

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

MOLLIE A. KESLER,
Bar No. 022526

Respondent.

PDJ-2017-9065

**FINAL JUDGMENT AND
ORDER OF SUSPENSION**

[State Bar No. 16-2393]

FILED NOVEMBER 29, 2017

The decision of the hearing panel was filed with the disciplinary clerk on November 7, 2017. The time for appeal has passed and no appeal has been filed.

Now Therefore,

IT IS ORDERED Respondent, **MOLLIE A. KESLER, Bar No. 02256**, is suspended from the practice of law for one (1) year effective November 7, 2017.

IT IS FURTHER ORDERED Ms. Kesler shall immediately comply with the requirements relating to notification of clients and others, and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED upon reinstatement, Ms. Kesler shall be placed on two (2) years of probation with the terms of probation to be determined at the time of formal reinstatement proceedings.

IT IS FURTHER ORDERED Ms. Kesler shall pay the State Bar's costs and

expenses in the amount of \$2,000.00. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge.

DATED this 29th day of November, 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed/mailed
this 29th day of November, 2017 to:

Bradley Perry
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Mollie A. Kesler
12012 N. 68th Place
Scottsdale, Arizona 85254-5144
Email: mollie.a.kesler@gmail.com
Respondent

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

MOLLIE A. KESLER,
Bar No. 022526

Respondent.

PDJ 2017-9065

**DECISION AND ORDER
IMPOSING SANCTION**

[State Bar No. 16-2393]

FILED NOVEMBER 7, 2017

I. PROCEDURAL HISTORY

Because Respondent, Mollie A. Kesler, was convicted on four counts of Aggravated Driving Under the Influence, Class 4 Felonies, Ms. Kesler was placed on interim suspension in PDJ 2017-9018 on March 1, 2017. Probable Cause was found on May 4, 2017, by the Attorney Discipline Probable Cause Committee. The State Bar of Arizona (“SBA”) filed its Complaint on May 18, 2017. On May 22, 2017, the Complaint was served on Ms. Kesler by certified, delivery restricted mail, and by regular first class mail, pursuant to Rules 47(c) and 58(a) (2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge (“PDJ”) was assigned to the matter.

A notice of default was issued on June 20, 2017. Ms. Kesler filed no Answer or otherwise challenged the Complaint and its allegations, and her default was effective on July 11, 2017. A notice of aggravation and mitigation hearing was sent

to all parties on that date, notifying them the aggravation mitigating hearing was scheduled for August 10, 2017, at the State Courts Building, 1501 West Washington Street, Phoenix, Arizona 85007-3231. On July 12, 2017, the State Bar moved to continue the hearing based on Bar Counsel's prescheduled out-of-state continuing legal education set for August 10, 2017. By order of the PDJ filed July 18, 2017, time limits were expanded and the hearing re-set to August 14, 2017, pursuant to Rule 51(c)(4). The parties were given notice of the new date.

On August 14, 2017, the Hearing Panel, comprised of Judge Maurice Portley (retired), attorney member, Betty Jane Davis, public member, and the Presiding Disciplinary Judge, ("PDJ"), William J. O'Neil, held an aggravation/mitigation hearing. Bradley Perry appeared on behalf of the State Bar of Arizona. Ms. Kesler did not appear. Exhibits 1-16 were admitted. At the conclusion of the hearing, the State Bar requested a one year suspension.

II. FINDINGS OF FACT

The facts listed below are those set forth in the SBA's Complaint and were deemed admitted under Rule 58(d) by the entry of the default. A respondent against whom a default has been entered may no longer litigate the merits of the factual allegations, but retains the right to appear and participate in the hearing that will determine the sanctions. Ms. Kesler did not appear.

1. Ms. Kesler was a lawyer licensed to practice law in Arizona having been first admitted to practice in Arizona on October 24, 2003.

2. On April 17, 2009, Ms. Kesler was administratively suspended for non-payment of dues.

3. On March 1, 2017, the Presiding Disciplinary Judge issued an order of interim suspension due to the criminal convictions of Ms. Kesler conviction on four counts of Aggravated Driving Under the Influence, Class 4 Felonies.

4. On September 13, 2015, at 4:25 pm, witnesses called police to report a single vehicle collision in a residential neighborhood, possibly involving alcohol. Police arrived and observed the vehicle of Ms. Kesler on its side in the front yard of a residential property belonging to William Shanahan. The mailbox was knocked over and landscaping rocks were strewn about the driveway. [Exhibit 16.]

5. Police contacted Ms. Kesler, who was outside of the vehicle, and detected an odor of alcohol and bloodshot and watery eyes. [Exhibit 16.]

6. Ms. Kesler had no driver's license as it had been revoked as a result of her two prior DUI convictions in the past eighty-four months. [Exhibit 16.]

7. Ms. Kesler was unable to perform field sobriety tests as instructed, but submitted to a portable breathalyzer. Ms. Kesler was arrested and submitted to a blood draw, which revealed her blood alcohol content was .141%. [Exhibit 16.]

8. On April 4, 2016, Ms. Kesler was convicted of 4 counts of Aggravated Driving Under the Influence, Class 4 Felonies. [Exhibit 1.]

9. On May 24, 2016, Ms. Kesler was sentenced to a three-year term of probation with fines and counseling and four months in the Department of Corrections. [Exhibit 1.]

10. Ms. Kesler violated Rule 42 Ariz. R. Sup. Ct., ER 8.4(b) and Rule 54(g) Ariz. R. Sup. Ct.

III. CONCLUSIONS OF LAW

Ms. Kesler failed to file an Answer or otherwise defend against the allegations in the SBA's Complaint. Default was properly entered and the allegations are therefore deemed admitted pursuant to Rule 58(d), Ariz. R. Sup. Ct. Based upon the facts deemed admitted, the Hearing Panel finds by clear and convincing evidence that Ms. Kesler violated: Rule 42, Ariz. R. Sup. Ct., ER 8.4(b) and Rule 54(g) Ariz. R. Sup. Ct.

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards For Imposing Lawyer Sanctions* ("*Standards*") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors 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. *Standard 3.0*.

Duties violated:

Ms. Kesler violated her duty to the public by violating Rule 42 Ariz. R. Sup. Ct. ER 8.4(b) and Rule 54(g) Ariz. R. Sup. Ct.

Mental State and Injury:

Ms. Kesler violated her duty to the public, implicating *Standard 5.1*. That *Standard* states: "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."

Ms. Kesler knowingly drove while intoxicated while her driver's license was revoked due to previous DUI convictions.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors are present in this matter: *Standard 9.22(c)* – A pattern of misconduct. Ms. Kesler was convicted of two misdemeanor DUIs prior to being convicted of felony DUI. The Hearing Panel finds no mitigating factors apply.

IV. PROPORTIONALITY

Under Rule 58(k), Ariz. R. Sup. Ct., a proportionality analysis is done as deemed appropriate by a hearing panel in its discretion. In the past, the Supreme

Court has consulted factually similar cases to assess the comparability of the sanction recommended. *See In re Struthers*, 179 Ariz. 216, 226, 887 P.2d 789, 799 (1994). The Supreme Court has recognized that the concept of such a review is “an imperfect process.” *In re Owens*, 182 Ariz. 121, 127, 893 P.3d 1284, 1290 (1995). This is because no two cases, factually, “are ever alike.” *Id.*

To assure an effective system of professional sanctions, there should be internal consistency, and the Panel finds it appropriate to examine the sanctions recommended in this case to assure such consistency. *See In re Peasley*, 208 Ariz. 27, 35, 90 P.3d 764, 772 (2004). However, the discipline in each case must be tailored to the individual facts, as neither perfection nor absolute uniformity can be achieved. *Id.* at 208 Ariz. at ¶ 61, 90 P.3d at 778 (citing *In re Alcorn*, 202 Ariz. 62, 76, 41 P.3d 600, 614 (2002); *In re Wines*, 135 Ariz. 203, 207, 660 P.2d 454, 458 (1983)).

In *Butel*, PDJ 2014-9037, the Presiding Disciplinary Judge accepted an agreement for discipline by consent by which Ms. Butel was suspended for one year, retroactive to October 18, 2013. Upon reinstatement, Ms. Butel was recommended to be placed on supervised probation for one year and recommended to participate in the State Bar’s Member Assistance Program.

In *Butel*, Ms. Butel self-reported her criminal conviction for a class 5 felony for leaving the scene of a fatal accident and class 1 misdemeanor for driving under

the influence. The single aggravating factor was her illegal conduct. The mitigating factors were, absence of a prior disciplinary record, full and free disclosure to disciplinary board and cooperative attitude toward proceedings, imposition of other penalties or sanctions, and remorse. Ms. Butel violated Rule 42, Ariz. R. Sup. Ct., specifically ER 8.4(b), and Rule 54(g), Ariz. R. Sup. Ct. Ms. Butel was also ordered to pay the costs and expenses of \$1,205.99.

This case has similarities to *Butel*; both involve a conviction for a driving-related felony offense. Although this case can be considered more egregious than *Butel* given that Ms. Kesler continued to drive on a suspended license, drove while intoxicated, and did not self-report the incident, a punishment similar to *Butel* would protect the public if Ms. Kesler desires to seek reinstatement.

V. CONCLUSION

The Supreme Court “has long held that ‘the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.’” *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 859 P.2d 1315 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 881 P.2d 352 (1994).

The Hearing Panel has based the sanction upon the facts deemed admitted, the exhibits, the *Standards*, including the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. The Hearing Panel orders:

1. Ms. Kesler shall be suspended from the practice of law for a period of one (1) year effective immediately and upon reinstatement, placed on probation for two (2) years.
2. Ms. Kesler shall pay all costs and expenses incurred by the State Bar as ordered by the PDJ. There are no costs or expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office with these disciplinary proceedings.

A final judgment and order will follow.

DATED this 7th day of November 2017.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Betty Jane Davies

Betty Jane Davies, Volunteer Public Member

Maurice Portley

Hon. Maurice Portley (ret.) Attorney Member

Copy of the foregoing mailed/mailed
this 7th day of November, 2017, to:

Bradley Perry
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Mollie A. Kesler
12012 N. 68th Place
Scottsdale, Arizona 85254-5144
Email: mollie.a.kesler@gmail.com
Respondent

by: AMcQueen

Bradley F. Perry, Bar No. 025682
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7247
Email: LRO@staff.azbar.org

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

MAY 18 2017

FILED
BY 

BEFORE THE PRESIDING DISCIPLINARY JUDGE

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

MOLLIE A. KESLER,
Bar No. 022526,

Respondent.

PDJ 2017-9065

COMPLAINT

[State Bar No. 16-2393]

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. Respondent was first admitted to practice in Arizona on October 24, 2003.
2. Respondent was administratively suspended for failure to pay dues in April, 2009.

3. On March 1, 2017, the Presiding Disciplinary Judge issued an order of interim suspension based on Respondent's conviction of four counts of Aggravated Driving Under the Influence, Class 4 Felonies.

COUNT ONE (17-0455 / SBA)

4. On September 13, 2015, at 4:25 pm, witnesses called police to report a single vehicle collision in a residential neighborhood, possibly involving alcohol. Police arrived and observed Respondent's vehicle on its side in the front yard of a residential property belonging to William Shanahan. The mailbox was knocked over and landscaping rocks were strewn about the driveway.

5. Police contacted Respondent, who was outside of the vehicle, and detected an odor of alcohol and bloodshot and watery eyes.

6. Respondent's driver's license had been revoked due to two prior DUI convictions in the past eighty-four months.

7. Respondent was unable to perform field sobriety tests as instructed, but submitted to a portable breathalyzer. Respondent was arrested and submitted to a blood draw, which revealed her blood alcohol content was .141%.

8. On April 4, 2016, Respondent was convicted of 4 counts of Aggravated Driving Under the Influence, Class 4 Felonies.

9. On May 24, 2016, Respondent was sentenced to a three-year term of probation with fines and counseling and four months in the Department of Corrections.

10. Respondent's conduct in this matter violates Rule 42 Ariz. R. Sup. Ct. ER 8.4(b) and Rule 54(g) Ariz. R. Sup. Ct.

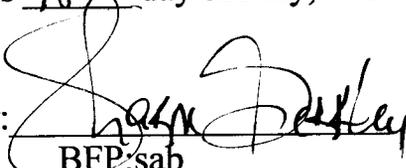
DATED this 18th day of May, 2017.

STATE BAR OF ARIZONA



Bradley F. Perty
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 18th day of May, 2017.

by: 
BFP:sab

BEFORE THE ATTORNEY DISCIPLINE
PROBABLE CAUSE COMMITTEE
OF THE SUPREME COURT OF ARIZONA

FILED

MAY 04 2017

BY 

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

No. 16-2393

MOLLIE A. KESLER
Bar No. 022526

PROBABLE CAUSE ORDER

Respondent.

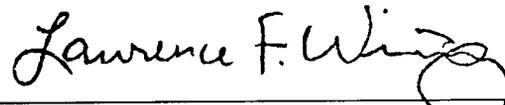
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 7, 2017, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 16-2393.

IT IS THEREFORE ORDERED pursuant to Rules 55(c) and 58(a), Ariz. R. Sup. Ct., authorizing the State Bar Counsel to prepare and file a complaint with the Disciplinary Clerk.

Parties may not file motions for reconsideration of this Order.

DATED this 3rd day of May, 2017.



Judge Lawrence F. Winthrop, Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

Original filed this 4th day
of May, 2017, with:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266

Copy mailed this 5th day
of May, 2017, to:

Mollie A. Kesler
12012 N. 68th Place
Scottsdale, Arizona 85254-5144
Respondent

Copy emailed this 5th day
of May, 2017, to:

Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona
1501 West Washington Street, Suite 104
Phoenix, Arizona 85007
E-mail: ProbableCauseComm@courts.az.gov

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
E-mail: LRO@staff.azbar.org

by: 