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HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
[Signature]

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER OF
THE STATE OF ARIZONA,
LOUIE CARRASCO,
Bar No. 006246

RESPONDENT.

No. 02-1896

**HEARING OFFICER
REPORT AND
RECOMMENDATION**

The hearing on this matter was held on March 1, 2004. The State Bar of Arizona was represented by Denise Quinterri, Esq. Respondent appeared in person and represented himself. Based upon the evidence presented at the hearing, the Hearing Officer makes the following findings of fact, conclusions of law and recommendations.

I. PROCEDURAL HISTORY

The State Bar filed a Complaint in this matter on December 03, 2003. Respondent filed his Answer on December 29, 2003. A settlement conference was held on February 02, 2004. The parties did not reach settlement. The hearing was held on March 1, 2004. A telephonic hearing was held for argument on the parties post-hearing memorandum on April 14, 2004.

II. FINDINGS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law in Arizona, having been admitted to practice in Arizona on May 10, 1980. (Respondent's Answer ¶ 1).

2. As of May 19, 1998, Respondent represented his cousin, Ramon Carrasco ("Ramon"), on charges of sexual abuse of a minor. (Reporter's Transcript of the Proceedings ("RTP"), 15:07-20:08; 27:23-28:04; *see also* State Bar's Exhibit 3, Excerpt of Jury Trial, Day One, case number CR-64234, dated 06/20/2004 ("Exhibit 3"), 05:22-10:02; Respondent's Answer ¶ 2).

1 3. Specifically, Ramon Carrasco was charged with sexually abusing his two
2 minor stepdaughters and another fifteen-year-old female. (Exhibit 3, 05:22-10:02; see
3 also State Bar's Exhibit 7, the State of Arizona's "Response to Petition for Special
4 Action," at p. 2, and at Appendix A (grand jury transcript). The investigation began on
5 May 15, 1998. (*Id.*)

6 4. The police officer in charge of the investigation was Detective Leanne
7 Charlton ("Detective Charlton"). (Exhibit 3, 04:09-10:02). The initial report of
8 molestation involved only one of the minor stepdaughters, _____, and the
9 unrelated fifteen-year-old female who lived in the home, _____ (See *id.*; see
10 also Exhibit 3, 59:06-61:25; Exhibit 7, App. A).

11 5. The other stepdaughter was named _____ (_____), and
12 she was 13 years old at the time, while _____ was 15 years old. (RTP 23:13-
13 24:14; see also Exhibit 7, App. A). After receiving the initial charges on May 15, 1998,
14 Detective Charlton instructed the girls' mother, Fonda Carrasco ("Fonda") that she
15 should not allow any of the children to have any contact with the alleged perpetrator in
16 the case. (Exhibit 3, 7:02-08:16; Exhibit 7, App. A).

17 6. After meeting with Fonda and the girls, Detective Charlton went to Ramon
18 Carrasco's residence to interview Ramon, the alleged perpetrator. (Exhibit 3, 08:16-
19 10:05). At that time, on May 15, 1998, Detective Charlton learned from Ramon that
20 the other minor stepdaughter, was also a victim. (*Id.*; see also Exhibit 7, App.
21 A).

22 7. Respondent testified that when he undertook representation, on May 19,
23 1998, he did not know that Ramon was charged with sexually abusing all three of the
24 girls that lived in Ramon's home. (RTP, 15:07-20:08; 27:23-28:04; 30:09-31:25; see
25 also Respondent's Answer, ¶¶ 2, 3). Respondent claims that initially, he only knew that

1 Ramon had been charged with sexually abusing two of the girls. (30:09-31:25; *see also*
2 Respondent's Answer, ¶¶ 2, 3).

3 8. On May 19, 1998, Respondent met with Fonda and Ramon Carrasco and
4 undertook their representation. (RTP, 15:07-20:08; 27:23-28:04; *see also* Exhibit 3,
5 05:22-10:02; Respondent's Answer ¶ 2). After meeting with Fonda and Ramon,
6 Respondent accompanied them to the Child Protective Services Offices for an interview
7 with Detective Charlton. (RTP, 18:17-23:25; *see also* Exhibit 3, 10:19-14:02, 35:10-
8 36:05, 42:07-55:12; Exhibit 7, Appendix A). At that meeting, it became clear that
9 Detective Charlton was considering arresting Fonda for obstruction of justice. (*See id.*)

10 9. On May 19, 2004, after some discussion with Fonda, Ramon and
11 Respondent, Detective Charlton told them that all three girls would be taken away from
12 Fonda and placed in CPS custody. (*See id.*) The girls were no longer allowed to be in
13 contact with either Ramon or Fonda Carrasco. (State Bar's Exhibit 4, Excerpt of Jury
14 Trial Day Two, 03:08-11:10, 37:16-39:14; *see also* Exhibit 3, 111:07-117:19; Exhibit 7,
15 App. A, p. 10; RTP, 18:17-23:25; 28:19-29:02).

16 10. During an interview with Detective Charlton on May 19, 1998,
17 confirmed to Detective Charlton that Ramon had sexually molested her. (Exhibit 4,
18 50:13-67:25).

19 11. Detective Charlton told Respondent that she would arrest Ramon for
20 molestation and Fonda for obstruction during a telephone call that Respondent made to
21 Detective Charlton on May 20, 1998. (RTP, 26:17-28:25; *see also* Exhibit 3, 14:03-
22 16:01). Respondent brought Ramon and Fonda Carrasco to the police station on May 21,
23 2004, where they were arrested. (*Id.*)

24 12. On May 20, 1998, Respondent telephoned the shelter where Child
25 Protective Services had placed the younger of his cousin's stepdaughters,

1 (RTP, 23:21-25; 28:10-30:08; *see also* Exhibit 3, 16:06-22:25, 36:06-20; Exhibit 4,
2 37:16-40:13, 50:13-67:25; Exhibit 7, Appendix A). Respondent represented to one of
3 the shelter workers that he was attorney. (*Id.*)

4 13. The shelter worker allowed Respondent to speak with (RTP,
5 28:10-32:22; *see also* Exhibit 3, pp. 34-37; Exhibit 4, 37:16-40:13, 50:13-67:25; Exhibit
6 7, App. A, pp. 10-14). The shelter worker testified that, absent Respondent's
7 representation that he was the girl's attorney, she would not have allowed him to speak
8 with (*Id.*)

9 14. Respondent testified that he did not know at that time that was also
10 an alleged victim of sexual abuse by Ramon. (RTP, 30:09-31:25; *see also* Respondent's
11 Answer, ¶¶ 2, 3). Respondent testified that he did not learn that was also an
12 alleged victim "until the Grand Jury Indictment came out. That would have been in June
13 or July [of 1998]." (RTP, 57:13-58:18).

14 15. Respondent admits having knowledge as of Thursday, May 21, 1998, that
15 CPS did not want him personally to have contact with . (RTP, 33:18-35:01.)
16 He admits knowing that was not to contact Fonda as of May 19, 1998. (RTP,
17 28:19-29:11). Respondent admits knowing that Rebecca was a material witness as of
18 May 19, 1998. (RTP, 28:13-32:25).

19 16. Detective Charlton testified to the grand jury that she took a statement from
20 on May 22, 1998 regarding the telephone conversation that had with
21 Respondent on May 20, 1998. (Exhibit 7, App. A, p. 12- 15.) stated that
22 Respondent had told her not to talk to the police or CPS. *Id.* In response to the question
23 of what rights Respondent had told her she had, said: "I don't know, I just
24 remember one important one, which is not to talk to you, to the police. I do not have to
25 answer any more questions. I do not have to put up with this." *Id.* at 13.

1 17. identified the statement of May 22, 1998 during the jury trial.
2 Exhibit 4, () 50:13-67:25. The statement was taped. *Id.*

3 18. Respondent was arrested on May 27, 1998. (State Bar's Exhibit 1 (Police
4 Report dated May 27, 1998); *see also* State Bar's Exhibit 7, App. B, Respondent's
5 "Statement of Facts" in Respondent's "Special Action.") The Police Report states that
6 the police officer "learned on 5-22-98 that Mr. Carrasco had contacted a victim in that
7 criminal case, identified himself as her attorney to the CPS shelter supervisor and then
8 advised the victim in the case that she should have no further contact with the police or
9 CPS." (State Bar's Exhibit 1).

10 19. Respondent was charged with obstructing a criminal investigation or
11 prosecution in violation of A.R.S. §13-2409, a class five felony. (Exhibit 1; *see also*
12 Respondent's Answer ¶ 6).

13 20. During a jury trial, on or about June 21, 2000, testified more than
14 once that she believed that Respondent was representing her. (Exhibit 4, 50:13-67:25;
15 Respondent's Answer ¶7). testified that she believed Respondent represented
16 her because she asked him if he would and she thinks that he said he would be her
17 lawyer. (*See id.*)

18 21. Respondent's Petition for Special Action (for a re-determination of
19 probable cause), attached to State Bar's Exhibit 7 as Appendix B, states that the girls
20 told Respondent that the police had beaten and abused them, after Respondent left the
21 May 19, 1998, meeting with CPS and the police at CPS headquarters. (Exhibit 7, App.
22 B, pp. 5, 8.) The Petition contains the assertion that Respondent "attempted to reach
23 the girls to ascertain whether they needed the services of an attorney to protect them
24 from further abuse." *Id.*

25 22. Respondent initially represented both Fonda and Ramon Carrasco. (RTP,
26

1 16:17-20:20). mother, Fonda Carrasco, testified that "He was in the
2 beginning trying to help everybody out." (Exhibit 4, 101:03-17).

3 23. Fonda also testified that she gave Respondent her cellular telephone so
4 that the girls could call him while she (Fonda) was in jail. (Exhibit 4, 96:04-102:25.)

5 also testified that Respondent had her mother's cell phone. (Exhibit 4, 58:16-
6 59:16). She called the cell phone and reached Respondent. (*Id.*)

7 24. Respondent claims that he talked to many times while she was
8 in CPS custody. (RTP, 24:25-38:19). Respondent acknowledges that he continued to

9 talk to after he was told that CPS did not want there to be any contact. (RTP,
10 33:01-38:19). These calls were initiated by , not Respondent. (RTP, 33:21-

11 22). Respondent continued to talk to after he knew she had been appointed
12 a lawyer (Valentine Shaffer). (*Id.*)

13 25. Respondent's Petition for Special Action complains that the grand jury
14 should have been told that Respondent was an attorney who actively pursues civil
15 rights cases, so that the grand jury would not think that Respondent was trying to
16 contact the "girls" for no reason whatsoever. (Exhibit 7, App. B, p. 8.) Respondent's

17 Petition also states that the grand jury should have been told that Respondent was

18 lawyer. The Petition states that Respondent "could represent both Ramon
19 and the girls if both of the parties agreed and signed a waiver of the conflict issue. (ER

20 1.7). Also, [Respondent] could represent in another unrelated
21 matter such as a claim of excessive force by the police." (Exhibit 7, App. B, pp. 10-11;

22 13-14).

23 26. Following a jury trial on June 20 and 21, 2000, Respondent was convicted
24 of obstructing a criminal investigation or prosecution in violation of A.R.S. §13-2409,
25 a class five felony. (See Exhibits 3 and 4; see also State Bar's Exhibits 5 and 6). The

1 trial court granted Respondent's motion for judgment of acquittal (*see* Exhibit 6) and
2 the state appealed. (*See* State Bar's Exhibit 8).

3 27. On or about October 30, 2001, the Arizona Court of Appeals, Division
4 Two, overturned the trial court's acquittal and reinstated the jury's verdict, remanding
5 the matter back to the trial court for re-sentencing. (State Bar's Exhibit 8; *see also*
6 docket for 2 CA-CR 2000-0337, *State v. Carrasco*, available on Internet). The Court
7 of Appeals also noted in its October 30, 2001 opinion, that Respondent had violated
8 A.R.S. §13-4433(B) by contacting the child. *Id.*

9 28. Respondent filed a motion for reconsideration, which was denied. (*See*
10 docket for 2 CA-CR 2000-0337, *State v. Carrasco*, available on Internet). Respondent
11 filed a petition for review to the Arizona Supreme Court. (*See id.*) The Supreme Court
12 denied the petition for review on May 31, 2002. (*See id.*) The trial court then
13 sentenced Respondent on September 10, 2002, to 18 months of probation for a Class
14 5 felony of Obstructing a Criminal Investigation or Prosecution. (*See* State Bar's
15 Exhibits 9, 10, 11).

16 29. The State Bar opened this file on September 27, 2002.

17 30. By letter to the State Bar dated October 17, 2003, Respondent stated his
18 position that " was not disclosed to be a victim until June 2000." (State Bar's
19 Exhibit 16). Respondent later clarified that he meant June or July of 1998. (RTP,
20 30:09-31:25; 57-58). Respondent also takes the position that "all three alleged victims
21 were willing defense witnesses." (State Bar's Exhibit 16).

22 31. Attached to Respondent's letter was a document entitled "Statement of
23 the Case" that Respondent stated was a portion of his appeal to the Arizona Court of
24 Appeals. (State Bar's Exhibits 16 and 17).

25

26

1 32. The Court of Appeals affirmed the lower court's decision on December
2 05, 2003. (See docket for 2 CA-CR 2002-0398, *State v. Carrasco*, available on
3 Internet; see also RTP, 58:19-60:17). Respondent filed a Petition for Review with the
4 Supreme Court on January 21, 2004. (See docket for 2 CA-CR 2002-0398, *State v.*
5 *Carrasco*, available on Internet). On May 26, 2004, the Supreme Court denied review.

6 33. Respondent's license to practice law was suspended by the Supreme
7 Court of Arizona for six months effective October 11, 1997. See State Bar's Notice of
8 Evidence of Prior Discipline, filed February 26, 2004. One of the charges against
9 Respondent was a violation of ER 1.7, Conflict of Interest. See *id.*, Exhibit C (No. SB-
10 97-0054-D).

11 34. Respondent was on probation for two years after the suspension concluded.
12 See *id.* Thus, Respondent was already on probation for conduct involving a conflict of
13 interest at the time of the conduct at issue in this matter (May of 1998).

14 **III. CONCLUSIONS OF LAW**

15 In cases involving the felony conviction of a lawyer, proof of the conviction is
16 conclusive evidence of the respondent's guilt of the crime for which he was convicted.
17 See Rule 53(h)(1), Ariz. R. S. Ct. In such cases, the sole issue to be determined is the
18 extent of the discipline to be imposed. *Id.* Here, there is clear and convincing evidence
19 that Respondent's conduct as described above violated Rule 42, Ariz. R. S. Ct.,
20 specifically ERs 1.7, 4.1, 8.4(b)(c) and (d) and Rule 53(h) (formerly Rule 57(a)(3)), Ariz.
21 R. S. Ct.¹ The following conclusions of law may be drawn from the evidence presented
22 in this matter.

23
24
25 ¹Although ERs 4.3 and 8.1(b) were alleged in the Complaint, this Hearing Officer does
26 not find a violation of these ERs.

1 1. By committing a criminal act that reflects adversely on his honesty,
2 trustworthiness and fitness to practice law, Respondent violated ER 8.4(b).

3 2. By engaging in conduct involving dishonesty, fraud, deceit or
4 misrepresentation, Respondent violated ER 8.4(c).

5 3. By engaging in conduct that involves interference with the administration
6 of justice, including the violation of A.R.S. § 13-4433(B), Respondent violated ER
7 8.4(d).

8 4. By being convicted of obstructing a criminal investigation or prosecution,
9 a class five felony, Respondent violated Rule 53(h) (formerly 57(a)), Ariz. R. S. Ct. In
10 violation of A.R.S. § 13-2409, Respondent violated ER 4.1.

11 5. By representing an accused child molester and another client in the same
12 matter who was a material witness in the matter Respondent violated ER 1.7. On May
13 20, 1998, and on additional occasions between May 19, 1998, and May 27, 1998,
14 Respondent had contact with Rebecca Horlander, and gave her legal advice. By
15 informing that he could represent her when the representation was directly
16 adverse to another client, Ramon, Respondent violated ER 1.7. Alternatively, by actually
17 representing when the representation was directly adverse to another client,
18 Ramon, Respondent violated ER 1.7. Even if Rebecca was only a witness, Respondent
19 violated ER 1.7 because one cannot represent both a witness to a crime and a perpetrator
20 of the crime at the same time. *See e.g.*, Arizona Ethical Opinions 91-05 and 92-7.

21 **IV. RECOMMENDED SANCTION**

22 **A. ABA Standards**

23 In determining the appropriate sanction in a disciplinary matter, the analysis
24 should be guided by the principle that the ultimate purpose of discipline is not to punish
25 the lawyer, but to set a standard by which other lawyers may be deterred from such
26

1 conduct while protecting the interests of the public and the profession. *In re Kersting*,
2 151 Ariz. 171, 726 P. 2d 587 (1986). The ABA Standards are a “useful tool in
3 determining the proper sanction.” *In re Cardenas*, 164 Ariz. 149, 791 P.2d 95 (1990).

4 In drafting the ABA Standards, the Committee developed a model that requires
5 the body imposing sanctions to answer the following questions as set forth in §3.0:

- 6 1. What ethical duty did the lawyer violate?
- 7 2. What was the lawyer’s mental state?
- 8 3. What was the extent of the actual or potential injury caused by the
9 lawyer’s misconduct?
4. Are there any aggravating or mitigating factors?

10 Each factor is addressed below.

11 **1. What Ethical Duty Did the Lawyer Violate?**

12 The ABA Standards provide that a lawyer has a specific duty not only to his
13 client, but also to the general public, the legal system and the profession. In this case,
14 Respondent has violated his ethical duty to all four. The conflict of interest violated his
15 duty to his clients specifically, and his duty to the profession also, due to the
16 appearance of impropriety. *ABA Standards* at p. 5. The interference with the
17 administration of justice violated Respondent’s duty to the public, as well as the duty
18 to the legal system. *Id.*

19 **2. What was the lawyer’s mental state?**

20 The second prong of the analysis questions the lawyer’s mental state when
21 engaging in misconduct. There is evidence in the record that shows that Respondent’s
22 mental state in reference to all of the underlying allegations was not intentional.
23 Respondent credibly testified that he did not know that _____ was an alleged victim
24 of abuse by Ramon and that contact was made with _____ out of concern for
25 _____

1 well being.² Yet he stands convicted of a crime requiring specific intent.
2 Under A.R.S. § 13-2409, a person must "knowingly" act to be in violation of the
3 statute. By virtue of the conviction, Respondent's mental state has at minimum been
4 adjudged to be "knowing".

5 Respondent was aware, and admits, that _____ was a material witness. It was
6 an exercise of extremely poor judgment for Respondent to have represented a minor
7 material witness to a crime, when Respondent also represented the alleged perpetrator.

8 **3. What was the extent of the actual or potential injury caused by
9 the lawyer's misconduct?**

10 The third inquiry is directed to the extent of actual or potential injury caused by
11 the lawyer's misconduct. Respondent's conduct caused, at a minimum, harm to the
12 legal profession by the appearance of impropriety that was presented.

13 **4. Are there any aggravating or mitigating factors?**

14 The *ABA Standards* recommend a sanction for various types of conduct. That
15 recommended sanction may increase or decrease depending on the evidence of
16 aggravation or mitigation. "Aggravation or aggravating circumstances are any
17 considerations or factors that may justify an increase in the degree of discipline to be
18 imposed." §9.21. §9.22 sets forth the factors that may be considered in aggravation.

19 Several aggravating factors are present here. First, Respondent has prior
20 disciplinary offenses. Specifically: (1) In file number 90-1614, Respondent received an
21 informal reprimand by order filed on February 14, 1991, for violation of ER 1.3 (Diligence),
22

23
24 ²Respondent testified that he contacted _____ to (1) keep her from running away, (2)
25 determine if Detective Charlton, about whom she had complained, had contacted her again and,
26 (3) to see if she could be placed with her sister while in CPS's custody. (RTP, 30:17 - 31:1).

1 Ariz. R. S. Ct. ; (2) In file number 94-1081, Respondent received an informal reprimand by
2 order filed on September 15, 1995, for violation of ER 1.3 (Diligence) , Ariz. R. S. Ct.; (3)
3 In file numbers 94-1804, 95-0996 and 95-2025, respondent was suspended for six months
4 by order filed on September 11, 1997, for violations of ERs 1.1 (Competence), 1.3
5 (Diligence), 1.4 (Communication), 1.7 (Conflict of Interest), 1.15 (Safekeeping Property), and
6 8.1(b) (Failure to Disclose or Respond), and Rules 43, 44 and 51(h) and (i), Ariz. R. S. Ct.
7 *See Standard 9.22(a).*

8 Additionally, Respondent has engaged in a pattern of misconduct and has
9 multiple offenses. *See Standard 9.22(c)* and (d). Not only is there a consistent pattern
10 within the context of this particular complaint and proceeding, Respondent has engaged
11 in prior conduct that essentially demonstrated the same type of misconduct. *See Prior*
12 *Discipline.* Respondent has substantial experience in the practice of law. Respondent
13 has been licensed to practice law since 1980. This should also be considered in
14 aggravation. *See Standard 9.22(i).* Respondent's misconduct was not the product of
15 inexperience.

16 ABA Standard 9.32 sets forth factors that may be considered in mitigation. It
17 appears that Respondent has one mitigating factor: the imposition of other penalties and
18 sanctions. Respondent was imposed sanctions as a result of the criminal trial in this
19 matter. *See Standard 9.32(k).* There are no other mitigating factors that apply.

20 The above factors are now considered in conjunction with the ABA standards
21 that address the particular conduct. "The Standards do not account for multiple charges
22 of misconduct. The ultimate sanction imposed should at least be consistent with the
23 sanction for the most serious instance of misconduct among a number of violations; it
24 might well be and generally should be greater than the sanction for the most serious
25 misconduct." *ABA Standards* at p. 6. ABA Standards 4.3, 5.1 and 6.0 address the

1 violations of ERs 1.7, 4.1 and 8.4(b)(c) and (d) which are the most serious instances
2 of misconduct among the violations considered in this matter.

3 Absent aggravating or mitigating circumstances, upon application of the factors
4 set out in Standard 3.0, the following sanctions are generally appropriate in cases
5 involving conflicts of interest, conduct involving misrepresentation, failure to obey any
6 obligation under the rules of a tribunal and improper communication with persons in the
7 legal system:

8 **4.3 Failure to Avoid Conflicts of Interest**

9 **4.32**

10 Suspension is generally appropriate when a lawyer knows of a conflict
11 of interest and does not fully disclose to a client the possible effect of that
12 conflict, and causes injury or potential injury to a client.

11 **5.1 Failure to Maintain Personal Integrity**

12 **5.11**

13 Disbarment is generally appropriate when:

14 (a) a lawyer engages in serious criminal conduct, a necessary element
15 of which includes intentional interference with the administration of
16 justice, false swearing, misrepresentation, fraud, extortion,
17 misappropriation, or theft; or the sale, distribution or importation of
18 controlled substances; or the intentional killing of another; or an attempt
19 or conspiracy or solicitation of another to commit any of these offenses;

or

17 (b) a lawyer engages in any intentional conduct involving dishonesty,
18 fraud, deceit, or misrepresentation that seriously adversely reflects on the
19 lawyer's fitness to practice.

19 **5.12**

20 Suspension is generally appropriate when a lawyer knowingly engages
21 in criminal conduct which does not contain the elements listed in
22 Standard 5.11 and that seriously adversely reflects on the lawyer's fitness
23 to practice.

22 **6.0 Violations of Duties Owed to the Legal System**

23 The ABA Standard for imposing sanctions for an 8.4(d) violation is Standard 6.0.
24 In this case 6.3 is most applicable because Respondent's conduct was directed to
25 individual persons rather than directly to the court.

1 **6.3 Improper Communications with Individuals in the Legal System**

2 **6.32:**

3 Suspension is generally appropriate when a lawyer engages in
4 communication with an individual in the legal system when the
5 lawyer knows that such communication is improper, and causes
6 injury or potential injury to a party or causes interference or
7 potential interference with the outcome of the legal proceeding.

8 The ABA Standards suggest that a sanction of suspension is appropriate under
9 the circumstances of this case.

10 **B. Proportionality**

11 In the imposition of lawyer sanctions, the court is guided by the principle that an
12 effective system of professional sanctions must have internal consistency. *In re*
13 *Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988). Therefore, a review of cases that
14 involve conduct of a similar nature is warranted. To achieve internal consistency, it is
15 appropriate to examine sanctions imposed in cases that are factually similar. *In re*
16 *Shannon*, 179 Ariz. 52, 876 P.2d 548 (1994). However, the discipline in each situation
17 must be tailored for the individual case as neither perfection or absolute uniformity can
18 be achieved. *In re Riley*, 142 Ariz. 604 (1984). The following cases are instructive in
19 this matter.

20 *Matter of Politi*, 2001 Ariz. LEXIS 21, SB-00-0106-D (2001), is the closest case on
21 point. The respondent in that case received a two-year suspension with two years of
22 probation for violations of ERs 1.7 (conflict of interest), 1.9 (conflict, former client), 8.4(b)
23 (conviction), 8.4(d) (conduct prejudicial to the administration of justice) and Rules 51 and 57
24 (convictions), Ariz. R. S. Ct. *See id.* The underlying facts involve both a felony conviction
25 and a conflict of interest. *See id.* In Count One, the respondent received a Class 4 felony
26 conviction for aggravated DUI. *See id.* In Count Two, the respondent represented a husband
 in dissolution of marriage proceedings between November 1994 and December 1996. *Id.*

1 In October 1995, the respondent agreed to represent the wife, a police officer, in proceedings
2 before a Police Officer Standards board wherein she was charged with assault and battery
3 upon a woman she believed to be her husband's girlfriend. *Id.* The police officer was also
4 violent toward her husband (at some point, ex-husband), and in April of 1997, the respondent
5 wrote to his client/husband advising him to consider filing criminal assault charges against
6 his client/police officer wife to prevent further acts of violence. *Id.*

7 The Commission did not discuss the conflict of interest in any greater detail. The
8 posture of the case is that the Commission accepted the Joint Memorandum for Discipline
9 by Consent of the parties. In considering the ABA Standards, the Commission found 5.12
10 and 4.32 most relevant in determining an appropriate sanction. As discussed above, 5.12
11 relates to criminal conduct and 4.32 relates to conflicts of interest. The Commission then
12 found two aggravating factors (substantial experience in the practice of law and pattern of
13 misconduct) and six mitigating factors (absence of prior discipline, absence of dishonest or
14 selfish motive, timely good faith effort to rectify consequences, cooperative attitude toward
15 disciplinary proceedings, mental disability or chemical dependency and the imposition of
16 other penalties or sanctions).

17 Here, Respondent has considerably more aggravating factors, and considerably fewer
18 mitigating factors.

19 In *Matter of Savoy*, 181 Ariz. 368, 891 P.2d 236 (1995), the Commission imposed a
20 two-year suspension for a conviction for perjury. There were five mitigating factors
21 (including character reference letters from judges and other lawyers) and zero aggravating
22 factors. *See id.*, 181 Ariz. at 371. The Commission said that a conviction for perjury would
23 normally warrant disbarment. *See id.*, 181 Ariz. at 370. The Commission applied ABA
24 Standard 5.11, and again observed that disbarment would be appropriate under that standard.
25 *Id.* However, the Commission stated that the circumstances of the case were unusual. *See*

26

1 *id.*, 181 Ariz. at 371. After considering the fact that the trial court had stated that the
2 determination of guilt was a close one and had imposed no prison sentence, and given the
3 extensive mitigation, which included over forty years of practice with only one prior instance
4 of discipline, the Commission determined that a two-year suspension was sufficient. *See id.*,
5 181 Ariz. at 370-72.

6 The case at hand also involves a criminal conviction under unusual circumstances.
7 The trial court set aside the jury's verdict of guilt finding that the state had failed to meet its
8 burden of proof. Respondent here has additional issues aside from the conviction, and he
9 cannot claim the mitigating factors that the *Savoy* respondent had.

10 In *Matter of Rivkind*, 164 Ariz. 154, 791 P.2d 1037 (1990), a lawyer was convicted
11 of attempted possession of cocaine. The Hearing Committee found a violation of ER 8.4(b)
12 and Rule 57(a) and recommended a twenty-two month suspension with one year of probation
13 to follow. *See id.* at 155. The Disciplinary Commission recommended a three-year
14 suspension. *Id.* The Arizona Supreme Court held that the suspension would be for two
15 years, retroactive to the date that the respondent's license was revoked (by interim
16 suspension). *See id.* at 162. In its review of the facts, the Supreme Court noted that there
17 was "overwhelming" evidence of mitigation. *See id.* at 158. Specifically, the respondent's
18 extensive evidence of rehabilitation and the fact that the respondent's drug use had neither
19 harmed his clients nor visibly affected his law practice weighed very heavily in the Court's
20 decision. *Id.* at 158-162.

21 This is not a drug use case. However, the *Rivkind* case is notable in that it is a felony
22 conviction case, and that even with extensive mitigating factors, and without the aggravating
23 factors of a serious conflict of interest and a disciplinary history, the respondent at issue
24 received a two-year suspension and two years probation. Here, Respondent has previously
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1 received a six-month suspension. He was on probation with the State Bar at the time he
2 engaged in the conduct at issue here.

3 At the lower end of the sanction spectrum is the case *Matter of Scholl*, 200 Ariz. 222,
4 25 P.3d 710 (2001), and at the higher end, *Matter of Soelter*, 175 Ariz. 139, 854 P.2d 773
5 (1993). In *Scholl*, the respondent received a 6-month suspension for seven felony
6 convictions involving dishonesty (tax fraud). The Hearing Officer recommended a censure
7 and the Commission recommended a two-year suspension. The Court found extensive
8 evidence of mitigation, including the fact that there was no prior discipline, and that the
9 respondent had demonstrated rehabilitation. The Court appeared to view the Respondent as
10 having an illness that he was treating. The Court applied ABA Standard 5.12, and found that
11 suspension was warranted, but determined that six months was sufficient based on the
12 particular facts of the case. *See id.*, 200 Ariz. 222. In *Soelter*, the respondent was disbarred.
13 The case did not involve a criminal conviction, however, one of the underlying violations was
14 a conflict of interest that involved simultaneous representation of a husband and wife in a
15 divorce. The case also involved three counts of abandonment of clients, and then a complete
16 lack of participation in the disciplinary process. *See Soelter*, 175 Ariz. 139. The facts of the
17 matter at hand fall between those of the *Scholl* case and the *Soelter* case.

18 **C. Restitution**

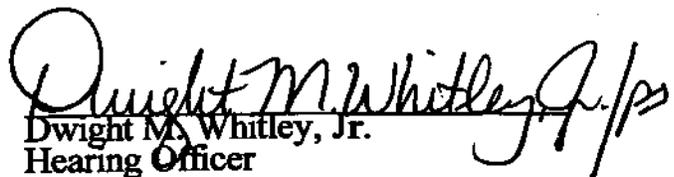
19 Restitution is not applicable here.

20 **V. CONCLUSION**

21 Respondent has been convicted of obstructing justice. That conviction has been
22 upheld on appeal. The Hearing Officer is bound by the determination of the jury.
23 Respondent must be held accountable for the breach of his ethical obligations. This
24 conduct mandates imposition of appropriate sanctions.

1 The objective of lawyer discipline is not to punish the lawyer, but to protect the
2 public, the profession, and the administration of justice. There is clear and convincing
3 evidence that Respondent violated Rule 42, Ariz. R. S. Ct. , specifically ERs 1.7, 4.1,
4 8.4(b)(c) and (d) and Rule 53(h) (formerly Rule 57(a)(3)), Ariz. R. S. Ct. Upon
5 consideration of the underlying facts, the applicable ABA Standards, and the case law,
6 the Hearing Officer recommends that Respondent be suspended for two years and be
7 ordered to pay costs and expenses associated with this disciplinary proceeding. The
8 Hearing Officer also recommends including a two-year term of probation upon
9 Respondent's reinstatement, the terms of which to be addressed at that time.

10 DATED this 20th day of May, 2004.

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12 
13 Dwight M. Whitley, Jr.
14 Hearing Officer

15 Original filed with the Disciplinary Clerk
16 this 20th day of May 2004.

17 Copy of the foregoing mailed
18 this 20th day of May 2004, to:

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26