

FILED
FEB 05 2007
DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA
BY: *[Signature]*

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

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3 IN THE MATTER OF A SUSPENDED MEMBER) No. 05-1690
4 OF THE STATE BAR OF ARIZONA,)
5)
6 **VICE, GEORGE, III**)
7 **Bar No. 011753**) **DISCIPLINARY COMMISSION**
8) **REPORT**
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RESPONDENT.)

8 This matter came before the Disciplinary Commission of the Supreme Court of Arizona
9 on November 18, 2006, pursuant to Rule 58, Ariz. R Sup. Ct., for consideration of the
10 Hearing Officer's Report filed September 20, 2006, recommending that Respondent's
11 suspension in File No. 00-0170 be extended for an additional three months, one year of
12 probation with the State Bar's Member Assistance Program (MAP) upon reinstatement, and
13 costs. The Respondent filed an objection and requested oral argument. Respondent and
14 Counsel for the State Bar were present.

16 Respondent argues Probable Cause Panelist McAuliff's participation in File No. 04-
17 1194¹ was inappropriate and violated due process. Respondent asserts that Probable Cause
18 Panelist McAuliff's panel appointment must be declared void *ab inito*. Respondent
19 maintains that the panelist is not a tribunal but an inappropriately installed person.

21 Respondent further argues that the client's documents, ordered by panelist McAuliffe to
22 be produced under a claim of attorney-client privilege, should be returned to avoid any
23 unnecessary prejudice to an ALB claim. Respondent advised that the client, ALB, Matthew

¹ This matter was ultimately dismissed by the State Bar on 12/30/05.

1 Byrne is present in the courtroom today and is prepared to approach the media about this
2 matter.

3 At oral argument, Respondent stated that he is here today exhausting his administrative
4 remedies. Respondent would not address his alleged ethical violations involving his
5 inappropriate communication to the panelist, despite repeated requests by the Disciplinary
6 Commission.

7 Respondent requests that the Hearing Officer's Report be rejected and the matter
8 dismissed. Respondent further requests that the Commission refer this matter for
9 disciplinary action against Probable Cause Panelist McAuliff.

10 In its response, the State Bar argues that Respondent's objection to the Probable Cause
11 Panelist's conflict of interest was overruled. Respondent however, continued to press his
12 objections beyond the permissible limits, thereby disrupting a tribunal and prejudicing the
13 administration of justice. The State Bar advises that it has never taken a position on the
14 conflict of interest issue except to say that it is irrelevant in these proceedings and the ethical
15 violations were found on the basis of undisputed facts.

16 The State Bar further argues that the rules do not state or imply that if the lawyer is right
17 and the tribunal is wrong that the lawyer is free to engage in abusive behavior. Attorneys
18 are obligated to behave respectfully towards the tribunal whether the tribunal is right or
19 wrong. Other remedies were available to Respondent such as an appeal or special action.
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21 The State Bar asserts that the Hearing Officer's findings and conclusions were not
22 clearly erroneous and a measured and reasonable sanction is recommended for the conduct
23 at issue. The State Bar urges the Commission to accept the Hearing Officer's
24 recommendations.
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Commissioner Todd dissenting:

1 I respectfully dissent. Understanding Respondent's conduct was intentional and the
2 disciplinary process suffered accordingly, given the circumstances of the emails, however, I
3 believe an appropriate sanction for this particular conduct is an informal reprimand. That
4 sanction, as the Commission properly found, is insufficient based on Respondent extensive
5 discipline record. Respondent is already suspended for more than a year and as a condition
6 of reinstatement must demonstrate compliance with his 2003 Members Assistance
7 Program/Probation contract.
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9 The Commission is authorized to initiate proceedings to temporarily transfer a lawyer to
10 disability inactive status when it believes a lawyer *may* be incapacitated due to a mental
11 condition to the extent the lawyer *may be* causing harm to the public, legal profession, or the
12 administration of justice. Ariz. Sup. Ct. Rule 63(b)(2). In light of the record in this case and
13 Respondent's conduct at oral argument, rather than another suspension, I believe the
14 Commission should initiate a transfer to disability inactive status. Such an alternative may
15 be a greater assistance to Respondent and the public than another suspension.
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17 **Commissioner Baran dissenting:**

18 I can agree neither with the majority nor my dissenting colleague. I would disbar
19 Respondent. The facts of this matter are as follows:

20 Respondent is a suspended attorney. He was investigated by the Bar for allegations
21 by Mr. Bernier that he was practicing law without a license (2004-1194). During the
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1 investigation a Probable Cause Panelist of the State Bar⁴ issued a subpoena for certain
2 records. The Panelist is the Complainant in the instant matter.

3 In connection with that (since dismissed) disciplinary matter, Respondent e-mailed to
4 the State Bar Panelist accusations that "In lieu of dissembling perhaps you should take some
5 personal responsibility and undo what you did and get off the case." Respondent further e-
6 mailed the Panelist stating that panelist's firm's position was "phony". There were other e-
7 mails that were unflattering. There has been no argument that the panelist was not acting as
8 a judicial officer.

9 Respondent contends that the Commission should examine the entire process leading
10 to the appointment of the Panelist, while the Bar insists that disrespectful conduct toward
11 any tribunal (here, the Panelist) cannot be condoned even if there were an error. I agree with
12 the Bar. In addition, the emails that are the subject of the Complaint were not isolated, nor
13 communicated in the heat of anger; they spanned several days and were numerous.

14
15 In my view, Respondent continues to exhibit the conduct that led to his current
16 suspension. He shows us no respect for the law, the Ethical Rules, the Bar, nor this
17 Commission.⁵ He has consistently demonstrated that he is unable to subordinate his
18 opinions and beliefs to a tribunal. He constitutes a danger to the practice of law and the
19 public.
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23 ⁴ State Bar Panelists are volunteers appointed by the Chairman of the Board of Governors, and are
24 members of that board. Typically four panelists serve in rotation, one week a month. Complainant
25 was one of these panelists. Complainant was not specifically assigned by anyone to Respondent's
26 case, but rather was serving his week of rotation when the subpoena involving Respondent came
across his desk.

⁵ Respondent essentially threatened this Commission with adverse publicity should he receive an
unfavorable ruling. While respondent is free to contact the press as he sees fit, such threats
constitute further proof of his lack of respect for any tribunal.

1 While my dissenting colleague suggests that the disability process might be
2 appropriate, I cannot agree. While the end result (protection of the public) might be
3 desirable, the disability system is not designed for persons who exhibit such blatant
4 disrespect for our system. It is designed for those with true disabilities. There is no
5 evidence before this Commission of a mental or physical disorder that would qualify
6 respondent for disability status. Although the issue is not properly before us, I have at least
7 an initial doubt that an apparent personality disorder would qualify for disability
8 consideration.

9 Original filed with the Disciplinary Clerk
10 this 5th day of February, 2007.

11 Copy of the foregoing mailed
12 this 5th day of February, 2007, to:

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25 by Grenda Demerquez
26 /mps