

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,

**AERYN A. HEIDEMANN,
Bar No. 025530**

Respondent.

PDJ-2015-9029

**DECISION AND ORDER OF
INTERIM SUSPENSION**

[State Bar No. 14-2941]

FILED: MAY 20, 2015

A Motion for Interim Suspension of Aeryn A. Heidemann was filed on April 9, 2015, under Rule 61(c)(2)(A), Ariz. R. Sup. Ct. As required by the aforementioned rule, the Presiding Disciplinary Judge, ("PDJ") ordered the State Bar to serve Ms. Heidemann within five (5) days with the Motion for Interim Suspension, and the Order setting the matter for hearing. Within that Order, the PDJ informed Ms. Heidemann she could file a response to the motion within ten (10) days of service. Ms. Heidemann was served and filed no response.

On May 20, 2015, the hearing was held. Ms. Heidemann did not appear. Staff Bar Counsel, Nicole S. Kasetta appeared on behalf of the State Bar of Arizona. The 17 exhibits offered by Bar Counsel were admitted. Ms. Kasetta informed the PDJ the Attorney Discipline Probable Cause Committee has found probable cause at its last hearing and the order of probable cause is expected to be received this week.

Scott L. Patterson testified. Mr. Patterson represents Curt R. Heidemann, the Petitioner/Father regarding various Family Court petitions including a Petition to Modify Decision-Making, Parenting Time and Child Support filed on July 10, 2014 by

Father. [Exhibits 1-3.] His testimony undergirded the exhibits supporting the request for interim suspension.

Ms. Heidemann filed a response in opposition to the allegations of the petition. [Exhibit 4.] At the hearing, Ms. Heidemann was ordered to appear for a Hair Follicle Test "at an appropriate TASC facility" on August 13, 2014. She was also ordered not to consume any alcohol and "commence random ETG/alcohol testing 8-10 times a month from this date (August 13, 2014) through October 31, 2014." [Exhibit 3, SBA000017.]

On August 27, 2014, Father filed an Emergency Motion for Temporary Order alleging Ms. Heidemann went to TASC and took the follicle test but did not take the urinalysis test. Ms. Heidemann tested positive for cocaine. [Exhibit 5, SBA000042 and 50. See also Exhibit 6.] On August 29, 2014, Judge Polk signed an Order to Appear regarding the Emergency motion. [Exhibit 7.] On September 17, 2014, Ms. Heidemann filed a response to the Emergency Motion stating she had "never knowingly consumed cocaine." [Exhibit 8, SBA000068, line 13.] She substantially attributed her positive test to probable actions of a mutual friend of her ex-boyfriend who "used to mix large amounts of cocaine and other drugs into bottles of liquor...in certain social situations." [Exhibit 8, SBA000069, lines 15-19.] She disputed the order required her to begin urinalysis on August 13, 2014.

Ms. Heidemann included affidavits from Phoenix Fire Department, Fire Engineer, Shawn Alan Morrison, Douglas A. Boiston, Networked Systems Administrator, Morgan Murri, founder of GECKO, a non-profit organization that raised funds for programs to inspire children, Attorney William M. Demlong a shareholder of *Kunz, Plitt Hyland & Demlong, PC*, San Diego Police Officer II Billy Andal and Ronald

Reeves, a physician employed by the Mayo Clinic in Rochester, Minnesota and others supporting the statements of Ms. Heidemann, as each swore they had observed no use of drugs by her and had been present at her home. [Exhibit 8, SBA000154-171.]

At the hearing on September 18, 2014, the Court found Ms. Heidemann failed to commence urinalysis testing until August 25, 2014 in violation of the prior order. Orders regarding testing were entered including that she appear at a TASC facility on November 21, 2014 for a Hair Follicle Test. [Exhibit 9.]

On November 17, 2014, the State Bar opened its file no. 14-2941 and directed her to file a response. [Exhibit 10.] She filed no written response. She called the State Bar on December 9, 2014 and was given a 20 day extension to respond to December 29, 2014. She did not respond. Jackie L. Deventer of the State Bar emailed her on January 30, 2015. [Exhibit 16.]

On December 1, 2014, the court held a status conference in the family law matter. Ms. Heidemann did not appear. The court found she had actual notice and found her November 26, 2014 Hair Follicle Test was again positive for cocaine. She was again ordered to submit to random drug testing 8 to 10 times per month. The Judge also ordered another Hair Follicle Test to be done on January 7, 2015. A status conference was set for January 21, 2015 with warnings if she failed to appear. [Exhibit 11 and 12.] Ms. Heidemann did not submit to another Hair Follicle Test, nor urinalysis test. [Exhibit. 14.]

On January 13, 2015, the State Bar wrote Ms. Heidemann noting no response had been received from its prior letter and requiring a written response within ten days. [Exhibit 13.] She filed no written response. [See also Exhibit 16.]

On January 21, 2015, Ms. Heidemann failed again to appear for a status conference with the court. The court noted there were no mail returns of its prior minute entries. The court found she twice tested positive for cocaine and had refused to take any other ordered drug testing. [Exhibit 15.]

Bar Counsel filed an affidavit, which undergirded the motion for interim suspension and attested to obtaining the Court Records and the efforts to obtain a response from Ms. Heidemann. [Exhibit 17.]

Under Rule 61(a) Ariz. R. Sup. Ct., an interim suspension may be entered upon a showing of probable cause that a lawyer “is engaging in conduct that has caused or is likely to cause immediate and substantial harm to clients, the public, or the administration of justice.”

Rule 61(c)(2) sets forth the procedural grounds by which an interim suspension may be sought in those kinds of cases. “The state bar may file a motion for interim suspension with the presiding disciplinary judge. The motion shall be accompanied by verification or separate affidavit upon personal knowledge stating sufficient facts to support the requested suspension, and shall include a copy of any related hearing panel report.” Rule 61(c)(2)(A) mandates that the motion be served upon the lawyer and requires a response to be filed. Aeryn A. Heidemann was properly served under Rule 61, and filed no response.

Rule 61(c)(2)(B) sets forth the procedural method by which the presiding disciplinary judge shall conduct the hearing. “The state bar shall have the burden of establishing probable cause that the basis of the requested relief exists and that interim suspension is appropriate.” In conducting the hearing, “The presiding discipline judge is not bound by common law or rules of evidence of by technical or

formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice.”

The State Bar informed the court a probable cause finding has been made by the Attorney Discipline Probable Cause Committee and that a formal complaint will soon be filed. The State Bar is reminded it must, consistent with Rule 61(c)(2)(D), “expeditiously proceed” with any related disciplinary proceeding. The orders entered shall continue in force until final disposition of all such pending disciplinary proceedings against Aeryn A. Heidemann unless vacated or modified by the PDJ. Nothing within this order precludes the parties from attempting to resolve this matter through a Rule 57 agreement for discipline by consent.

Now Therefore,

The PDJ finds there is probable cause Aeryn A. Heidemann is engaging in conduct that has caused or is likely to cause immediate and substantial harm to clients, the public, or the administration of justice.

IT IS ORDERED, under Rule 61, Rules of the Supreme Court, **AERYN A. HEIDEMANN, Bar No. 025530**, is interim suspended from the practice of law, effective May 20, 2015.

IT IS FURTHER ORDERED, as provided in Rule 61(d), such suspension shall continue in force until final disposition of all pending disciplinary proceedings against Aeryn A. Heidemann, unless vacated or modified.

IT IS FURTHER ORDERED, effective immediately Aeryn A. Heidemann shall not accept for representation any new clients and is precluded from accepting funds for that purpose.

IT IS FURTHER ORDERED, freezing any trust account and operating accounts of Aeryn A. Heidemann and restraining her from making a withdrawal of funds in any manner, from any trust account or operating account without the prior written approval of bar counsel or by order of the PDJ which shall be applied for by formal written motion.

IT IS FURTHER ORDERED, under Supreme Court Rule 72(a) **AERYN A. HEIDEMANN, Bar No. 025530**, shall notify all her clients of the terms of this order within ten days from May 20, 2015 and shall timely file with the Disciplinary Clerk and the Court, not later than June 4, 2015, notice of compliance with this Order as provided by Rule 72(e), Rules of the Supreme Court of Arizona.

IT IS FURTHER ORDERED, setting this matter for a telephonic status review on August 18, 2015 at 9:30 a.m. to discuss the status. This status review shall automatically be vacated without further order upon the filing by the State Bar of a complaint regarding this matter.

DATED this 20th day of May, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing mailed/e-mailed
this 20th day of May, 2015, to:

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By: JAlbright