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FEB 11 2005

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

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IN THE MATTER OF A MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
WILLIAM M. SPENCE,)
Bar No. 002728)
)
RESPONDENT.)

Nos. 03-1172, 03-1378, 03-1665

**DISCIPLINARY COMMISSION
REPORT**

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 Report¹ filed December 6, 2004, recommending a 30 day suspension, two years of probation with the State Bar's Member Assistance Program (MAP) effective upon the signing of the probation contract, 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 eight² members of the Commission unanimously recommend adopting and incorporating by reference the Hearing Officer's findings of fact, conclusions of law, and recommendation for a 30 day

¹ The Commission commends the thoroughness of the Hearing Officer as reflected in his Report specifically, his discussion and findings regarding corroborated testimony, credibility of witnesses, and the extensive proportionality analysis of cases involving sexual misconduct that was provided.

² Commissioner Mehrens recused. Anne H. Phillips, a Hearing Officer from Phoenix, participated as an ad hoc member.

suspension³, two years of probation (MAP) effective upon the signing of the probation contract, and costs of these disciplinary proceedings. The Hearing Officer's Report is attached as Exhibit A. The terms of probation are as follows:

Terms of Probation

1. Respondent shall contact the director of MAP no later than 30 days of the final Judgment and Order to develop a MAP contract in conjunction with Respondent's physician to ensure that no emotional or psychological issues will negatively impact Respondent's ability to practice.

2. Respondent shall participate in a program developed by MAP specifically tailored toward sensitivity training to address the type of conduct at issue in this matter.

3. 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 30 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.

RESPECTFULLY SUBMITTED this 11th day of February, 2005.


Cynthia L. Choate, Chair
Disciplinary Commission

³ The Commission notes that there have been approximately seven cases involving sexual misconduct since *Matter of Piatt*, 191 Ariz. 24, 951 P.2d 889 (1997) was decided. Members of the bar should now be on notice that offensive sexual behavior is not acceptable, and that if such conduct remains prevalent in the legal profession, a lengthier suspension may be appropriate in future cases to deter similar misconduct.

Original filed with the Disciplinary Clerk
this 11th day of February, 2005.

Copy of the foregoing mailed
this 11th day of February, 2005, to:

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/mps