

suspension and costs, including any costs incurred by the Disciplinary Clerk's office.²

RESPECTFULLY SUBMITTED this 3rd day of September 2008.

Jeffrey Messing /cs
Jeffrey Messing, Vice-Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 3rd day of September, 2008.

Copy of the foregoing mailed
this 3rd day of September, 2008, to:

Honorable H. Jeffrey Coker
Hearing Officer 6R
P.O. Box 23578
Flagstaff, AZ 86002-0001

Nancy A. Greenlee
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by: CSoto

/mps

² A copy of the Hearing Officer's Report is attached as Exhibit A. Cost and expenses incurred by the State Bar total \$626.00.

EXHIBIT

A

3. Subsequent negotiation between the parties resulted in the agreement that the positive urinalysis constituted a violation of Respondent's probation and the parties agreed to an increased sanction of suspension for six months and a day. The undersigned Hearing Officer was notified of the amended agreement and granted permission to file amended Tender and Joint Memorandum, which were both filed on June 16, 2008.

FINDINGS OF FACT

4. On January 24, 2007, the Committee on Character and Fitness ("the Committee") requested that Respondent contact the State Bar's Membership Assistance Program ("MAP") to arrange for an evaluation and assessment.
5. As a result of that assessment, the State Bar was requested to prepare a MAP contract for Respondent. Respondent signed the MAP contract on May 9, 2007, the term of which was one year from the date of her admission to the State Bar of Arizona.
6. On or about May 17, 2007, the Committee issued findings of fact and a recommendation of conditional admission in the matter of Respondent's application for admission to the State Bar of Arizona.
7. The Committee recommended that Respondent comply with the terms of the MAP contract for a period of 12 months. A copy of the Committee's findings and recommendations were mailed to Respondent at her address of record.

8. By notice dated June 28, 2007, Respondent was notified that the Supreme Court of Arizona had declined review of the Committee's findings of fact and recommendation of conditional admission, and that the Committee's recommendation for admission was final.
9. By letter dated July 6, 2007, the Committee notified Respondent that the Court had reviewed and concurred with the recommendation of the Committee with respect to her admission to practice (See Supreme Court Order issued June 28, 2007, No. SB-07-0108-C) and that she was recommended for admission in accordance with the MAP contract she signed on May 9, 2007.
10. Respondent was conditionally admitted to the practice of law in the state of Arizona on July 31, 2007. Respondent's one year participation in the MAP contract began on July 31, 2007, the date on which she was admitted.

COUNT ONE (File No. 07-1792)

11. Respondent's MAP contract contained provisions requiring, among other things, that Respondent:
 - a) Completely abstain from using alcohol;
 - b) Not use any over-the-counter medication other than aspirin, acetaminophen or ibuprofen, unless specifically approved in advance by her primary care physician;
 - c) Abstain from ingesting alcohol, food stuffs, beverages or toiletries containing alcohol.
12. Pursuant to Respondent's MAP contract, she submitted to random urinalysis on or about October 11, 2007.

13. On or about October 17, 2007, Dr. Michael Sucher, Medical Director of MAP, informed Bar Counsel that the results of that urinalysis showed that Respondent had tested positive for ethylglucuronide ("EtG"), an alcohol metabolite, and that Respondent was not in compliance with her MAP contract.
14. Respondent subsequently admitted to Dr. Sucher that she had, without a prescription and without having disclosed to Dr. Sucher, taken NyQuil, which contained alcohol. Respondent affirmatively asserted that at the time she took the NyQuil, she did not realize that it contained alcohol, and that she was negligent in failing to assure that it did not. For purposes of the agreement, the State Bar does not contest this assertion.
15. Respondent admitted that she was aware of the requirements of her MAP contract, including the requirement that she not ingest alcohol or take over-the-counter medications without the approval of Dr. Sucher or her physician.
16. As mentioned previously, as a result of the consumption of NyQuil in October, 2007, the parties had originally agreed that Respondent would receive a censure and be placed on probation for one year beginning on the date that all parties signed the original Tender and Joint Memorandum. The terms of Respondent's probation were to include Respondent's continued participation in the State Bar of Arizona's Membership Assistance Program under the same terms as Respondent's current participation, including abstinence. Subsequent to all of the parties signing the documents on May 15, 2008, a hearing on the original agreement was held on May 20, 2008.

17. On or prior to May 21, 2008, Respondent consumed alcohol in violation of her recently imposed probation. Respondent knew and understood that all terms of her MAP contract, including the terms that required her abstinence from consuming alcohol, were in effect until May 15, 2009.
18. Subsequent negotiations between Bar Counsel and Respondent's attorney resulted in a conditional agreement that Respondent's positive urinalysis constituted a violation of her probation, and that the agreement for discipline by consent would be amended to reflect a suspension for six months and one day.
19. The parties submit that the suspension for six months and one day is an appropriate sanction in this matter in light of Respondent's conduct, both initially (consuming Nyquil) in violation of her MAP contract, and subsequently (consuming alcohol) in violation of her probation after signing her original Tender and Joint Memorandum. The parties further submit that Respondent's status as a conditional admittee will, as a result of her suspension, be terminated. Respondent also agrees that, should she seek reinstatement and be reinstated, the terms and conditions of probation, if any, should be determined at the time of her reinstatement. Respondent also agrees to pay all costs and expenses of these disciplinary proceedings.

CONCLUSIONS OF LAW

20. This Hearing Officer finds that there is clear and convincing evidence that Respondent violated Rule 53(e) and (g) Ariz.R.Sup.Ct.

ABA STANDARDS

21. 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 and mitigating factors.

The Duty Violated

22. *Standard* 7.2 provides that suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system. Respondent's conduct in consuming alcohol shortly after the hearing on her original violation constitutes a violation of a duty owed by the Respondent, and potential injury to the legal system.

The Lawyer's Mental State

23. The Respondent's mental state in the original violation of her MAP contract by consuming NyQuil could be considered negligent. However, Respondent's mental state in consuming alcohol shortly after the hearing on the original violation must be considered to be "knowing".

The Injury Caused

24. While Respondent's conduct did not cause any harm or threat of harm to any client, it certainly constitutes a threat to the integrity of the profession, and the potential for harm depending on Respondent's conduct after consuming alcohol.

Aggravating and Mitigating Factors

25. The parties submit that there are no aggravating factors. However, this Hearing Officer finds that 9.22(c) Pattern of Misconduct is applicable. Respondent had not even completed the disciplinary process on the violation of her MAP contract by consuming NyQuil, when she consumed alcohol in violation of her recently signed probation agreement.
26. In mitigation, the parties submit that *Standard* 9.32(a), Absence of a Prior Disciplinary Record, would apply, but agree that, given that Respondent violated a term of probation within one week of signing the original agreement, it should be given very little weight. The parties also submit that *Standard* 9.32 (f), Inexperience in the Practice of Law, would apply. This Hearing Officer concurs that it might be applicable under the circumstances of this case, but gives it a little weight.
27. Respondent submits that, following the May 20, 2008, hearing, she notified the State Bar that she wanted to be placed on "inactive" status. Respondent received a job offer near the time of the hearing that she subsequently accepted. Respondent has now relocated to California, has taken a job that does not require her to have Bar membership and she is not working as a lawyer.

PROPORTIONALITY REVIEW

28. The Supreme Court has held that while discipline in each situation must be tailored to the individual facts of the case, it is also important that cases with

similar factual patterns receive similar discipline, In *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983), and *In re Wolfram*, 174 Ariz. 49, 847 P.2d 94 (1993).

29. The parties submitted two cases as proportionality cases, but concede that they are unaware of any cases directly on point. The undersigned Hearing Officer could not find any more applicable cases.
30. In *In re Pohto*, SB-03-0145-D (2004), the lawyer was suspended for six months and one day after failing to comply with the terms of his conditional admission by ingesting alcohol. In *Pohto*, however, the lawyer was charged with driving under the influence as well.
31. In *In re Rolph*, SB-06-0011-D (2006), the lawyer was suspended for 90 days for knowingly failing to comply with the conditions of admission, as well as failure to cooperate with the State Bar during the disciplinary investigation.

RECOMMENDATION

32. This case is unique in that, while Respondent's conduct itself is not that egregious, it must be kept in mind that she was originally a conditional admittee, violated her MAP contract and as a sanction for that violation agreed to a term of probation, which she almost immediately violated. Respondent appears to be a bright articulate young person that could have a future in the law. However, the fact that she takes her obligation to the profession and the rules, as well as her personal commitments, so casually is troubling indeed. Suspension is appropriate for such misconduct, and while six months and a day might appear to be harsh, it is the most appropriate sanction to protect the profession.

33. It is the recommendation of this Hearing Officer that Respondent be suspended from the practice of law for a period of six months and one day.
34. It is also recommended that, in the event that Respondent is reinstated to the practice of law, a determination be made at that time as to whether probation should be imposed upon reinstatement, and if probation is imposed upon reinstatement, the terms and conditions of the probation should be determined at that time.
35. Respondent shall pay all costs incurred by the State Bar in connection with these proceedings.

DATED this 8th day of July, 2008.

Hon. H. Jeffrey Coker /N/M
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 8th day of July, 2008.

Copy of the foregoing mailed
this 8th day of July, 2008, to:

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