

OCT -7 2004

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA  
BY P. J. ...

BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA

IN THE MATTER OF A MEMBER	)	Nos. 98-1232, 99-0835, 00-0585,
OF THE STATE BAR OF ARIZONA,	)	00-1328, 00-1447
	)	
<b>WENDY B. MORGAN,</b>	)	
<b>Bar No. 015503</b>	)	
	)	
	)	<b>DISCIPLINARY COMMISSION</b>
RESPONDENT.	)	<b>REPORT</b>
_____	)	

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 11, 2004, pursuant to Rule 58(e), Ariz. R. S. Ct., for consideration of the Hearing Officer's Report filed June 28, 2004, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent (Agreement) and Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memorandum) providing for a six month suspension retroactive to March 23, 2001, two years of probation retroactive to April 20, 2004,<sup>1</sup> with terms and conditions as set forth in the Order of Reinstatement filed April 20, 2004, and costs of these disciplinary proceedings.

**Decision**

The Commission's standard of review is set forth in Rule 58(b), which states that the Commission reviews questions of law *de novo*. In reviewing findings of fact made by a hearing officer, the Commission applies a clearly erroneous standard. Mixed findings of fact and law are also reviewed *de novo*. *State v Blackmore*, 186 Ariz. 630, 925 P.2d 1347

<sup>1</sup> The Hearing Officer's Report and the Agreement inadvertently list April 19, 2004, the day that the Supreme Court met, as the effective date of reinstatement. See Hearing Officer's Report, p. 2, finding of fact #3 and Tender of Admissions, p. 3, item #3.

(1996) citing *State v. Winegar*, 147 Ariz. 440, 711 P.2d 579 (1985).

1           Upon review, the Commission determined that the record does not support the  
2 finding of mitigating factors 9.32(j) delay and 9.32(m) remoteness of prior offenses.  
3 Although the conduct in these instant matters occurred between four and six years ago, any  
4 delay was attributed solely to Respondent's voluntary Petition for Transfer to Disability  
5 Inactive Status. Respondent was placed on temporary disability inactive status on March  
6 21, 2001 and on indefinite disability inactive status on August 7, 2001. No prejudice  
7 occurred to Respondent while the pending discipline matters were held in abeyance and  
8 moreover, the instant agreed-upon sanction is applied retroactively.  
9

10           In consideration of mitigating factor 9.32(m), the Commission determined that  
11 Respondent's prior informal reprimand was imposed in June of 1999 and the actual  
12 misconduct occurred between 1995 and 1998. The earlier offense was not considered  
13 remote at the time the misconduct occurred in this instant matter. The Commission  
14 therefore, does not find this factor applicable.  
15

16           The Commission was also persuaded by Respondent's argument that her false  
17 statement should not be treated both as a substantive violation<sup>2</sup> and a factor in aggravation,  
18 and therefore, does not find aggravating factor 9.22(f) submission of false evidence, false  
19 statements, or other deceptive practices during the disciplinary process.  
20

21           The Commission concluded however, that the absence of the above mentioned  
22 aggravating and mitigating factors does not affect the overall outcome.

23           Therefore, having found no other findings of fact clearly erroneous, the nine<sup>3</sup>  
24

25 \_\_\_\_\_  
26 <sup>2</sup> In Count Four, Respondent conditionally admits she violated ER 8.1(a) knowingly making a false statement of material fact.

<sup>3</sup> Commissioner Funkhouser did not participate in these proceedings. Anne Phillips, a Hearing Officer from Phoenix, participated as an ad hoc member.

1 members of the Commission unanimously recommend adopting and incorporating by  
2 reference the Hearing Officer's findings of fact, conclusions of law, and recommendation  
3 for a six month suspension retroactive to March 23, 2001, two years of probation  
4 retroactive to April 20, 2004, with terms and conditions as set forth in the Order of  
5 Reinstatement filed April 20, 2004, and costs of these disciplinary proceedings. The terms  
6 of probation are as follows:

7 **Terms of Probation**<sup>4</sup>

- 8 1. Applicant shall be placed on probation for a period of two years retroactive to April  
9 20, 2004.<sup>5</sup> The parties agree that Applicant's probation will be jointly monitored  
10 by the State Bar of Arizona and the State Bar of California.
- 11 2. Applicant shall, within thirty days of the issuance of a final Judgment and Order by  
12 the Supreme Court of Arizona, contact the MAP Director at the State Bar of  
13 Arizona, as well as the director of LAP at the State Bar of California.
- 14 3. Applicant will schedule an intake interview with LAP, to be completed no later  
15 than 90 days after a final Judgment and Order is issued by the Supreme Court of  
16 Arizona. Following the intake interview, applicant will sign an application  
17 agreement, and agree to participate in LAP throughout the evaluation period.
- 18 4. Following the evaluation period, applicant shall enter into a LAP Participation  
19 Agreement within 120 days.
- 20 5. Applicant's LAP Participation Agreement shall be submitted to the State Bar of  
21 Arizona's MAP for approval. Such approval shall not be unreasonably withheld,  
22 provided that the terms of the proposed LAP Participation Agreement substantially  
23 comply with monitoring requirements that would be required if MAP were  
24 supervising the probation.
- 25 6. Applicant shall be responsible for the costs and expenses associated with LAP.  
26 The State Bar of Arizona agrees to waive any fees for Applicant's participation in  
MAP while being monitored by LAP.

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<sup>4</sup> The parties agreed and the Hearing Officer recommended that the terms of probation would not become part of any public record unless a Notice of Non-Compliance was filed. See Report, p. 30-31, item #2 and Tender of Admissions, p. 15, item #2. However, the terms and conditions are previously referenced in the Order of Reinstatement, which is public.

<sup>5</sup> The effective date of Respondent's reinstatement in File No. 03-6002.

7. The parties agree that Applicant's counsel and MAP shall receive all reports generated by LAP. This includes copies of any reports provided by Applicant's therapists submitted to LAP pursuant to the LAP Participation Agreement.
- 1 8. The parties acknowledge that Applicant is currently in therapy with Deborah Allen,  
2 M.A. in California. The State Bar of Arizona agrees that it is preferable for  
3 Applicant to continue to receive therapy with her current therapist, and agrees to  
4 convey this position to LAP. However, Applicant agrees that this provision will  
5 not waive or exempt her from complying with the terms of her LAP Participation  
6 Agreement.
- 7 9. The parties agree that Applicant shall attend therapy sessions at least bi-weekly for  
8 a period of two years. The parties further agree that should Applicant be unable to  
9 make a scheduled appointment due to vacations, out of town trips, illness or other  
10 reasonable justifications, it shall not constitute a breach of probation, if they are  
11 documented and approved by Applicant's therapist and LAP.
- 12 10. Applicant agrees that during her probation period, she will not engage in the private  
13 practice of law as a solo practitioner.
- 14 11. Should Applicant relocate from California to another state during the probation  
15 period, Applicant shall notify MAP. If Applicant moves to Arizona, then the  
16 parties agree that Applicant will enter into a Memorandum of Understanding with  
17 MAP for monitoring of her probation in Arizona. Should Applicant move to  
18 another state, the parties will reach an agreement concerning the monitoring of  
19 Applicant's probation.
- 20 12. Should Applicant relocate to Arizona and resume the practice of law, Applicant  
21 agrees to undergo a full LOMAP audit, to include an audit of Applicant's  
22 procedures for operating a trust account.
- 23 13. In the event Applicant fails to comply with the terms of probation, bar counsel will  
24 file a Notice of Non-Compliance with the hearing officer previously assigned to the  
25 matter. The hearing officer will conduct a hearing within 30 days to determine  
26 whether the terms of probation have been breached, and if so, recommend  
appropriate action and response to such breach. If there is an allegation that  
Applicant failed to comply with any of the foregoing terms, the burden of proof  
will be on the State Bar of Arizona to prove non-compliance by clear and  
convincing evidence. The parties agree that until such time as the Applicant enters  
into a LAP Participation Agreement, should the parties fail to agree concerning any  
of the terms of probation set for herein, the parties will jointly ask the Disciplinary  
Commission, or other imposing entity as applicable, to re-vest Hearing Officer 7I

with jurisdiction of this matter, if appropriate.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of October, 2004.



Craig B. Mehrens, Chair  
Disciplinary Commission

Original filed with the Disciplinary Clerk  
this 7<sup>th</sup> day of October, 2004.

Copy of the foregoing mailed  
this 7<sup>th</sup> day of October, 2004, to:

Michael L. Rubin  
Hearing Officer 7K  
230 Anderson Road  
Prescott, AZ 86301-3023

J. Scott Rhodes  
Respondent's Counsel  
*Jennings, Strauss & Salmon, P.L.C.*  
Two North Central Avenue, 16<sup>th</sup> Floor  
Phoenix, AZ 85004-2393

James D. Lee  
Senior Bar Counsel  
State Bar of Arizona  
111 West Monroe, Suite 1800  
Phoenix, AZ 85003-1742

by: K. Weigand

/mps