

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE MATTER OF A MEMBER)	No. 05-1572
OF THE STATE BAR OF ARIZONA,)	
)	
MARSHALL FEALK,)	
Bar No. 003332)	DISCIPLINARY COMMISSION
)	REPORT
RESPONDENT.)	
_____)	

This matter first came before the Disciplinary Commission of the Supreme Court of Arizona on October 13, 2007, pursuant to Rule 58, Ariz.R Sup.Ct., for consideration of the Hearing Officer's Report filed August 21, 2007, recommending acceptance of the Tender of Admissions and the Agreement for Discipline by Consent (Tender) and the Joint Memorandum (Joint Memorandum) in Support of Agreement for Discipline by Consent providing for censure, one year of probation with the State Bar's Trust Account Program (TAP), Trust Account Ethics Enhancement Program (TAEHP), and costs. No formal complaint was filed.

The Commission determined that prior discipline was present and that aggravating factor 9.22(b) selfish or dishonest motive was inconsistent with the finding of a negligent mental state. The Commission rejected the agreement and remanded the matter for further proceedings See Commission Report filed November 1, 2007.

No hearing was held and an Amended Joint Memorandum¹ in Support of Tender of Admissions for Discipline by Consent was filed on December 5, 2007. The parties

¹ An amended Tender was not filed and the facts/conditional admissions remain the same

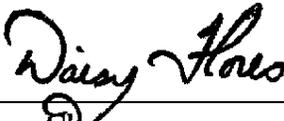
1 eliminated aggravating factor 9 22(b), and included aggravating factor 9.22(a) prior
2 discipline offset by mitigating factor 9 32(m) remoteness of prior offenses

3 The matter again came before the Commission on February 23, 2008, for
4 consideration of the Amended Hearing Officer's Report filed February 4, 2008,
5 recommending acceptance of the original Tender and Amended Joint Memorandum
6 providing for censure, one year of probation (TAP and TAEPP), and costs of these
7 disciplinary proceedings

8 **Decision**

9 Based on these facts, the eight members² of the Disciplinary Commission
10 unanimously reject the Tender and Amended Joint Memorandum and remand this matter
11 to Hearing Officer 9D for further proceedings.

12 RESPECTFULLY SUBMITTED this 19th day of March, 2008

13
14
15 

16 _____
Daisy Flores, Chair
Disciplinary Commission

17
18 Original filed with the Disciplinary Clerk
this 19th day of March, 2008.

19
20 Copy of the foregoing mailed
this 20th day of March, 2008, to:

21 Juan Perez-Medrano
22 Hearing Officer 9D
23 360 North Court Avenue
24 Tucson, AZ 85701

25
26 _____
² Commissioner Belleau did not participate in these proceedings. Former Commissioner Barbara Atwood, a lawyer member from Tucson, participated as an ad hoc member

1 Robert J. St Clair
2 Respondent's Counsel
3 *Freeman & St Clair, PLLC*
4 215 N. Court Avenue, 2nd Floor
5 Tucson, AZ 85071-1045

3 Patricia J. Ramirez
4 Bar Counsel
5 State Bar of Arizona
6 4201 North 24th Street, Suite 200
7 Phoenix, AZ 85016-6288

7 by: *CS*

8 /mps

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26