

**FILED**

DEC 13 2004

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

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

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IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )  
  
ANDREW MANKOWSKI, )  
Bar No. 016637 )  
  
RESPONDENT. )

Nos. 03-0310, 03-0703, 03-0871,  
03-1350, 03-1445, 03-1739,  
03-1767, 03-1769, 04-0135,  
04-0328

**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 September 10, 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 and one day suspension, two years of probation upon reinstatement with the State Bar's Law Office Management Assistance Program (LOMAP) including a practice monitor (PM) and the Member's Assistance Program (MAP), participation in fee arbitration, 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).

1 At the request of the Acting Disciplinary Clerk, the State Bar filed a Motion to  
2 Clarify and Supplement the Record before the Disciplinary Commission on November 2,  
3 2004, which was granted. The motion was necessary because since the filing of the  
4 Hearing Officer's Report, in which mitigating factor 9.32(a) absence of a prior disciplinary  
5 record was found, an Order of Probation was filed by the Probable Cause Panelist in File  
6 No. 04-0211. The Commission determined however, that the presence of this new  
7 aggravating factor, 9.22(a) prior disciplinary offenses, does not affect the outcome.

8 Additionally, the Hearing Officer determined that the evidence to support  
9 mitigating factor 9.32(c) personal and emotional problems was not extensive but that the  
10 parties did present evidence that Respondent is a solo practitioner with a diverse practice,  
11 had too many clients and could not maintain support staff to assist him. Respondent's wife  
12 also assisted him with the practice until she was diagnosed with cancer. *See* Hearing  
13 Officer's Report, p. 29. Because the evidence of this factor was limited, little weight is  
14 given in consideration of this factor. The Commission determined however, that the  
15 overall outcome would not be affected.

16 Lastly, the dates in findings of fact # 63 and #64 appear inconsistent. *See* Hearing  
17 Officer Report, p. 11. Copies of the State Bar's screening letters are not part of the record  
18 and consequently, these dates could not be corrected as mere clerical error.

19 Therefore, having found no other findings of fact clearly erroneous, the nine<sup>1</sup>  
20 members of the Commission unanimously recommend adopting and incorporating by  
21 reference<sup>2</sup> the Hearing Officer's findings of fact, conclusions of law,<sup>3</sup> and recommendation  
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26 <sup>1</sup> Commissioners Nelson and Osborne did not participate in these proceedings. Mary Durand, from Phoenix, and former Commissioner Jack Potts, M.D., from Phoenix participated as ad hoc members.

<sup>2</sup> The Hearing Officer's Report is attached herein as Exhibit A.

1 for a six month and one day suspension, two years of probation upon reinstatement  
2 (LOMAP with a PM and MAP), participation in fee arbitration, and costs. The terms of  
3 probation are as follows:

4 **Terms of Probation**

5 1. Upon reinstatement, Respondent shall be placed on probation for a period of  
6 two years, commencing upon the signing by Respondent of a Probation Contract.

7 2. Respondent will, within thirty days of the Supreme Court's Order of  
8 Reinstatement, contact the director of LOMAP. The LOMAP director or his/her designee  
9 will conduct an audit of Respondent's law office no later than thirty days thereafter.  
10 Following the audit, Respondent will enter into a Memorandum of Understanding that will  
11 be effective for a period of two years from the date upon which all parties sign the  
12 Memorandum. Respondent will comply with all recommendations of the LOMAP director  
13 or his/her designee.

14 3. Respondent will, within thirty days of the Supreme Court's final judgment  
15 and order, contact the director of MAP to schedule an assessment of his condition to  
16 practice law. The MAP director or his/her designee will schedule the assessment of  
17 Respondent to take place no later than sixty days thereafter.

18 4. Respondent will be responsible for the costs and expenses associated with  
19 his participation in the MAP and LOMAP programs.

20 5. Respondent shall be assigned a practice monitor for the period of probation.  
21 The reporting terms shall be developed by LOMAP and shall require that the practice  
22 monitor actively monitor Respondent's case load.  
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26 <sup>3</sup> Although the facts support a finding of ER 1.5, the Hearing Officer's conclusions of law inadvertently omitted a violation of ER 1.5 in Count Two. See Report, p. 23 and Tender, p. 7, item #42.

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6. Respondent shall participate in fee arbitration with the named Complainants in Counts Two, Three, Five, Seven and Nine. Respondent will pay restitution to those Complainants as determined by the arbitrator. The Complainants have agreed to participate in fee arbitration.

7. Respondent shall pay the sanction ordered by the court in Count Ten as reflected in the Agreement, Exhibit 2, payable to Nina Soper.

8. 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.

9. Respondent shall pay the costs and expenses incurred in this disciplinary proceeding.

The Commission further requests that Respondent pay all court ordered sanctions, fee arbitration awards, if any, prior to reinstatement.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of December, 2004.

  
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Craig B. Mehrens, Chair  
Disciplinary Commission

Original filed with the Disciplinary Clerk  
this 13<sup>th</sup> day of December, 2004.

1 Copy of the foregoing mailed  
this 13<sup>th</sup> day of December, 2004, to:

2 Jeffrey Messing  
3 Hearing Officer 9X  
4 2999 N. 44<sup>th</sup> Street, Suite 500  
Phoenix, AZ 85018-7252

5 Andrew Mankowski  
6 Respondent  
7 3225 N. Central Avenue, Suite 315  
Phoenix, AZ 85012

8 Michael N. Harison  
9 Bar Counsel  
10 State Bar of Arizona  
11 111 West Monroe, Suite 1800  
Phoenix, AZ 85003-1742

12 by: K. Weigand

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