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BEFORE A HEARING OFFICER  
OF THE SUPREME COURT OF ARIZONA

**FILED**  
JUL 13 2007  
HEARING OFFICER OF THE  
SUPREME COURT OF ARIZONA  
BY [Signature]

IN THE MATTER OF A )  
SUSPENDED MEMBER OF THE )  
STATE BAR OF ARIZONA, )  
 )  
 )  
KATHLEEN D. MASTERS, )  
Bar No. 005003 )  
 )  
Respondent. )

No. 06-1427

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

The State Bar filed a Complaint against Respondent on April 30, 2007. Respondent failed to file an Answer within the twenty day period as required by *Rule 57 (b) Ariz.R.Sup.Ct.* A Notice of Default was filed by the State Bar on May 30, 2007.

On May 28, 2007 and May 31, 2007, the Respondent and the State Bar of Arizona respectively executed a Tender of Admissions and Agreement for Discipline by Consent (Tender) along with a Joint Memorandum in Support of Agreement by Discipline by Consent (Joint Memo) pursuant to *Rule 56 (a), Ariz.R.Sup.Ct.*, and the guidelines for discipline by consent issued by the Arizona Supreme Court's Disciplinary Commission. Subject to review and acceptance by the Hearing Officer, Respondent agreed to accept a suspension of her license to practice law in the State of Arizona for a period of two (2) years, retroactively to May 30, 2006, along with two (2) years probation with the specific terms to be determined at the time of reinstatement, but otherwise to include a Member Assistance Program (MAP). In addition, Respondent was to pay the costs and expense of the disciplinary process for her conduct in this matter. Attached to the Tender as Exhibit "A" was a Statement of Costs and Expenses.

After reviewing the Tender and the Joint Memo, this Hearing Officer accepts them as a valid and binding resolution of this matter between Respondent and the State Bar of Arizona.

**FINDINGS OF FACT**

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1. All of the procedural facts and statements set forth above are found to be true.

2. At all times relevant hereto, with the exception of the periods of suspension noted below, the Respondent was an attorney licensed to practice law in and a member of the State Bar of Arizona, having been admitted to practice in Arizona on October 7, 1977.

3. On November 29, 2005, the Yavapai County Attorney's Office filed charges against Respondent alleging violations of *A.R.S. §§ 28-1381 (A)(1), 28-1381 (A)(2), 28-1383 A)(1), 28-3304, 13-701, 13-702, 13-801 and 13-1201* (Driving Under the Influence, Blood Alcohol Content Reckless Endangerment statutes).

4. Respondent entered into a plea of guilty/no contest on January 30, 2006, to aggravated DUI, a class 4 felony.

5. Respondent was sentenced to four (4) months in the Arizona Department of Corrections, together with five (5) years Intensive Probation upon release from custody, and was ordered to pay substantial fines.

6. On March 7, 2006, Respondent was suspended from the practice of law in Arizona for a period of six months and one day in State Bar file nos.04-0293, *et al.*

7. On May 24, 2006, Respondent was suspended from the practice of law in State Bar file no. 05-0341.

8. Respondent was released from the Department of Corrections on May 30, 2006, and started her Intensive Probation on June 16, 2006.

9. Respondent has not applied for reinstatement and remains suspended from the practice of law.

10. Respondent engaged in conduct in violation of *ER 8.4 (b), Rule 42, Ariz.R.Sup.Ct., and Rule 53 (h), Ariz.R.Sup.Ct.*

**CONDITIONAL ADMISSIONS**

Respondent conditionally admits that the professional misconduct in which she engaged, as

1 set forth above, violated *ER 8.4 (b)*, *Rule 42, Ariz.R.Sup.Ct.*, and *Rule 53 (h), Ariz.R.Sup.Ct.*

### 2 3 **CONCLUSIONS OF LAW**

4 1. The practice of law in the State of Arizona rests “exclusively within the authority of  
5 the Judiciary”. See *Arizona Constitution, Article III, In re Creasy, 198 Ariz. 539, 12 P.3d 214 (2000)*.

6 2. The Arizona Supreme Court is the judicial authority which has jurisdiction over the  
7 practice of law in the State of Arizona. See *Rule 31 (a) Ariz.R.Sup.Ct.*

8 3. The Disciplinary Commission of the Arizona Supreme Court has jurisdiction over  
9 anyone practicing law as defined in Rule 31. See *Rule 46 (b)*.

10 4. By Respondent initially failing to file a Response to the Complaint filed by the State  
11 Bar of Arizona, all of the allegations contained in the Complaint are deemed to have been admitted.  
12 See *Rule 53 (c)(1), Ariz.R.Sup.Ct., Matter of Zang, 158 Ariz. 251, 762 P.2d 538 (1988)*.

13 5. Independent of the conclusions of law set forth in Paragraph 4, above, as a matter of  
14 law, Respondent is found to have violated *ER 8.4 (b)*, *Rule 42, Ariz.R.Sup.Ct.* and *Rule 53 (h),*  
15 *Ariz.R.Sup.Ct.*, in that she entered into a plea of guilty/no contest on January 30, 2006, to aggravated  
16 DUI, a class 4 felony.

17 As a result of the foregoing, this Hearing Officer finds there is clear and convincing evidence  
18 to sustain a finding that Respondent has violated *ER 8.4 (b)*, *Rule 42, Ariz.R.Sup.Ct.*, and *Rule 53*  
19 *(h), Ariz.R.Sup.Ct.*

### 20 21 **ABA STANDARDS**

22 The 1991 Edition of the *ABA Standards For Imposing Lawyer Sanctions* (the  
23 “*Standards*”) are accepted by the Arizona Supreme Court and its Disciplinary Commission as  
24 providing a suitable guide to Hearing Officers who attempt to determine what appropriate sanction  
25 is to be imposed against an attorney who has been found to have violated *Rule 42, Ariz.R.Sup.Ct.*  
26 *In re Peasley, 208 Ariz. 27, 90 P.3d 764 (2004); In re Rivkind, 164 Ariz. 154, 791 P.2d 1037 (1990)*.  
27 These *Standards* have been used consistently by these two bodies in determining the severity of

1 attorney discipline, *In re Clark*, 207 Ariz. 414, 87 P.3d 827 (2004), since they are designed to  
2 promote a uniformity of application. *Standard 1.3, Commentary.*

3 Specifically, *Standard 3.0* provides that four criteria should be considered: (1) the duty  
4 violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's  
5 misconduct; and (4) the existence of mitigating factors.

6 In determining the appropriate sanction to be imposed, in light of the Conclusions of Law set  
7 forth above under which Respondent pled guilty to a class 4 felony which adversely reflects on her  
8 fitness to practice law, this Hearing Officer considered *Standards 5.0*, (Violations of Duties Owed  
9 to the Public) and *5.1*, (Failure to Maintain Personal Integrity), and more specifically *Standard 5.12*  
10 which prescribes Suspension as generally being appropriate when a lawyer knowingly engages in  
11 criminal conduct which does not contain the elements listed in *Standard 5.11*, but which does  
12 seriously adversely reflect on a lawyer's fitness to practice law. In this regard, the Hearing Officer  
13 notes that the Joint Memo entered into between the State Bar of Arizona and the Respondent reflects  
14 the following conditional admissions:

15 1. Respondent committed a criminal act by driving while under the influence of  
16 alcohol in violation of Arizona law, conduct which adversely reflected on her fitness as a lawyer, and  
17 taken as a whole, violated her duty to the public and the profession;

18 2. Respondent knowingly making the decision to drive while under the influence;  
19 and

20 3. That while no actual harm was done, the potential for injury to the public by  
21 Respondent's driving under the influence was great.

22 Based on the foregoing and the presumptive sanction for the admitted conduct of suspension,  
23 it is appropriate to evaluate any aggravating or mitigating factors which would justify an increase or  
24 decrease in the presumptive sanction. *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2000) and *In re*  
25 *Savoy*, 181 Ariz. 368, 891 P.2d 236 (1995).

1 **AGGRAVATING AND MITIGATING FACTORS**

2 The parties agreed that there were three (3) aggravating factors and four (4) mitigating factors  
3 which should be considered by the Hearing Officer in determining the final sanction.

4 In aggravation were Respondents's prior disciplines in October 2001 and November 2003,  
5 when she placed on diversion in file nos. 99-2120 and 00-1482 (*Standard 9.22(a)*)<sup>1</sup>, her substantial  
6 experience in the practice of law since being licensed in 1977 (*Standard 9.22(i)*) and her illegal  
7 conduct (*Standard 9.22(k)*).

8 In mitigation were an absence of a dishonest or selfish motive (*Standard 9.32(b)*), her  
9 cooperative attitude (*Standard 9.32(e)*)<sup>2</sup> her acknowledgment of her alcohol problem and voluntary  
10 participation in an intensive substance abuse program and AA meetings since her release (*Standard*  
11 *9.32(i)*) and the other penalties and fines imposed upon her by the State (*Standard 9.32(k)*).

12  
13 **PROPORTIONALITY REVIEW**

14 The Supreme Court has held, in order to achieve proportionality when imposing discipline,  
15 that the discipline in each situation must be tailored to the individual facts of the case in order to  
16 achieve the purposes of discipline. *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983) and *In re*  
17 *Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993). Thus, the Court has taken into account similar conduct,  
18 *In re Struthers*, 179 Ariz. 216, 887 P.2d 789 (1994), and has made analogous comparisons, *Matter*  
19 *of Bowen*, 178 Ariz. 283, 872 P.2d 1235 (1994), in an attempt fairly to assess the proportionality of  
20 the sanction recommended, while at the same time recognizing that no two cases are ever exactly  
21 alike, *In re Owens*, 182 Ariz. 121, 893 P.2d 1284 (1995). Only in this way can there be any hope  
22 to achieve consistency in the imposition of sanctions. *See In re Peasley*, 208 Ariz. 27, 90 P.3d 764

23  
24 <sup>1</sup> Respondent demonstrated an inability to comply with the diversion order, as demonstrated by an  
25 Order filed on November 21, 2003, extending her diversion in files nos. 99-2120 and 00-1482 due to her  
26 failure to meet the terms and conditions of the memorandum of understanding. In addition, Respondent  
received a six-month and one day suspension, with probation, in file nos. 04-0293 (violation of ERs 3.1, 3.3  
(a), 3.4(c), 4.4, 5.3(a), (b) and (c), 5.5 and 8.4(a), (c) and (d)) and 05-0341 (violation of ERs 1.1, 1.2(a), 1.3,  
1.4(a)(3) and (b), 1.15 and 1.16(a)(2))

27 <sup>2</sup> Respondent actually initiated the settlement negotiations.

1 (2004) and *In re Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990).

2  
3 **APPLICABLE CASE LAW**

4 To arrive at a just conclusion, the Hearing Officer collectively considered the following  
5 applicable two (2) cases in making his recommendation, both of which involved the commission of  
6 a criminal act by driving while under the influence of alcohol in violation of Arizona law, conduct  
7 which adversely reflected on their fitness as lawyers, and which violated their duty to the public and  
8 the profession;

9 1. *In re Wasson*, SB-05-0079-D (2005) - (agreement by consent for a two (2) year  
10 suspension and two (2) years probation) and *In re Politi*, SB-00-0106-D (2001) - (agreement by  
11 consent for a two (2) year retroactive suspension and two (2) years probation)

12 **RECOMMENDATION**

13 Keeping in mind that the purpose of lawyer discipline is not to punish the lawyer, *In re*  
14 *Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993), but to protect the public, the profession and the  
15 administration of justice while at the same time deterring future misconduct, *In re Neville*, 147 Ariz.  
16 106, 708 P.2d 1297 (1985), that same purpose also aims to instill public confidence in the bar's  
17 integrity. *Matter of Horwitz*, 180 Ariz. 20, 29, 881 P.2d 352, 361 (1994). In light of those guiding  
18 precepts, with due consideration and application of the *Standards* to the facts present in this case,  
19 including aggravating and mitigation factors and a proportionality analysis of the sanction to be  
20 imposed upon a finding of Respondent's conduct and actions to have been in violation of *Rule 42*,  
21 *Ariz.R.Sup.Ct.*, and specifically, *ER 8.4 (b)*, and *Rule 53 (h) Ariz.R.Sup.Ct.*, and after further duly  
22 noting the recommendation of Bar Counsel that this "agreement provides for a sanction that meets the  
23 goals of the disciplinary system", and that the "terms of the agreement serve to protect the public,  
24 instill confidence in the legal system, deter other lawyers from similar conduct and maintain the  
25 integrity of the bar", this Hearing Officer recommends that a two-year suspension retroactively to May  
26 30, 2006, is an appropriate discipline for Respondent's conduct in this matter, and that with a two (2)  
27 year period of probation, Respondent should be able to establish her rehabilitation and fitness once

1 again to be able to practice law in the state of Arizona.

2 DATED this 12<sup>th</sup> day of July, 2007.

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Michael L. Rubin  
6 Hearing Officer 7K

7 Original mailed for filing  
8 with the Disciplinary Clerk  
9 this 12<sup>th</sup> day of July, 2007,

10 and

11 a Copy of the foregoing mailed  
12 this same day to:

13 Shauna R. Miller  
14 Senior Bar Counsel  
15 State Bar of Arizona  
16 4201 N. 24th St., Suite 200  
17 Phoenix, Arizona 85016-6288

18 and

19 Kathleen D. Masters  
20 1520 White Spar Road  
21 Prescott, Arizona 86303

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