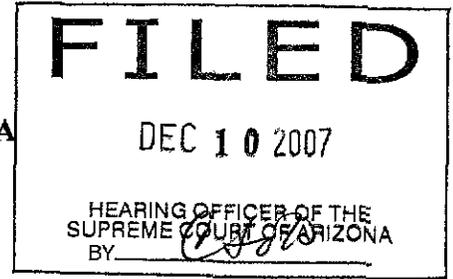


BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA



IN THE MATTER OF A SUSPENDED)
MEMBER OF THE STATE BAR OF)
ARIZONA,)
)
WILLIAM J. RECKLING, III)
Bar No. 005748)
)
RESPONDENT.)
_____)

File No. 06-0131

HEARING OFFICER'S REPORT

PROCEDURAL HISTORY

1. Respondent was given an interim suspension on July 6, 2006, (SB-06-0102-D) for being arrested on drug charges on January 15, 2006, entering into an admission to those charges on March 27, 2006, and later entering into a deferred prosecution program. Probable cause was found in this matter on April 9, 2007, relating to the charges which were the basis of his interim suspension, and a complaint was filed on August 9, 2007. This matter was assigned to the undersigned on September 4, 2007, and a Notice of Settlement was filed on October 1, 2007. A hearing on the Tender of Admissions and Joint Memorandum was held on November 16, 2007.
2. For conduct that occurred after his arrest on January 15, 2006, Respondent, in 06-588, received an Informal Reprimand, probation, and Membership Assistance Program ("MAP"). The State Bar filed on October 1, 2007, a Notice of Termination of Respondent's probation in 06-588, given that the agreed-upon sanction in the 06-0131 case is suspension.

FINDINGS OF FACTS

3. At all times relevant hereto, Respondent was a member of the Arizona State Bar, having been admitted on April 28, 1979.
4. Respondent was suspended by an Order of Interim Suspension of the Supreme Court of Arizona in case number SB-06-0102-D, filed July 6, 2006, effective as of the date of the order.
5. On August 15, 2006, Respondent was personally served with the Order of Interim Suspension. As of the date of this Tender of Admissions, Respondent remains suspended.

Count One (06-0131)

6. In March of 2005 Respondent began his employment as a Deputy County Attorney in the Civil Division of the Navajo County Attorney's Office.
7. On January 15, 2006, at 77 S. Access Road in Camp Verde, Arizona, Yavapai County Sheriff's detectives arrested Respondent because Respondent was found to possess a small baggie of methamphetamine and a methamphetamine pipe.
8. On January 20, 2006, Respondent resigned from his position as a Civil Deputy County Attorney with the Navajo County Attorney's Office.
9. On January 26, 2006, Respondent was charged before the Yavapai County Superior Court of the State of Arizona with four criminal counts in Case Number CR 2006-0058, *State of Arizona v. William Reckling*, arising out of Respondent's arrest on January 15, 2006.
10. In Case Number CR 2006-0058, Respondent was charged with:

Count one, use of wire communication or electronic communication in drug related transactions, a class 4 felony (Count 1);

Count two, possession of dangerous drugs, a class 4 felony (Count 2);

Count three, possession of drug paraphernalia, a class 6 felony (Count 3);

Count four, driving on a suspended license, a class 1 misdemeanor (Count 4).

11. On March 27, 2006, Respondent signed a plea agreement in which Respondent agreed to plead guilty to all four counts as they were charged
12. In exchange for his guilty pleas, Respondent was allowed to participate in the Treatment Assessment Screening Center ("TASC") program
13. As a result of this plea agreement, sentencing on all drug charges was deferred so Respondent could participate in the TASC program.
14. Pursuant to the terms of the plea agreement, if Respondent successfully completed the TASC program, then Respondent's guilty pleas to Count one and Count two would be withdrawn and both counts would be dismissed.
15. Pursuant to the terms of the plea agreement, if Respondent successfully completed the TASC program, Count three, possession of drug paraphernalia, would be designated a class six felony.
16. Pursuant to the terms of the plea agreement, if Respondent did not successfully complete the TASC program, then, on motion from the State, a sentencing date would be set by the Yavapai County Superior Court for Respondent to be sentenced on all three criminal drug charges to which he pled guilty.

17. On March 27, 2006, Respondent entered guilty pleas before a judge of the Yavapai County Superior Court to all four counts pursuant to the terms of the signed plea agreement.
18. Respondent was sentenced to two (2) days in the Yavapai County jail with credit for two (2) days already served, and received a \$300 fine on the conviction of Count four, driving on a suspended license, a class one misdemeanor.
19. On the three remaining criminal drug charges, Respondent was directed to report to TASC immediately.
20. On July 15, 2006, Respondent was admitted to the hospital for deep vein thrombosis and placed in a medically induced coma. Respondent's medical condition ultimately resulted in the placement of a "Green Shield" in Respondent's Vena Cava Interior to prevent any clots from progressing into the Respondent's lungs.
21. Due to Respondent's hospitalization, Respondent was medically unable to attend to the requirements of the TASC program.
22. Without the knowledge of Respondent's hospitalization, on July 20, 2006, the TASC program involuntarily discharged Respondent for noncompliance with the terms and conditions of the program.
23. Because TASC did not know of Respondent's hospitalization, the TASC Treatment Discharge form stated that Respondent failed to comply with the requirements of the TASC program, did not attend group counseling, and failed to show for required urinalysis

24. Upon motion from the Yavapai County Attorney's Office, pursuant to the terms of the plea agreement, Respondent's sentencing date was set for September 11, 2006, at 1:30 p.m.
25. On August 10, 2006, Respondent's criminal defense counsel filed a Motion to Vacate Sentencing. In this Motion, the Court was notified that Respondent had been hospitalized since July 15, 2006, and thus was medically unable to participate in the TASC program.
26. In a reply Motion filed on August 14, 2006, the Yavapai County Attorney's Office did not object to allowing Respondent to remain in the TASC program and vacating sentencing.
27. On August 16, 2006, the Yavapai County Superior Court vacated the sentencing date of September 11, 2006.
28. On October 10, 2006, Respondent's defense counsel filed a Notice of Filing of TASC Memorandum, in which the Yavapai County Superior Court was given notice of Respondent's successful completion of the TASC program.
29. On December 4, 2006, the Court entered a Judgment of guilt against Respondent on Count three, possession of drug paraphernalia, a class 6 designated felony pursuant to his successful completion of the TASC program and the terms of his plea agreement.
30. Respondent received a fine of \$180 and was ordered to pay \$120 to the TASC program.

CONCLUSIONS OF LAW

31. The Hearing Officer finds by clear and convincing evidence that Respondent violated Rule 42, Ariz.R Sup Ct., specifically, ER 8.4(b), by being convicted of Possession of Drug Paraphernalia, a designated class 6 felony on December 4th, 2006 in the Yavapai County Superior Court.

ABA STANDARDS

32. 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; (4) the existence of aggravating or mitigating factors.

The Duty Violated

33. ABA Standard 5.12 states: "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".

The Lawyer's Mental State

34. Respondent's mental state was knowing and intentional

The Actual or Potential Injury

35. Respondent's conduct was injurious to the profession and adversely reflects on his trustworthiness and fitness as a lawyer, as well as his ability to uphold the law of the State of Arizona.

Aggravating and Mitigating Factors

36. *Standard* 5.12 states that the presumptive sanction for Respondent's conduct is suspension. From this presumption, the aggravating and mitigating factors must be considered.

Aggravating Factors

37. Under *Standard* 9.22(a), Respondent has a prior disciplinary offense. On April 16, 2007, Respondent received an Informal Reprimand from the State Bar for violation of Rule 42, specifically, ER, 8.4(d), and Rule 41(g) Ariz.R.Sup.Ct.

38. Under *Standard 9.22(i)*, Respondent has substantial experience in the practice of law. Respondent was admitted to the practice of law over 28 years ago.
39. Under *Standard 9.22(k)*, Respondent engaged in illegal conduct, specifically, the possession of a controlled substance and a methamphetamine pipe.

Mitigating Factors

40. Under *Standard 9.32(b)*, there is no evidence of a selfish or dishonest motive. Respondent admits that he has, or had, a drug problem.
41. Under *Standard 9.32(e)*, Respondent has shown a cooperative attitude toward the proceedings in this matter. Respondent met with Hal Nevitt of the State Bar approximately one week after his arrest and has had extensive contact with the Bar concerning these matters since then
42. Under *Standard 9.32(c)*, Personal and Emotional Problems, Respondent asserts a mental disability as a relevant mitigating factor. (See Respondent's Exhibit #1 to hearing) Respondent asserts that he suffers from bipolar disorder, per the diagnostic criteria set forth in the Psychiatric Diagnostic and Statistical Manual ("DSM") IV and the Social Security Disability criteria sec. 12.4, and has been under continuous psychiatric care since 1985. Respondent has an SSDI claim pending on this basis. In the late 1990's, the State determined that Respondent met the criteria for "Seriously Mentally Ill" ("SMI"), per ARS Title 36, and Respondent has received psychiatric care from the State's Behavioral Health contractors since that time.
43. Under *Standard 9.32(g)*, Respondent asserts his excellent reputation and character within the community as a relevant mitigating factor Respondent asserts he has received an "AV" rating from Martindale-Hubble in his career as a practicing attorney. The Hearing

Officer was not presented with sufficient proof other than Respondent's testimony to verify this claim, so it was weighted accordingly.

44. Under *Standard 9 32(k)*, other penalties were imposed upon Respondent. Respondent successfully completed the TASC program. Respondent was sentenced to probation and received a fine for his criminal conduct.
45. The parties submit that suspension is the appropriate sanction in this matter after weighing the Aggravating and Mitigating factors.

PROPORTIONALITY REVIEW

46. The Supreme Court has held that 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).
47. In *In re Clark*, SB-98-0067-D, *Clark* was convicted of Solicitation to Commit Possession of Narcotic Drugs, a class 6 open offense, in 1988. *Clark* received three years of probation, but was discharged from probation early due to exceptional performance and the offense was designated a class 1 misdemeanor. *Clark* admitted to a violation of ER 8 4(b). Standard 5.12 was cited. There is one aggravating factor found (prior discipline) against nine mitigating factors, most significant of which was the ten-year delay in the disciplinary proceedings. *Clark* was censured rather than suspended, mostly due to the delay in the disciplinary proceedings, which was followed by probation (MAP and drug testing).
48. In *In re Smith*, SB-95-0074-D (1968), *Smith* was convicted of Possession of Narcotic Drugs in Los Angeles, California and sentenced to three years probation. *Smith*

admitted a violation of ER 8.4(b). Standard 5.12 was again cited. Two aggravating factors were found in contrast to nine mitigating factors. The *Rivkind* case was cited for proportionality. *Smith* was suspended for 2 1/2 years, retroactive to 1990, and placed on probation for two years, which included drug testing and participation in MAP.

49. In *In re Rivkind*, SB-88-0043-D (1990), *Rivkind* was convicted of Attempted Possession of Narcotic Drugs a class five felony and was placed on three years probation. *Rivkind* was found to have violated ER 8.4(b). One aggravating factor was found in contrast to “overwhelming” mitigation. *Rivkind* was suspended for two years. *Rivkind's* suspension was followed by a term of probation, which included participation in MAP, drug testing and a practice monitor.

RECOMMENDATION

50. 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 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 P2d 352, 361 (1994).
51. In imposing this discipline, it is appropriate to consider the facts of the case, the American Bar Association's *Standards for Imposing Lawyer Sanctions*, and the proportionality of discipline imposed in analogous cases *Matter of Bowen*, 178 Ariz. 283, 286, 872 P2d 1235 (1994)
52. During the hearing of this matter, an additional issue was noted by the Hearing Officer. Respondent seemed reluctant to acknowledge that he had, or has, a drug problem.

Whether Respondent has a drug problem, or was self-medicating as a result of his mental health issues, is unclear. Regardless, Respondent needs to have a clear understanding of the interplay between his mental health issues and his problem with drugs before he should be considered for reinstatement to the Bar

53. Upon consideration of the facts, application of the *Standards*, including aggravating and mitigating factors, and a proportionality analysis, this Hearing Officer recommends acceptance of the parties agreed upon sanction:
54. Respondent shall be suspended for a period of 18 months, with the effective date of the suspension being July 6, 2006, which is the effective date of Respondent's interim suspension in this matter.
55. Respondent shall pay all costs and expenses that are incurred by the State Bar in these proceedings within 30 days of the Supreme Court's Final Judgment and Order. In addition, Respondent shall pay all costs incurred by the Disciplinary Commission, the Supreme Court, and the Disciplinary Clerk's Office in this matter.
56. Upon formal reinstatement to the practice of law by order of the Supreme Court of the State of Arizona, Respondent shall be placed on a term of probation. The duration and conditions of Respondent's probation term shall be determined upon reinstatement, at a minimum, the terms of Respondent's probation shall include:
 - A. Respondent shall contact the Director of the State Bar's Law Office Management Assistance Program ("LOMAP") within 30 days of reinstatement. The director of LOMAP shall develop a probation contract, and its terms shall be incorporated herein by reference.

B. Respondent's probation shall also include any additional terms deemed appropriate by the Hearing Officer, Commission or Court at the time of reinstatement.

C Respondent shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other Rules of the Supreme Court of Arizona

D In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a Notice of Non-compliance with the imposing entity, pursuant to Rule 60(a)(5), Ariz.R.Sup Ct. The imposing entity may refer the matter to a Hearing Officer to conduct a hearing at the earliest practicable date, but in no event later than 30 days after receipt of notice to determine whether a term of probation has been breached and, if so, to recommend the appropriate action and response. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove non-compliance by clear and convincing evidence.

DATED this 10th day of December, 2007.

Hon. H. Jeffrey Coker JCS
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 10th day of December, 2007.

Copy of the foregoing mailed
this 10th day of December, 2007, to:

William J Reckling
Respondent
4202 North 42nd Street
Phoenix, AZ 85018-0001

Matthew E. McGregor
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: 