IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THERESA SHERIDAN,
Plaintiff/Appellant,

v.

PIMA COUNTY MERIT SYSTEM COMMISSION,
Defendant/Appellee,

AND

PIMA COUNTY ATTORNEY'S OFFICE
Real Party in Interest/Appellee.

No. 2 CA-CV 2016-0028
Filed October 11, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20146156
The Honorable Christopher P. Staring, Judge

AFFIRMED

COUNSEL

Theresa Sheridan, Tucson
In Propria Persona

DeConcini McDonald Yetwin & Lacy, P.C., Tucson
By Barry Corey
Counsel for Defendant/Appellee

Barbara LaWall, Pima County Attorney
By Thomas Weaver, Deputy County Attorney, Tucson
Counsel for Real Party in Interest/Appellee

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Judge Howard concurred.

M I L L E R, Judge:

¶1 This case arises out of the firing of prosecutor Theresa Sheridan by the Pima County Attorney. The Pima County Merit Commission ("the Commission") affirmed her dismissal and she sought judicial review in the superior court. The superior court affirmed the Commission's decision. Sheridan now appeals, arguing the superior court erred by upholding the decision because, inter alia, the county attorney violated her rights to due process and dismissed her without just cause, the Commission's decision was arbitrary and capricious, and there was no substantial evidence supporting her dismissal. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the Commission's decision. *See Golob v. Ariz. Med. Bd. of State*, 217 Ariz. 505, n.1, 176 P.3d 703, 705 n.1 (App. 2008).[1] In February 2014, Sheridan was working for the Pima County Attorney's Office, and had been assigned to a case in which the

[1]Although Sheridan argues the trial court erred as well, we review de novo the court's ruling. *See Carlson v. Ariz. State Pers. Bd.*, 214 Ariz. 426, ¶ 13, 153 P.3d 1055, 1059 (App. 2007).

defendant, Maricela Gray, was charged with driving while there was a drug or its metabolite in her body. Gray's blood tests indicated she had amphetamine and oxycodone in her system, and before trial she disclosed that she intended to use the affirmative defense of having a valid prescription for the drugs. Sheridan moved for additional disclosure of the defendant's prescription records. Judge Teresa Godoy reviewed the records and made redactions. Judge Godoy also ordered the unredacted copy be filed under seal. The order stated that the redacted copies were "available for the parties to pick up in chambers."

¶3 On February 19, a Wednesday, Judge Godoy's judicial administrative assistant (JAA) emailed Sheridan, telling her to "stop by chambers after [her] morning coverage to pick up the patient[']s prescription history." Sheridan responded later that morning, saying she would stop by in the early afternoon before a trial. The JAA answered that the documents would be in the judge's outbox if she was at lunch. Sheridan did not pick up the documents because she was too busy with trial, so she called and left a message the next day saying she would stop by and pick them up.

¶4 Judge Godoy's division was on vacation that Thursday and Friday, but her law clerk was in the office with the door open on Thursday afternoon. The law clerk saw Sheridan just outside the door near the outbox and told her that if she did not find what she was looking for there, she would need to come back on Monday. Sheridan then walked into chambers and said the JAA had told her there would be something for her in the outbox. The law clerk told Sheridan she could come back on Monday because the division was closed. Sheridan then looked through papers on a counter next to the JAA's desk, picked up set of papers with a court order on top, and said she found what she was looking for. The law clerk told Sheridan she was "uncomfortable with [her] taking that." Despite indicating it was the sought-after document, Sheridan also said she did not understand the document. Nonetheless, she put it in in her bag and walked out. The law clerk was not sure Sheridan had heard her say she was uncomfortable.

¶5 When Sheridan returned to her office after hours, she saw that the redacted documents had been sent to her through

interoffice mail. She then reviewed what she had taken from chambers and noticed there were no black lines indicating redactions. She placed the unredacted documents in an envelope, sent the envelope to the JAA with a note of apology, and sent an email to the JAA on Friday morning. Sheridan did not inform opposing counsel, the court, or any of her superiors about what had occurred.

¶6 Early the next week, the JAA and law clerk discussed the incident and informed Judge Godoy. The judge scheduled a hearing on Tuesday. At the hearing, the law clerk told the court about Sheridan's taking the documents from chambers, and Sheridan explained repeatedly that she "never looked" at the unredacted copy. After the hearing, Judge Godoy called Sheridan's supervisor and told him what had occurred. The supervisor stated it was the first time he had heard about it. In March, Sheridan was given a "letter of counseling," which cited merit system and personnel policies she had violated. The letter stated that it was unprofessional to look through papers on another person's desk without permission and noted that her supervisor had "previously discussed [Sheridan's] interactions and dealing with others, particularly the court, and . . . talked about how [she] need[ed] significant improvement in this area."

¶7 In April, Gray moved for sanctions due to prosecutorial misconduct. At a hearing on that motion, Sheridan testified she had turned over the sheet with the court's order and had seen that the records she had taken were "unredacted, with no black lines." She also said she glanced at the document briefly. Judge Godoy concluded Sheridan had committed intentional prosecutorial misconduct and dismissed the case against Gray. In doing so, the court made six findings: (1) Sheridan ignored the initial request from the law clerk that she return on Monday; (2) she came into chambers uninvited and removed an item against the law clerk's wishes; (3) she looked at the unredacted medical records; (4) she never notified defense counsel; (5) she sent an email to the JAA without copying defense counsel; and (6) she "[a]vow[ed] to the Court six separate times [during the February hearing] that she never looked at the documents."

¶8 Shortly after the hearing on the motion for sanctions, Sheridan was placed on administrative leave with pay "due to an investigation." Sheridan later met with her supervisors at a "pre-action meeting" and was eventually dismissed. Her notice of dismissal cited incompetence, dishonesty, and violation of various county rules of conduct and Arizona Supreme Court Rules and Rules of Professional Conduct.

¶9 Sheridan appealed to the Commission. She argued she was a competent prosecutor who had been truthful and consistent in describing what happened to the documents. After eight days of hearings, the Commission unanimously upheld the dismissal. Each member of the Commission orally explained his or her reasoning. Two members explained that a key factor in their decisions was the difference between Sheridan's avowals at the first hearing—that she never looked at the documents—and her testimony at the later hearing that she had seen the unredacted list. The third member concluded that all of the facts regarding the Gray case, including picking up the documents and failing to inform opposing counsel, showed a "severe lack of judgment."

¶10 Sheridan sought review in the superior court. After an evidentiary hearing and oral argument, in an eleven-page under advisement ruling, the trial court concluded: "Substantial evidence supports the actions of the Pima County Attorney in terminating Ms. Sheridan's employment, and the Commission's decision to uphold the termination and dismiss Ms. Sheridan's appeal. Neither entity has abused its discretion, acted contrary to law, or acted in an arbitrary or capricious manner." The court upheld the dismissal and entered judgment pursuant to Rule 54(c), Ariz. R. Civ. P.

¶11 Sheridan timely appealed.[2] We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) (providing appellate

[2] Sheridan filed a notice of appeal while her motion for reconsideration was pending. Pursuant to her request, we suspended the appeal and revested jurisdiction pending determination of the motion. We later vacated that order and reinstated the appeal.

jurisdiction for cases "permitted by law to be appealed from the superior court") and 12-913 (final decision of superior court in action to review decision of administrative agency "may be appealed to the supreme court"). *See Svendsen v. Ariz. Dep't of Transp., Motor Vehicle Div.*, 234 Ariz. 528, ¶ 13, 323 P.3d 1179, 1184 (App. 2014) (construing § 12-913 as allowing appeal to court of appeals).

Discussion

¶12 On appeal from a merit commission's decision pursuant to the Administrative Review Act, the superior court "shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion." A.R.S. § 12-910(E). On appeal to this court, "we review de novo the superior court's judgment, reaching the same underlying issue as the superior court: whether the administrative action was not supported by substantial evidence or was illegal, arbitrary and capricious, or involved an abuse of discretion." *Carlson v. Ariz. State Pers. Bd.*, 214 Ariz. 426, ¶ 13, 153 P.3d 1055, 1059 (App. 2007). Further, "[n]either this court nor the superior court may substitute its judgment for that of the agency on factual questions or matters of agency expertise, but we apply our independent judgment . . . to questions of law, including questions of statutory interpretation and constitutional claims." *Lewis v. Ariz. State Pers. Bd.*, 742 Ariz. Adv. Rep. 14, ¶ 15 (Ct. App. July 7, 2016), *quoting Carlson*, 214 Ariz. 426, ¶ 13, 153 P.3d at 1059.

¶13 Sheridan argues generally that the county attorney violated merit system rules as well as her due process rights, it acted arbitrarily and capriciously, and her dismissal was not supported by substantial evidence. She also contends the trial court used the incorrect standard of review, failed to address arguments raised in her superior court opening brief, improperly rejected her prosecutorial immunity argument, and excluded evidence at the evidentiary hearing. We address each argument in turn.

Dismissal Procedure

¶14 Sheridan argues the procedure used by the county attorney, beginning with her placement on paid administrative leave and through its actions at the Commission hearings, violated merit system rules and county policies as well as her right to due process under the Fifth and Fourteenth Amendments of the United States Constitution.[3]

¶15 Sheridan's first contention is that the county attorney violated Pima County Personnel Policy 8-107(A)(3) when it placed her on administrative leave with a letter that was signed by Chief Deputy County Attorney Amelia Cramer rather than County Attorney Barbara LaWall. Personnel Policy 8-107(A)(3) allows the "Appointing Authority" to place an employee on administrative leave with pay "when it is determined to be in the best interest of the County." "Appointing Authority" as defined "include[s] the . . . County Attorney." Pima Cty. Merit Sys. R. 1.06. As the trial court found, nothing in the language of the policy requires that LaWall must personally sign the notice. Moreover, Sheridan notes in her opening brief that the undisputed testimony was that LaWall "made the decision to place Sheridan on administrative leave." That complied with the plain language of the policy.

¶16 As regards Sheridan's claim that her placement on leave did not follow proper procedures, Sheridan may not appeal her

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[3]Sheridan also argues the trial court "failed to conduct a de novo review of the issues of law concerning [the county attorney's] violation of Sheridan's procedural due process right," citing "issues [raised] in her superior court opening brief, yet . . . notably absent from the superior court's December 3, 2015 ruling." Sheridan is correct that the court did not expressly use the term "due process" in its ruling. Nonetheless, the court addressed her underlying arguments that she "was disciplined twice for the same conduct," and "improperly placed on administrative leave," as well as her arguments concerning the hearing procedure generally. Moreover, this court addresses de novo each due process argument raised in her appeal.

placement on leave with pay. As the trial court noted, the Merit System Rules contain an exclusive list of matters that may be appealed, and leave with pay is not included. Pima Cty. Merit Sys. R. 14.1. Sheridan argues only that she could appeal her leave within this appeal because her dismissal "flowed directly from" her initial placement on leave. Although she was dismissed after placement on leave, placement on leave does not always "flow[] directly" to dismissal. *See* Pima Cty. Pers. Policy 8-107(A)(3)(c) ("At the conclusion of administrative leave, the employee shall be returned to work and advised of any appropriate action."). Placement on leave was a separate decision from which appeal was not available.[4] Pima Cty. Merit Sys. R. 14.1.

¶17 Next, Sheridan argues the county attorney violated her rights to procedural due process when placing her on leave because the notice she was given did not provide specific reasons for the action and instead referred only to an investigation. A public employee may invoke the right to procedural due process found in the Fifth and Fourteenth Amendments if she asserts a constitutionally protected interest in life, liberty, or property. *Deuel v. Ariz. State Sch. for Deaf & Blind*, 165 Ariz. 524, 526, 799 P.2d 865, 867 (App. 1990); *see also Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538, 542 (1985). Generally, there is no deprivation of a property right by being placed on leave with pay. *See Loudermill*, 470 U.S. at 544-45 (footnote omitted) ("[I]n those situations where the employer perceives a significant hazard in keeping the employee on the job, it can avoid the problem by suspending with pay."); *accord Pavlik v. Chinle Unified Sch. Dist. No. 24*, 195 Ariz. 148, ¶ 34, 985 P.2d 633, 641 (App. 1999). Sheridan, however, argues she was deprived of liberty because her reputation was damaged and she suffered mental and emotional distress when her co-workers saw her escorted out of the office as her administrative leave began. She contends such circumstances require notice of the specific allegations under investigation.

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[4]Further, Sheridan does not indicate where in the record this issue was raised with the Commission, and we do not see that it was.

¶18 Sheridan relies on *Vanelli v. Reynolds School District No. 7*, 667 F.2d 773 (9th Cir. 1982), to argue her liberty interest was implicated when she was escorted out of the office. *Vanelli*, however, is distinguishable. In that case, the plaintiff was terminated at a public school board hearing with no opportunity to respond to the charges until a later hearing. *Id.* at 776. The court found that the process by which he was terminated implicated his liberty and property interests and that a pre-termination hearing was constitutionally required. *Id.* at 777-78. Even assuming Sheridan's liberty interest was implicated by the manner in which she was escorted out of the office, she had sufficient notice of the reasons for being placed on administrative leave, as it occurred within hours of the court's finding that she had committed intentional prosecutorial misconduct. *See Pavlik*, 195 Ariz. 148, ¶¶ 35-43, 985 P.2d at 641-42 (noting employee who was not given written notice of charges before placement on leave could have asked for reasons).

¶19 Sheridan next contends the county attorney "improperly used a judge's adverse prosecutorial misconduct ruling to dismiss Sheridan without State Bar action, and even though she had already been counseled under merit system rules for mishandling records." In essence, Sheridan contends she was punished twice for the same conduct because she had already accepted responsibility for taking the documents when given the letter of counseling.

¶20 As her supervisor explained, the letter of counseling addressed only the February incident in which she took the documents, and the "game changer was . . . her testimony at the May hearing being significantly different." Because the letter predated Sheridan's testimony at the May hearing, it could not have addressed the fact that her statements changed between February and May. Moreover, Judge Godoy's finding of intentional prosecutorial misconduct was relevant to the dismissal. The county attorney could properly rely on Judge Godoy's ruling as a separate, independent event.

¶21 Sheridan also appears to argue the county attorney could not take into account potential ethical violations due to

dishonesty in terminating her, because attorney ethical violations are the purview of the State Bar of Arizona. She cites only *In re Peasley*, 208 Ariz. 27, n.14, 90 P.3d 764, 772 n.14 (2004), in which our supreme court noted that a judge's findings in an underlying criminal case do not necessarily determine whether an ethical violation has occurred. *Peasley*, however, does not support Sheridan's argument that an attorney may not be fired for dishonesty without a finding of dishonesty by the state bar.

¶22 Regarding the hearing process, Sheridan argues the county attorney violated her due process rights to an impartial hearing before the Commission when counsel for the county attorney repeatedly asked whether there was a state bar complaint against her and told the Commission it was bound by Judge Godoy's findings. "[A] proper merit system must provide an aggrieved merit system employee with a hearing in front of a neutral body before discipline decisions become final." *Pima Cty. v. Pima Cty. Law Enf't Merit Sys. Council*, 221 Ariz. 224, ¶ 14, 119 P.3d 1027, 1030 (2005); *see also Deuel*, 165 Ariz. at 526, 799 P.2d at 867 (continued employment with state agency constitutionally protected property right). We do not find a direct, causal link between the questions at the hearing and a violation of due process.

¶23 The county attorney's counsel first asked Sheridan whether she had any contact with the state bar regarding this case. Sheridan's counsel objected that any action would have been subsequent to the dismissal and therefore would not be relevant to the dismissal itself. The Commission chair agreed. Sheridan's former supervisor testified about the consideration taken before placing her on leave and stated, "[T]he game changer was the intentional misconduct finding. . . . That's going to be reported to the State Bar. I now have an attorney who has been found to have engaged in intentional misconduct, and until we investigated those facts fully, she could not appear in court." Later, the same supervisor stated, "This is an attorney who is found, at least by the Court, notwithstanding what eventually the Bar decides, that she's engaged in misconduct, so that's a problem." Sheridan did not object to the supervisor's statements. Finally, Sheridan's counsel asked if she was an active member of the state bar and if any

sanctions had been imposed against her license, and she answered that she was an active member with no sanctions. The Commission chair followed up with a question of whether there was any complaint to the bar pending, and Sheridan answered that the complaint made would not affect her ability to work because she would "still have a complete, active, unrestricted Bar license. No suspension. No nothing."

¶24 Sheridan argues all of these statements resulted in a hearing before a non-neutral body. In context, however, it was clear the Commission knew any bar action post-dated the dismissal, and ultimately, Sheridan herself explained that the pending bar action would not affect her ability to work as a prosecutor. The references to the state bar did not deprive Sheridan of a fair and impartial hearing.

¶25 Likewise, the statement made by the county attorney's counsel, that he was "bother[ed]" by the possibility that the Commission could "rehear this case and make a . . . finding of fact . . . different from a sitting Superior Court judge," did not prejudice Sheridan. Indeed, the Commission's counsel immediately told the Commission it was "not bound by" Judge Godoy's findings. Two commissioners then posited, "If we were bound by them . . . [w]hy are we here?" Finally, one of the commissioners focused on dishonesty in affirming Sheridan's termination, explaining "it boil[ed] down to" the difference between the two transcripts. In context, it is apparent the Commission was aware of its role as a neutral fact-finder regarding the dismissal decision and understood it was not bound by the findings of Judge Godoy in the criminal case. Sheridan was not deprived of a fair and impartial hearing before the Commission.

Prosecutorial Immunity

¶26 Sheridan next contends she had prosecutorial immunity from dismissal by the county attorney. To support this argument, she cites two cases in which prosecutors were found to have immunity against civil liability from defendants for actions taken in a criminal case, *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009), and *Imbler v. Pachtman*, 424 U.S. 409 (1976), as well as an Arizona case in

which the court held that state personnel have immunity from civil rights claims arising out of prosecution of a civil suit, *State v. Superior Court*, 186 Ariz. 294, 921 P.2d 697 (App. 1996). These cases do not support the proposition that a prosecutor may avoid employment sanctions for her conduct during a case, and Sheridan does not explain why the rules in those cases should be expanded to include such a situation. Prosecutorial immunity did not protect Sheridan from dismissal.

Arbitrary or Capricious Dismissal

¶27 Sheridan argues the Commission acted arbitrarily and capriciously in upholding her termination because it considered the issue of dishonesty where no state bar action had occurred and because she was treated differently than other deputy county attorneys.[5] An arbitrary action is "unreasoning action, without consideration and in disregard of the facts and circumstances." *Maricopa Cty. Sheriff's Office v. Maricopa Cty. Emp. Merit Sys. Comm'n (Juarez)*, 211 Ariz. 219, ¶ 14, 119 P.3d 1022, 1025 (2005). "Arbitrariness can arise, for example, when similarly situated employees receive differing sanctions for the same offense" or if "a punishment . . . [is] unreasonably disproportionate to the offense." *Id.* n.6.

¶28 Sheridan appears to argue the Commission's actions were arbitrary because it "exceeded its authority" by citing to attorney ethical rules in her notice of dismissal, which are not explicitly listed as approved reasons for dismissal in Pima County Merit System Rule 12.1(C). All of the ethical rules cited, however, implicate dishonesty, which is a dismissible offense. Rule 12.1(C)(6).

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[5]She also argues here that the trial court used the incorrect standard of review, stating she requested review under an arbitrary-and-capricious standard, and the court's list of issues raised on appeal used the abuse-of-discretion standard. In the context of the entire decision, however, it is clear the court correctly considered whether the action "was illegal in that it was arbitrary, capricious or involved an abuse of discretion." *See Ariz. Bd. of Regents v. Superior Court*, 106 Ariz. 430, 430, 477 P.2d 520, 520 (1970); *see also* § 12-910(E).

Sheridan then argues there was no basis to terminate her for dishonesty without state bar action. She contends she "was entitled to due process first through the State Bar for any lawyer professional conduct or ethics issues." She cites no case law or rules for this contention, and we are aware of none.

¶29 Next, Sheridan contends she was treated differently than similarly situated employees, specifically two deputy county attorneys who were found to have committed prosecutorial misconduct "but remained employed with [the county attorney's office] in some capacity until **after** the State Bar took action." She also contends the trial court erred by failing to admit evidence relating to those two attorneys. Ultimately, however, Sheridan admits that both prosecutors were dismissed from employment; therefore, their sanctions were the same as hers and her sanction was not arbitrary or capricious. *See Juarez*, 211 Ariz. 219, n.6, 119 P.3d at 1025 n.6. Further, even assuming evidence of their dismissals should have been admitted, those incidents would not support the proposition that termination is prohibited in the absence of state bar action. Rather, they establish only that prosecutors have been terminated after being disbarred or suspended. Sheridan again cites no rule or case law to support her evidentiary argument, and we are aware of none. The Commission's actions in upholding Sheridan's dismissal were not arbitrary or capricious.

Substantial Evidence for Dismissal

¶30 Sheridan contends the trial court erred when it found substantial evidence of dishonesty. Dishonesty means "a willful perversion of truth in order to deceive, cheat, or defraud." *Pima Cty. v. Pima Cty. Merit Sys. Comm'n (Mathis)*, 189 Ariz. 566, 570, 944 P.2d 508, 512 (App. 1997), *quoting* Merriam-Webster's Collegiate Dictionary 333. As noted above, we independently examine the record to determine whether there is substantial evidence to support the Commission's ruling. *Carlson*, 214 Ariz. 426, ¶ 13, 153 P.3d at 1059. We do not re-weigh the evidence. *Mathis*, 189 Ariz. at 569, 944 P.2d at 511. "If an agency's decision is supported by the record, substantial evidence exists to support the decision even if the record also supports a different conclusion." *JHass Grp. L.L.C. v. Ariz. Dep't of Fin. Insts.*, 238 Ariz. 377, ¶ 37, 360 P.3d 1029, 1039 (App. 2015),

quoting Gaveck v. Ariz. State Bd. of Podiatry Exam'rs, 222 Ariz. 433, ¶ 11, 215 P.3d 1114, 1117 (App. 2009).

¶31 Sheridan contends her differing explanations between the February and May hearings were honest mistakes and that her six statements from the February hearing that she never looked at the documents were taken out of context. However, a review of those statements indicates that at the first hearing, she repeatedly told the judge she did not look at the documents under the cover sheet at all.[6]

¶32 As revealed by her statements at the May hearing, Sheridan did indeed look—albeit briefly—at the documents. Sheridan's repeated avowals to the contrary in February alone provide substantial evidence supporting a finding of dishonesty.

¶33 Sheridan also argues subsequent actions by the state bar indicate there was no substantial evidence to support dismissal for

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[6]Sheridan's statements were as follows:

> "I didn't think anything about it. And I never looked at it."
>
> "When I saw this and then looked at your document for the very first time, I can avow to you I never looked at the un-redacted copy."
>
> "But I can avow to you, your Honor, I did not look at your original document."
>
> "And I avow to the Court that I never looked at the un-redacted copy because I was in trial the entire time."
>
> "I never opened the green copy and examined the documents."
>
> "And I honestly, with no prejudice to Ms. Stiles' client . . . I didn't look at the list."

dishonesty. Specifically, she contends that because her consent agreement with the state bar implicated only fairness to the opposing party and counsel and respect for rights of others—but did not relate to dishonesty—there was not substantial evidence of dishonesty.[7] However, senior bar counsel testified that there had been enough evidence to investigate rule violations involving dishonesty and candor to the tribunal; nonetheless, the bar chose to settle the complaint. Indeed, bar counsel explained:

> We looked at the ABA standards as to what discipline we felt would be appropriate. . . . Judge Godoy had made two allegations about [Sheridan]. One, that [she] had taken some documents from [Judge Godoy's] chambers inappropriately; and two, that [she] w[as] subsequently dishonest or lied about it in subsequent hearings. The offer we made [Sheridan] was [she] would be admitting to the taking of the documents . . . and . . . would take a reprimand . . . and in exchange, we would agree not to bring the charges about the dishonesty.

He explained those charges were dropped pursuant to a plea agreement, not due to insufficient evidence. Although, as Sheridan notes, bar counsel agreed that he was unsure of proving his case by clear and convincing evidence in regard to the dishonesty counts, the state bar did not dismiss the complaint due to insufficient evidence.

¶34 Finally, Sheridan argues there was insubstantial evidence of incompetence, another charge listed in her dismissal. Although she focuses on years-old performance evaluations she argues were irrelevant, there is substantial evidence of incompetence

[7]In the consent agreement, Sheridan conditionally admitted her conduct violated Ariz. R. Sup. Ct. 42, ER 3.4(c) (fairness to opposing party and counsel) and ER 4.4(a) (respect for rights of others).

even without taking those evaluations into account. The mishandling of the documents and misrepresentations to the court alone support a finding of incompetence; moreover, several months before the incident, Sheridan's supervisors had met with her regarding recent performance issues in court. The documented verbal counseling detailed recent instances regarding her presentation and demeanor in the courtroom, which also "mirror[ed] problems [Sheridan] . . . had in the past." Substantial evidence supports the finding of incompetence.

Disposition

¶35 For the foregoing reasons, we affirm. Sheridan requests attorney fees on appeal pursuant to A.R.S. § 12-348(A)(2), which allows a court to award fees to a party who "prevails by an adjudication on the merits" in a proceeding to review a government agency decision. Because Sheridan has not prevailed, we deny her request.