

COUNT ONE (File No. 07-0254)

3. In or about 2005, Respondent applied for admission to the State Bar of Arizona.
4. In reviewing Respondent's application, the Character and Fitness Committee ("the Committee") expressed concern about Respondent's history of substance abuse problems.
5. On or about January 30, 2006, the Committee issued its findings of fact and officially recommended Respondent for conditional admission.
6. One of the conditions of Respondent's admission was that he enter into a Therapeutic Contract with the State Bar's Member Assistance Program and comply with the terms of the contract for a period of three years.
7. The Committee also ordered Respondent to abstain from alcohol and mood altering drugs, submit to random drug testing, participate in support meetings, engage in quarterly evaluations, and continue with ongoing treatment for his depression and attention deficit disorder.
8. On or about March 16, 2006, Respondent entered into a Therapeutic Contract with the State Bar's Member Assistance Program.
9. As part of Respondent's Therapeutic Contract, Respondent was required to meet with a practice monitor at least once each month.
10. Respondent did not meet with his practice monitor in August and September of 2006.
11. On October 6, 2006, the State Bar sent a letter to Respondent warning him that he had to meet with his practice monitor on a monthly basis.

12. On or about July 9, 2007, Respondent was arrested by the Kingman Police Department for domestic violence by disorderly conduct.
13. On or about July 28, 2007, Respondent was again arrested by the Kingman Police Department for domestic violence by disorderly conduct.
14. The criminal cases against Respondent in Kingman were ultimately dismissed.
15. On September 14, 2007, the State Bar sent another warning letter to Respondent referencing his arrests and cautioning him that further misconduct would result in a screening investigation.
16. On or about October 2, 2007, Respondent entered into an addendum to his Therapeutic Contract with the State Bar's Member Assistance Program.
17. The amendment required Respondent to make and attend appointments with a licensed professional counselor and provide written progress reports to the Member Assistance Program every 90 days.
18. Respondent failed to provide the State Bar with written progress reports regarding his mandated counseling sessions at anytime subsequent to the amendment.
19. The terms of the original Therapeutic Contract required Respondent to make and attend appointments with a psychiatrist and authorize the psychiatrist to provide written reports to the Member Assistance Program every 90 days.
20. While the Respondent testified that he authorized and directed his counselors to provide the reports to the State Bar, the State Bar never received any of the written reports from Respondent's psychiatrist.

21. The terms of the original Therapeutic Contract required Respondent to participate in a random biological fluid testing program.
22. In or about April 2008, and each month thereafter, Respondent failed to provide the State Bar verification that he had been participating in random biological fluid testing. It is Respondent's position that he was being tested by the criminal justice system and that those tests were clean.
23. On June 10, 2008, the State Bar sent a screening letter to Respondent asking him to address his noncompliance within 20 days. Respondent failed to respond to the letter.
24. On or about July 2, 2008, the State Bar sent a follow-up letter to Respondent referencing his noncompliance with the previous screening letter and demanding a response within 10 days. Respondent again failed to respond to the letter.
25. On or about July 18, 2008, Bar Counsel discovered that Respondent had relocated to Utah in April of 2008, but had not updated his address with the State Bar membership division.
26. The State Bar forwarded copies of its July 2 and July 18 letters to Respondent's Utah address.
27. On August 6, 2008, Respondent provided a hand written response to the Bar indicating that he had relocated to Utah and had been incarcerated since June 3, 2008.
28. In his letter, Respondent did not address the allegations other than to say that they were due, in large part, to his incarceration.

29. At the time, Respondent's address on record with the State Bar of Arizona reflected a Kingman, Arizona address.
30. Respondent's address on record with the State Bar of Arizona still reflects a Kingman, Arizona address.
31. **COUNT TWO (File No. 08-1232)**
In or about October 2006, Respondent undertook representation of George Barker¹ in Mohave Superior Court case CV 2006-1610.
32. On or about February 7, 2008, a Final Pre-Hearing Conference was held in Mr. Barker's case.
33. Respondent failed to appear at the Final Pre-Hearing Conference and the Court continued the hearing to June 13, 2008.
34. On or about June 3, 2008, Respondent was incarcerated in the Salt Lake County Metro Jail on domestic violence charges.
35. On June 13, 2008, the Court held another Final Pre-Hearing Conference on Mr. Barker's case.
36. In that Respondent was incarcerated, he again failed to appear for the hearing.
37. Respondent testified that Mr. Barker had fired him in March of 2008, and that he had advised Mr. Barker that a hearing was scheduled.
38. Counsel for the Plaintiff in the Barker matter informed the Court that he had been unable to contact Respondent despite his attempts.
39. As a sanction, the Court granted attorney's fees in the amount of \$498.40 to plaintiff and against Mr. Barker.

¹ Mr. Barker's name is incorrectly listed as 'Baker' in the Tender.

40. The Court struck Mr. Barker's Answer to the action and entered an Order of Default as a further sanction for Respondent's noncompliance with the Court's orders.
41. On or about June 19, 2008, the Court forwarded its Minute Entry regarding Respondent's conduct to the State Bar of Arizona.
42. On July 23, 2008, the State Bar forwarded a copy of the Court's Minute Entry to Respondent along with a letter requesting he reply within 20 days.
43. On August 6, 2008, Respondent provided a hand written response to the Bar indicating that he had relocated to Utah and had been incarcerated since June 3, 2008.
44. Respondent's address on record with the State Bar of Arizona reflected a Kingman, Arizona address.
45. Respondent's address on record with the State Bar of Arizona still reflects a Kingman, Arizona address.
46. **COUNT THREE (File No. 08-2003)²**
In or about March of 2008, Respondent was involved in a verbal altercation with his wife at his home.
47. Respondent got into his motor vehicle to leave the house and his wife followed him outside.
48. Respondent backed the vehicle slightly and struck his wife's hand with the vehicle. She was not injured.

² This Count, File Number 08-2003, was a matter then in the screening process that had not previously been incorporated into the formal matter pending. This screening matter is resolved, along with the existing formal files, as part of the parties' agreement.

49. Respondent left the home, but returned shortly thereafter to retrieve his files for a deposition.
50. When Respondent returned, he became involved in another verbal altercation with his wife.
51. As Respondent attempted to leave, he shut the car door and his wife's arm was struck as the door closed on it. His wife suffered a bruise on her arm. Police were summoned to the home.
52. On June 3, 2008, Respondent was involved in another verbal altercation with his wife in his home.
53. During the altercation, Respondent threw a soda can in his wife's direction, striking her leg. Respondent's wife suffered a lesion on her leg. Police were again summoned to Respondent's home.
54. Respondent was charged with numerous domestic violence charges, but many were ultimately dismissed pursuant to a plea agreement.
55. On or about August 22, 2008, Respondent pled guilty to Aggravated Assault, a class 3 Felony, Aggravated Assault a class A Misdemeanor, and Attempted Domestic Violence in the Presence of a Child, class B Misdemeanor.
56. On October 2, 2008, Respondent was sentenced to 36 months probation, 100 hours of community service, and restitution to be paid to the victim. Respondent testified that he was incarcerated a total of 121 days.
57. Respondent was also ordered to complete an evaluation for domestic violence, parenting, and substance abuse as well as complete any therapy recommended by the evaluations.

58. Respondent completed the required evaluations, and is currently participating in the therapeutic programs.
59. Respondent is eligible to have his conviction reduced to a misdemeanor if he successfully completes probation.
60. At the hearing in this matter, Respondent testified that he had been sober for nine years before his June arrest and knows that he must remain sober. Respondent also attributes some of his problems to the fact that he simply hung up his shingle after being admitted to practice law, without a mentoring system or staff support, and there was too much stress. Respondent is also seeing a counselor for personal therapy in addition to the Court ordered probation treatment. Respondent testified that he is committed to fixing his issues so that he never has these problems in the future. Respondent is not living with his wife and children, but they are hopeful for reunification at some point in the future.

CONCLUSIONS OF LAW

61. The undersigned Hearing Officer finds that there is clear and convincing evidence that Respondent violated:
- Rule 32(c)(3) Ariz.R.Sup.Ct. Provide the State Bar with a current address.
- Rule 42, Ariz. R.Sup.Ct.
- ER 3.2 Expediting litigation
- ER 3.4 Disobeying an obligation under the rules of a tribunal
- ER 8.4(b) Commit a criminal act
- ER 8.4(d) Conduct prejudicial to the administration of justice

Rule 53(d) Refusal to cooperate, (f) Failure to furnish information, (g) Violation of a condition of admission, and (h) Conviction of a crime.

62. **Restitution:**

The State Bar advises that there are no restitution issues in this case and, there being no further evidence of such, the Hearing Officer finds that there is no restitution in this matter.

ABA STANDARDS

63. 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.

64. **The Duty Violated:**

The undersigned Hearing Officer finds that Respondent violated his duty to the profession and to his client as set forth herein. The recommended sanction in this case is that Respondent receive a suspension of six months and one day to be followed by a period of probation upon reinstatement. Respondent's most serious misconduct in this case is his criminal conduct in violation of ER 8.4(b) and Rule 53(h), commission of a crime. ABA *Standard* 5.12 therefore is implicated and it provides that: "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."

65. The presumptive sanction therefore appears to be suspension.

66. **The Lawyer's Mental State:**

The parties submit and the Hearing Officer finds that Respondent's mental state was "knowing".

67. **The Actual or Potential Injury:**

There was both actual and potential injury in this matter in that Respondent was incarcerated, convicted of offenses involving the threat to the safety of others (his family), and placed on probation as a result of that conviction. There was also injury to the profession in that Respondent's conduct reflects badly on the profession. Respondent's refusal to keep the Bar apprised of his mailing address and not responding promptly also impaired these proceedings in that the Bar had difficulty establishing contact with him.

Aggravating and Mitigating Factors

68. **Aggravating factors:**

Standard 9.32(d), Multiple Offenses. Respondent has been found to have multiple counts of misconduct.

Standard 9.32(k), Illegal Conduct. Respondent was convicted of a crime.

69. **Mitigating Factors:**

Standard 9.32(k), Imposition of Other Penalties or Sanctions. Respondent was sentenced to probation, community service, and counseling.

*Standard 9.32(f), Inexperience in the Practice of Law.*³ Respondent was only admitted to the practice of law in 2006.

³ This mitigating factor was not stated in the Tender, but the facts support this as a mitigating factor.

PROPORTIONALITY REVIEW

70. The Supreme Court has held that one of the goals of attorney discipline should be to achieve consistency when imposing discipline. It is also recognized that the concept of proportionality is “an imperfect process” because no two cases are ever alike, *In re Struthers*, 179 Ariz. 216, 887 P.2d 789 (1994), *In re Wines*, 135 Ariz. 203, 660 P.2d 454 (1983). In order to achieve internal consistency, it is appropriate to examine sanctions imposed in cases that are factually similar, *In re Peasley*, 208 Ariz. 90, 90 P3d. 772 (2004). It is also the goal of attorney discipline that the discipline imposed be tailored to the individual case and that neither perfection nor absolute uniformity can be achieved, *Peasley*, supra.
71. In this case, the State Bar is recommending, and the Respondent has accepted, a sanction of six months and one day suspension, to be followed by two years of probation.
72. In *In re Reckling*, SB-08-0052 (2008), the lawyer was suspended for 18 months retroactively after being convicted of possession of drug paraphernalia, a class six felony in violation of ER 8.4(b).
73. In *In re Zavala*, SB-07-0004-D (2007), the lawyer was suspended for one year with two years of probation after being convicted of possession of drug paraphernalia, a class six undesignated felony in violation of ER 8.4(b) and Rule 53(h).
74. In *In re Carrasco*, SB-04-0149-D (2005), the lawyer was suspended for six months and one day after he was convicted of obstructing a criminal investigation or prosecution, a class five felony, when he contacted a crime victim and

misrepresented himself as the victim's attorney in violation of ER's 1.7, 4.1, 8.4(b)(c) & (d), Rule 53(h) and 57(a)(3).

RECOMMENDATION

75. The purpose of lawyer discipline is not to punish the lawyer, but to protect the public, the profession, the administration of justice and deter future misconduct, *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993), *In re Neville*, 147 Ariz. 106, 708 P.2d 1297 (1985). It is also the purpose of attorney discipline to instill public confidence in the Bar's integrity, *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).
76. In imposing 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, 872 P.2d 1235 (1994).
77. Respondent's problems can be summarized by saying that he has both emotional issues as well as alcohol addiction issues. Respondent was very candid and admitted that he, right after being admitted to the Bar, tried to go it alone in a solo practice with no support and no assistance. After a period of nine years of sobriety, the stress of providing for his family as well as the stress of running a solo practice became too much for the Respondent and he resumed consuming alcohol. This led to altercations with his wife, which, first in Kingman, and then later in Utah caused him to have run-ins with the law. Once Respondent fell off the wagon, he not only did not take care of his personal affairs, he did not keep

the Bar apprised of his address or respond appropriately when contacted by the Bar.

78. The hearing in this matter had to be conducted by phone because Respondent, as a condition of his probation, cannot leave the State of Utah. Respondent testified that he is not only complying with the terms and conditions of his probation, he has taken the extra step to receive personal counseling to try to address issues that led him down this path. Respondent seems to have fairly good self awareness of his problems, how he got into his present predicament, and what he needs to do to not only address his present problems, but make sure that he does not find himself in this situation in the future. Respondent appeared to be remorseful for placing himself in this circumstance and blamed no one but himself. Respondent is also hopeful that, after more counseling and more time to heal, that he and his family will be able to be reunited.

79. After considering the facts of this case, the ABA *Standards*, the proportionality cases and the aggravating and mitigating factors, the Hearing Officer recommends the following:

- 1) Respondent be suspended for six months and one day;
- 2) If Respondent is readmitted to the Bar, as a condition of readmission, that he be placed on probation for a period of two years with terms as deemed appropriate after a full screening by the Membership Assistance Program;
- 3) 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;

4) In the event that Respondent fails to comply with the terms of probation and information thereof is received by the State Bar, Bar Counsel shall file a Notice of Noncompliance 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 time, 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 an appropriate sanction 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 to prove noncompliance by clear and convincing evidence.

5) Respondent shall pay the costs and expenses incurred in these disciplinary proceedings.

DATED this 2nd day of February, 2009.

Hon. H. Jeffrey Coker / WM
H. Jeffrey Coker, Hearing Officer

Original filed with the Disciplinary Clerk
this 2nd day of February, 2009.

