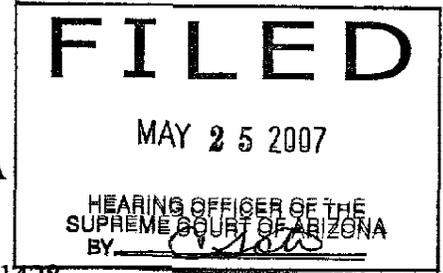


BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA



IN THE MATTER OF A SUSPENDED MEMBER)
OF THE STATE BAR OF ARIZONA,)
)
THOMAS A. CIFELLI,)
Bar No. 013794)
)
RESPONDENT)

File No. 06-1428

HEARING OFFICER
REPORT

PROCEDURAL HISTORY

The State Bar filed a complaint against Respondent on January 17, 2007, based upon Respondent being convicted on March 3, 2006, of two counts of Aggravated Driving Under the Influence of Alcohol, both felonies. On April 3, 2006, Respondent was sentenced to four months in the Arizona Department of Corrections on each count, to run concurrently, plus two years probation

On September 26, 2006, the State Bar transmitted a certified copy of the sentencing order filed April 4, 2006, in Cause No. CR2005-7536, to the Clerk of the Supreme Court.

A Probable Cause Order was issued by Daniel A. McAuliffe on December 14, 2006. Respondent filed a motion to stay the Automatic Interim Suspension, and Motion To Retire Law License Without Disciplinary Action on January 9, 2007. The Supreme Court requested a response from the State Bar on November 22, 2006. The State Bar filed a response on December 7, 2006, and Respondent filed a reply on December 15, 2006. The Supreme Court issued an order on January 9, 2007, denying Respondent's

Motion for Stay and ordering his interim suspension effective January 9, 2007, until the resolution of these proceedings

Respondent was served on January 18, 2007, by certified and first class mail at his address of record Respondent was served in person on January 17, 2007, with the Supreme Court's Order of Suspension Respondent's Notice of Default was sent to him on February 14, 2007, at his address of record Respondent's default was thereafter entered on March 6, 2007

Pursuant to the State Bar's request, an aggravation/mitigation hearing was conducted by the undersigned on May 10, 2007, at 10.00 a m An amended notice of hearing was sent to Respondent on April 4, 2007, giving him notice of the aggravating/mitigating hearing

Respondent did not appear in person or by counsel at the aggravation/mitigation hearing

FINDINGS OF FACT

At all times relevant hereto, Respondent was a member of the State Bar of Arizona, having been admitted on October 26, 1991

COUNT ONE (File No. 06-1428)

On or about December 9, 2004, Respondent drove a vehicle while under the influence of alcohol in Scottsdale, Arizona.

As a result of driving under the influence of alcohol on or about December 9, 2004, Respondent drifted in his lane twice and crossed over the double yellow lines of the painted median in the roadway

On or about December 9, 2004, Scottsdale Police Officer M Carpenter observed Respondent drift in his lane and cross the center double yellow lines in the roadway

On the same date, Officer Carpenter requested a unit for a possibly impaired driver

On the same date, Officer D Blackwell responded to the scene

On the same date, after Respondent stopped his vehicle, Officer Blackwell approached and viewed Respondent sitting in the driver's seat of the vehicle

On the same date, Respondent admitted to the officer that he drank three to four mixed drinks at Myst Bar

On the same date, Officer Carpenter determined that Respondent's driver's license had previously been suspended per an Admin Per Se suspension from November 22, 2004 to December 22, 2004.

As a result of a blood test, Respondent's blood alcohol content was determined to be 151, above the legal limit

On or about March 3, 2006, after proceeding to trial, Respondent was found guilty of two counts of Driving Under the Influence of Intoxicating Liquor, both felonies, in violation of A R S 28-1381(A)(1) and A R S. 28-1381(A)(2) in Maricopa County Superior Court case number CR 2005-007536-001 DT

On or about April 3, 2006, Respondent was sentenced to the Arizona Department of Corrections for a term of four months on each felony count, to be served concurrently, and to be followed by two years of probation

On or about September 26, 2006, the State Bar transmitted a certified copy of the Sentencing Minute Entry filed on April 4, 2006, in Maricopa County Superior Court case number CR 2005-007536-001 DT to the Clerk of the Supreme Court

Respondent committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects

CONCLUSIONS OF LAW

This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 42, Ariz R Sup Ct , specifically ER 8 4(b)

ABA STANDARDS

ABA Standard 3 0 provides that four criteria should be considered (1) the duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the lawyer's misconduct, and (4) the existence of aggravating or mitigating factors

This Hearing Officer considered *Standard 5 1 Failure to Maintain Personal Integrity* The Respondent committed a criminal act that reflects adversely on his fitness as a lawyer in other respects *Standard 5 1* provides Absent aggravating or mitigating circumstances, upon application of the factors set out in *Standard 3 0*, the following sanction is generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's fitness to practice law

5.12 Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard 5.11* and that seriously adversely reflects on the lawyer's fitness to practice law

Based upon the allegations set forth in the Complaint which are deemed admitted due to Respondent's failure to respond and default, the presumptive sanction with regard to the most serious admission of misconduct under *Standard 5.1* appears to be suspension. Respondent engaged in criminal conduct that did not involve the elements listed in *Standard 5.11*, but which seriously adversely reflects on his fitness to practice

The Duty Violated

This Hearing Officer finds that Respondent engaged in criminal conduct by driving while intoxicated on December 9, 2004, in Scottsdale, Arizona, putting himself and the public at risk

The Lawyer's Mental State

Respondent's conduct was knowing regarding the commission of the underlying offense

The Actual or Potential Injury

Respondent's conduct in driving a motor vehicle while intoxicated posed a substantial risk of potential injury to the public

Aggravating/Mitigating Factors

This Hearing Officer considered aggravating and mitigating factors in this case pursuant to 9.22 and 9.32 respectively

Aggravation.

Standard 9 22(c) – Pattern of misconduct Prior to his arrest for aggravated DUI, Mr Cifelli was arrested for misdemeanor DUI on October 7, 2004, and subsequently convicted in that matter on August 16, 2005

Standard 9 22(e) – bad faith obstruction by failing to respond to these proceedings Mr Cifelli failed to answer or participate in these proceedings

Standard 9.22(k) – illegal conduct (although this is the basis of the discipline, the Hearing Officer does not give it much weight)

Standard 9 22(i) – substantial experience in the practice of law Respondent has been an attorney in Arizona for over 15 years

Mitigation

Respondent did not respond to the Complaint nor appear at the aggravation/mitigation hearing, so the Hearing Officer does not know if he self-reported or if there are other mitigating factors The Hearing Officer can find that the Respondent has no prior disciplinary record, 9 32(a), as no proof of such was offered by Bar Counsel Further, the Hearing Officer can find that Respondent had the imposition of other penalties (incarceration)

No other aggravating or mitigating factors were found

The presumptive sanction for a violation of *Standard 5 12* is suspension. The State Bar requests that the Respondent receive a two-year suspension plus two years of probation

PROPORTIONALITY REVIEW

The Supreme Court has held in order to achieve proportionality when imposing discipline, the discipline in each situation must be tailored to the individual facts of the case in order to achieve the purposes of discipline. *In re Wines*, 135 Ariz 203, 660 P 2d 454 (1983) and *In re Wolfram*, 174 Ariz 49, 847 P 2d 94 (1993).

In *In re Wasson*, SB-05-0079-D (2005), Respondent received a two-year retroactive suspension and two years probation for a violation of Rule 42, Ariz R Sup Ct, specifically ER 8 4(b) and Rule 53(h), Ariz.R Sup Ct. Respondent had been found guilty of two separate Aggravated DUI's, both felony offenses, one in April 2003 and the second in June 2003. In aggravation, Wasson had engaged in illegal conduct. In mitigation, five factors were found: absence of a prior disciplinary record, absence of a dishonest or selfish motive, personal or emotional problems; full and free disclosure to the disciplinary board or cooperative attitude toward proceedings, imposition of other penalties or sanctions.

In *In re Politi*, SB-00-0106-D (2001), Respondent received a retroactive two-year suspension and two years probation for violations of Rule 42, Ariz R Sup.Ct, specifically ERs 1 7, 1 9, 8 4(b) and 8.4(d). Politi had pled guilty to an Aggravated DUI, a felony offense, in 1999. Although Politi had violated several ethical rules, the sanctions were based upon the most serious instance of misconduct, the criminal conduct. Aggravating factors included substantial experience in the practice of law and a pattern of misconduct. Mitigating factors included no prior discipline, absence of selfish or dishonest motive, timely good faith effort to rectify consequences of misconduct, cooperative attitude.

toward proceedings, imposition of other penalties or sanctions and mental disability or chemical dependence

RECOMMENDATION

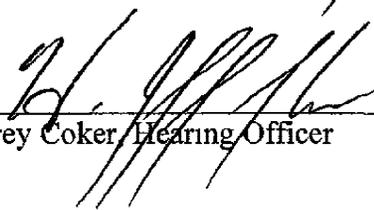
The purpose of lawyer discipline is not to punish the lawyer, but to protect the public and deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). It is also the objective of lawyer discipline to protect the public, the profession and the administration of justice. *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). Yet another purpose is to instill public confidence in the Bar's integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994).

In imposing discipline, it is appropriate to consider the facts of the case, the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") and the proportionality of discipline imposed in analogous cases. *Matter of Bowen*, 178 Ariz. 283, 286, 872 P.2d 1235, 1238 (1994).

Upon consideration of the facts, application of the *Standards*, including aggravating and mitigation factors, and a proportionality analysis, this Hearing Officer recommends the following.

- 1 Respondent's license be suspended for a period of two years.
- 2 Respondent serve a two-year probation following his reinstatement to active status. The terms of his probation will be determined at the time of his reinstatement.
- 3 Respondent shall pay all costs and expenses incurred in these disciplinary proceedings.

DATED this 22 day of May, 2007



H Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 25th day of May, 2007

Copy of the foregoing mailed
this 25th day of May, 2007, to:

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By Christina Joto