

FILED

NOV 19 2007

BEFORE A HEARING OFFICER OF THE SUPREME COURT OF ARIZONA
HEARING OFFICER OF THE SUPREME COURT OF ARIZONA
By CLW

1
2
3 IN THE MATTER OF A MEMBER OF
4 THE STATE BAR OF ARIZONA,

File Nos 06-0687, 06-1273

5
6 **MICHAEL A. URBANO,**
7 **Bar No. 023029,**
8 Respondent.

Hearing Officer's Report

(Assigned to Hearing Officer 7V,
Stanley R. Lerner)

9 The State Bar of Arizona ("State Bar"), represented by undersigned Bar
10 counsel, and Respondent, Michael Urbano, represented by Veronica Manolio,
11 submitted the Respondent's Tender of Admissions and Agreement for Discipline
12 by Consent pursuant to Rule 56(a), Ariz R Sup.Ct., and the guidelines for
13 discipline by consent issued by the Arizona Supreme Court's Disciplinary
14 Commission.
15
16

17 The formal complaint in this matter was filed on May 31, 2007. A hearing
18 was held after the Tender of Admissions and the Consent were filed. In exchange
19 for the stated form of discipline per Rule 56(c)(4)(A), Ariz.R.Sup Ct, Respondent
20 conditionally admitted violating the duties owed to his client, the profession and
21 the legal system, described in detail below. The Hearing Officer adopts the Tender
22 of Admissions and accepts the admissions by Respondent that he violated the
23 duties owed to his client, the profession and the legal system, described in detail
24 below
25

1 Respondent agreed to accept a sixty-day suspension, with one year of
2 probation. The Hearing Officer having considered the evidence presented and the
3 statements of the Respondent at the Hearing believes the suspension and other
4 terms as agreed are appropriate.
5

6 Respondent's probation shall begin after his reinstatement to active status
7 and shall run for one year upon his signing of a Memorandum of Understanding
8 The terms and conditions of probation shall include an assessment by the State
9 Bar's Management Assistance Program ("MAP") and Respondent's agreement to
10 any contract deemed appropriate by MAP In addition, Respondent shall pay the
11 costs and expenses incurred in this disciplinary proceeding as enumerated in
12 Exhibit "A" attached to the Tender of Admissions.
13
14

15 FACTS

16 1. At all times relevant, Respondent was a lawyer licensed to practice
17 law in the state of Arizona, having been first admitted to practice in Arizona on
18 August 26, 2004.
19

20 2 Respondent and Emil Pikula ("Mr Pikula") were friends prior to the
21 representations described below
22

23 3 Mr. Pikula married Anett Pikula ("Ms. Pikula") on August 22, 2005

24 4. Ms. Pikula worked at Christie's Cabaret ("Cabaret") as an exotic
25 dancer

1 5. Before representing Mr. Pikula in the matters discussed below,
2 Respondent told Mr. Pikula that he desired Ms. Pikula sexually.

3
4 6. On November 23, 2005, Mr. Pikula was charged with assaulting Ms.
5 Pikula in *State of Arizona v. Emil A. Pikula*, City of Phoenix Municipal Court,
6 Maricopa County, number 20069000246 (“criminal matter”) which resulted in an
7 Order of Protection against Mr. Pikula on November 28, 2005.

8
9 7. In December 2005, Mr. Pikula hired Respondent to represent him in
10 domestic relations matters and, on December 28, 2005, Respondent filed a
11 petition for annulment of Mr. Pikula’s marriage to Ms. Pikula in *Anett Pikula v*
12 *Emil A. Pikula*, Maricopa County Superior Court case number FN 2005-005146
13 (“domestic relations matters”).
14

15 8. Further hearings concerning the protective orders issued against Mr.
16 Pikula were handled in the domestic relations case.

17
18 9 Respondent also agreed to assist Mr. Pikula in the criminal matter. If
19 this matter proceeded to a hearing, Respondent would present evidence that he
20 represented Mr. Pikula on a *pro bono* basis in the criminal matter. For purposes
21 of this consent agreement, the State Bar does not object to this statement.

22
23 10. Respondent went to the Cabaret while Ms. Pikula was working there
24 and had direct contact with her on at least two occasions, once while he
25 represented Mr. Pikula. If this matter proceeded to a hearing, Respondent claims

1 he would present evidence that he did not go to the Cabaret to meet with, see, or
2 talk to Ms. Pikula. For purposes of this consent agreement, the State Bar did not
3 object to this statement.
4

5 11. During the second meeting at the Cabaret, Ms. Pikula offered
6 Respondent a lap dance, which he refused.

7 12. The second time that Respondent met Ms. Pikula at the Cabaret; she
8 wanted to discuss the domestic relations matter with Respondent.
9

10 13. At and after the contact at the Cabaret and although he knew that Ms.
11 Pikula wanted to discuss the domestic relations matters with him, Respondent did
12 not end his contacts with Ms. Pikula
13

14 14 During the time that he represented Mr. Pikula, Ms. Pikula obtained
15 Respondent's cellular telephone number and contacted him by telephone and by
16 text messages on numerous occasions.
17

18 15. In about January 2006, Ms. Pikula hired attorney Iris Garcia Maes
19 ("Ms Maes") to represent her in the domestic relations matters.

20 16. After Ms Pikula retained Ms. Maes, Respondent continued to have
21 contact with Ms. Pikula
22

23 17 Respondent was aware that Ms. Pikula had counsel when he
24 continued to have contact with her, even though Ms Maes did not consent to
25

1 these communications and Respondent did not have authority from Ms. Maes to
2 communicate with Ms. Pikula

3
4 18 Respondent did not immediately inform Mr. Pikula, Ms. Maes or the
5 courts in the criminal matter or the domestic relations matters that he had
6 repeatedly had contact with Ms. Pikula, much less the nature of his contacts with
7 Ms. Pikula.

8
9 19 The court in the domestic relations matters dismissed the November
10 28, 2005 Order of Protection on January 9, 2006

11 20. Ms. Pikula filed a counter-claim for dissolution of her marriage to
12 Mr. Pikula on January 9, 2006

13
14 21 Respondent filed a Notice of Appearance on behalf of Mr. Pikula in
15 the criminal matter on January 19, 2006

16 22 On January 27, 2006, Ms. Pikula obtained a second Order of
17 Protection, this time in the domestic relations matters, which Order was dismissed
18 on February 14, 2006.

19
20 23 On April 13, 2006, a non-jury trial was held in the criminal matter,
21 Mr. Pikula was found guilty of domestic violence assault, and sentencing was set
22 for May 24, 2006.

23
24 24 During his representation of Mr. Pikula, Respondent told Ms. Pikula
25 at least the following:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- a. After this case is over, I'd love to take you out.
- b. When this case is over, trust me, I'm going to knock the bottom out of you.
- c. I love to be near you.
- d. I like you, I like you a lot. I do.
- e. Do you know what flattered means? Flattered means I like that you call me. It's nice.

25. During his representation of Mr. Pikula, Ms. Pikula contacted him and told him that she wanted to meet with him to discuss the cases. Respondent then met with and ate with Ms. Pikula and paid the bill

- a. On a second occasion during his representation of Mr. Pikula, Ms. Pikula called Respondent, asked where he was and then appeared at the restaurant at which Respondent was eating. Respondent did not end his contact with Ms. Pikula when she appeared at that restaurant.
- b. During the time that he represented Mr. Pikula, Respondent and Ms. Pikula kissed on at least one occasion. If this matter proceeded to a hearing, Respondent would present evidence that Ms. Pikula kissed him without his encouragement. For purposes of this consent agreement, the State Bar does not contest this statement.

1 c. In April 2006, Respondent admitted to Mr Pikula that he had had
2 contacts with Ms Pikula during the time that Respondent represented
3 him, but Respondent did not fully disclose to Mr Pikula the amount
4 or nature of the contacts he had had with Ms. Pikula.
5

6 26. Respondent informed Ms. Maes in a letter dated April 20, 2006 that
7 he had had repeated contacts with Ms Pikula, that a conflict of interest existed
8 between he and Mr. Pikula, and that he, Respondent, was solely responsible for
9 creating the conflict.
10

11 27. On April 21, 2006, Respondent filed a Notice of Withdrawal as Mr
12 Pikula's attorney in the domestic relations matters and informed the court that he
13 was withdrawing due to an actual conflict of interest.
14

15 28 Ms. Maes filed charges with the State Bar concerning Respondent's
16 conduct on April 26, 2006.
17

18 29. On May 2, 2006, Respondent filed a motion to withdraw as Mr
19 Pikula's attorney in the criminal matter.

20 30. Mr. Pikula subsequently filed a petition for post-conviction relief in
21 the criminal matter and the court issued a Ruling/Findings of Fact re. Petition for
22 Post-Conviction Relief on April 16, 2007 in which he denied the petition for
23 post -conviction relief and found that Respondent had an actual conflict of interest
24
25

1 due to his unprofessional relationship with Ms. Pikula. The court also found that
2 the actual conflict did not have any adverse effect on the criminal matter

3
4 31 Respondent did not have Mr. Pikula's informed consent to
5 communicate with Ms. Pikula.

6 32. Respondent should have notified Mr. Pikula sooner about his
7 contacts with Ms. Pikula and the conflict of interest that developed between him
8 and Mr. Pikula.

9
10 33 Respondent continued to represent Mr. Pikula even after a conflict of
11 interest developed between Respondent and Mr. Pikula

12 34 Mr. Pikula did not expressly waive the conflict of interest.

13 ADMISSIONS

14
15 Respondent admits that his conduct, as set forth above, violated the
16 following Rules of Professional Conduct. Rule 42, Ariz.R Sup.Ct., specifically
17 ERs 1.4, 1.7, 4.2 and 8.4(c) and (d).
18

19 DISMISSALS

20 The State Bar conditionally agreed to dismiss the allegation that
21 Respondent's conduct violated Rule 42, Ariz.R Sup.Ct., ER 1.6. After the
22 complaint was filed in this matter, Respondent submitted additional evidence
23 including but not limited to tapes and transcripts from audio recordings allegedly
24 made by Ms. Pikula without Respondent's knowledge and court documents from
25

1 the underlying actions. Based upon the evidence submitted by the Respondent and
2 for purposes of the consent agreement, the State Bar agreed to dismiss this
3 allegation
4

5 Therefore the allegations that Respondent's conduct violated Rule 42,
6 Ariz R Sup.Ct., ER 1.6 are dismissed

7 **HEARING**

8
9 The Hearing Officer conducted a hearing on September 28, 2007 for the
10 purpose of mitigation and learning from the Respondent about his conduct, his
11 admissions and to discern the remorse felt by the Respondent. Remorse is a
12 consideration in determining mitigation and sanctions against Respondent The
13 Respondent was sworn and testified that he acknowledged his conduct violated his
14 duties to the client and to the profession. The marriage of the Respondent is
15 apparently in the process of dissolution because of his conduct. It was apparent to
16 the Hearing Officer that the Respondent felt embarrassed and ashamed about his
17 conduct. Moreover, the Respondent's testimony convinces the Hearing Officer
18 that genuine remorse about his conduct, both personally and professionally, was
19 felt by the Respondent
20
21
22

23 **SANCTIONS**

24 Respondent and the State Bar agreed that, based on the Respondent's
25 conditional admissions, the following disciplinary sanctions would be imposed:

1 1. Respondent will receive a sixty-day suspension for violations of Rule
2 42, Ariz R Sup Ct., specifically ERs 1.4, 1 7, 4 2, and 8 4(c) and (d).

3 2. Respondent will receive one year of probation, which will begin after
4 his reinstatement to active status and run for one year from his signing of a
5 Memorandum of Understanding

6 3. The terms of probation include an assessment by MAP and
7 Respondent shall agree to any contract deemed appropriate by MAP

8 4. Respondent shall pay all costs and expenses incurred by the State Bar
9 in this disciplinary proceeding, as provided in the State Bar's statement of costs
10 and expenses, attached hereto as Exhibit "A".

11 5. In the event that Respondent fails to comply with the terms of
12 probation, to be determined upon his reinstatement into active status, and
13 information thereof is received by the State Bar, Bar counsel shall file a Notice of
14 Non-Compliance with the imposing entity, pursuant to Rule 60(a)(5),
15 Ariz.R Sup.Ct The imposing entity may refer the matter to a hearing officer to
16 conduct a hearing at the earliest practicable time, but in no event later that thirty
17 days after receipt of notice, to determine whether a term of probation has been
18 breached, and, if so, to recommend an appropriate action and response If there is
19 an allegation that Respondent failed to comply with any of the foregoing terms,
20
21
22
23
24
25

1 the burden of proof shall be on the State Bar to prove non-compliance by clear and
2 convincing evidence.

3
4 **CONCLUSION**

5 The Hearing Officer finds that the Respondent admitted that he engaged in
6 the conduct set forth above, and the rule violations indicated, in exchange for the
7 form of discipline set forth above. The Respondent showed remorse and contrition
8 regarding his conduct.
9

10 Pursuant to Rule 53(c)(4), Ariz.R Sup Ct , Respondent waived his right to a
11 formal disciplinary hearing to which he would otherwise be entitled as well as his
12 right to testify and present the witnesses on his behalf at a hearing Respondent
13 further waived all motions, defenses, objections or requests that he has made or
14 raised, or could assert hereafter, if the conditional admissions and stated forms of
15 discipline are approved. Respondent was represented by Veronica Manolio and
16 has received assistance in these proceedings Respondent acknowledged that he
17 has read the Tender of Admissions and received a copy of it. Respondent
18 submitted his agreement with conditional admissions, freely and voluntarily, and
19 without coercion or intimidation, and was aware of the Supreme Court rules with
20 respect to discipline. The Hearing Officer accepts the agreement and considers the
21 conditional admissions now as admissions subjecting Respondent to the sanctions
22 to which the parties agreed
23
24
25

1 Accordingly it is ordered the following sanctions be imposed on
2 Respondent:

3 1. Respondent will receive a sixty-day suspension for violations of Rule
4 42, Ariz.R.Sup Ct., specifically ERs 1.4, 1.7, 4.2, and 8.4(c) and (d).

5 2. Respondent will receive one year of probation, which will begin after
6 his reinstatement to active status and run for one year from his signing of a
7 Memorandum of Understanding.
8

9 3 The terms of probation include an assessment by MAP and
10 Respondent shall agree to any contract deemed appropriate by MAP.
11

12 4 Respondent shall pay all costs and expenses incurred by the State Bar
13 in this disciplinary proceeding, as provided in the State Bar's statement of costs
14 and expenses, attached hereto as Exhibit "A".
15

16 5 In the event that Respondent fails to comply with the terms of
17 probation, to be determined upon his reinstatement into active status, and
18 information thereof is received by the State Bar, Bar counsel shall file a Notice of
19 Non-Compliance with the imposing entity, pursuant to Rule 60(a)(5),
20 Ariz.R.Sup.Ct. The imposing entity may refer the matter to a hearing officer to
21 conduct a hearing at the earliest practicable time, but in no event later than thirty
22 days after receipt of notice, to determine whether a term of probation has been
23 breached, and, if so, to recommend an appropriate action and response. If there is
24
25

1 an allegation that Respondent failed to comply with any of the foregoing terms,
2 the burden of proof shall be on the State Bar to prove non-compliance by clear and
3 convincing evidence.
4

5 **DATED** this 19th day of November 2007.

6
7 Stanley R. Lerner/CS
8 Stanley R. Lerner, Hearing Officer

9 Original filed with the Disciplinary Clerk
10 this 19th day of November, 2007.

11 Copies of the foregoing mailed this 19th
12 day of November, 2007, to:

13 Veronica L. Manolio
14 Respondent's Counsel
15 Ronan & Firestone, PLC
16 9300 East Raintree Drive, Suite 120
17 Scottsdale, Arizona 85260

18 Denise K. Tomaiko
19 Bar Counsel
20 State Bar of Arizona
21 4201 North 24th Street, Suite 200
22 Phoenix, Arizona 85016-6288

23
24
25
26 by: Christina AS