

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

AERYN A. HEIDEMANN,
Bar No. 025530

Respondent.

PDJ-2014-9045

FINAL JUDGMENT AND ORDER

[State Bar No. 14-2941]

FILED OCTOBER 1, 2015

This matter having come on for hearing before the Hearing Panel of the Supreme Court of Arizona, it having duly rendered its decision and no appeal having been filed and the time to appeal having expired, accordingly,

IT IS HEREBY ORDERED Respondent **AERYN A. HEIDEMANN**, is suspended from the practice of law for three (3) years, effective September 9, 2015, for conduct in violation of her duties and obligations as a lawyer as disclosed in the Hearing Panel's Decision and Order Imposing Sanctions filed on September 9, 2015.

IT IS FURTHER ORDERED Ms. Heidemann's interim suspension in PDJ-2015-9029, is hereby vacated.

IT IS FURTHER ORDERED Ms. Heidemann 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 Ms. Heidemann shall pay the costs and expenses of the State Bar of Arizona in the amount of \$2,000.20. There are no costs or expenses

incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 1st day of October, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing mailed/emailed this 1st day of October, 2015.

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

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

Respondent.

No. PDJ-2014-9045

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar No. 14-2941]

FILED SEPTEMBER 9, 2015

On August 12, 2015, the Hearing Panel ("Panel"), composed of Michael Snitz, volunteer public member, Richard L. Brooks, volunteer attorney member, and Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a one (1) day hearing under Rule 58(j), Ariz. R. Sup. Ct. Nicole S. Kasetta appeared on behalf of the State Bar of Arizona ("State Bar"). Respondent, Aeryn A. Heidemann failed to appear to this hearing, although she received prior notice of the date and time of the hearing.

The Panel carefully considered the Complaint, Proposed Rule 58(k) Hearing Panel Report, and admitted exhibits. The Panel now issues the following "Decisions and Order Imposing Sanctions," under Rule 58(k), Ariz. R. Sup. Ct.

I. SANCTION IMPOSED: THREE (3) YEAR SUSPENSION

II. BACKGROUND AND PROCEDURAL HISTORY

On April 9, 2015, the State Bar filed a Motion for Interim Suspension of Ms. Heidemann in PDJ-2015-9029. On April 23, 2015, the State Bar filed a Notice of Service of Motion for Interim Suspension. On May 20, 2015, the PDJ issued a decision and order granting interim suspension under Rule 61, Ariz. R. Sup. Ct.

A Probable Cause Order was issued on May 21, 2015, by the Attorney Discipline Probable Cause Committee. On May 27, 2015, the State Bar filed its Complaint alleging seven (7) violations of the Ethical Rules stemming from a failure by Ms. Heidemann to follow court ordered drug testing and a failure to cooperate with the State Bar's investigation.

On June 1, 2015, Notice of Service of Complaint was filed with the PDJ. The Complaint was sent to the address of record as provided by Ms. Heidemann to the Membership Record Department of the State Bar of Arizona. [Exhibit 20, SBA000234-35.] On June 3, 2015, Notice of Assignment of PDJ was filed, assigning Judge O'Neil to the matter. A notice of default was issued on June 30, 2015, given Ms. Heidemann's failure to file an answer or otherwise defend against the State Bar's Complaint. On July 22, 2015, an effective entry of default was entered under Rule 58(d) for Ms. Heidemann's continued failure to file an answer.¹

On July 23, 2015, the State Bar submitted its list of witnesses and requested a subpoena for Scott L. Patterson. On that same day the State Bar submitted a motion to allow Mr. Patterson to testify telephonically as he was not expected to be needed to testify but should he be needed, his testimony would not be lengthy. On August 5, 2015, the motion was granted allowing telephonic testimony of Mr. Patterson. At the hearing, Mr. Patterson's testimony was not necessary.

¹ A respondent against whom a default has been entered no longer has the right to litigate the merits of the factual allegations, but retains the right to appear and participate in the hearing that will determine his sanctions. Included with that right to appear is the right to testify and the right to cross-examine witnesses, in each instance only to establish facts related to aggravation and mitigation. Respondent did not appear. Although the allegations are deemed admitted by default, there has also been an independent determination by the Hearing Panel that the State Bar has proven by clear and convincing evidence that Respondent violated the ethical rules.

III. FINDINGS OF FACT

Ms. Heidemann was licensed to practice law in the State of Arizona on April 18, 2008. [Complaint, ¶ 1.]

In 2010, Ms. Heidemann and her husband divorced, agreeing to joint legal custody of their three (3) children. [Id., ¶ 2; Exhibit 1 (Parenting Plan).] On July 10, 2014, Ms. Heidemann's ex-husband filed a petition to modify the existing agreement for joint custody alleging that Ms. Heidemann had been exposing the children to "excessive alcohol use/abuse, and possibly illicit drug use, while they are at her home." [Id., ¶ 3; Exhibit 2, SBA000007.] The petition specifically points to a drug pipe on Ms. Heidemann's bedside table, which was photographed by one of the children. [Id.]

On August 13, 2014, the court held a status conference and entered a Minute Entry on the same date ordering Ms. Heidemann to submit to a hair follicle test by 7:00 p.m. that same day. [Complaint, ¶ 5; Exhibit 3, SBA000017.] Further, the court ordered Ms. Heidemann not to consume any alcohol through October 31, 2014, and that Ms. Heidemann commence random ETG/alcohol testing 8-10 times a month through October 31, 2014. [Id.] Ms. Heidemann submitted her August 13, 2014 hair follicle test, which tested positive for cocaine and cocaine metabolites. [Exhibit 5, SBA000050; Exhibit 6.]

On August 15, 2014, Ms. Heidemann filed a response stating she never brought or knowingly allowed drugs in her house and placing any potential blame for the drug pipe on an "emancipated child who has a well-documented record of drug use." [Exhibit 4, SBA000023.] She also alleged that the drug pipe was brought inside the house, after being found in the garage, in order to destroy it before disposing of it,

as recommended by Ms. Heidemann's friend in law enforcement. [Id.] Additionally, Ms. Heidemann accused her ex-husband of engaging in "spurious rhetoric" to discredit her by making untrue claims and assertions about her abilities as a parent. [Id., SBA000025.]

On August 27, 2014, Ms. Heidemann's ex-husband filed an emergency motion for temporary order for modification of legal decision-making and parenting time based on Ms. Heidemann's having failed the August 13 drug test. [Exhibits 5 and 6.] The court scheduled a hearing on the emergency motion for September 18, 2014. [Exhibit 7.]

On September 17, 2014, Ms. Heidemann filed a response opposing the emergency motion stating: "Respondent has never knowingly consumed cocaine She is an outspoken opponent of any drug use. . . . Respondent was shocked when the results of the follicle test were returned." [Exhibit 8, SBA000067.] Nevertheless, the motion was heard on September 18, and a Minute Entry was submitted by the Courts on that same day. [Exhibit 9.]

The September 18, 2014 Minute Entry stated:

[T]he Court received an Individual Testing Compliance Summary for the Period of January 1, 2014 through September 16, 2014, for [Respondent] from TASC, which indicates that [Respondent] submitted to a Hair Follicle Test on August 13, 2014, and tested positive for Cocaine. The court further notes that [Respondent] did not appear back to TASC to commence random drug . . . testing until August 25, 2014, even though the Court ordered Mother to submit to urinalysis testing on August 13, 2014.

[Id., SBA000198-99.]

Further, the September 18 Minute Entry granted sole legal decision making for the minor children to the ex-husband and ordered Ms. Heidemann to continue random drug testing and to cooperate with the testing agency. [Id., SBA000199.]

Additionally, the court ordered Ms. Heidemann “shall be randomly tested 8 to 10 times per month through and including November 30, 2014” and that Ms. Heidemann “shall appear at an appropriate TASC facility on **November 21, 2014**, for a Hair Follicle Test.” [Id., SBA000200 (emphasis in original).]

Further, the September 18 Minute Entry referred the matter to the State Bar, stating:

As a result of [Respondent] testing positive for Cocaine and having failed to submit to a urinalysis testing on August 13, 2014, as ordered by the Court, and as a result of Mother currently being investigated by the Phoenix Police Department for forgery and theft of a credit card, IT IS ORDERED referring this matter to the State Bar of Arizona.

[Id., SBA000201.]

Ms. Heidemann appeared for her November 21, 2014 hair follicle test and again tested positive for cocaine. [Exhibit 12, SBA000206.] On December 1, 2014, the court held a status conference and entered a Minute Entry on the same date. [Id., SBA000205-07.] Ms. Heidemann did not attend the status conference, but instead, had a friend call the court and inform the court she was “in the hospital with medical issues.” [Id.] The court proceeded with the status conference without Ms. Heidemann, noted the recent positive drug test result, ordered continued drug testing 8 to 10 times per month, and ordered Ms. Heidemann to appear for a status conference on January 21, 2015. [Id.] Further, the court admonished Ms. Heidemann, stating “that if she fails to appear . . . on January 21, 2015, the Court may proceed to enter final orders in her absence.” [Id.]

On January 21, 2015, the court held a status conference and entered a Minute Entry on the same date. [Exhibit 16.] Ms. Heidemann did not attend this status

conference either, and the court held the hearing without her.² [Id.] In the Minute Entry the court noted that while Ms. Heidemann had tested negative on November 26, 2014, she had not tested once between that test and the January status conference, despite having her color being called thirteen (13) times during that time period. [Id.] The court “deem[ed] to be an admission that, if she had tested, the tests would have been positive for one or more of the substances tested for.” [Id., SBA000214.] Further, the court awarded the ex-husband sole custody of the children. [Id., SBA000215.] The Minute Entry directed the clerk to “to endorse the State Bar of Arizona in today’s Minute Entry as a result of Mother having failed to submit to the drug testing as ordered by the Court and failing to appear for the last two hearings, as she is a licensed attorney.” [Id., SBA000217.]

On November 17, 2014, Bar Counsel sent Ms. Heidemann a screening letter demanding a response by December 8, 2014. [Exhibit 11.]³ On December 9, 2014, Ms. Heidemann asked the State Bar to extend the time to file her response. [Exhibit 18.] The State Bar gave Ms. Heidemann a twenty (20) day extension; however, no response was filed. After Ms. Heidemann failed to respond to the initial screening letter Bar Counsel sent a second letter on January 13, 2015. [Exhibit 14.] This second letter was also returned to the State Bar. [Exhibit 17.] On January 30, 2015, Bar

² In its Minute Entry, the court wrote: “The Court was ready to proceed on time; however, the Court was informed that [ex-husband’s counsel] was unable to reach the Respondent by telephone. The Court staff has been trying to reach [Respondent] by telephone and has left messages since shortly before 11:15 a.m., but [Respondent] has not called back, [Respondent] has not filed anything, and it is now almost 15 minutes past the designated start time. THE COURT NOTES that the last appearance in this matter was December 1, 2014 . . . for which [Respondent] failed to appear. . . . [T]he Court presumes Mother received the Minute Entry dated December 1, 2015, and had notice of today’s proceeding.” [Complaint, ¶ 22, Exhibit 16.]

³ Supreme Court Rule 55(b)(1), requires a respondent to respond to a screening letter within twenty (20) days.

Counsel's assistant both telephoned and emailed Ms. Heidemann regarding her failure to respond. [Id., ¶ 43.] Ms. Heidemann never replied to either the telephone call or the email. [Id., ¶ 44.]

IV. VIOLATIONS

The Panel considered the charges alleged by the State Bar in its single count complaint and finds clear and convincing evidence Ms. Heidemann violated ERs 3.2, 3.4(c), 8.1(b), 8.4(d), and Rules 54(c) and 54(d), Ariz. R. Sup. Ct.

- **ER 3.2 (Expediting Litigation)**

ER 3.2 provides "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." The commentary to ER 3.2 suggests "[i]t is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay."

- **ER 3.4(c) (Fairness to Opposing Party and Counsel)**

ER 3.4(c) provides "[a] lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." "Knowing behavior is established by invoking, among other things, objective factors that include the situation in which the prosecutor found himself, the evidence of actual knowledge and intent and any other factors which may give rise to an appropriate inference or conclusion." *In re Zawada*, 208 Ariz. 232, 237, 92 P.3d 862, 867 (2004) (internal quotation omitted).

Ms. Heidemann knew of the Court's drug testing orders and had appeared for testing, albeit less than ordered, with at least one (1) negative and two (2) positive testing results. Ms. Heidemann failed to appear for testing on thirteen (13) drug

testing dates from late November 2014 through early January 2015. There is no record that Ms. Heidemann filed an appeal or substituted any other statement that would show the Panel anything beyond a knowing disobedience of the court's order, on the part of Ms. Heidemann, who knew that the order was effective until November 30, 2014. She knowingly failed to appear for the November 30, 2014, drug test. We therefore conclude that her absence at court hearings and non-compliance with the court's order was purposeful. Therefore, the Panel finds Ms. Heidemann knowingly disobeyed court orders by failing to submit to drug testing and failing to appear at scheduled status conferences.

- **ER 8.1 (Bar Admission and Disciplinary Matters)**

ER 8.1(b) provides "[a]n applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not . . . fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority." The Panel finds an "[a]ttorney violates disciplinary rule by failing to respond to State Bar's requests for information, despite not having any selfish or dishonest motive for failing to respond." *Matter of Miller*, 178 Ariz. 257, 872 P.2d 661 (1994).

The Oath of Admission to the State Bar of Arizona states, "I will at all times faithfully and diligently adhere to the rules of professional responsibility and a lawyer's creed of professionalism of the State Bar of Arizona." Thus, an "apparent indifference to the disciplinary process" properly causes concern to the Panel. *Matter of Brown*, 184 Ariz. 480, 483, 910 P.2d 631, 634 (1996). Attorneys have a "duty as [officers] of the court [that] includes the obligation to fully and actively cooperate

with the bar when [her] conduct is called into question.” *Id.* The “[f]ailure to respond to inquiries from the State Bar shows a disregard for the Rules of Professional Conduct and borders on contempt for the legal system.” *In re Davis*, 181 Ariz 263, 266, 889 P.2d 621, 624 (1995) (citation omitted).

Here, Ms. Heidemann failed on a number of levels to respond to the State Bar’s investigation into the matters before us. The Panel finds no reason to determine reasons for such failures to respond or to make conclusions as to whether or not those reasons arise out of a selfish or dishonest motive. The Panel is only concerned with the failure to cooperate with the State Bar during the investigation and throughout these proceedings leading to the hearing. Ms. Heidemann was certainly aware of the disciplinary investigation, as evidenced by her having contacted the State Bar to obtain an extension of time to file her response. [Exhibit 18.] Ms. Heidemann knew she had a duty to maintain an up-to-date address with the State Bar, yet she failed to do so, resulting in a number of undeliverable items. The Panel finds that “[i]naction serves to undermine the profession’s efforts at self-regulation, damaging both its credibility and reputation.” *Brown*, 184 Ariz. at 483, 910 P.2d at 634. Therefore, the Panel finds Ms. Heidemann in violation of ER 8.1(b).

- **ER 8.4 (Misconduct)**

The State Bar has alleged a violation of ER 8.4(b) (criminal act) and although the misconduct is deemed admitted by default, the Panel does not find clear and convincing evidence that Ms. Heidemann violated ER 8.4(b) in regards to her son’s checking account and any identity theft or forgery based on comments made either in a motion to the courts or during a deposition that is not part of the record. Her failed drug tests [Exhibit 5, SBA000050; Exhibit 10, SBA000202; Exhibit 13,

SBA000208], however, is considered separately. The Panel weighed the illegal conduct evidenced by those failed drug tests in aggravation as the Panel considered Mr. Heidemann's most serious misconduct was her failure to comply with the family court's orders and her failure to respond to the State Bar's investigation. See Standard 9.22(k) (illegal conduct). The evidence before the Panel clearly and convincingly demonstrates that Ms. Heidemann ingested cocaine, which would explain why she failed the court ordered drug tests.

ER 8.4(d) (conduct prejudicial to the administration of justice) provides "[i]t is professional misconduct for a lawyer to . . . [e]ngage in conduct that is prejudicial to the administration of justice." "A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs." Preamble to Rule 42, Rules of Professional Conduct. From the undisputed evidence it is clear Ms. Heidemann's drug use has become so pervasive that it has affected both her personal and professional (as an officer of the court) life. The Panel notes that there were no complaints arising out of her performance while engaged in the practice of law. We nonetheless decline to allow attorneys to continue practicing law with a known drug problem when that attorney does not cooperate with the State Bar regarding pending charges and ignore court orders.

Ms. Heidemann's personal conduct raise too many concerns with regard to her ability to practice law. The ethical rules do not, and should not, require an actual prejudice to the administration of justice when the potential is so great. Additionally, for the Panel to ignore Ms. Heidemann's disregard of court orders would be to cast a shadow over the integrity of the justice system. *Brown*, 184 Ariz. at 483, 910 P.2d

at 634. Further, we cannot allow attorneys to ignore the State Bar in any investigation causing unnecessary delays to the disciplinary process. Therefore, the Panel finds Ms. Heidemann violated ER 8.4(d).

- **Rule 54 (Grounds for Discipline)**

We find Ms. Heidemann in violation of Rule 54(c) and (d). Rule 54(c) states “[g]rounds for discipline of members and non-members include the . . . [k]nowing violation of any rule or any order of the court.” Ms. Heidemann knowingly disobeyed court orders when she failed to appear for a number of court ordered drug tests. Therefore, the Panel finds Ms. Heidemann in violation of Rule 54(c) because—as stated above—her disregard of following court orders brings doubt to the integrity of justice.

Rule 54(d) states “[g]rounds for discipline of members and non-members include the . . . [v]iolation of any obligation pursuant to these rules in a disciplinary or disability investigation or proceeding.” Ms. Heidemann failed to cooperate with the State Bar during its investigation in the matter before us. Further, the rule specifically deals with evading service or refusal to cooperate, stating:

Evading service or refusal to cooperate with officials and staff of the state bar, the committee, the presiding disciplinary judge, a hearing panel, or a conservator appointed under these rules acting in the course of that person's duties constitutes grounds for discipline.

Rule 54(d)(1), Ariz. R. Sup. Ct.

Further, the rule continues with clarification of the failure to furnish information, stating:

The failure to furnish information or respond promptly to any inquiry or request from bar counsel, the board, the committee, the presiding disciplinary judge, a hearing panel, or this court, made pursuant to these rules for information relevant to pending charges, complaints or matters

under investigation concerning conduct of a lawyer, or failure to assert the ground for refusing to do so constitutes grounds for discipline.

Rule 54(d)(2), Ariz. R. Sup. Ct.

Since Ms. Heidemann has failed to furnish information to the State Bar and has made no assertion for grounds justifying her refusal to do so, the Panel finds her to be in violation of Rule 54(d).

V. CONCLUSIONS OF LAW AND DISCUSSION OF THE DECISION

The *American Bar Association Standards for Imposing Lawyer Discipline* (“ABA Standards”) are a “useful tool in determining the proper sanction” to be imposed on a lawyer found in violation of the Ethical Rules. *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). We give consideration to the following factors: (1) the ethical duty violated, (2) the lawyer's mental state, (3) the actual or potential injury caused by the misconduct, and (4) the existence of aggravating and mitigating factors. *ABA Standards Standard 3.0, In re Peasley*, 208 Ariz. 27, 32, 90 P.3d 764, 769 (2004).

DUTY VIOLATED

A lawyer’s misconduct may violate a duty owed to a client, the public, the legal system, or the profession. *Commentary, ABA Standards Standard 3.0, See also ABA Standards Theoretical Framework*. When disciplinary proceedings are brought against lawyers alleged to have engaged in ethical misconduct, the State Bar must prove misconduct by clear and convincing evidence. *Commentary, ABA Standards Standard 1.3*.

The most fundamental duty which a lawyer owes the public is the duty to maintain the standards of personal integrity upon which the community relies. The public expects the lawyer to be honest and to abide by the law; public confidence in the integrity of offices of the court is undermined when lawyers engage in illegal conduct.

We find Ms. Heidemann violated her duty to the public, the legal system, and the profession.

MENTAL STATE

The *ABA Standards* recognize three mental states: intentional, knowing, and negligent. ER 1.0(f) states that "knowingly," "known," or "knows" denotes actual knowledge of the fact in question and a person's knowledge may be inferred from circumstances. The *ABA Standards* define "knowledge" as "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." *ABA Standards* Definitions. Under the *ABA Standards*, a lawyer acts intentionally by acting with "the conscious objective or purpose to accomplish a particular result." *Id.* We find Ms. Heidemann and her misconduct in violating court orders and refusing to cooperate with the bar to be knowing, if not intentional.

INJURY

Under the *ABA Standards*, the injury caused by a lawyer's misconduct may be actual or potential. The Panel finds Ms. Heidemann's misconduct caused both actual and potential injury. The *ABA Standards* define "injury" as harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. Whether a lawyer's actions caused harm is a question of fact. *Van Dox*, 214 Ariz. at 305, 152 P.3d at 1188. The *ABA Standards* note that the level of injury can range from "serious" injury to "little or no" injury, while a reference to "injury" alone indicates any level of injury greater than "little or no" injury. *ABA Standards* Definitions. A "potential injury" is the harm to a client, the public, the legal system or the profession reasonably foreseeable at the time of the lawyer's misconduct, and

which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct. *Id.*

The Panel finds actual and potential injury to the public, the legal system and the legal profession when we consider the facts undergirding Ms. Heidemann's drug use. Actual injury to the legal profession occurs when lawyers refuse to cooperate with the State Bar. When attorneys refuse to cooperate with the State Bar, a self-regulating profession, there is injury to the entire legal profession. Moreover, because of Ms. Heidemann's drug use, there is potential injury to the public if she was permitted to continue practicing law in Arizona without the sanction imposed herein.

PRESUMPTIVE SANCTIONS

The Panel looks to the *ABA Standards* to determine the presumptive sanctions and notes *Standard 6.2* applicable for a violation of ERs 3.2 and 3.4(c); *Standard 6.0* applicable for a violation of ER 8.4(d); and *Standard 7.0* applicable for violations of ER 8.1(b) and Rule 54.

Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

ABA Standards Standard 7.2

Under Standard 6.2⁴, an attorney is subject to discipline for abusing the legal process by "fail[ing] to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation." According to the Commentary to Standard 6.2, "lawyers are suspended when they knowingly violate

⁴ *Standard 6.0* refers generally to any violation of duties owed to the legal system and can be broadly applied to the relevant sections of *Standards 6.1, 6.2, or 6.3.*

court orders. . . . [s]uch knowing violations can occur when a lawyer fails to comply with a court order that applies directly to him or her.”

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

ABA Standards Standard 6.22

The Panel determined that based on these facts, the presumptive sanction is suspension.

AGGRAVATION AND MITIGATION

Each disciplinary case involves unique facts and circumstances. *Commentary, ABA Standards Standard 9.1*. In striving for fair disciplinary sanctions, consideration must be given to the facts pertaining to the professional misconduct and to any aggravating or mitigating factors. *Id.* The Panel determined the following aggravating factors are supported by the record:

- **9.22(k) (Illegal conduct)**

The Panel finds sufficient evidence of illegal conduct based on Ms. Heidemann’s positive drug tests which reflect poorly on her ability to practice law. Therefore, to protect the public, the Panel places reasonable weight on this aggravating factor

The Panel determined that the following mitigating factor is supported by the record:

- **9.32(a) (absence of a prior disciplinary record)**

Ms. Heidemann’s lack of a prior disciplinary record is a mitigating factor in determining sanctions. However, her short time being in the practice of law since 2008 leads the Panel place minimal weight on this as a mitigating factor.

VI. CONCLUSION

The object of lawyer discipline is to protect the public, the legal profession, the administration of justice, and to deter other attorneys from engaging in unprofessional conduct. *Van Dox*, 214 Ariz. at 303, 152 P.3d at 1186; *Peasley*, 208 Ariz. at 38, 90 P.3d at 775. Attorney discipline is not intended to punish the offending attorney, although the sanctions imposed may have that incidental effect. *Id.* The Panel finds Ms. Heidemann committed professional misconduct in violation of ERs 3.2, 3.4(c), 8.1(b), 8.4(d), and Rules 54(c) and 54(d), Ariz. R. Sup. Ct.

The State Bar requested suspension for a period of three (3) years as the sanction for Ms. Heidemann's unethical actions. Based on our review of the underlying facts, our conclusions of law, and application of the *Standards*, including both aggravating and mitigating factors, the Panel agreed with this assessment. The presumptive sanction for the unethical actions and refusal to cooperate with the State Bar suggests a suspension is appropriate. Accordingly,

IT IS ORDERED Ms. Heidemann is suspended from the practice of law for three (3) years effective the date of this Decision and Order.

IT IS FURTHER ORDERED that Ms. Heidemann's interim suspension in PDJ-2015-9029 is hereby vacated.

IT IS FURTHER ORDERED Ms. Heidemann shall pay costs and expenses in this matter in the amount of \$2,000.20, pursuant to Rule 60(b), Ariz. R. Sup. Ct.

A final judgment and order will follow.

DATED this 9th day of September, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Michael Snitz

Michael Snitz, Volunteer Public Member

Richard L. Brooks

Richard L. Brooks, Volunteer Attorney Member

Copies of the foregoing mailed/emailed
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**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

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

Respondent.

PDJ 2015-_____

COMPLAINT

State Bar No. 14-2941

Complaint is made against Respondent as follows:

GENERAL ALLEGATIONS

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on April 18, 2008.

COUNT ONE (File no. 14-2941/Judicial Referral)

2. In 2010, Respondent and her husband ("father") divorced. They had three children and agreed to joint legal custody of the children with Respondent having primary physical custody of the children.

3. On July 10, 2014, father filed a petition to modify decision-making, parenting time, and child support. Father alleged that Respondent exposed the children to "excessive alcohol use/abuse, and possibly illicit drug use, while they are

at her home” and that one of the children took a photograph of a drug pipe that he found in Respondent’s nightstand.

4. On August 15, 2014, Respondent filed a response stating that she “has never brought or knowingly allowed drugs or drug paraphernalia to be brought into the home and the only drugs or drug paraphernalia that has ever been in the home was brought by the parties’ emancipated child who has a well-documented record of drug use.”

5. On August 13, 2014, the court held a status conference and entered a minute entry on the same date ordering Respondent to submit to a hair follicle test by 7:00 p.m. that day, that Respondent shall not consume any alcohol through October 31, 2014, and that Respondent commence random ETG/alcohol testing 8-10 times a month through October 31, 2014.

6. On the same day, Respondent submitted to a hair follicle test and tested positive for cocaine.

7. On August 27, 2014, father filed an emergency motion for temporary order for modification of legal decision-making and parenting time based on Respondent’s failed drug test. In the motion, father references that that Respondent used her son’s credit card without his permission.

8. On September 9, 2014, the court scheduled a hearing on father’s emergency motion for September 18, 2014.

9. On September 17, 2014, Respondent filed a response opposing father’s emergency motion. In her response, Respondent states: “Respondent has never knowingly consumed cocaine. . . . She is an outspoken opponent of any

drug use. . . . Respondent was shocked when the results of the follicle test were returned.”

10. On September 18, 2014, the court held a hearing on husband’s emergency motion.

11. The court entered a minute entry regarding the same.

12. The minute entry states that “the Court received an Individual Testing Compliance Summary for the Period of January 1, 2014 through September 16, 2014, for [Respondent] from TASC, which indicates that [Respondent] submitted to a Hair Follicle Test on August 13, 2014, and tested positive for Cocaine. The court further notes that [Respondent] did not appear back to TASC to commence random drug . . . testing until August 25, 2014, even though the Court ordered Mother to submit to urinalysis testing on August 13, 2014.”

13. In the minute entry, the court granted the father sole legal decision making for the minor children and ordered that Respondent continue to undergo random drug testing and cooperate with the testing agency. The court further ordered that Respondent “shall be randomly tested 8 to 10 times per month through and including November 30, 2014” and that Respondent “shall appear at an appropriate TASC facility on **November 21, 2014**, for a Hair Follicle Test.” (emphasis in original)

14. In the minute entry, the court referred the matter to the State Bar of Arizona stating: “As a result of [Respondent] testing positive for Cocaine and having failed to submit to a urinalysis testing on August 13, 2014, as ordered by the Court, and as a result of Mother currently being investigated by the Phoenix Police

Department for forgery and theft of a credit card, IT IS ORDERED referring this matter to the State Bar of Arizona.”

15. On November 21, 2014, Respondent submitted to a hair follicle test and again tested positive for cocaine.

16. On December 1, 2014, the court held a status conference and entered a minute entry on the same date.

17. Respondent did not appear for the December 1, 2014 status conference but had a friend call the court and inform the court that Respondent was “in the hospital with medical issues.”

18. The court found that Respondent “had actual notice of today’s proceeding and has failed to appear and participate in these proceedings.” The court proceeded without Respondent.

19. The court noted that it received the results of the November 21, 2014 drug test “which indicates that [Respondent] tested positive for cocaine.” The court ordered that Respondent continue drug testing 8 to 10 times per month and to appear for a status conference on January 21, 2015.

20. The court admonished Respondent “that if she fails to appear . . . on January 21, 2015, the Court may proceed to enter final orders in her absence.”

21. On January 21, 2015, the court held a status conference and entered a minute entry the same date.

22. In the minute entry, the court wrote: “The Court was ready to proceed on time; however, the Court was informed that [father’s counsel] was unable to reach the Respondent . . . by telephone. The Court staff has been trying

to reach [Respondent] by telephone and has left messages since shortly before 11:15 a.m., but [Respondent] has not called back, [Respondent] has not filed anything, and it is now almost 15 minutes past the designated start time. THE COURT NOTES that the last appearance in this matter was December 1, 2014 . . . for which [Respondent] failed to appear. . . . [T]he Court presumes Mother received the minute entry dated December 1, 2015, and had notice of today's proceeding."

23. The court proceeded with the hearing without Respondent.

24. Regarding the drug testing, the Court wrote: ". . . the Court had previously ordered Mother to submit to random drug testing. She last tested on November 26, 2014, and her result was negative. However, since then she has not tested once. Her color was called between December 1, 2014, and January 16, 2015, thirteen times and she did not test any of those thirteen times, which the Court deems to be an admission that, if she had tested, the tests would have been positive for one or more of the substances tested for."

25. The court awarded father "at least a portion, if not all, of his attorney's fees" because Respondent "has conducted herself unreasonably during the court [sic] of this case. [Respondent] has failed to appear for today's proceedings and the last proceeding. Mother has unreasonably delayed these proceedings."

26. The court also awarded the father sole custody of the children.

27. The court's minute entry directs the clerk "to endorse the State Bar of Arizona in today's minute entry as a result of Mother having failed to submit to the

drug testing as ordered by the Court and failing to appear for the last two hearings, as she is a licensed attorney.”

28. In addition to the above, Respondent committed identity theft, credit card fraud, and forgery in November and December of 2013 when she forged checks to her son’s checking account and opened a credit card account with this information.

29. The Phoenix Police Department interviewed Respondent’s 19 year old son, Connor, on June 10, 2014.

30. Connor informed the police that he opened a checking account in November of 2013 and discovered that Respondent had been using the account “without his knowledge to deposit her wages and then convert them to cash.” Connor further informed the police that he believed that Respondent was having her wages direct deposited into his account because “she is deeply in debt. And if the people that have judgments against her found any assets under her name they would likely garnish the account.”

31. Respondent overdrew the account and Connor then learned of Respondent’s actions. Connor obtained two checks that Respondent wrote on the account.

32. The police report states that Respondent admitted to writing the checks during a deposition on May 1, 2014.

33. Connor further informed the police that he applied for a car loan and it was denied.

34. As a result, Connor learned that Respondent opened a credit card in his name and failed to pay it. Connor obtained the credit card statements and Respondent charged approximately \$700 in November and December of 2013.

35. During a deposition, Respondent admitted that she deposited checks into her son's account even though her name was not on the account, including a pay check, and wrote checks from this account.

36. On September 25, 2014, Connor again contacted the Phoenix Police Department to report a domestic violence incident with Respondent.

37. Connor informed the police that Respondent "beat him as a child and was now doing the same thing to his two younger brothers." Connor stated that he woke up one night, approximately a year ago, to Respondent beating him and that Respondent "took his machete . . . and started slashing him with it." Connor showed the police two scars on his shoulder area which he stated were a result of the incident

38. Connor subsequently refused to cooperate with the police on either of the above matters.

39. The Phoenix Police Department "permanently pended" the first matter and closed the second matter.

40. On November 17, 2014, bar counsel sent Respondent a screening letter demanding a response by December 8, 2014.

41. Respondent failed to respond and, on January 13, 2015, bar counsel sent Respondent a second letter.

42. Respondent failed to respond to the January 13, 2015 letter.

43. On January 30, 2015, bar counsel's assistant called and emailed Respondent regarding her outstanding response.

44. Respondent never replied to the January 30, 2015 phone message or email.

45. Respondent's conduct in this count violated Rule 42, ER 8.4(b), 8.4(d), 3.2, 3.4(c), and 8.1(b), and Rules 54(c) and 54(d), Ariz. R. Sup. Ct.

DATED this 27th day of May, 2015.

STATE BAR OF ARIZONA



Nicole S. Kaseta
Staff Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 27th day of May, 2015.

by: Jackie Dendle
NSK:jld

FILED

MAY 21 2015

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

STATE BAR OF ARIZONA
BY *Adela B. Montoya*

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

No. 14-2941

AERYN A. HEIDEMANN
Bar No. 025530

PROBABLE CAUSE ORDER

Respondent.

The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on May 8, 2015, 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 8-0-1¹, the Committee finds probable cause exists to file a complaint against Respondent in File No. 14-2941.

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 21st day of May, 2015.

Daisy Flores / hnm

Daisy Flores, Vice Chair
Attorney Discipline Probable Cause Committee
of the Supreme Court of Arizona

¹ Committee member Judge Lawrence F. Winthrop did not participate in this matter.

Original filed this 22nd day
of May, 2015, with:

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by: Jackie Dorde