

SUPREME COURT OF ARIZONA

In the Matter of a Member of the) Arizona Supreme Court
 State Bar of Arizona) No. SB-14-0038-AP
)
 SCOTT K. HENDERSON,) Office of the Presiding
 Attorney No. 10002) Disciplinary Judge
) No. PDJ20149019
 Respondent.)
)
) **FILED 01/07/2015**

DECISION ORDER

Pursuant to Rule 59, Ariz. R. Sup. Ct., the State Bar appealed the hearing panel’s findings and referral of Respondent Scott K. Henderson to diversion for one year, with participation in the State Bar of Arizona’s Member Assistance Program (“MAP”), and imposition of costs of the disciplinary proceedings. The Court has considered the parties’ briefs and the record in this matter. Upon consideration, the Court concludes that the hearing panel erred in its referral to diversion.

Respondent was convicted of one count of endangerment, a Class 6 designated felony, and one count of DUI, a Class 1 misdemeanor, after driving erratically with a BAC of .309 and nearly colliding twice with a vehicle containing two people. Consequently, this Court accepts the hearing panel’s conclusion that Respondent violated Arizona Rules of the Supreme Court, Ethical Rule (“ER”) 8.4(b) by “commit[ting] a criminal act that reflects adversely on the lawyer’s trustworthiness or fitness as a lawyer in other respects.”

A matter generally is not eligible for diversion if “[t]he presumptive form of discipline in the matter appears likely to be greater than a reprimand.” See *Arizona Attorney Diversion Guidelines* III(1). The presumptive form of discipline for Respondent’s violation of ER 8.4(b) is greater than a reprimand.

In considering an appropriate sanction, this Court is guided by the American Bar Association *Standards for Imposing Lawyer Sanctions* (“Standards”). Ariz. R. Sup. Ct. 58(k). Standard 5.12 provides that “[s]uspension is generally appropriate when a lawyer knowingly engages in criminal conduct [other than conduct warranting disbarment] and that seriously adversely reflects on the lawyer’s fitness to practice.” By violating ER 8.4(b), Respondent necessarily committed a criminal act that reflects adversely on his fitness to practice. The adverse reflection was “serious” because Respondent committed a felony that involved “a substantial risk of imminent

death" to others. See A.R.S. § 13-1201(B) (providing that endangerment must involve a substantial risk of imminent death to constitute a felony); Standard 5.12 cmt. (noting that most cases governed by Standard 5.12 commonly involve lawyers who commit felonies).

The Court finds that Standard 5.12, suspension, provides the appropriate presumptive discipline. Consequently, Respondent is not eligible for diversion.

Considering the mitigating and aggravating factors as found by the hearing panel,

IT IS HEREBY ORDERED affirming the decision of the hearing panel that Respondent Scott K. Henderson violated ER 8.4(b) and modifying the sanction to reflect a three month suspension, effective thirty days from the date of this order.

IT IS FURTHER ORDERED that Respondent shall be placed on probation for a period of one-and-one-half years beginning on the date of his reinstatement under the terms and conditions as listed below:

1. Within thirty days of reinstatement, Respondent shall contact MAP and submit to an assessment. Respondent shall thereafter enter into a MAP contract based on the recommendations made by the MAP director or designee. Respondent shall comply with all the terms of the MAP contract which shall be incorporated herein by reference. Respondent shall be responsible for any costs associated with MAP.
2. The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct., and a hearing may be held within thirty days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

IT IS FURTHER ORDERED accepting the hearing panel's conclusion that Respondent shall be assessed the costs and expenses of the disciplinary proceedings as provided in Rule 60(b).

DATED this 7th day of January, 2015.

Ann A. Scott Timmer
Justice

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