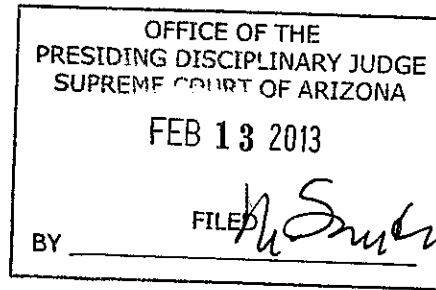


Amy Rehm, Bar No. 016714
Deputy Chief Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone: (602) 340-7247
Email: LRO@staff.azbar.org



J. Scott Rhodes, Bar No. 016721
Jennings, Strouss & Salmon, PLC
One East Washington Street, Suite 1900
Phoenix, AZ 85004-2554
Telephone: 602-262-5862
Email: SRhodes@jsslaw.com
Respondent's Counsel

**BEFORE THE PRESIDING DISCIPLINARY JUDGE
OF THE SUPREME COURT OF ARIZONA**

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

**Paul B. Rudolph
Bar No. 014027**

Respondent.

PDJ-2012-9065

**AMENDED AGREEMENT FOR
DISCIPLINE BY CONSENT**

[State Bar No. 11-2833]

The State Bar of Arizona (State Bar), through undersigned bar counsel, and Respondent Paul B. Rudolph, who is represented in this matter by counsel, J. Scott Rhodes, hereby submit their Amended Agreement for Discipline by Consent, pursuant to Rule 57(a)(3)(B), Ariz. R. Sup. Ct. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER(s) 8.4(b) and 8.4(c), Ariz. R. Sup. Ct. Upon acceptance of this

agreement, Respondent agrees to accept imposition of the following discipline: Reprimand. Respondent also agrees to pay the costs and expenses of State Bar and the disciplinary proceeding.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit "A."

FACTS

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 October 26, 1991.

COUNT ONE (State Bar File No. 11-2833)

2. On February 14, 2010, at approximately 7:30 p.m., Respondent was driving on Scottsdale Road when he was stopped by Scottsdale Police, arrested, and subsequently cited for impersonating a police officer in violation of ARS § 13-2411(A), a class one misdemeanor offense.

3. On August 11, 2010, criminal complaint No. 20100738 (DR #10-04074) was filed in Scottsdale City Court charging Respondent with a violation of A.R.S. § 13-2411(A) (impersonating a police officer), a class one misdemeanor, as cited. (Ex. "B.") A.R.S. § 13-2411(A) is violated when "a person pretends to be a police officer with intent to induce another to rely on the person's pretended acts".

4. The criminal complaint was subsequently transferred to Desert Ridge Justice Court, JC2011-157435.

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

5. On May 20, 2011, a bench trial was held and Respondent was found guilty of violating A.R.S. § 13-2411(A).

6. Respondent admits that he was convicted and understands that "proof of conviction shall be conclusive evidence of the attorney's guilt of the crime." Rule 54(g), Ariz. R. Sup. Ct.

7. In his pre-trial and trial testimony, the arresting police officer contended that:

- a. He was on duty on February 14, 2010 driving a marked Ford Expedition;
- b. At 7:34 p.m. on February 14, 2010, the officer was driving south on Scottsdale Road between Jomax Road and Happy Valley Road;
- c. Scottsdale Road at that location had two lanes in both directions and a center turn lane;
- d. The officer observed two or three vehicles in each lane travelling in the opposite direction as his vehicle;
- e. He observed that one of the vehicles appeared to have flashing high beams;
- f. As the officer's vehicle approached that vehicle, he observed it was a white Ford Crown Victoria, and that the Crown Victoria's white headlights were flashing back and forth, in a manner police call "wig-wag" lights;
- g. The officer observed the "wig wag" lights activated for approximately two seconds;

- h. Because Ford Crown Victorias are common law enforcement vehicles, and white "wig-wag" lights often indicate emergency vehicles, the officer believed the Crown Victoria was a police vehicle;
- i. The officer waited until the on-coming traffic cleared, then made a u-turn to assist with what he believed was a police vehicle;
- j. The officer estimated that, by the time he made his u-turn, the other vehicles were 0.5 to 0.75 miles away from him;
- k. After making his u-turn the officer did not see the "wig wag" lights flashing on the Crown Victoria again;
- l. When he later caught up with the Crown Victoria, after passing several intersections and streets, it had moved ahead of some of the vehicles it had previously been behind;
- m. The officer did not observe any vehicles yield to the Crown Victoria or move over to clear room for the Crown Victoria;
- n. The Crown Victoria stopped and waited to turn left onto Pinnacle Vista Drive;
- o. The officer entered the median lane behind the Crown Victoria, and the officer then observed that the Crown Victoria did not have a government-issued license plate²;
- p. The officer then believed the Crown Victoria was not a police vehicle;

² If this case proceeded to a hearing, Respondent would testify that the vehicle displayed an Arizona Fraternal Order of Police license plate.

- q. The officer then also recognized Respondent from prior contact with him;
- r. The officer knew Respondent was a former law enforcement officer;³
- s. Both vehicles turned left onto Pinnacle Vista Drive;
- t. The officer did not activate his emergency lights or siren but instead followed the Crown Victoria as it proceeded for approximately one block;
- u. After approximately a block, Respondent stopped his Crown Victoria by the side of the road;
- v. At that point, the officer activated his emergency lights and stopped his vehicle behind Respondent's Crown Victoria;
- w. The officer approached Respondent and engaged him in discussion;
- x. The officer's statements about Respondent's statements and demeanor were:
 - i. Respondent had "wig-wag" lights because he knew there was a large police presence on Scottsdale Road⁴;
 - ii. Respondent stopped his vehicle on Pinnacle Vista Drive to let the police vehicle pass;
 - iii. Respondent smelled of alcohol;
 - iv. Respondent denied having consumed alcohol;

³ Respondent served as a Special Agent with the Drug Enforcement Administration from the mid- to late 1980s.

⁴ In this case, "wig-wag" lights refers to a toggle switch near the turn signal which caused the headlights to alternate from left to right illumination. The headlights themselves were not modified or changed.

y. The officer conducted a DUI investigation that ultimately resulted in Respondent's arrest at approximately 8:03 p.m.

8. Respondent was not prosecuted for DUI.⁵

9. A search of Respondent's vehicle revealed in the trunk (among other objects) one rifle and one shotgun mounted and locked on the underside and inside of the trunk, ammunition, handcuffs, an expandable baton, a canister of OC spray, a Taser, and a Fraternal Order of Police badge. Respondent's possession of all of these items was lawful, and this information was not admitted into evidence in the underlying criminal proceeding. This information is relevant to Respondent's affinity with law enforcement generally as a result of his earlier service in law enforcement, as described below.

10. On August 10, 2011, Respondent was sentenced to pay a \$500 fine (Ex. "C"), which Respondent paid the same day (Ex. "D").

11. Respondent unsuccessfully appealed the conviction to the Superior Court and subsequently to the Court of Appeals and Arizona Supreme Court. The parties agree that Respondent's appeals were within his rights and were undertaken in good faith and upon the advice of competent criminal defense lawyers who represented him in those proceedings.

12. By letter dated August 29, 2011, Respondent self-reported his conviction to the State Bar. Respondent voluntarily elected to self-report, because it is not established as a matter of law whether the offense required self-reporting pursuant to Rule 54(g), Ariz. R. Sup. Ct.

⁵ Respondent denies that he was impaired during the underlying events.

13. On June 29, 2012, during the pendency of Respondent's Petition for Review to the Arizona Supreme Court, the parties filed an Agreement for Discipline by Consent ("First Consent Agreement" or "First Consent") prior to authorization by the Attorney Discipline Probable Cause Committee to file a formal complaint, pursuant to Rule 57(a)(B), Ariz. R. Sup. Ct.

14. On August 6, 2012, the Presiding Disciplinary Judge ("PDJ") held a hearing on the First Consent Agreement. At the conclusion of the hearing, the PDJ stated he would deny the First Consent as premature because Respondent's Petition for Review was still pending. (See Ex. "E," 9/12/12 Order Rejecting the Proposed Consent for Discipline as Premature.)

15. The PDJ further stated his concern that, first, if the Justice Court ruling were upheld, a statutory *mens rea* of the criminal conviction was intent, and the offense occurred while Respondent was on disciplinary probation, and, second, that *Standard 8.0* of the ABA's *Standards for Imposing Lawyer Sanctions* might apply.

16. On September 13, 2012, the Supreme Court denied the Petition for Review.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and is submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, ERs 8.4(b) and 8.4(c), Ariz. R. Sup. Ct.

CONDITIONAL DISMISSALS

There are no conditional dismissals.

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar agree that based on the facts and circumstances of this matter, as set forth above, a reprimand is appropriate in this matter.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The parties agree that *Standard* 5.13 is the appropriate *Standard* given the facts and circumstances of this matter. *Standard* 5.13 provides that a "reprimand is generally appropriate when a lawyer knowingly engaged in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely

reflects on the lawyer's fitness to practice law." Respondent agrees that he was convicted of impersonating a police officer. The parties agree, for purposes of this consent agreement, that conduct involving dishonesty and misrepresentation are inherent in the elements of the crime of impersonating a police officer. The parties further agree that such dishonesty and misrepresentation adversely reflect on Respondent's ability to practice law because he was convicted of a misdemeanor offense where the elements of the crime involve misrepresentation. See, Rule 54(g), Ariz. R. Sup. Ct.

Although Respondent was on probation for File No. 05-2003 at the time of the arrest in this matter, the parties agree that Standard 8.0 should not control the sanction in this case. Even if Standard 8.0 were considered, the parties believe the resulting sanction should be reprimand. The Commentary to Sanction 8.3 states: "Reprimands are most commonly imposed on lawyers who have been disciplined and engage in the same or similar acts of misconduct." The similarity between this case and File No. 05-2003 is that both matters involved criminal allegations. That being said, however, the underlying conduct in File No. 05-2003 was more serious than the conduct of which Respondent was convicted in this case. The parties further believe that weight should be given to the fact that Respondent is willing to enter into a voluntary agreement for discipline in this case out of deference to the criminal conviction that he received, but he is forthright in his conviction that he did not commit the crime of which he was convicted. The parties further believe that Respondent's decision to self-report, his cooperation with the State Bar, and especially, his voluntary participation in counseling are compelling mitigation. The parties, in short, do not believe that Respondent intentionally violated the terms of

his probation and that any violation thereof is subject to the mitigation set forth herein.

The duty violated

As described above, Respondent's conduct violated his duty to the profession and the public.

The lawyer's mental state

For purposes of this agreement, the parties agree that Respondent's conviction was based on the requisite statutory mental state that "a person pretends to be a police officer with intent to induce another...to rely on the person's pretended acts" (A.R.S. § 13-2411(A)), and that his conviction establishes the factual basis and mental state for a violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was harm to the profession and the public as a result of Respondent's conduct.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is a reprimand. The parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

1. *Standard* 9.22(a): Prior Disciplinary Offenses

a. File No. 06-1075 – Informal Reprimand (Admonition) February 23, 2007

i. Respondent had direct contact with a prospective client in violation of ER 7.3. Respondent was placed on probation for

one year with LOMAP which was successfully completed and terminated in June 2008.

b. File No. 05-2003 – Suspension (30 Days) November 10, 2008

- i. After settling a malpractice suit in which Respondent was the defendant, he sent threatening emails to the plaintiff's attorney using an assumed name. Respondent pleaded guilty to one count of harassment as a misdemeanor offense. Respondent was suspended for violations of ERs 8.4(b), 8.4(c), 8.4(d) and Rule 41(g). Respondent was placed on probation with MAP for two years, which successfully terminated in January 2011.

2. *Standard 9.22(c)* – Pattern of Misconduct

- a. Respondent was suspended prior to this matter for other criminal conduct, though the criminal conduct in the prior matter was more egregious than what is at issue in this matter.

3. *Standard 9.22(i)* – Substantial Experience in the Practice of Law

- a. Respondent has practiced law for approximately 21 years.

4. *Standard 9.22(k)* – Illegal Conduct

- a. Respondent engaged in criminal conduct involving impersonation of a police officer.

In mitigation:

1. *Standard 9.32(d)* – Good Faith Effort to Rectify Consequences

- a. Respondent is a former DEA Special Agent who, as a private citizen, has maintained his empathy for and interest in law

enforcement and his desire to support other law enforcement personnel. As a result, he has tried to stay prepared at all times to assist in the event of a need for citizen support of the police. On the night of his arrest, Respondent did not stop any civilian vehicles or engage in other acts demonstrating a clear desire and intent to deceive the public to think he was a police officer. The parties contend that his affinity with law enforcement, as a former DEA Special Agent, got the better of him and he engaged in a brief and isolated act related to the "wig-wag" lights. The parties also contend that the sanction in this case is appropriate because, in order to avoid any future allegations related to his affinity with the police, he sold the Crown Victoria and no longer drives a vehicle that could be confused for a police vehicle. Nor does Respondent travel with badges, handcuffs, batons or any other material commonly associated with the police. Respondent also promptly paid the court ordered fine and self-reported the conviction to the State Bar.

- b. Respondent has also taken other action to assure he remains fit and reliable as a lawyer. Specifically, Respondent has been in counsel with Hal Nevitt. Mr. Nevitt's report is filed separately under seal to protect Respondent's privacy.

2. *Standard 9.32(k)* – Imposition of Other Penalties or Sanctions

- a. Respondent was convicted of a class one misdemeanor offense and ordered to pay a \$500 fine.

Discussion

The parties have conditionally agreed that a greater or lesser sanction would not be appropriate under the facts and circumstances of this matter. The parties agree that the sanction is within the appropriate range of sanctions for similar misconduct, and that the conduct at issue in this matter was less egregious than Respondent's prior criminal conviction. The parties further agree, for purposes of this agreement, that an admonition would not be appropriate based in part on Respondent's prior disciplinary history and that a suspension would not be appropriate given Respondent's criminal conduct in this matter was not in the context of litigation, as was his prior matter, and was not as egregious as his prior conviction. Respondent has also acknowledged the seriousness of this matter and took prompt corrective action to remedy the primary issue by selling his car.


Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of a reprimand and the imposition of all appropriate costs and expenses. A proposed form of order is attached hereto as Exhibit "F."

DATED this 13th day of February, 2013.

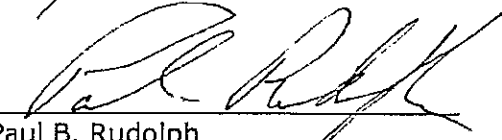
STATE BAR OF ARIZONA



Amy Rehm
Deputy Chief Bar Counsel

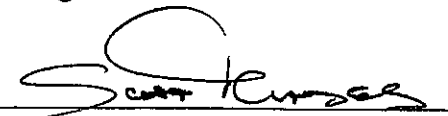
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this 12 day of February, 2013.




Paul B. Rudolph
Respondent

DATED this 12th day of February, 2013.



J. Scott Rhodes
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
this 13th day of February, 2013.

Copies of the foregoing mailed/emailed
this 13th day of February, 2013, to:

J. Scott Rhodes
Jennings Strouss & Salmon PLC
One East Washington Street, Suite 1900
Phoenix, AZ 85004-2554
Email: SRhodes@jsslaw.com
Respondent's Counsel

Copy of the foregoing emailed
this 13TH day of February, 2013, to:

William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
Email: officepdj@courts.az.gov
lhopkins@courts.az.gov

Copy of the foregoing hand-delivered
this 13TH day of February, 2013, to:

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

By: Rodney T. Burt