

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2004-CC-00637-COA

MISSISSIPPI DEPARTMENT OF CORRECTIONS

APPELLANT

v.

JACQUELINE L. MAXWELL

APPELLEE

DATE OF JUDGMENT:	2/20/2004
TRIAL JUDGE:	HON. WINSTON L. KIDD
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	OFFICE OF THE ATTORNEY GENERAL BY: JANE L. MAPP
ATTORNEY FOR APPELLEE:	WILLIAM HARVEY GRESHAM
NATURE OF THE CASE:	CIVIL - STATE BOARDS AND AGENCIES
TRIAL COURT DISPOSITION:	FINDINGS OF THE EAB AFFIRMED
DISPOSITION:	REVERSED AND THE FINDING OF THE ADMINISTRATIVE REVIEW BOARD IS REINSTATED - 05/10/2005
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE LEE, P.J., GRIFFIS AND ISHEE, JJ.

LEE, P.J., FOR THE COURT:

FACTS AND PROCEDURAL HISTORY

¶1. In October 2000, Jacqueline Maxwell worked as a correctional case manager/counselor for the Mississippi Department of Corrections (MDOC). Maxwell was assigned to 200 inmates, including Eric Jones. As part of her duties as a case manager and counselor, Maxwell counseled inmates regarding their status at the facility including behavior modification to obtain limited privileges in the facility. Maxwell was also responsible for counseling inmates regarding other problems at the facility. Her duties required her to

see each of the inmates a minimum of once a month. On January 10, 2001, Maxwell received a handwritten correspondence with an attachment from Jones, indicating that Jones was suffering from a state of depression due to the recent holiday season. Maxwell wrote a response to Jones that same day, using a counseling technique described as “client-therapy relationships.” Maxwell argues that by using this method she was attempting to develop an effective counseling relationship with Jones. MDOC argues that Maxwell was involved in an improper relationship with Jones, which is against MDOC policy.

¶2. Maxwell was sent notice of an Administrative Review Hearing on February 9, 2001. The agency administrative hearing was held on February 26, 2001, after which the hearing officer determined that MDOC had sufficient cause to recommend that MDOC terminate Maxwell’s employment. On March 20, 2001, Maxwell received notice that her employment with MDOC was terminated.

¶3. Maxwell appealed this termination with the Employee Appeals Board (EAB). The EAB’S reviewing officer determined that Maxwell had indeed violated MDOC’s policy against forming personal relationships with inmates, however that the violation did not warrant termination. The EAB set aside Maxwell’s termination and reinstated Maxwell to her former position, but the reinstatement was without back pay. The reviewing officer further ordered that a written reprimand be placed in Maxwell’s personnel file.

¶4. MDOC appealed to the Full Board, which affirmed the reviewing officer’s decision. MDOC then sought review in the circuit court, which subsequently affirmed the board’s decision to uphold Maxwell’s reinstatement without back pay and written reprimand. It is from this affirmance that MDOC now appeals, arguing that the circuit court erred in affirming the Employee Appeals Board and the reviewing officer’s decision to modify MDOC’s disciplinary action against Maxwell.

STANDARD OF REVIEW

¶5. This Court's standard of review of an administrative agency's findings and decisions is well established, as enunciated in *Yarbrough v. Mississippi Employment Sec. Comm'n*, 841 So. 2d 1193 (Miss. Ct. App. 2003).

An agency's conclusions must remain undisturbed unless the agency's order 1) is not supported by substantial evidence, 2) is arbitrary or capricious, 3) is beyond the scope or power granted to the agency, or 4) violates one's constitutional rights. A rebuttable presumption exists in favor of the administrative agency, and the challenging party has the burden of proving otherwise. Lastly, this Court must not reweigh the facts of the case or insert its judgment for that of the agency.

(Citing *Lewis v. Mississippi Employment Sec. Comm'n*, 767 So. 2d 1029 (¶9) (Miss. Ct. App. 2000)).

The decision of an administrative agency is arbitrary “when it is not done according to reason and judgment, but depending on the will alone. An action is capricious if done without reason, in a whimsical manner, implying either a lack of understanding of or disregard for the surrounding facts and settled controlling principles.” *Mississippi State Dep't of Health v. Natchez Comm. Hosp.*, 743 So. 2d 973, 977 (¶13) (Miss. 1999) (citations omitted). The findings of the employing agency are entitled to a presumption of correctness. *Mississippi Dep't of Corrections v. Harris*, 831 So. 2d 1190, 1192 (¶10) (Miss. Ct. App. 2002). Regarding the burden of proof in such cases, our supreme court has stated that “the statute and administrative regulations clearly place the burden of persuasion on the aggrieved employee to demonstrate that the reasons given are not true. . . . unless the employee carries the burden of persuasion that the alleged conduct did not occur, the employee has no right to have the employment decision overturned.” *Richmond v. Miss. Dep't. of Human Services*, 745 So. 2d 254, 258 (¶14) (Miss. 1999).

¶6. In our analysis we must also consider the following rule:

The Employee Appeals Board may modify an action of a responding agency but may not increase the severity of such action on the appealing party. If the responding agency has

acted in accordance with the published policies, rules and regulations of the State Personnel Board, and if the personnel action taken by the responding agency is allowed under said policies, rules and regulations, the Employee Appeals Board shall not alter the action, including but not limited to the compensation paid to the employee, taken by the agency.

S.P.B. Rule 10.40.22 (B) (Rev. 1999).

I. DID MDOC ACT ARBITRARILY AND CAPRICIOUSLY IN TERMINATING MAXWELL?

¶7. The EAB reviewing officer determined as follows:

The contents and language used in the letter suggests the beginning of what would appear to the casual observer to be a personal relationship.

Technically, [Maxwell] violated the policy regarding relationships; however, there was no proof that the relationship was in fact personal, rather after hearing the facts and the duties of the position of Case Manager, it is the opinion of the Hearing Officer that a close personal relationship between [Maxwell] and the inmate did not in fact exist. However, it does appear that given time there is a possibility that a personal relationship might develop.

The Hearing Officer finds that there was a technical violation of the policy by [Maxwell], but does not warrant discipline.

[Rule 24(B)] of the Mississippi Employee Appeals Board, provide (sic) that the Hearing Officer may modify the action of a responding party, but may not increase such action.

The Hearing Officer finds that the action taken by [MDOC] is too severe. . . .

The order continued by setting aside Maxwell's termination, reinstating Maxwell without back pay, and ordering that a letter of reprimand be placed in her personnel file. The Appeals Board's final order upheld the hearing officer's determinations. The Appeals Board, then, effectively determined that while Maxwell technically committed a Group III offense by having a personal relationship with an inmate "there was no proof that the relationship was in fact personal."

¶8. The letter sent to Jones by Maxwell was in response to a note from Jones. Maxwell's letter begins "Sprangely, (sic) I was just thinking about you when I received your letter. I have been so busy this morning. . . I haven't had a chance to write to say hello." This sentence was followed by a smiley face.

In reference to Jones's correspondence, Maxwell writes: "Thanks! For sharing and being the person I have become (sic) to know." Further in the letter Maxwell writes "Yesterday when I came on the tier I was just playing with you when I said you were ugly, I was just making conversation O.K. Hopefully you didn't take it serious (sic)." Maxwell further writes, "Please believe me, there isn't anything I would do intentionally to hurt you or anyone for that matter." Maxwell ends the letter by signing "Your Mom."

¶9. Earl Jackson, the associate warden in Maxwell's unit, testified that while it was proper for Maxwell to respond to inmate correspondence, it was improper for Maxwell to sign "Your Mom." Warden Crocker testified that, while case managers must form professional relationships with the inmates, case managers are not allowed to establish close personal relationships with inmates. Crocker further testified that in his opinion, Maxwell's correspondence with Jones was improper and "crossed the line."

¶10. Maxwell testified that she called Jones "ugly" because he kept interrupting her while she was talking with another inmate on the tier. Maxwell further testified that she closed the letter with "Your Mom" because she had found that during her teaching career students tended to be attracted to their teachers, but relating to them as a mother figure removed the flirtatious mood. Stanley Flagg, who is an associate warden at Parchman and Maxwell's brother, testified on his sister's behalf. In Flagg's opinion, the letter did not indicate that Maxwell had developed a close relationship with Jones. Flagg also testified that he would not have recommended terminating Maxwell's employment.

¶11. Clearly, MDOC did not act in an arbitrary or capricious manner in dismissing Maxwell. As stated earlier in this opinion, the determination of the employing agency is presumed to be correct. Under *Richmond*, unless Maxwell carried her burden and showed that the alleged conduct did not occur, then she has no right to have the employment decision overturned. *Richmond*, 745 So. 2d at 258. From the

record before this Court, Maxwell has failed to meet this burden. Accordingly, the decision of the circuit court is reversed.

¶12. THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY IS REVERSED AND THE FINDING OF THE ADMINISTRATIVE REVIEW BOARD IS REINSTATED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.

BRIDGES, P.J., MYERS, CHANDLER, GRIFFIS AND ISHEE, JJ., CONCUR. KING, C.J., CONCURS IN RESULT ONLY. IRVING, J., DISSENTS WITH A SEPARATE WRITTEN OPINION JOINED BY BARNES, J.

IRVING, J., DISSENTING:

¶13. The Mississippi Department of Corrections terminated Jacqueline L. Maxwell's employment as a correctional case manager/counselor because she allegedly committed a group III offense. There are eighteen infractions which are listed as group III offenses in the Mississippi State Personnel Board Policy and Procedures Manual. Maxwell was charged with committing infraction number eleven which is specified as "an act or acts of conduct occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the public or to other state employees."

¶14. The majority, finding that Jacqueline L. Maxwell failed to demonstrate the absence of substantial evidence to support MDOC's termination of her, reverses the decision of the learned circuit judge affirming the decision of the Employee Appeals Board in favor of Maxwell, and reinstates the decision of the MDOC. I find no substantial evidence to support MDOC's decision that Maxwell committed an act or acts on or off the job which are plainly related to her job performance and are of such a nature that to continue her in her role as correctional case manager/counselor would constitute a negligence in regard to

the agency's duties. Therefore, I respectfully dissent. I would affirm the decision of the circuit judge affirming the decision of the Employee Appeals Board.

¶15. It is of paramount importance that there is no evidence that Maxwell engaged in a physical personal relationship with inmate Eric Jones. Indeed, there is no evidence that Maxwell was ever alone in close physical proximity to Jones. Jones and Maxwell were never seen holding hands, touching or gazing wantonly at each other. Further, there is no evidence that Maxwell and Jones ever engaged in any improper conversation.

¶16. Since there was no physical involvement or contact between Maxwell and Jones, the first question then is, what act or conduct did Maxwell commit on or off the job which is plainly related to her job performance and is of such nature that, to continue her in her assigned position could constitute negligence in regard to MDOC's duties to the public or to other state employees. Everyone agrees that the only act done or committed by Maxwell was the writing of a letter to inmate Eric Jones in response to a letter that he had written to her. To put the letter writing in context, however, it is necessary to begin with the circumstances that led to Maxwell's writing, what is alleged to be, the infamous letter to Jones. Maxwell's letter was in response to the following letter from Jones to her:

Mr. Eric Jones
#45225 UT 32-E
Parchman, MS 37737

Jan. 10, 01

Mrs. Maxwell
Case-Manager

Dear Mrs. Maxwell,

Good morning. I'm writing to share with you my feelings on those scriptures you instructed me to read . . .

First – thank you! It was good food for moral & ethical development. But ... (yes there is a “but.) But – these scriptures do not “conclusively” support a “Trinity.”

I still stand firm that the truth lies in Oneness. The “Oneness” of God. And in the struggle of achieving that Oneness. Regardless of the odds [sic].

I’m taking the liberty of forward [sic] you a “Message From God.” Share it with all. Well– take special care and God bless.

Sincerely,

Eric

P.S. The depression of the holidays does not seem to want to clear.

A Message from God

As you got up this morning, I watched you and hoped you would talk to me, even if it was just a few words, asking my opinion or thanking me for something good that happened in your life yesterday, but I noticed you were too busy trying to find the right outfit to put on and wear to work. So I waited. When you ran around the house getting ready, I knew there would be a few minutes for you to stop and say hello, but you were too busy. At one point you had to wait fifteen minutes with nothing to do except sit in a chair. Then I saw you spring to your feet, I thought you wanted to talk to me, but you ran to the phone and called a friend to get the latest gossip. I watched as you went to work and waited patiently all day long. With all your activities I guess you were too busy to say anything to me. I noticed that before lunch you looked around, maybe you felt embarrassed to talk to me, that is why you didn’t bow your head. You glanced three or four tables over and you noticed some of your friends talking to me briefly before they ate, but you didn’t. That’s okay, there is still more time left, and I hope you will talk to me even yet. You went home and it seems as if you had lots of things to do. After completing a few of them you turned on the TV. Just about anything goes on TV & you spend a lot of time each day in front of it, not thinking about anything in particular but just enjoying the show. I waited patiently again as you watched TV & ate your meal, but again you did not talk to me. As you did your homework I waited again and you did what you had to do. At bedtime I guess you felt too tired. After you said good night to your family and plopped into bed, you fell asleep in no time. That’s okay. Because you may not realize that I am always there for you. I’ve got more patience than you will ever know. I even want to teach you how to be more patient with others. I love you so much that I wait everyday for a nod, a prayer, a thought or a thankful part of your heart. It is difficult to have a one-sided conversation.

Well, you are getting up again and once again I will wait with nothing but love for you, hoping that today you will give me some time. Have a nice day.

Your friend,

GOD

P.S. Do you have enough time to sent [sic] this to another person?

¶17. After receiving Jones's letter, Maxwell, on January 12, 2001, sent him the following response:

Sprangly, [sic] I was thinking about you when I received your letter. I have been so busy this morning with classification hearings and all till I haven't had a chance to write to say hello :) I received the paper with the message from God, that was a nice touch just what I needed to continue my day. Thanks, for sharing and being the person I have become [sic] to know. It's nice when people appreciate you and they let you know it.

Yesterday when I came on the tier I was just playing with you when I said you were ugly. I was just making conversation O.K. Hopefully, you didn't take it serious. By chance if you did I want to apologize to you now O.K. Please believe me, there isn't anything I would do intentionally to hurt you or anyone for that matter. Friendship is a unity, it is something that shouldn't be taken lightly.

You know I could write a book, there is so much needs to be said about the message ? :) Good to know you are doing fine. Thanks again for the Good words of encouragement.

Your mom

P.S. excuse the writing and spelling

¶18. The next question that must be asked is does the writing of a letter by a case manager/counselor to an inmate constitute a group III offense under Mississippi State Personnel Board Policy and Procedures Manual, subparagraph eleven. Stated another way, is a case manager/counselor prohibited from writing a letter to an inmate. The answer to this question is a resounding "no." In fact, the MDOC does not even contend that writing the letter constitutes a group III offense. It also admits that there is not anything improper about a case manager/counselor writing a letter to an inmate. After admitting that it is a proper

function of a case manager/counselor's job to respond to inmates in writing, the MDOC engages in a subjective interpretation of the meaning of the letter and obviously concludes that, in this case, the letter is inappropriate because it is a love letter.

¶19. I cannot agree that MDOC's subjective interpretation of the letter constitutes substantial evidence that a romantic relationship between Maxwell and Jones had begun or was beginning to take form.

¶20. Maxwell explained that she was engaged in a counseling technique known as client-centered therapy. As proof of this counseling technique, she introduced into evidence the following excerpts from

JAMES O. WHITTAKER, INTRODUCTION TO PSYCHOLOGY, 562-67 2D ED.:

CLIENT-CENTERED THERAPY

Client-centered, or nondirective therapy is based on the assumption that the client has the right to select his own goals, even though these might not be the goals the counselor would choose for him.

Another fundamental difference between psychoanalysis and nondirective counseling methods lies in the ultimate goals of counseling. Psychoanalysis often emphasizes the problem that caused the client to seek help. Thus, its goal is the solution of the problem. When this problem is successfully solved, and the symptoms removed, the analysis is considered successful. On the other hand, in the nondirective counseling situation, emphasis is on the client, rather than his problem. It is felt that therapy should be a "growth" experience, and that the client should, as the result of this experience, be better equipped to deal with future problems. This, then, is the goal of nondirective counseling.

The nondirective therapist does not feel that the goal of personality growth is achieved if emphasis is placed only on the problem involved. This does not mean, of course, that the client's problem is neglected. In the process of learning how to solve the current pressing problem, and in learning to understand his own feelings more fully, the client develops the necessary tools for dealing adequately with future problems. The client, so to speak, solves his own problems with the help of the counselor, and in the process of doing so, learns how to deal with other problems he may ultimately face.

Contrasted with psychoanalysis then, client-centered therapy is nondirective in nature. The counselor or therapist is much less active in the counseling situation, and the counselee or client does much more talking. The counselor does not point out problems that need correcting, he does not make interpretations of what the client says, and he does not ask

specific questions calling for "yes" or "no" answers. We might ask, then, "What is the role of the therapist in client-centered therapy?" Basically, it is one of adopting permissive attitudes of acceptance, and "reflecting" and clarifying for the client the feeling he has expressed, with the idea that the client will come to understand his own feeling and behavior.

See Appendix I for a diagram illustrating the steps in the counselor-therapist client relationship.

¶21. I turn now to a discussion of the testimonial evidence. MDOC produced two witnesses who testified on its behalf, Gene Crocker, Warden of Area IV, and Earl Jackson, an associate warden with the MDOC.

Mr. Crocker gave the following pertinent testimony:

Q. Do you know whether it's a proper counseling technique to build a relationship to earn the trust with the person you're counseling with?

A. In a penitentiary setting, it's not - -

Q. No, would you answer my question and then you can - -

A. All right, repeat your question.

Q. *Is it a proper counseling technique to develop a relationship or rapport with the person that the counselor is trying to help?*

A. *I, I feel like it would be.*

* * *

Q. *Okay. Are you familiar, you said you took psychology, of what's called a client-centered therapy?*

A. *I'm not familiar with it.*

Q. It it's [sic] contained in there, and then this would be a factual book, that that is a proper counseling technique; would you disagree with that?

A. It depends. I'm not familiar with it.

Q. Okay. So you're not a counselor, are you?

A. No.

Q. *And you wouldn't know what counseling techniques are to be used?*

A. *Not as a counselor, no.*

¶22. Although Crocker testified that Maxwell was a case manager and not a counselor, Associate Warden Jackson contradicted this assertion, giving the following pertinent testimony:

Q. So she's just responding to his correspondence is what she's doing; is that correct?

A. Apparently she is responding to his correspondence.

Q. Okay. And is that a, what a case manager should do?

A. *A case manager's job does include responding to inmates' correspondence or -- She was doing her job, right.*

Q. *Now, part of a case manager's job is counseling, isn't it?*

A. *That's true. They do meet with offenders and discuss any problems that they may have or assist in any, any problems that they may have.*

Q. And try to get them classified and get them out of "different type of custody" and tell them how to get, to improve their status; is that right?

A. That's true.

Q. Okay. And that's what her job was; is that correct?

A. That's correct.

Q. And this letter that she was responding to was right after the holidays, January the 10th?

A. That's-- I believe so.

Q. And it specifically mentions his depression?

A. That's true.

- Q. And a case manager should be concerned about the depression of an inmate?
- A. That's true, yes.
- Q. Now are you familiar with counseling techniques that involve playing roles?
- A. I am.
- Q. Okay. Explain that to the Court.
- A. *Basically -- Obviously we have different counseling techniques, but basically you may utilize a role where case managers may -- in a way it's hard to explain -- develop a technique to try and pull information out of an individual if they seem to be reluctant in sharing information.*
- Q. *It's called client-based therapy.*
- A. *Sure.*
- Q. Okay, where you try to put on a role whether it be a father figure, mother figure, grandfather figure. Are you familiar with that - -
- A. I am familiar with that.
- Q. Have you ever used that in counseling to put on as a, maybe a mentor, or it can be anything, but to have a relationship with someone you're trying to help?
- A. In some regards, I have.
- Q. Okay.
- A. Yes.
- Q. Okay. You're familiar with psychology?
- A. Yes.
- Q. You've got a degree in psychology?
- A. No, I don't have a degree, I've taken psychology courses.
- Q. *And you're familiar with what we call client - centered therapy?*

A. Right.

Q. And that's where you go in and you're working with somebody and you have no communication?

A. That's true.

Q. And you try to build that communication where you can share ideas and find out what their problem is?

A. That's true.

Q. Okay.

BY MR. GRESHAM: May I approach the witness?

Q. *I'm going to hand you what I'm going to represent it to be Page 563 of this book, and that takes you through a counseling procedure; right?*

A. It does.

Q. *Okay. And that is an approved counseling procedure?*

A. *That's true.*

Q. *Okay. And specifically you build a relationship, and the therapist may use many roles, grandfather, double, etcetera. It's role playing.*

A. *According to that therapy, that's true.*

Q. *Okay. And that is a theory that's recognized?*

A. *Right.*

¶23. Maxwell testified herself and called two witnesses on her behalf, Associate Warden Robert Scott, and her brother, Associate Warden Stanley Flagg.

¶24. Scott testified that he had been an associate warden for fourteen years. He was familiar with the responsibilities of a case manager. He had seen the letter written by Maxwell to Jones as well as the letter

written by Jones to Maxwell. Although Scott thought some of the phraseology used in Maxwell's letter was improper, he would not have recommended termination.

¶25. On cross-examination, Scott was asked about Mississippi Department of Corrections Policy DOC. 03.01 which states in pertinent part "that "[n]o employee shall establish close friendships or fraternize with offenders or their immediate family, agent or other representative." Scott was pressed to admit that the letter violated DOC. 03.01; however, he refused to concede such a violation, explaining that there are different levels of friendship. He did admit that if Maxwell was only wearing her case manger hat, some of the sentences in her letter would be improper. However, he found no violation in the counselor role because in this role there are various acceptable theories and philosophies of how to properly counsel an individual. Counseling was a part of Maxwell's responsibility.

¶26. Flagg did not think the letter violated department policy and would not have recommended termination for any employee writing such a letter.

¶27. At the risk of further burdening an already overburdened record, I must quote from the letter from MDOC giving the reasons for terminating Maxwell. The pertinent portion of the letter reads:

On January 10, 2001, during a search in Unit 32-E Building, a letter was found in the possession of Inmate Charles Tatum, #56143, that had been written by you. *The contents of the letter indicated that there was a personal relationship developing between you and an offender.* During an interview with Warden Gene Crocker, Deputy Warden J.J. Streeter, and Associate Warden Earl Jackson, you admitted to writing the letter, but stated you did not write the letter to Tatum but to another inmate, Eric Jones, #45265, but gave Tatum the letter to deliver to Jones. You further admitted that Inmate Jones had written you several letters and that you were trying to be a mother figure to him.

An act or acts of conduct occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in the assigned position could constitute negligence in regard to the Agency's duties to the public or to other state employees is a violation of Subparagraph Number 11 of Appendix III (Third Group Offense) as outlined in the State Personnel Board Manual of Policies, Rules and Regulations updated July 1999.

¶28. It is extraordinarily clear from the termination letter that Maxwell's termination was based solely on MDOC's interpretation of the phraseology used in Maxwell's letter. While the termination letter does not characterize the "personal relationship" as romantic, there is no doubt that MDOC did not view the "personal relationship" as platonic. Hence, Maxwell was terminated because, in the view of the MDOC, Maxwell had initiated a personal romantic relationship with inmate Jones.

¶29. There is not one scintilla of evidence in this record, subject to objective analysis, to support the MDOC's finding. Therefore, its finding is without substantial evidence and is arbitrary and capricious. Consequently, we are not bound, by our standard of review, to uphold the decision of the MDOC.

¶30. This dissent would be incomplete if I did not say a word about the finding of the Employee Appeals Board. The EAB adopted the findings of the hearing officer who found in pertinent part:

Technically, the Appealing Party violated the policy regarding relationships; however, there was no proof that the relationship was in fact personal, rather, after hearing the facts and the duties of the position of case manager; it is the opinion of the Hearing Officer that a close personal relationship between the Appealing Party and the inmate did not in fact exist. However, it does appear that given time there is a possibility that a personal relationship might develop.

¶31. It should be noted that policy number DOC. 03.01 is not one and the same as the Group III offense which permits termination. Even a violation of policy does not warrant termination unless it is also a Group III offense. As already noted, the Group III offense which Maxwell was charged with committing was "an act or acts of conduct occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the public or to other state employees."

¶32. The only act committed here was the writing of a letter in her professional capacity as counselor, an act that everyone admits was an acceptable and proper act. The disagreement is over the intent of the

writer. Was the intent to foster an acceptable relationship in the counseling context so that Maxwell could successfully counsel the inmate, or was the intent to establish an romantic personal relationship? Even if it were the latter, it seems to me that the Group III offense would not occur until some improper act or conduct occurred which clearly indicates an romantic relationship.

¶33. The MDOC contends that the hearing officer found that Maxwell committed a Group III offense, and therefore, he was without authority to alter the punishment given to Maxwell because termination is an acceptable punishment for commission of a Group III offense. I agree with the MDOC on the latter point. However, as I have already discussed, that is not my understanding of what the hearing officer found.

¶34. For the reasons presented, I strongly dissent. I would not terminate Maxwell's employment and tarnish her stellar achievements because her employer lacked understanding of proper and acceptable counseling techniques, leading it to assign an improper motive to the letter which everyone admits was not itself an improper act.¹

BARNES, J., JOINS THIS SEPARATE WRITTEN OPINION.

¹ Prior to coming to work for the Mississippi Department of Corrections, Maxwell worked eleven years as a draftsman for the Tennessee Valley Authority and nine years as an instructor at Coahoma Community College.

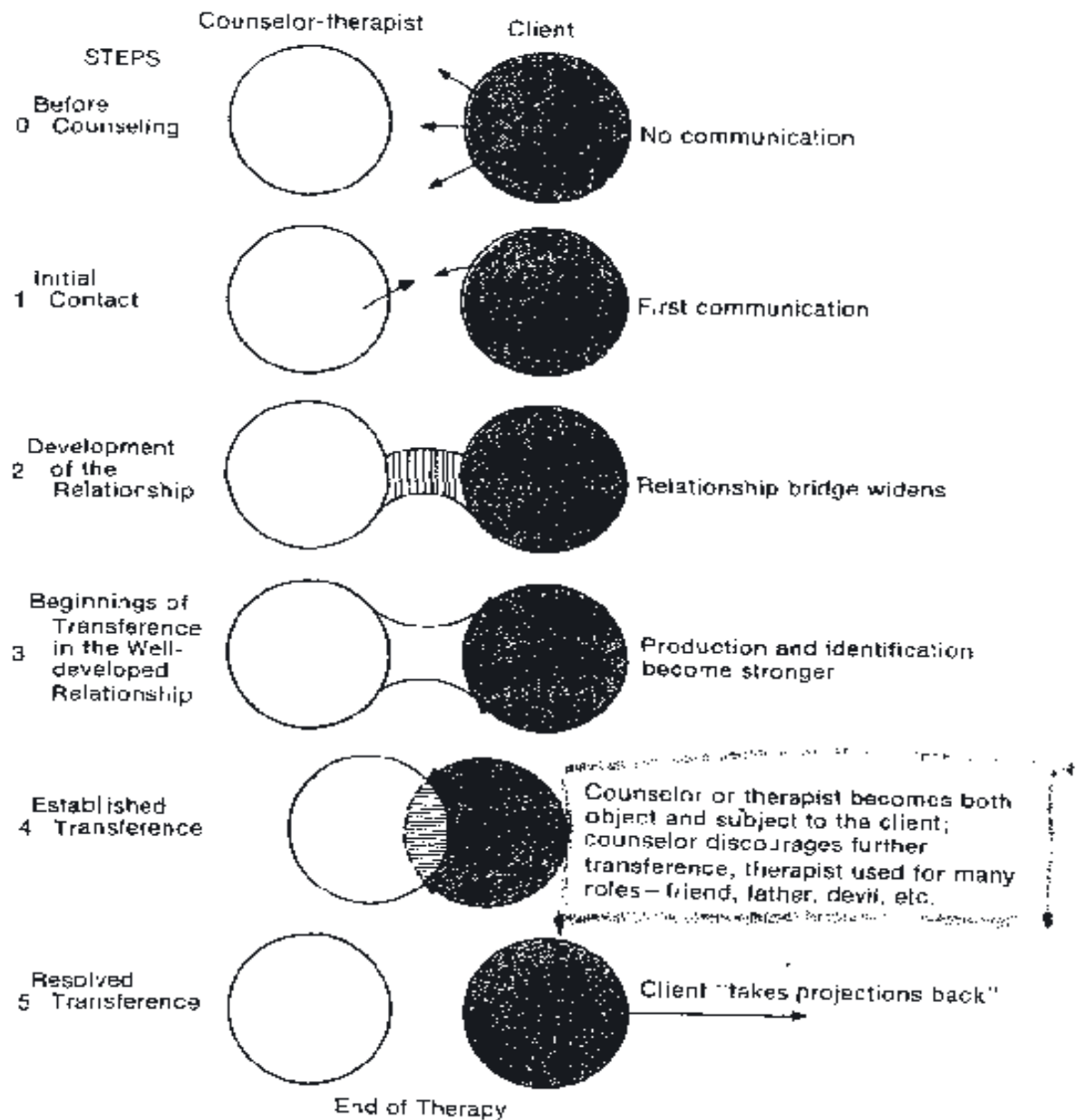


FIGURE 17-6 TRANSFERENCE IN PSYCHOTHERAPY.

As this chart shows, patients generally enter into therapy with mixed feelings. As the relationship develops, however, the client's positive feelings toward the therapist increase. Somewhat later such feelings often develop to the point that the client's perception of the therapist is distorted. (Brammer, L., and Shostrum, E.; *Therapeutic Psychology: Fundamentals of Counseling and Psychotherapy*. Englewood Cliffs, N.J., Prentice Hall, 1960.)

