

FILED

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HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY R. D. Amos

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

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

No. 08-1430

**RONALD JEFFREY WASHINGTON,
Bar No. 022784**

**HEARING OFFICER'S
REPORT**

Respondent.

PROCEDURAL HISTORY

1. This case involves a direct file of a Tender of Admissions and Agreement for Discipline which was filed on April 16, 2010. A hearing was held on May 14, 2010. In attendance at the hearing were Bar Counsel Amy K. Rehm, Respondent Ronald Jeffrey Washington (hereinafter Respondent) and this Hearing Officer.
2. The Respondent admits to: criminal conduct, Class 6 undesignated felonies for possession of marijuana and possession of paraphernalia which violated Rule 42, Ariz. R. Sup. Ct. ER 8.4(b) and ER 8.4(d) and which resulted from his second jury trial and later sentence to probation on December 11, 2009.
3. The parties request acceptance of their Agreement to impose upon Respondent: (1) a censure; (2) two years of probation, and (3) payment of costs and expenses of the disciplinary proceedings.

FINDINGS OF FACT

4. At all times relevant hereto, Respondent was an attorney licensed to practice law in the State of Arizona, having been admitted to practice in Arizona on April 12, 2004.¹

¹ The facts cited herein are taken from the Tender of Admissions unless otherwise noted.

1 5. On or about August 20, 2007, police responded to Respondent's Tucson residence after
2 his home security alarm sounded.

3 6. At the time the police arrived, no one was present at the residence.

4 7. Police noticed the garage door partially open, and entered in response to the alarm.

5 8. Upon entry, police noticed the odor of marijuana and saw plastic wrapping that they
6 believed to be used to wrap marijuana.

7 10. Police then obtained a telephonic search warrant and searched Respondent's residence.
8 During the search, police found plastic wrap with marijuana residue, a small scale, and an
9 empty box for a larger digital scale.

10 11. Respondent was later questioned and claimed that he was being set up. He told police
11 that some of the plastic wrapping in the house was his from a recent furniture purchase and
12 shoe purchase, but the other wrappings (containing marijuana residue) and larger digital
13 scale box did not belong to him, and that the small scale was his and used only for cooking.

14 12. On or about September 10, 2007, an indictment was returned in the Pima County
15 Superior Court charging Respondent with the following:
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17 a. Count One: Possession of Marijuana for Sale, a class 2 felony;

18 b. Count Two: Possession of Drug Paraphernalia, a class 6 felony.

19 13. Respondent was tried before a jury on the charges on August 11, 2008.

20 14. At the conclusion of the trial, the jury was deadlocked and unable to reach a unanimous
21 verdict. As a result, the court declared a mistrial.

22 15. Approximately 14 months later, on November 3, 2009, Respondent was tried before a
23 jury again.
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1 16. At the conclusion of the second trial, the jury found Respondent guilty of the lesser-
2 included charge of Possession of Marijuana, a class 6 undesignated offense, and guilty of
3 Possession of Drug Paraphernalia, a class 6 undesignated offense.

4 17. On or about December 11, 2009, Respondent was sentenced to 18 months of supervised
5 probation as a result of the conviction.

6 18. Respondent maintained his innocence of the charges, but acknowledges the fact of his
7 conviction.

8 19. At the hearing, the State Bar presented the testimony of Hal Nevitt, the Director of
9 lawyer assistance for the State Bar. T/H 22:1-6. Mr. Nevitt testified that on August 23, 2007,
10 three days after arrest, Respondent contacted Mr. Nevitt and told him of his arrest and that
11 he was interested in voluntarily entering into a monitoring agreement through the State Bar's
12 Membership Assistance Program (MAP) .T/H 22:9-13.

13 20. On August 29, 2007, Respondent traveled to Phoenix, met Mr. Nevitt in person, and
14 participated in an initial evaluation. Respondent explained the circumstances surrounding his
15 arrest and maintained to Mr. Nevitt that he was not guilty of the criminal charges from
16 August 20, 2007. However, Respondent told Mr. Nevitt that he had previously used
17 marijuana and that he was interested in stopping that use completely. T/H 23:2-21.

18 21. During the evaluation, Respondent told Mr. Nevitt of his substance abuse history which
19 included drinking alcohol at age 18 in college, and use of marijuana in college with frequent
20 use in 1999. Respondent stated he stopped using marijuana in law school, but upon law
21 school graduation used marijuana again sporadically. T/H 24:1-20.
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1 22. Mr. Nevitt gave Respondent the Substance Abuse Subtle Screening Inventory (SASSI).
2 The results indicated a low probability that Respondent had a substance dependence
3 disorder. T/H 25:2-5.

4 23. Based on the interview and testing, Respondent signed a Voluntary Therapeutic Contract
5 with the Member Assistance Program of the State Bar on September 18, 2007. (Exhibit 4).
6 The major parts of the contract were: (1) quarterly hair follicle tests; (2) to regularly meet
7 with a peer monitor; and (3) to meet with Mr. Nevitt quarterly. T/H 31:19-25, 33:7-13. The
8 contract also required Respondent to pay \$100 per individual hair follicle test and a \$50
9 monthly administrative fee to MAP. T/H 40:14-41:4.

10 24. After his first hung jury trial in August, 2008, Respondent extended his voluntary MAP
11 contract an extra 6 months from October, 2008 to March, 2009. T/H 27:11-28:17.

12 25. Mr. Nevitt testified that Respondent complied successfully with all of the requirements
13 of his Voluntary Therapeutic Contract. T/H 48:1-7. He also exceeded his peer monitor
14 meeting requirements. T/H 32:6-12.

15 26. Having observed and interacted with Respondent, Mr. Nevitt stated that Respondent
16 changed his mindset about the acceptability of marijuana use. This change resulted from
17 Respondent's having experienced his own criminal prosecution and the likelihood of future
18 disciplinary proceedings. Mr. Nevitt testified that this change in mindset makes the
19 likelihood small that Respondent will use marijuana in the future. T/H 46: 4-14.

20 27. Regarding the items found in his garage and home on August 20, 2007, Respondent
21 maintained that they were not his. However, he understood how a jury using the legal
22 doctrine of constructive possession could convict him as the homeowner. T/H 60:18-24.
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1 28. Respondent testified that he has put the criminal matter behind him. He accepts that he
2 has been convicted, and that he can be disciplined for the conviction. T/H 61:5-18.

3 29. Respondent stated that his 18 month participation in the MAP program had a positive
4 effect on him. Given his desire to practice law, Respondent realized that using marijuana
5 was not conducive to his continuing to practice law: "I wanted to prove to the State Bar, to
6 the State of Arizona, who ever may be the pertinent person that I do not use marijuana" TH/
7 62:14-23.

8 30. Since being sentenced on December 11, 2009, Respondent's sentence of 18 months
9 probation requires him to submit monthly urine drug tests and to pay a \$65 monthly
10 probation service fee. All of his urine tests have been negative and he is current on his
11 probation fee. TH 63:2-64:8. Exhibit B.

12 **CONCLUSIONS OF LAW**

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14 31. This hearing officer finds that there is clear and convincing evidence that Responded
15 violated rule 42, Ariz. R. Sup. Ct., specifically ERs 8.4(b), commission of a criminal act that
16 reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other
17 respects, and 8.4(d) conduct that is prejudicial to the administration of justice.

18 **ABA STANDARDS**

19 32. ABA Standard 3.0 provides that four criteria should be considered: (1) the duty violated;
20 (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's
21 misconduct; and (4) the existence of aggravating and mitigating factors.
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The Duty Violated

33. This Hearing Officer finds that Respondent violated duties he owed to the public by criminal conduct under ER 8.4(b) and to the legal system by failing to operate within the bounds of the law under ER 8.4(c).

5.0 Violation of Duty Owed to the Public

34. In regard to Respondent's criminal conduct under ER 8.4(b), the relevant Standard is 5.12. Standard 5.12 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 law." Since Standard 5.12 addresses criminal conduct, suspension is the presumptive sanction.

6.0 Violation of Duty Owed to the Legal System

37. For Respondent's violation of ER 8.4(d) (conduct prejudicial to the administration of justice) for failing to operate within the bounds of the law involves Standard 6.0. Standard 6.0 applies to misconduct involving dishonesty, fraud deceit or misrepresentation which do not directly fit the criminal conduct here. Respondent's violation of ER 8.4(d), as a failure to operate within the bounds of the law does not involve dishonesty, fraud, deceit or misrepresentation. Instead, Respondent's misconduct raises the question: to what degree does Respondent's misconduct adversely reflect on his fitness to practice.

The Lawyer's Mental State

39. This Hearing Officer finds that Respondent was convicted for knowingly possessing marijuana and paraphernalia. The applicable mental state for Respondent's misconduct is knowing.

Actual or Potential Injury

40. This Hearing Officer finds that Respondent's possession of marijuana and paraphernalia caused injury to the public in that it undermined the public's confidence in the integrity of lawyers as officers of the court. Respondent's misconduct also caused injury to the legal system because lawyers are expected to operate within the bounds of the law.

Aggravating and Mitigating Factors

41. Standard 9.22(g): Refusal to acknowledge wrongful nature of conduct. This factor applies, but this Hearing Officer also agrees with the parties that Respondent was entitled to exercise his right to defend himself against the charges. Respondent maintained his innocence and did not appeal. However, Respondent accepts his conviction and recognizes that he can be disciplined for it. This aggravating factor is not given full weight because it involves balancing Respondent's exercise of his right to contest the charges at trial against his acceptance of the conviction and its consequences.

42. Standard 9.22(k): Illegal conduct: This factor comprises the underlying misconduct.

Mitigating Factors

43. Standard 9.32(a): Absence of a prior disciplinary record. Standard 9.32(e): full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Respondent was prompt in cooperating in the investigation of the charges and in the negotiations that resulted in the offered agreement.

44. Standard 9.32(i): imposition of other penalties or sanctions. Respondent was sentenced to criminal probation with drug testing and probation fees.

45. The parties recognize that Respondent's voluntary and extended participation in the MAP program right after his arrest with random testing, mentor and evaluation meetings

1 and financial payment requirements are not specifically recognized in the ABA Standards
2 for mitigation. Despite such non-recognition in the listed standards, the parties urge some
3 consideration be given to Respondent's participation and performance. This Hearing Officer
4 finds that Respondent's record of voluntary MAP participation is relevant to measuring the
5 good faith nature of his efforts regarding the proper sanction and fitness to practice.

6 **PROPORTIONALITY REVIEW**

7 46. The Arizona Supreme Court has held that one goal in imposing attorney discipline is
8 internal consistency. *In re Struthers*, 179 Ariz. 216, 887 P.2d 789 (1994). To achieve
9 internal consistency, it is appropriate to examine sanctions imposed in cases that are
10 factually similar. *In re Peasley*, 208 Ariz. 90, 90 P. 3d 772 (2004). However, the concept of
11 proportionality remains an "imperfect process" because no two cases are ever alike. It is also
12 the goal of attorney discipline that discipline imposed be tailored to an individual's case and
13 that neither perfection nor absolute uniformity can be achieved. *Struthers*, supra. *In re Riley*,
14 142 Ariz. 604, 691 P. 2d 695 (1984).

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16 47. In this case the State Bar is recommending and the Respondent has accepted, a censure,
17 two years of probation with applicable terms, and payment of all costs and expenses
18 incurred by the State Bar, the Disciplinary Clerk and the Supreme Court in these disciplinary
19 proceedings.

20 48. The Arizona Supreme Court has held that for purposes of attorney discipline cases, a
21 class 6 undesignated offense is not a felony unless and until it is designated a felony. *Matter*
22 *of Beren*, 178 Ariz. 400, 874 P.2d 320 (1994).

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24 49. In Arizona, the lawyer discipline cases involving marijuana are those cases that involved
25 felony convictions for possession of marijuana for sale and related crimes. Those cases

1 resulted in disbarment. See *In re D'Antonio*, SB-95-0019-D (1995); *In re Dutton*, SB97-
2 0013-D (1997).

3 50. However, there are cases involving convictions of possession of drug paraphernalia
4 related to other classes of drugs such as narcotic (cocaine) or dangerous (methamphetamine)
5 drugs that are helpful to the proportionality analysis.

6 51. In *In re Coker*, SB-09-0054-D, Respondent pled guilty to possession of drug
7 paraphernalia, a class 6 undesignated felony in exchange for four counts of class 4 felonies
8 (narcotic and dangerous drugs) being dismissed A class 6 possession of marijuana count was
9 also dismissed. Respondent also had separate misconduct involving ERs 1.7(a) 1.8(a) 1.8(e)
10 and 1.16. Respondent received a one year suspension with two years of probation upon
11 reinstatement including MAP and other terms. Aggravating factors were: 9.22(a), prior
12 discipline (two cases); 9.22(d) multiple offenses; 9.22(i) substantial experience in the
13 practice of law (over 25 years); and 9.22(k) illegal conduct. Mitigating factors were: 9.32(e)
14 full and free disclosure or cooperative attitude; and 9.32(i) other penalties and sanctions.
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16 52. In *In re Zavala*, SB-07-0004-D (2007), Respondent pled guilty to two counts of
17 possession of paraphernalia; class 6 undesignated offenses in exchange for the class 4 felony
18 possession of dangerous drugs being dismissed. Prior to conviction, Respondent had been
19 given a chance to avoid prosecution through a diversion program but engaged in further
20 drug use and was prosecuted. Respondent received one year suspension with two years of
21 probation upon reinstatement including MAP and other terms. Aggravating factors were:
22 9.22(c) pattern of misconduct; 9.22(i) substantial experience in the practice of law; and
23 9.22(k) illegal conduct. Mitigating factors were 9.32(a) absence of prior discipline; 9.32(b)
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1 absence of a dishonest or selfish motive; 9.32(c) personal or emotional problems; 9.32(e)
2 full and free disclosure or cooperative attitude; and 9.32(g) character or reputation.

3 **RECOMMENDATION**

4 53. Counsel for the State Bar has urged that this case merits a deviation from the
5 presumptive sanction of suspension. This Hearing Officer finds it unnecessary to rely upon
6 disciplinary cases from other jurisdictions which have issued more lenient sanctions without
7 suspension. It is also unnecessary to try to distinguish between misdemeanor convictions
8 after trial as opposed to those resulting from plea bargains. The individual circumstances of
9 this case as stated below when considered with the above proportionality review, and the
10 aggravating and mitigating factors, merit the sanction of censure instead of suspension.

11 54. Without doubt, Respondent violated the most fundamental duty a lawyer owes to the
12 public. As stated in the introduction to ABA Standard 5.0 that duty is "to maintain the
13 standards of personal integrity upon which the community relies. [P]ublic confidence in the
14 integrity of officers of the court is undermined when lawyers engage in illegal conduct."

15 55. While recognizing that Respondent violated his fundamental duty as a lawyer, there still
16 are several reasons to deviate from the presumptive standard of suspension. Here,
17 immediately after his arrest, Respondent contacted the State Bar and voluntarily entered the
18 therapeutic drug treatment program for one year.

19 56. He extended his participation in the program by six months for a total of 18 months. He
20 successfully completed the program with all drug tests being clean. He exceeded the peer
21 monitor meeting requirements and paid the ongoing required fees.

22 57. From September, 2007 through June, 2010, Respondent will have demonstrated his
23 sobriety from marijuana for 2 years and 10 months. Part of this long duration was due to the
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1 14 months between the first hung jury mistrial in August, 2008 and the second trial in
2 November, 2009.

3 58. At the hearing, this Hearing Officer closely observed Respondent testify about his past
4 regret and desire to change from his past use of marijuana. More than his words, his actions
5 over many months demonstrate his regret in violating his duty to the public and the legal
6 system. He has maintained his confirmed sobriety from marijuana for almost three years.
7 His prolonged sobriety supports his fitness to practice. It remains unlikely that Respondent
8 will violate his duties to the public and legal system in the future.

9 59. The two years of disciplinary probation provided for in the Agreement for Discipline
10 will extend beyond the current term of criminal probation and will impose ongoing
11 requirements to remain drug free.

12 60. The often stated purposes of lawyer discipline are not to punish the lawyer, but to protect
13 the public, the profession, the administration of justice, and to deter future misconduct. *In re*
14 *Fioramonti*, 176 Ariz. 182, 859 P. 2d 1315 (1993). Under the circumstances in Respondent's
15 case, to impose suspension would serve a punitive purpose when the other purposes will be
16 met through the Agreement terms.

17 61. Having considered the facts, and weighed the Standards and proportionality cases this Hearing
18 Officer concludes that the proposed sanction of censure combined with two years of probation and
19 payment of all costs and expenses in these proceedings achieves the goal of attorney discipline.

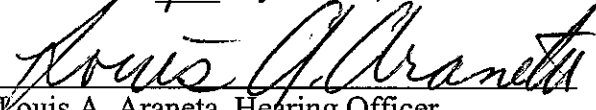
20 Therefore this Hearing Officer recommends the following:

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- 22 1. Respondent shall receive a censure;
 - 23 2. Respondent shall be placed on probation for a period of two years,
 - 24 under the following terms and conditions:
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- 1 a. The probation period will begin to run at the time of the Judgment and
2 Order.
- 3 b. Respondent shall contact the director of the State Bar's Member
4 Assistance Program (MAP) within 30 days of the judgment and order.
5 Respondent shall submit to a MAP assessment. The director of MAP shall
6 develop "Terms and Conditions of Probation" based on the assessment
7 and the terms shall be incorporated herein by reference.
- 8 c. If Respondent fails to comply with any of the foregoing conditions and
9 the State Bar receives information about non-compliance, bar counsel
10 shall file with the Hearing Officer a Notice of Noncompliance. The
11 Hearing Officer shall conduct a hearing at the earliest applicable date, but
12 in no event later than 30 days after receipt of notice, to determine whether
13 a term of probation has been breached and, if so, to recommend an
14 appropriate sanction. If there is an allegation that Respondent failed to
15 comply with any of the foregoing conditions, the burden of proof shall be
16 on the State Bar to prove noncompliance by clear and convincing
17 evidence.
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- 19 3. Respondent shall pay all costs incurred by the State Bar in bringing these
20 disciplinary proceedings. An Itemized Statement of Costs and Expenses is
21 attached as Exhibit "A," and incorporated herein. In addition, Respondent
22 shall pay all costs incurred by the Disciplinary Commission, the Supreme
23 Court and the Disciplinary Clerk's Office in this matter.
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DATED this 18th day of June, 2010.


Louis A. Araneta, Hearing Officer

Original filed with the Disciplinary Clerk
this 18th day of June, 2010

Copy of the foregoing mailed this
21 day of June, 2010 to:

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