

FILED

JUN 16 2008

DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY CP/eto

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

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

No 05-2003

PAUL B. RUDOLPH,)
Bar No. 014027)

**DISCIPLINARY COMMISSION
REPORT**

RESPONDENT)
_____)

This matter first came before the Commission on January 1, 2007, for consideration of the Hearing Officer's Report recommending acceptance of the direct Agreement providing for censure and one year of probation (MAP) for violating ER 8 4(b) and Rule 41(g) The Commission rejected the Agreement having concluded that *Standard 5 12* (suspension) is the presumptive sanction for conduct involving the threat of violence The Commission further concluded that Respondent's misconduct was substantially related to the practice of law, impacts on his ability to practice law, and adversely reflects on his fitness to practice (*See Commentary to Standard 5 12*) No formal Complaint was originally filed in this matter, however, an aggravation and mitigation hearing was held on September 21, 2006

The Commission also noted that the record was devoid of any evidence that Respondent received any counseling or if remedial measures have been taken to ensure the misconduct does not reoccur, the record was insufficient for application of mitigating factor 9 32(l) remorse given Respondent's late apology, and little weight should be given

1 to Respondent's self-reporting as it was a required term of the plea agreement See
2 Commission Report filed February 20, 2007

3 On August 8, 2007, Commission then considered the Amended Hearing Officer's
4 Report filed June 11, 2007, recommending acceptance of the Amended Tender of
5 Admissions and Agreement for Discipline by Consent and Amended Joint Memorandum
6 in Support of Agreement for Discipline by Consent providing for a 30-day suspension, one
7 year of probation (MAP), and costs for violating ER 8 4(b) and Rule 41(g)

8 No hearing was held on the Amended Agreement The Commission again rejected
9 and remanded the matter having concluded that based on the conditional admissions as set
10 forth in the Tender, and given the seriousness of the harm incurred by the victims, nothing
11 less than six-months and one-day suspension appeared appropriate The Commission
12 determined that Respondent's misconduct was calculated and occurred over a prolonged
13 period His actions created substantial fear and terrorized his victims The Commission
14 further determined the proportional cases offered in support of the 30-day suspension were
15 not found to be factually similar and were distinguished in that the misconduct occurred in
16 the "heat of the moment"¹ See Commission Report filed September 12, 2007

17
18 Respondent then filed a Petition for Special Action On behalf of the Commission,
19 the Attorney General filed a Limited Response to Petition for Special Action The
20 Supreme Court declined to accept jurisdiction of the Petition for Special Action See Order
21 dated January 8, 2008 The State Bar filed its formal Complaint on October 4, 2007
22 Respondent filed his Answer on October 30, 2007 A hearing was held on January 28,
23 2008
24

25
26 ¹ Pursuant to Rule 56(e), Ariz R Sup Ct, conditional admissions are deemed withdrawn if the
Agreement for Discipline by Consent is rejected

1 This matter again came before the Disciplinary Commission of the Supreme Court
2 of Arizona on May 17, 2008, pursuant to Rule 58, Ariz R Sup Ct , for consideration of the
3 Hearing Officer's Report filed March 12, 2008, recommending a 30-day suspension, two
4 years of probation with the State Bar's Member Assistance Program ("MAP"), and costs
5 No objection was filed by either party, however, oral argument was requested by
6 Respondent Respondent, Respondent's Counsel, and counsel for the State Bar appeared
7 Respondent argued in support of the Hearing Officer's recommendation The State Bar
8 supports the recommended sanction

9 After a full evidentiary hearing, the Commission is now convinced that the
10 recommended sanction is appropriate and fulfills the purposes of discipline Although the
11 Commission sees Respondent's criminal conduct as serious, Respondent stopped the
12 conduct prior to getting caught and there was no face to face threat or confrontation with
13 the victims No evidence to the contrary was offered to dispute the witnesses' testimony,
14 including that of psychiatrist, Dr Daniel Blackwell that Respondent's misconduct was
15 aberrational in nature and unlikely to reoccur Additionally, two years of probation (MAP)
16 instead of one-year of probation, is recommended at this time The State Bar asserts that
17 the recommended sanction is proportional and appropriate
18

19 Decision

20
21 The eight members² of the Disciplinary Commission by a majority of seven,³
22 recommend accepting and incorporating the Hearing Officer's findings of fact, conclusions
23
24
25

26 ² One lawyer member seat remains vacant

³ Commissioner Osborne was opposed. See dissenting opinion below

1 of law, and recommendation for a 30-day suspension, two years of probation (MAP), and
2 costs of these disciplinary proceedings⁴ The terms of probation are as follows

3 **Terms of Probation**⁵

4 1 Within 30-days of reinstatement, Respondent shall contact the Director of
5 MAP and schedule a MAP assessment Respondent thereafter shall enter into a probation
6 contract based on the recommendations of the MAP director or designee The period of
7 probation shall run from the date that all parties have signed the probation contract and will
8 conclude two-years from that date

9 2 In the event that Respondent fails to comply with any of the foregoing
10 conditions, and the State Bar receives information, bar counsel shall file with the imposing
11 entity a Notice of Non-Compliance, pursuant to Rule 60(a)(5), Ariz R Sup Ct The
12 Hearing Officer shall conduct a hearing within 30-days after receipt of said notice, to
13 determine whether the terms of probation have been violated and if an additional sanction
14 should be imposed In the event there is an allegation that any of these terms have been
15 violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by
16 clear and convincing evidence
17

18 RESPECTFULLY SUBMITTED this 14th day of June, 2008

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22 _____
23 Daisy Flores, Chair
24 Disciplinary Commission

25 *Commissioner Osborne dissenting:*

26 _____
⁴ A copy of the Hearing Officer's Report is attached as Exhibit A

⁵ The Hearing Officer's Report did not contain specific terms of probation

1 I respectfully dissent from the majority's recommendation in this matter This
2 Commission is charged with the duty to protect public and I am not convinced that this
3 Respondent poses no further threat to the public The cause of Respondent's misconduct has
4 not been sufficiently identified Why would someone with Respondent's professional
5 background and education exhibit such aberrational behavior?

6 Clearly Respondent's conduct in this matter was knowing, if not intentional and
7 serious injury occurred to the victims and their family I believe that Respondent's sanction
8 should be increased based on the degree of harm that occurred in this matter and 30-day
9 suspension and probation is not adequate Probation should not be imposed as a safety net to
10 protect the public The ABA *Standards, Black Letter Rules* also provide in part that
11 "generally a suspension should be for a period of time equal to or greater than six-months"
12

13 Most troubling is that Respondent has received no formal rehabilitative counseling or
14 therapy since his misconduct occurred except for a few sessions with his pastor While there
15 have been no new charges filed with the State Bar, the mere passage of time is not enough to
16 convince me that there will be no future misconduct Respondent should be required to
17 demonstrate what positive actions he has since taken and his fitness to practice through formal
18 reinstatement proceedings

19
20 Original filed with the Disciplinary Clerk
this 16th day of June, 2008

21 Copy of the foregoing mailed
22 this 16th day of June, 2008, to

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

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