

**FILED**

OCT 28 2004

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA

BY *[Signature]*

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

IN THE MATTER OF A MEMBER ) Nos. 01-2136, 02-1560, 02-2422,  
OF THE STATE BAR OF ARIZONA, ) 03-0268, 03-1505

**ROBERT H. GREEN, JR.,** )  
**Bar No. 015089** )

RESPONDENT. )

**DISCIPLINARY COMMISSION  
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on October 16, 2004, pursuant to Rule 58(e), Ariz. R. S. Ct., for consideration of the Hearing Officer's Report filed March 23, 2004, recommending rejection 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 60 day suspension, two years of probation upon reinstatement with the State Bar's Law Office Management Assistance Program (LOMAP) including a practice monitor (PM), the Member Assistance Program (MAP), the Ethics Enhancement Program (EEP), and costs of these disciplinary proceedings.

The Hearing Officer concluded that, based on the mitigation present in the record, the agreed-upon sanction consisting of a 60 day suspension with two years of probation was unduly harsh and punitive, and requested that the parties modify the sanction to reflect a 30 day suspension with the same terms of probation, and restitution. See Request for Modification of Agreement filed February 24, 2004.

The State Bar refused to modify the Agreement and appealed; however, oral argument was not requested. The State Bar argued in its brief that the Hearing Officer erroneously concluded as a matter of law that the agreed-upon sanction was unduly harsh

1 and punitive and erred in recommending rejection of the Agreement. *See* State Bar's  
2 Opening Brief filed May 10, 2004. The State Bar maintained the agreed-upon sanction was  
3 proportional and that in arriving at the sanction, the State Bar consented to not appeal the  
4 dismissal of an unrelated matter by the Probable Cause Panelist in File No. 99-1259.

5 Respondent argued overall, that a 30 day suspension and probation was an  
6 appropriate sanction, and the State Bar has failed to explain how a 60 day suspension  
7 protects the public more than a 30 day suspension. Respondent further argued that  
8 doubling an otherwise appropriate and proportional suspension based on a dismissed  
9 charge is improper.

#### 10 Decision

11 The Commission's standard of review is set forth in Rule 58(b), which states that  
12 the Commission reviews questions of law *de novo*. In reviewing findings of fact made by  
13 a hearing officer, the Commission applies a clearly erroneous standard. Mixed findings of  
14 fact and law are also reviewed *de novo*. *State v Blackmore*, 186 Ariz. 630, 925 P.2d 1347  
15 (1996) citing *State v. Winegar*, 147 Ariz. 440, 711 P.2d 579 (1985).

16 Upon review, the nine members of the Commission determined that the Hearing  
17 Officer erroneously concluded as a matter of law that the agreed-upon sanction was unduly  
18 harsh and punitive and erred in recommending rejection of the Agreement.  
19

20 The Commission therefore, unanimously recommended rejecting the Hearing  
21 Officer's Report and Recommendation and accepted and incorporated by reference the  
22 parties' Agreement and Joint Memorandum providing for a 60 day suspension, two years  
23 of probation (LOMAP with PM/MAP and EEP), restitution, and costs of these disciplinary  
24 proceedings. Terms of Probation and Restitution are as follows:  
25  
26

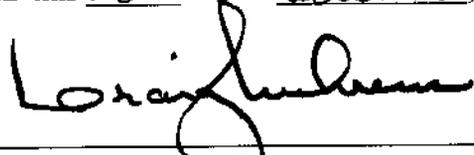
### Terms of Probation

1. Respondent shall be placed on probation for a period of two years following his reinstatement to active status.
2. Respondent shall, no later than 30 days after reinstatement, contact the director of LOMAP to schedule an audit of his trust account and office systems for calendaring and/or docketing. The LOMAP director or designee will conduct an audit no later than 60 days thereafter. Following the audit, Respondent shall enter into a Memorandum of Understanding (MOU) that will be effective for a period of two years from the date upon which all parties have signed the MOU. Respondent shall comply with all recommendations of the LOMAP director or designee.
3. Respondent shall, no later than 30 days after reinstatement, contact the director of MAP to schedule an assessment. The MAP director or designee will conduct an assessment no later than 60 days thereafter. Following the assessment, Respondent shall, if appropriate, enter into MOU that will be effective for a period of two years from the date upon which all parties have signed the MOU. Respondent shall comply with all recommendations of the MAP director or designee.
4. Respondent shall find a PM who shall be approved by the State Bar. The PM shall be an attorney who will supervise Respondent's quality of services rendered and Respondent's supervision of his trust account. The PM shall submit quarterly reports to the State Bar, and the PM will agree to report to the State Bar any manifestation or relapse, unusual behavior or conduct falling below minimum standards of the profession as set forth in the Rules of Professional Conduct, Rule 42, Ariz. R. S. Ct.
5. Respondent shall, no later than six months after his reinstatement, attend EEP.
6. Respondent shall be responsible for costs and expenses associated with participation in LOMAP, MAP and EEP, as well as for the costs and expenses associated with his PM.
7. In the event that Respondent fails to comply with any of the foregoing conditions, and the State Bar receives information, bar counsel shall file with the Hearing Officer a Notice of Non-Compliance, pursuant to Rule 60(a)5, Ariz. R. S. Ct. The Hearing Officer shall conduct a hearing within thirty days after receipt of said notice, to determine whether the terms of probation have been violated and if an additional sanction should be imposed. In the event there is an allegation that any of these terms have been violated, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence.

**Restitution**

City of Scottsdale/Count 3 \$210.00  
Mr. Berutto/Count 5 \$500.00  
**Total: \$710.00**

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of October, 2004.



Craig B. Mehrens, Chair  
Disciplinary Commission

Original filed with the Disciplinary Clerk  
this 28<sup>th</sup> day of October, 2004.

Copy of the foregoing mailed  
this 28<sup>th</sup> day of October, 2004, to:

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