has given up tennis."  
19 (Memo, 3/22/06). After some additional conversation concerning scheduling it later on  
20 Wednesday and the MRI, Judge Warner agreed to that MacPherson's client could testify  
21 on Friday.

22 The next day, Wednesday, March 22, 2006, the date of the two Memorandums, the  
23 JA called the Tucson Country Club at about 3:00 p.m. She was told that MacPherson was  
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1 on the course, his tee-time had been 12 30 p m and he should be finished about 4 to 4 30  
2 p m

3 Neither Dr Katz nor his office could corroborate that MacPherson had an  
4 appointment on Wednesday or that he had appeared at the office

5 In retrospect, it may have been more expeditious for the court to have handled the  
6 matter as a criminal contempt proceeding But having initiated a Bar complaint, the State  
7 Bar in my view should not have entered into a tender agreement when there was such a  
8 fundamental factual dispute existing on which the entire ethical violation turns In a truth-  
9 seeking profession, such diametrically opposed positions should not be left unresolved  
10 Therefore, I respectfully dissent from accepting the tender and would remand the matter  
11 for a hearing

12 Original filed with the Disciplinary Clerk  
13 this 14<sup>th</sup> day of April, 2008

14 Copy of the foregoing mailed  
15 this 14<sup>th</sup> day of April, 2008, to

16 Honorable H Jeffrey Coker  
17 Hearing Officer 6R  
18 P O Box 23578  
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20 Respondent's Counsel  
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by Christina Loto

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BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA

**FILED**  
MAR 2008  
HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY *Clabo*

IN THE MATTER OF A MEMBER OF )  
THE STATE BAR OF ARIZONA, )  
)  
**CARL D. MACPHERSON,** )  
**Bar No. 006253** )  
)  
**RESPONDENT.** )

File No. 06-1378

**HEARING OFFICER'S REPORT**

**SUPPLEMENTAL HEARING OFFICER'S REPORT**

1. This matter proceeded to a hearing on a Tender of Admissions and Agreement and Joint Memorandum on August 23, 2007. Because of scheduling problems, the hearing was held telephonically rather than in person.
2. The Hearing Officer prepared a Hearing Officer's Report which was filed on October 24, 2007. In the original report, the Hearing Officer evaluated the evidence and concluded that the recommended sanction of a Censure and costs of the proceedings alone was not a sufficient sanction for the evidence proffered at the hearing. The Hearing Officer recommended suspension for 60 days and one year of probation as a more appropriate sanction.
3. Pursuant to Rule 56(e)(2), the parties had 30 days to either accept or reject the Hearing Officer's suggested modifications. The parties indicated that the modification was not acceptable.
4. Subsequently, the parties modified their original agreement to include a 30 day suspension plus probation. The modified agreement was proffered to the Hearing Officer.

at a hearing on February 4, 2008. Testimony was taken, and for the reasons set forth herein the Hearing Officer recommends acceptance of the modified Joint Memorandum and Tender.

5. The facts and the law are as set forth in the Hearing Officer's original report filed October 24, 2007, and the recently filed Joint Prehearing Statement and Tender of Admissions. The amended agreement offers a 30 day suspension plus probation for one year, LOMAP and ethical training
6. The Hearing Officer finds that, based upon the testimony of the Respondent, it is clear that there is, in fact, a difference of opinion about what happened and when. The State Bar concedes that the state of the evidence is such that some important questions cannot be proven by the clear and convincing standard.
7. The Hearing Officer had the opportunity to actually witness the demeanor and presentation of the Respondent at the hearing on the amended agreement. It is clear to the Hearing Officer that the Respondent understands the error of his ways and has committed himself to making sure this kind of situation does not occur again
8. Based upon the additional testimony, the Hearing Officer finds as an additional mitigating factor, *Standard 9.32(l)* remorse.
9. Based upon the additional evidence, the Hearing Officer finds that the recommended sanction of a 30 day suspension, followed by a year of probation that includes LOMAP and that Respondent will complete an ethics class on the necessity to be truthful with the Court, is an appropriate sanction for the Respondent's conduct.

DATED this 6<sup>th</sup> day of March, 2008.

Hon H Jeffrey Coker per  
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk  
this 6<sup>th</sup> day of March, 2008.

Copy of the foregoing mailed  
this 7<sup>th</sup> day of March, 2008, to

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