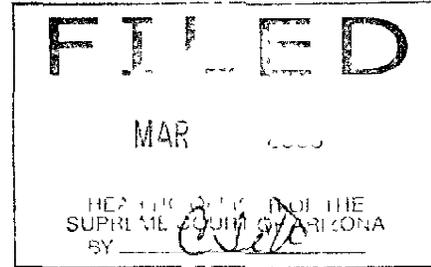


**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**



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(1) 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 6th day of March, 2008.

H. Jeffrey Coker
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 6th day of March, 2008.

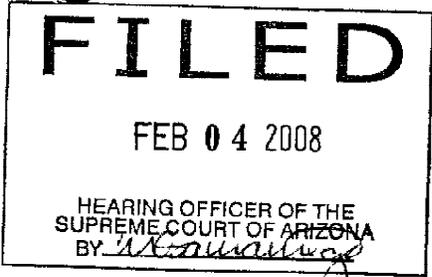
Copy of the foregoing mailed
this 7th day of March, 2008, to

Tom Slutes
Respondent's Counsel
Slutes, Sakrison & Rogers, P C
33 North Stone Avenue, Suite 1000
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by *CS*

/cs



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11 Telephone (520) 624-6691
12 Attorney for Respondent

13 **BEFORE A HEARING OFFICER**
14 **OF THE SUPREME COURT OF ARIZONA**

15 IN THE MATTER OF A MEMBER
16 OF THE STATE BAR OF ARIZONA,

File No. 06-1378

17 **CARL D. MACPHERSON,**
18 **Bar No. 006253,**

JOINT PRE-HEARING
STATEMENT

19 Respondent.

(Assigned to Hearing Officer 6R,
Honorable H Jeffrey Coker)

20 The State Bar of Arizona, which is represented in this matter by counsel
21 David L. Sandweiss, and Respondent Carl D. Macpherson, who is represented in
22 this matter by counsel Tom Slutes, submit this Joint Pre-Hearing Statement.

23 **I. THE UNCONTESTED FACTS DEEMED MATERIAL**

24 1. At all times relevant, Respondent was a lawyer licensed to practice law
25 in the State of Arizona having been first admitted to practice on May 10, 1980.

1 2. Respondent represented Joan Schwartz (“Mrs. Schwartz”) in her family
2 court matter against her husband Dr. Bradley Schwartz (“Dr. Schwartz”).

3
4 3. Dr. Schwartz was prosecuted for hiring someone to kill a fellow
5 physician

6 4 Mrs Schwartz was scheduled to testify in the murder trial.

7
8 5. Respondent told the prosecutor that he wanted to be present when his
9 client, Mrs. Schwartz, testified in the murder trial.

10 6. Due to scheduling issues, Mrs. Schwartz was rescheduled to testify on
11 Wednesday, March 22, 2006, at 1:30 p.m.

12
13 7. In a notice to the court, Respondent advised that Mrs. Schwartz was
14 unavailable to testify on any afternoon, including Wednesday, March 22, 2006,
15 since she had to pick up her children at school.

16 8. Respondent also advised in the notice that Mrs. Schwartz was available
17 to testify Thursday morning, March 23, 2006, or any other morning thereafter.

18
19 9. After discussing the matter with counsel in the criminal case, Judge
20 Nanette Warner (“Judge Warner”) issued an order that Mrs. Schwartz appear
21 Wednesday, March 22, 2006, at 1.30 p.m., as scheduled. A copy of the order was
22 faxed to Respondent.

23
24 10. Respondent called the Court and spoke with the Judge’s assistant, Sandi
25 Simpson (“Ms. Simpson”) Respondent told Ms. Simpson that he had a doctor’s

1 appointment Wednesday, March 22, 2006, and had worked out a schedule with
2 criminal counsel such that Mrs. Schwartz could testify on Friday, March 24, 2006.

3
4 11. Ms. Simpson conferred with Judge Warner and Judge Warner told Ms.
5 Simpson that Respondent could rearrange his schedule if he wanted to be present
6 during Mrs. Schwartz' testimony

7
8 12 Respondent grew very upset that the Judge would not accommodate his
9 schedule and lamented further that he probably did not have adequate time to file a
10 Special Action

11
12 13. During discussions in chambers with Judge Warner, Respondent
13 emphasized that he had a doctor's appointment on Wednesday, March 22, 2006, at
14 1.00 p.m., to evaluate his shoulder, which had been operated on previously, for the
15 need for further surgery or an MRI

16
17 14. Judge Warner offered to accommodate Respondent by moving Mrs.
18 Schwartz's testimony to later in the day on Wednesday.

19
20 15. Respondent retorted that doctors are notorious for keeping patients
21 waiting and starting appointments late, to which Judge Warner responded that she
22 was willing to move Mrs Schwartz's testimony to even later in the day on
23 Wednesday.

24
25 16. Respondent retorted that his doctor might want him to get an x-ray or
MRI, which would detain Respondent even longer on Wednesday

1 17. Judge Warner doubted that Respondent's doctor could get him a same-
2 day x-ray or MRI, but Respondent related that his doctor was also a friend and
3 client and could arrange an immediate radiology study for Respondent
4

5 18. Criminal counsel told Judge Warner that a *Frye* hearing scheduled for
6 Friday morning would be more conveniently heard on Thursday and that they
7 could take Mrs Schwartz's testimony Friday morning. Judge Warner relented.
8

9 19. On Wednesday, March 22, 2006, at about 3.00 p.m., Ms. Simpson called
10 the Tucson Country Club where Respondent was known to have a regular
11 Wednesday tee time and learned that his group teed-off at 12:30 p.m. and that
12 Respondent was on the course and should be finished by 4:30 p.m.
13

14 **II. CONTESTED FACTS DEEMED MATERIAL BY RESPONDENT**

15 1. Mr. Macpherson had called the office of his orthopedic surgeon, Dr.
16 Katz, to see if he could be seen at 1 00 on Wednesday, March 22, 2006. As was
17 customary, he was told that he could be worked in and to come by the office.
18

19 2. After leaving the Judge's chambers on Wednesday March 22, 2006, Mr.
20 Macpherson went to Dr Katz's office. He found that Dr. Katz was not present at
21 that time and had apparently left for the day.
22

23 3. Mr. Macpherson routinely has a tee time at Tucson Country Club on
24 Wednesdays at around 12:30 p.m. with golfers with whom he often plays. When
25 Mr. Macpherson realized he could not see Dr. Katz on Wednesday afternoon, and

1 because Mrs Schwartz' appearance as a witness had been moved to Friday, March
2 24, 2006, and because Mrs Schwartz was in fact unavailable to testify on the
3 afternoon of Wednesday, March 22, 2006, because she had to pick up her children,
4 Mr Macpherson realized that there was no reason for him to contact Mrs.
5 Schwartz, return to the courthouse, or contact Judge Warner. He therefore went to
6 Tucson Country Club where he joined the group of golfers that had teed off
7 around 12:30 p.m., their game already in progress.
8
9

10 **III. CONTESTED FACTS DEEMED MATERIAL BY THE STATE BAR**

11 1. On the morning of Tuesday, March 21, 2006, Respondent faxed to the
12 Court a "Notice to Court Regarding Availability of Witness" filed by Respondent.
13

14 2. Prior to the commencement of the Tuesday, March 21, 2006, afternoon
15 session of the trial, Respondent appeared in chambers with criminal counsel to
16 discuss the situation with Judge Warner.
17

18 3. Respondent did not have a shoulder doctor's appointment on
19 Wednesday, March 22, 2006

20 4. Respondent never has a shoulder doctor's appointment; he goes to the
21 doctor's office whenever he wants and as a professional courtesy the doctor tries
22 to accommodate him
23

24 5 Respondent falsely represented to Judge Warner that he had a doctor's
25 appointment on Wednesday, March 22, 2006

1 6. Respondent engaged in conduct involving dishonesty, fraud, deceit or
2 misrepresentation when he lied to Judge Warner about having a doctor's
3 appointment on Wednesday, March 22, 2006
4

5 7. Respondent engaged in conduct prejudicial to the administration of
6 justice by making a false statement to Judge Warner regarding his doctor's
7 appointment for Wednesday, March 22, 2006
8

9 **IV. CONTESTED ISSUES OF LAW DEEMED MATERIAL BY THE
10 STATE BAR**

11 1. Whether by making a false statement to Judge Warner regarding his
12 doctor's appointment for Wednesday, March 22, 2006, Respondent violated ERs
13 3 3(a) and 8 4(c) and (d), Rule 42, Ariz.R.Sup.Ct.
14

15 **V. CONTESTED ISSUES OF LAW DEEMED MATERIAL BY
16 RESPONDENT**

17 1. Whether by making a false statement to Judge Warner regarding his
18 doctor's appointment for Wednesday, March 22, 2006, Respondent violated ERs
19 3 3(a) and 8 4(c) and (d), Rule 42, Ariz.R.Sup Ct.
20

21 **VI. EXHIBITS**

22 **State Bar's Exhibits**

23

<i>Exhibit No.</i>	<i>Bates Nos.</i>	<i>Certified Screening File Bates Nos.</i>	<i>Date</i>	<i>Description</i>
			12/13/07	Original State Bar of Arizona Custodian of Records Affidavit,

24
25

<i>Exhibit No.</i>	<i>Bates Nos.</i>	<i>Certified Screening File Bates Nos.</i>	<i>Date</i>	<i>Description</i>
				certification of file no 06-1378
				Certified Copy of State Bar Screening file No 06-1378
1	0001		12/13/07	Copy of State Bar of Arizona Custodian of Records Affidavit, certification of file no 06-1378
2	0002-0043			Copy of Certified Copy of State Bar Screening file no. 06-1378
		0002-0003	4/17/07	Probable Cause Order
		0004	4/17/07	Letter to Honorable Nanette Warner ("Judge Warner") from State Bar
		0005	2/22/07	Letter to Judge Warner from State Bar
		0006-0007	12/4/06	Letter to Judge Warner from State Bar
		0008-0009	12/12/06	Letter to State Bar from Respondent
		0010-0011	11/30/06	Letter to State Bar from Judge Warner
		0012	12/4/06	Letter to Respondent from State Bar
		0013	12/4/06	Letter to Judge Warner from State Bar
		0014-0016	12/1/06	Faxed letter to State Bar from Judge Warner
		0017	9/29/06	Letter to Judge Warner from State Bar
		0018	9/29/06	Letter to Respondent from State Bar
		0019-0021	9/25/06	Letter to State Bar from Respondent
		0022-0023	9/7/06	Letter to Judge Warner from State Bar
		0024-0025	9/7/06	Letter to Respondent from State Bar
		0026-0027	9/7/06	Letter to Judge Warner from State Bar
		0028-0029	8/18/06	Letter (Complaint) to State Bar from Judge Warner
		0030	3/20/06	Notice to court re availability of witness, CR2004-3995, <i>State of Arizona v Schwartz</i>
		0031-0036	3/21/06	Minute entry, CR2004-3995. <i>State of</i>

Exhibit No.	Bates Nos.	Certified Screening File Bates Nos.	Date	Description
				<i>Arizona v Schwartz</i>
		0037-0040	3/21/06	Transcript re· Jury trial day fourteen, CR2004-3995, <i>State of Arizona v Schwartz</i>
		0041	3/22/06	Memo to Judge Warner from Sandi Simpson, JAA
		0042-0043	3/22/06	Memo to file from Judge Warner
3	0044-0045		2/28/07	Letter to State Bar from Judge Warner
4	0046-0047		3/22/06	Judge Warner's court schedule
5	0048		3/22/06	Judge Warner's outlook calendar
6	0049		4/2/07	Investigation report by Mike Fusselman
7	0050		3/21/07	Minute entry, CR2004-3995, <i>State of Arizona v Schwartz</i>
8	0051-0054		3/22/07	Minute entry, CR2004-3995, <i>State of Arizona v Schwartz</i>
9	0055-0059		3/24/06	Minute entry, CR2004-3995, <i>State of Arizona v Schwartz</i>
10	0060-0062		3/22/06	State's notice of disclosure and supplemental list of witnesses, CR2004-3995, <i>State of Arizona v Schwartz</i>
11	0063		2/27/07	Letter to Mike Fusselman from Brick Storts
12	0064		2/26/07	Investigation report by Mike Fusselman
13	0065-0076		8/23/07	Transcript of telephonic proceedings re· consent documents
14	0077		12/6/07	Letter from Dr. Katz

In addition, the following may be submitted as evidence·

1. Respondent's answer filed in this proceeding, and disclosure statements and responses to discovery requests, including responses to requests for production of documents and responses to requests for admissions, and responses to non-uniform interrogatories.

1 2. Any and all non-objectionable exhibits identified and disclosed by
2 Respondent

3 **Respondent's Exhibits**

4 1 Letter from Dr. Katz dated 12/6/07

5 2. Any and all non-objectionable exhibits listed by the State Bar of
6 Arizona.

7 **VII. OJECTIONS**

8 **State Bar:** None

9 **Respondent:**

10 **VIII. WITNESSES**

11 **State Bar's Witnesses**

12 1. Carl D Macpherson (Adversely)

13 2. Honorable Nanette M. Warner

14 3. Sandi Simpson

15 4 Brick Storts

16 5. Richard Platt

17 6. Karen Weems

18 7. Mike Fusselman

19 8. Sandra Montoya, State Bar Records Manager (if needed)

20 9. Any and all non-objectionable witnesses identified and disclosed by
21 Respondent
22
23
24
25

1 DATED this 1st day of February 2008

2
3
4 
5 Tom Slutes
6 Attorney for Respondent

7 Original filed with the Disciplinary Clerk
8 of the Supreme Court of Arizona
9 this 1st day of February, 2008.

10 by 

11 Copy of the foregoing mailed
12 this 1st day of February, 2008, to:

13 Tom Slutes
14 Slutes, Sakrison & Rogers, P.C.
15 33 N. Stone Ave., Suite 1000
16 Tucson, Arizona 85701
17 Attorney for Respondent

18 Honorable H. Jeffrey Coker
19 Hearing Officer 6R
20 P.O. Box 23578
21 Flagstaff, Arizona 86002

22 Copy of the foregoing hand-delivered
23 this 4th day of February, 2008, to:

24 Lawyer Regulation Records Manager
25 State Bar of Arizona
4201 N. 24th St., Suite 200
Phoenix, Arizona 85016-6288

by: 
DLS dds