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FEB 14 2005
DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY *[Signature]*

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

IN THE MATTER OF A SUSPENDED MEMBER) Nos. 03-1455
OF THE STATE BAR OF ARIZONA,)
)
MARK S. CLARK,)
Bar No. 018280)
) **DISCIPLINARY COMMISSION**
) **REPORT**
RESPONDENT.)

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 15, 2005, pursuant to Rule 58(e), Ariz. R. S. Ct., for consideration of the Amended Hearing Officer's Report filed November 19, 2004, recommending a six month suspension 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 (1996) citing *State v. Winegar*, 147 Ariz. 440, 711 P.2d 579 (1985).

Therefore, having found no findings of fact clearly erroneous, the eight¹ members of the Commission recommend adopting and incorporating by reference the Hearing Officer's findings of fact, conclusions of law, and recommendation for a six month suspension,² and

¹ Anne H. Phillips, a Hearing Officer from Phoenix, participated as an ad hoc member and was opposed. See dissenting opinion below.

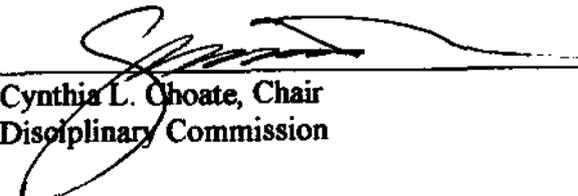
² The Commission notes that given the seriousness of the misconduct in this matter, a suspension of six months and one day may have been more appropriate, but because Respondent is currently suspended in File Nos. 98-1191, et al. and formal reinstatement proceedings are required, the purposes of discipline are met with this recommended sanction.

costs. The Hearing Officer's Report is attached as Exhibit A.

1 **Ad Hoc Commissioner Phillips dissenting:**

2 I respectfully dissent from the majority. Disbarment appears to be the appropriate
3 sanction, as the presumptive sanction under ABA *Standard* 8.1(a), intentionally or knowingly
4 violating the term of a prior disciplinary order. The hearing officer found no mitigation, with
5 three aggravating factors, including refusal to acknowledge the wrongful nature of his
6 conduct. The reasons for the underlying suspension are so egregious that a mere additional
7 six months appears insufficient to protect the public, as Respondent appears to be
8 demonstrating a continuing disregard for our system.
9

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11 RESPECTFULLY SUBMITTED this 14th day of FEBRUARY 2005.

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14 
15 Cynthia L. Choate, Chair
Disciplinary Commission

16 Original filed with the Disciplinary Clerk
17 this 14th day of February, 2005.

18 Copy of the foregoing mailed
19 this 14th day of February, 2005, to:

20 Dwight M. Whitley, Jr.
Hearing Officer 9I
21 33 N. Stone, Suite 2100
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