

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**STEVEN ALEXANDER STEWART,
Bar No. 030288**

Respondent.

No. PDJ-2015-9037

FINAL JUDGMENT AND ORDER

[State Bar No. 14-3571]

FILED: SEPTEMBER 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 **STEVEN ALEXANDER STEWART**, is disbarred from the practice of law effective August 12, 2015, the date of the Hearing Panel's Decision and Order Imposing Sanctions (Decision) for conduct in violation of his duties and obligations as a lawyer as disclosed in the Decision.

IT IS FURTHER ORDERED Mr. Stewart's interim suspension in PDJ-2015-9053 is hereby vacated.

IT IS FURTHER ORDERED Mr. Stewart 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 Mr. Stewart shall pay the costs and expenses of the State Bar of Arizona in the amount of \$2,000.00 within thirty (30) days from the date of this Order. 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 September, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

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

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No. PDJ-2015-9037

**DECISION AND ORDER
IMPOSING SANCTIONS**

[State Bar No. 14-3571]

FILED: August 12, 2015

On July 30, 2015 the Hearing Panel ("Panel"), composed of Jan S. Enderle, D.V.M., volunteer public member, Michael E. Gottfried, 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. Stacy L. Shuman appeared on behalf of the State Bar of Arizona ("State Bar"). Steven A. Stewart failed to appear to this hearing.

The Panel carefully considered the Complaint, Individually Prepared Joint Pre-Hearing Statement, the State Bar's Pre-Trial Memorandum, admitted exhibits, and testimony. The Panel now issues the following "Decisions and Order Imposing Sanctions," under Rule 58(k), Ariz. R. Sup. Ct.

I. SANCTION IMPOSED: DISBARMENT

II. BACKGROUND AND PROCEDURAL HISTORY

A Probable Cause Order was issued April 20, 2015 by the Attorney Discipline Probable Cause Committee. On April 28, 2015, the State Bar filed its Complaint alleging a single violation of the Ethical Rules—misconduct under ER 8.4(b)—

stemming from a criminal conviction of Mr. Stewart arising out of the work done by the Internet Crimes Against Children Unit of the Los Angeles Police Department.

On April 30, 2015, Notice of Service of Complaint was filed with the PDJ. On May 4, 2015, Notice of Assignment of PDJ was filed, assigning Judge O'Neil to the matter.

On May 22, 2015, Mr. Stewart submitted his Answer, which admitted to being arrested on May 11, 2014, having pled no contest to a felony offense and misdemeanor offense in the Los Angeles County Superior Court and admits because of his conviction, he was sentenced to two days in jail and five years of probation with "fines/fees/restitution, sex offender terms including registration." On the same day, a Notice of Initial Case Management Conference was filed with the parties setting a telephonic conference for June 2, 2015.

The telephonic conference was held on that date. Standard written scheduling orders were issued controlling the subsequent course of action by the PDJ. Those orders included a requirement the parties jointly prepare the joint pretrial statement. The parties were cautioned with emboldened print regarding this obligation.

Counsel or the unrepresented parties who will try the case shall confer, prepare and file a Joint Prehearing Statement not later than this date. Each party shall prepare their individual portion of the written joint pretrial statement, to be signed by each counsel or unrepresented party. The Joint Pretrial Statement shall be prepared by the parties as a single document in adherence to Civil Rule 16(a) and 16(g)(2)(A-E, J) made applicable to discipline proceedings by Supreme Court Rule 48(b). **If a party fails to participate in good faith to prepare the joint prehearing statement, the PDJ upon motion or his own initiative shall, except upon a showing of good cause, issue sanctions that may include refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting that party from introducing designated matters in evidence; or an order striking out pleadings or parts thereof or dismissing the action or rendering a judgment by default against the disobedient party unless the PDJ finds the noncompliance was**

substantially justified. See Supreme Court Rule 48(b) making Civil Rule 16(i) applicable.

Mr. Stewart was notified of the requirements under Supreme Court Rule 61: "An interim suspension shall be entered pursuant to paragraph (c)(1)(A) of this rule upon receipt by the presiding disciplinary Judge of proof of a lawyer's conviction of a felony." On June 12, 2015, Mr. Stewart was interim suspended in PDJ-2015-9053 as a result of his felony conviction. Under the initial case management conference orders the parties attended a settlement conference on June 22, 2015, before Settlement Officer Richard Goldsmith. No agreement was reached.

On June 23, 2015, the State Bar submitted a Request for Subpoena of the following witnesses: Officer Brent Hopkins, Detective Hardy, Officer Kwon, Officer Monterroso, and Officer Arnett. The subpoenas were granted and issued by the Disciplinary Clerk. On the same day, the State Bar's Motion for Telephonic Appearance and Testimony by Witnesses was filed with the PDJ. The State Bar moved to allow the subpoenaed witnesses to testify telephonically, as they reside in the Los Angeles County area of California. The PDJ granted the State Bar's motion to allow for telephonic appearance. At the hearing, Detective Hardy was available to testify telephonically, but was not requested to testify on the record as exhibits presented to the Panel were sufficient in advising of her involvement in the underlying criminal matter.

On July 6, 2015, Notice of Assignment of Panel Members was filed by the Disciplinary Clerk. On July 9, 2015, an Individually Prepared Joint Pre-Hearing Statement was filed by the State Bar. Mr. Stewart chose not to participate in preparing the pre-hearing statement despite the June 2, 2015 order by the PDJ to participate in good faith in the preparation of a joint pre-hearing statement. On the

same day the pre-hearing statement was filed, the State Bar filed a Motion to Strike Answer and Enter Judgment by Default.¹

On July 14, 2015, a final case management conference was held. Mr. Stewart failed to appear for the telephonic conference, despite multiple attempts to reach him by phone and email. On the same day the PDJ issued an Order Re: Final Case Management Conference and Orders Entering Sanctions, Striking Answer and Entering Effective Default under Rule 48(b), which incorporates portions of Civil Rule 16 (scheduling and management of cases). On July 15, 2015, the State Bar submitted its Notice of Association of Bar Counsel associating Stacy L. Shuman as bar counsel for this matter.

III. FINDINGS OF FACT

Mr. Stewart was licensed to practice law in the State of Arizona on June 11, 2013. [Individually Prepared Joint Pre-Hearing Statement, ¶1.]

On May 8, 2014, Detective Hardy, acting as an undercover officer, created a Craigslist advertisement with the title "Looking for like minded individuals - w4m - 39" with content advertising "family fun." [Exhibit 1, SBA000002.] A user with the screen name "Steven Stewart" sent a message to the undercover officer shortly after posting the Craigslist advertisement. [Id.] The user was later identified as Mr. Stewart. The following conversation took place over email² between Mr. Stewart and Detective Hardy:

Mr. Stewart: So you got someone in mind I can watch you with?

¹ The State Bar presented evidence of attempts to reach Mr. Stewart to finalize the joint pre-hearing statement including emails of June 23 and July 6, 2015.

² There is no reference to a time period, but it is implied the emails took place during the time period of Thursday, May 8, 2014, after the initial contact by Mr. Stewart through Saturday, May 10, 2014, when phone numbers were exchanged and the meeting was to be planned.

Hardy: Yep. But I need to know if you r like minded? R u into family fun?

Mr. Stewart: Yes I am. More with my niece when she was 8-12. You?

Hardy: I have an 8 year old niece and 11 year old nephew that live with me and I have been raising for 4 years.

[Id., SBA000002-3.]

The email conversation continued with Mr. Stewart stating, "I'd love to play with both . . . [w]hen are you looking to do this?" [Id., SBA000003.] On May 10, 2014, after a few more email correspondences, Mr. Stewart confirmed his availability to meet that night and provided Detective Hardy with his phone number to arrange a meeting. [Id.] After communicating via text message, Mr. Stewart and the detective talked over the phone where Mr. Stewart explained sex acts he wanted to engage in when he met the two children. [Id.] Detective Hardy told Mr. Stewart he would need condoms and lubricant to engage in the specified sex acts and should pick up those items before meeting. [Id.] Upon request by Mr. Stewart to verify there were children, Detective Hardy utilized additional undercover officers to say hello to Mr. Stewart. [Id.] After being satisfied of the belief of minor children being available, Mr. Stewart obtained an address to meet the undercover detective at a hotel. [Id.]

Before meeting with the undercover detective at the hotel, Mr. Stewart described himself for the detective and told her he was driving a grey Toyota. [Id., SBA000004.] Before arriving, Mr. Stewart asked if he could take nude photos of the children. [Id.] Upon arrival, Mr. Stewart communicated a lack of parking in the hotel parking lot and was directed by the undercover detective to park in the nearby Jack in the Box parking lot. [Id.] Soon after parking his vehicle, Mr. Stewart was arrested without incident. [Id.]

On May 14, 2014, a police report was filed regarding the arrest of Mr. Stewart on May 11, 2014³. [Id., SBA000010.] Mr. Stewart was arrested under California Penal Code § 288.4(b)⁴ for arranging to meet with a minor or a person he believed to be a minor for sex and his bail was set for \$75,000. [Id.] The police documented all items found on Mr. Stewart after his arrest, both on his person and in his vehicle. [Exhibit 1, SBA000007 (Signed Consent to Search Form).] In the search incident to arrest, the police found a laptop and a smartphone in his vehicle, and a package of condoms in Mr. Stewart's front pants pocket. [Id., SBA000005.]

An initial appearance and arraignment was held on June 5, 2014 in the criminal justice court and a preliminary hearing scheduled. [Exhibit 2, SBA0000017.] After stipulated continuances, on July 22, 2014, a preliminary hearing was held. The State presented its evidence and witnesses Detective Brenda Hardy and Officer Brian Arnett each testified. [Id., SBA000019.] The State concluded its case and Mr. Stewart offered no affirmative defenses. [Id.] The Court found sufficient cause and ordered Mr. Stewart to answer to the general jurisdiction of the Superior Court of Los Angeles, setting an arraignment/plea hearing for August 5, 2014. [Id.]

On August 5, 2014, Mr. Stewart was arraigned in the Superior Court of Los Angeles. During the period from August 5 through October 27, 2014, pretrial

³ The police report notes Mr. Stewart being arrested May 11, 2014 at 12:40 a.m. [Exhibit 1, SBA000010.]

⁴ Section 288.4(b) states, "[e]very person described in paragraph (1) of subdivision (a) who goes to the arranged meeting place at or about the arranged time, shall be punished by imprisonment in the state prison for two, three, or four years." Under §288.4(a)(1), "[e]very person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he or she believes to be a minor for the purpose of exposing his or her genitals or pubic or rectal area, having the child expose his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment."

hearings took place resulting in stipulated continuances. [Id., SBA000020.] On November 5, 2014, a trial date was set. [Id., SBA000022.] On November 17, 2014, after his rights were explained to him and waived, Mr. Stewart formally changed his original plea of not guilty to a plea of *nolo contendere* and found guilty of both counts. [Id.] Mr. Stewart was placed on formal probation which included five (5) years of probation⁵, 60 days of community labor, and two (2) days in the Los Angeles County Jail.⁶ [Id.]

The court ordered a supplemental report regarding Mr. Stewart's progress on probation requiring the payment of fines under different provisions of California Penal Code § 1202.4, updating of information regarding residence and other relevant contact information with the probation officer, and registration as a convicted sex offender, requiring proof of registration to be carried on Mr. Stewart. [Id., SBA000024.] Mr. Stewart accepted all terms of probation. [Id.]

Mr. Stewart was ordered to complete 52 weeks of sex offender counseling and pay a sex offender fine of \$1,230. [Id.] Since Mr. Stewart resides in Arizona, the court granted permission for Mr. Stewart to perform community labor and counseling in Arizona. [Id.] The court ordered Mr. Stewart to report once a month in person and once a month by telephone for his probation. [Id.]

On March 6, 2015, an Arrest Disposition Report was sent to the Department of Justice. [Id.] On May 11, 2015, the court received a receipt of interstate compact transfer regarding the probation of Mr. Stewart to his resident state of Arizona. [Id.]

⁵ At the end of his five (5) years of probation, Mr. Stewart may withdraw his plea to count one. [Exhibit 2, SBA000024.] After three (3) years, Mr. Stewart may move to withdraw his plea to count one with the court willing to take the matter under consideration. [Id., SBA000025.]

⁶ Mr. Stewart was given credit for time already served in the Los Angeles County Jail relating to the criminal charges. [Exhibit 2, SBA000022.]

IV. VIOLATIONS

The Panel considered the charges alleged by the State Bar in its single count complaint and finds clear and convincing evidence Mr. Stewart violated ER 8.4(b) and Rule 54(g), Ariz. R. Sup. Ct.

- **ER 8.4 (Misconduct)**

ER 8.4(b) provides “[i]t is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.” Discipline and disability proceedings are neither civil nor criminal, but are *sui generis*. Rule 48(a), Ariz. R. Sup. Ct. “Although we use criminal convictions in the realm of lawyer discipline to shortcut the process of proving professional misconduct, disciplinary actions are *sui generis* proceedings that have no other connection with the criminal law.” *Matter of Beren*, 178 Ariz. 400, 874 P.2d 320 (1994).

The State Bar presented three (3) cases to the Panel in determining whether Mr. Stewart’s conviction seriously adversely reflects on his ability to practice law. In the first case, *In re Lazcano*, 223 Ariz. 280, 222 P.3d 896 (2010), an attorney was denied admission into the Arizona bar because his recent no-contest plea to a felony offense prevented him from showing good moral character for admission to State Bar while he was still on probation. The attorney’s no contest plea qualified as a conviction because “[l]ike a guilty plea, a plea of no contest `is an admission of guilt for the purposes of the case.’” *Id.* at 282, ¶ 7, 222 P.3d at 898, (quoting *State v. Stewart*, 131 Ariz. 251, 254, 640 P.2d 182, 185 (1982)).

The State Bar cited *In re Hamm*, 211 Ariz. 458, 123 P.3d 652 (2005), where an Applicant for admission to State Bar who had been convicted of first degree murder

in another state was denied admission. Similar to *Hamm*, the Panel “examine[d] past misconduct to see what it reveals about an applicant's present moral character.” *Hamm*, 211 Ariz. at 463, ¶ 17, 123 P.3d at 657.

In the third case presented by the Bar, *In re Shank*, SB-03-0159-D (2004), an attorney was disbarred after two (2) felony offenses involving minors. The Court agreed with the Hearing Officer’s findings that the “crime of child molesting constitutes illegal activity which reflects adversely on an attorney's fitness to practice law.” *In re Shank*, SB-03-0159-D, p. 12 (citing *Matter of Buker*, 615 N.E.2d 436, 437 (Ind. 1993); *Matter of Christie*, 574 A.2d 845, 846 (Del. 1990)).

The Panel finds that Mr. Stewart’s no contest plea admits guilt for these proceedings. *Lazcano*, 223 Ariz. at 282, ¶ 7, 222 P.3d at 898. The Panel finds that the crimes Mr. Stewart plead no contest are of the same category of illegal activity as child molestation and reflects likewise to his fitness to practice law. *In re Shank*, SB-03-0159-D. The Panel finds Mr. Stewart in violation of ER 8.4(b) because his misconduct reflected adversely on his fitness to practice law.

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

“‘Serious crime’ means any crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, theft or moral turpitude.” Rule 54(g), Ariz. R. Sup. Ct.

The Arizona Supreme Court “held that a lawyer can be convicted of an uncharged ethical violation if it is not based on separate incidents of misconduct.” *In re Tocco*, 194 Ariz. 453, 457, 984 P.2d 539, 543 (1999) (citing *In re Swartz*, 129

Ariz. 288, 293, 630 P.2d 1020, 1025 (1981)). The State Bar did not allege a Rule 54(g) violation, but the Panel finds, by clear and convincing evidence, a violation of Rule 54(g). However, our entry of the sanction of disbarment did not require this additional finding.

Even though the charges arise out of California, the Panel notes language contemplated in a similar Arizona statute aimed at the crime of luring a minor for sexual exploitation. Under A.R.S. § 13-3553(A), a person commits luring a minor for sexual exploitation by offering or soliciting sexual conduct with another person knowing or having reason to know that the other person is a minor. It is not a defense to a prosecution for a violation of this section that the other person is not a minor. A.R.S. § 13-3553(B); *Mejak v. Granville*, 212 Ariz. 555, 556, 136 P.3d 874, 875 (2006). Finally, luring a minor for sexual exploitation is a class 3 felony, and if the minor is under fifteen it is punishable under A.R.S. § 13-705 (“Dangerous crimes against children”). *Id.*, § 13-3553(C).⁷

The Panel notes these relatable Arizona statutes as a statement within our state of the seriousness of the misconduct. We find no reason to hold attorneys to a different standard. The attempted solicitation of a minor—even if the alleged minor is as an undercover peace officer—is *per se* a serious crime involving moral turpitude for the purposes of attorney discipline. We find Mr. Stewart in violation of Rule 54(g) for the commission of a serious crime.

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⁷ In Arizona, when the alleged victim in the case is a police detective who poses as an underage victim, there will be no actual victim under the age of 15 for purposes of A.R.S. § 13-705. *State v. Villegas*, 258 P.3d 162, 227 Ariz. 344 (Ariz. Ct. App. 2011).

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. *ABA Standards 5.0 Introduction*.

We find Mr. Stewart violated his 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 the criminal actions of Mr. Stewart to have been intentional and his misconduct intentionally violated the ethical rules.

INJURY

Under the *ABA Standards*, the injured caused by a lawyer's misconduct may be actual or potential. The Panel finds Mr. Stewart'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 injury to the public, the legal system and the legal profession. We consider the facts undergirding the crime and find significant injury actual injury.

PRESUMPTIVE SANCTIONS

The Panel looks to the *ABA Standards* to determine the presumptive sanctions and notes Standard 5.1 applicable for a violation of ER 8.4(b) and Standard 7.0 applicable for a violation of Rule 54(g).

Disbarment is generally appropriate when: (a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or (b) a lawyer engages in any intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

ABA Standards Standard 5.11

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.

ABA Standards Standard 5.12

The public expects lawyers to abide by the legal rules of substance and procedure which affect the administration of justice. Offenses involving dishonesty or serious interference with the administration of justice are in that category. *Commentary, ABA Standards Standard 5.12.* According to the Commentary of Standard 5.11 "[i]n imposing final discipline in such cases, most courts impose disbarment on lawyers who are convicted of serious felonies."

Disbarment is generally appropriate when a layer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes serious or potentially serious injury to a client, the public, or the legal system.

ABA Standards Standard 7.1

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

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 State Bar suggested the Panel consider the facts undergirding the felony criminal conduct of Mr. Stewart. In his answer, Mr. Stewart asserted, once his probation period was completed, he would no longer have the crime attached to his name. We find such argument minimized the actions of Mr. Stewart and the crime. The underlying facts are serious as was the planned conduct of Mr. Stewart. That Mr. Stewart in his exchange of messages with the officer admitted he committed misconduct with his niece clarifies that his actions were intentional towards multiple anticipated vulnerable victims. The Panel does not find his position stated in his answer to be persuasive and finds the nature of his illegal conduct to be an aggravating factor.⁸

⁸ It is not necessary for a lawyer to be convicted of, or even charged with, a crime to violate the rule. See, e.g., *People v. Odom*, 941 P.2d 919 (Colo. 1997) (lawyer disciplined for committing crime for which he never was charged), *Iowa Supreme Court Att'y Disciplinary Bd. v. Stowers*, 823 N.W.2d 1 (Iowa 2012) ("absence of criminal charges, or even acquittal of criminal charges, is not a defense to this rule"), *In re King*, 33 So. 3d 873 (La. 2010) (fact that lawyer's felony conviction set aside and expunged at conclusion of probationary period did not preclude its use for disciplinary purposes), *In re Hassenstab*, 934 P.2d 1110 (Or. 1997)

The Panel determined that the following mitigating factors are supported by the record:

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

Mr. Stewart's lack of a prior disciplinary record is a mitigating factor in determining sanctions. However, his short time being in the practice of law makes 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 Mr. Stewart committed professional misconduct in violation of ER 8.4(b) and Rule 54(g), Ariz. R. Sup. Ct.

The State Bar requested disbarment as the sanction for Mr. Stewart's unethical actions. Based on our review of the underlying facts constituting his criminal conduct, our conclusions of law, and application of the *ABA Standards*, including both aggravating and mitigating factors, the Panel agreed with this assessment. The presumptive sanction for the unethical actions suggests a disbarment and the Panel finds no mitigation warranting a consideration of a lesser sanction.⁹ Accordingly,

(lawyer violated three criminal sex offense statutes with clients; irrelevant that criminal proceedings resulted only in plea of no contest to one count of prostitution).

⁹ Although proportionality is not required, the Panel notes no Arizona disciplinary case involving an attorney being sanctioned for solicitation of sex with a minor. The Panel first notes *In re Lever*, 60 A.D.3d 37, 869 N.Y.S.2d 523 (2008), where an attorney received a three (3) year suspension for arranging a meeting with an undercover officer, posing as a 13 year old, for sexual contact. The attorney in *Lever* was given a long-term suspension and not disbarred, in part because of the cooperation with the disciplinary committee. The Panel also

IT IS ORDERED that Mr. Stewart is disbarred from the practice of law effective the date of this Decision and Order. Mr. Stewart shall remain disbarred until the court enters an order reinstating him to the practice of law under Rules 64(d) and 65, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED that Mr. Stewart shall pay costs and expenses in this matter under Rule 60(b), Ariz. R. Sup. Ct.

A final judgment and order will follow.

DATED this 12th day of August, 2015

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Jan S. Enderle, D.V.M.

Jan S. Enderle, D.V.M., Volunteer Public Member

Michael E. Gottfried

Michael E. Gottfried, Volunteer Attorney Member

Copies of the foregoing mailed/emailed this 12th day of August, 2015.

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notes *In re Aguillard*, 958 So. 2d 671 (La. 2007), where an attorney was permanently disbarred after being arrested for arranging a meeting with an investigator, posing as 13 year old, for the purpose of engaging in sexual relations. During investigation, the police uncovered evidence linking the attorney to a second underage victim. The attorney in *Aguillard* was permanently disbarred to protect the public's confidence in the legal profession.

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OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA
APR 28 2015
BY *JA* FILED

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**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

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

**STEVEN ALEXANDER STEWART,
Bar No. 030288,**

Respondent.

PDJ 2015-9037

COMPLAINT

[State Bar No. 14-3571]

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 June 11, 2013.

COUNT ONE (File no. 14-3571/Hopkins)

2. On May 11, 2014, Respondent was arrested in California for violating a number of sex crimes as part of an undercover sting for sex crimes involving minors.

3. During the undercover investigation, Respondent negotiated an agreement which would have allowed him to engage in a number of specific sexual activities with an eight year old girl and eleven year old boy.

4. When Respondent asked to speak with the children in order to verify their existence, the undercover officer utilized additional undercover officers to speak briefly with Respondent.

5. After informing Respondent of the meeting place, Respondent asked if he could take naked pictures of the children when they met. The officer indicated that he could and stated that he would have to use condoms during the sex acts.

6. When arrested, a number of condoms were found in Respondent's pants pockets.

7. On November 17, 2014, Respondent pled no contest to California Penal Code § 288.4(b) [a felony offense]¹, and California Penal Code § 288.4(a)(1) [a misdemeanor offense]² in the Los Angeles County Superior Court case of *State of California v. Steven Stewart*, BA424599.

8. As a result of the conviction, Respondent was sentenced to two (2) days in the county jail (time served), five (5) years of probation, fines/fees/restitution, sex offender terms including registration.

9. By engaging in the above described criminal conduct and being convicted of various sex crimes in the Los Angeles County Superior Court case of

¹ 288.4(b) Every person described in paragraph (1) of subdivision (a) who goes to the arranged meeting place at or about the arranged time, shall be punished by imprisonment in the state prison for two, three, or four years.

² 288.4(a) (1) Every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he or she believes to be a minor for the purpose of exposing his or her genitals or pubic or rectal area, having the child expose his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

State of California v. Steven Stewart, BA424599, Respondent violated Rule 42, Ariz.

R. Sup. Ct., ER 8.4(b).

DATED this 28th day of April, 2015.

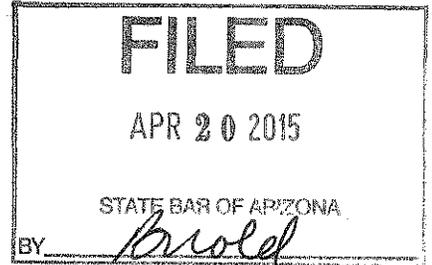
STATE BAR OF ARIZONA



Craig D. Henley
Senior Bar Counsel - Litigation

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 28th day of April, 2015.

by: 
CDH/jao



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

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

No. 14-3571

**STEVEN ALEXANDER STEWART
Bar No. 030288**

PROBABLE CAUSE ORDER

Respondent.

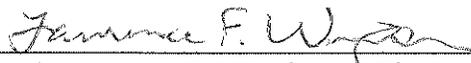
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on April 10, 2015, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation, Complainant's Response and Respondent's Response.

By a vote of 9-0-0, the Committee finds probable cause exists to file a complaint against Respondent in File No. 14-3571.

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 20 day of April, 2015.



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

Original filed this 20 day
of April, 2015, with:

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

Copy mailed this 22 day
of April, 2015, to:

Steven Alexander Stewart
PO Box 37756
Phoenix, Arizona 85069-7756
Respondent

Copy emailed this 22 day
of April, 2015, to:

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of the Supreme Court of Arizona
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by: 