

FILED

JUL 14 2008

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA  
*M. Smith*

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

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IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
)  
**PATRICK A. PLUMMER,** )  
**Bar No. 012547** )  
)  
RESPONDENT )  
\_\_\_\_\_ )

Nos 06-1089, 06-1488, 07-0256

**DISCIPLINARY COMMISSION  
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on June 14, 2008, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the Hearing Officer's Report filed April 14, 2008, recommending a six-month and one-day suspension and probation, with length and terms to be determined upon reinstatement, and costs Respondent filed an objection and requested oral argument Respondent and counsel for the State Bar were present

Respondent admits to a negligent violation in Count One but contends that he has new and aggravated health issues that contributed to his misconduct Respondent further admits that when he submitted the affidavit in support of his application for fees, he knew it was not contemporaneous but that his health problems prevented him from further specifying or developing the documentation at that time Respondent asserts that the recommend sanction is harsh and that the American with Disabilities Act ("ADA") applies as additional mitigation in this matter Respondent maintains that he has reduced his practice, is following his doctor's orders and treatment regarding medication, and that he is

1 using coping devices and new software to help in managing his law practice Respondent  
2 request that a censure and probation be imposed in lieu of suspension

3 In response, the State Bar argues that there is no contrary evidence that the Hearing  
4 Officer's findings are clearly erroneous The Hearing Officer's findings regarding his  
5 mental state were supported by clear and convincing evidence and Respondent's knowing  
6 violations, especially those involving lying to the court were not the result of any medical  
7 or emotional conditions

8 The State Bar asserts that the Hearing Officer denied Respondent's motions to  
9 supplement the record and in his multiple Opening Briefs, Respondent now seeks to  
10 improperly introduce new evidence that was not presented to the Hearing Officer In  
11 addition, Respondent's exhibits are incomplete and many were not served on the State Bar  
12 and should be disregarded Moreover, Respondent was represented by experienced  
13 discipline counsel at the hearing and could have produced all relevant evidence at that  
14 time

15 The State Bar further asserts that ADA does not apply in this case and  
16 Respondent's reliance on it is misplaced and without merit Respondent did not directly  
17 raise this issue in the underlying hearing and is now precluded from raising the issue on  
18 appeal The State Bar argues that Respondent cited no authority in support of his position  
19 and advises the ADA does not prevent the Disciplinary Commission from recommending a  
20 sanction because Respondent's misconduct was not a direct result of his medical  
21 conditions. *See People v Goldstein*, 887 P 2d 634, 638 n 2 (Colo 1994) If Respondent's  
22 medical conditions were to meet ADA requirements his disabilities would affect essential  
23 functions of his job and the accommodations he requested are unreasonable and would  
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1 create undue hardship Reading, writing and thinking are basic skills required by an  
2 attorney and no existing Arizona case law has established that the ADA applies in the  
3 context of lowering the minimal standards of professional conduct The State Bar  
4 maintains that based on the numerous and incomprehensible pleadings filed by Respondent  
5 before this Disciplinary Commission, the Hearing Officer's findings and conclusions  
6 sufficiently demonstrate that Respondent has yet receive treatment that will allow him to  
7 competently practice law and not harm the public

8 In closing the State Bar asserts that the Hearing Officer has given Respondent  
9 ample consideration in mitigation and urges the Commission to accept the Hearing  
10 Officer's recommendation of a six-month and one-day suspension and probation

#### 11 Decision

12 Having found no facts clearly erroneous, the eight members<sup>1</sup> of the Disciplinary  
13 Commission unanimously recommend accepting and incorporating the Hearing Officer's  
14 findings of fact, conclusions of law, but modify the recommended sanction to reflect a one  
15 year suspension and costs of these disciplinary proceedings<sup>2</sup>

#### 17 Discussion

18 The Disciplinary Commission considers Respondent's misconduct involving lying  
19 to the tribunal as serious misconduct At oral argument, Respondent admits that when he  
20 filed the affidavit and application in support of fees, he knew the fees were not based on  
21 contemporaneous time entry records, and at that time did not instruct the court that the  
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25 <sup>1</sup> One lawyer member seat remains vacant Commissioner Horsley did not participate in these  
26 proceedings Sylvia Vega, a public member from Phoenix, participated as an ad hoc member

<sup>2</sup> A copy of the Hearing Officer's Report is attached as Exhibit A

1 amounts were reconstructed based on the contingency award See Commission Transcript,  
2 pp 8-9

3 The Commission determines *de novo* that based on the totality of the misconduct  
4 and in consideration of the cases offered for a proportionality analysis, a one-year  
5 suspension is more appropriate and well within the range of sanctions imposed for similar  
6 misconduct involving lying to the tribunal By submitting the affidavit and fee application  
7 without explanation, Respondent mislead the court This recommended sanction also  
8 serves to fulfill the purposes of discipline, two of which are to deter similar conduct by  
9 other lawyers, and to protect the public *Matter of Kersting*, 151 Ariz 171, 726 P 2d 587  
10 (1986)

11 RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of July, 2008

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13  
14 Daisy Flores  
15 Daisy Flores, Chair  
16 Disciplinary Commission

17 Original filed with the Disciplinary Clerk  
18 this 14<sup>th</sup> day of July, 2008

19 Copy of the foregoing mailed  
20 this 15<sup>th</sup> day of July, 2008, to

21 Honorable H Jeffrey Coker  
22 Hearing Officer 6R  
23 P O Box 23578  
24 Flagstaff, AZ 86002

25 Patrick A. Plummer  
26 Respondent  
6002 E Kings Avenue  
Scottsdale, AZ 85254-0001

Shauna Miller  
Senior Bar Counsel  
State Bar of Arizona  
4201 North 24th Street, Suite 200  
Phoenix, AZ 85016-6288

by MS

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