

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

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

**JEFFREY L. PATTEN,
Bar No. 009238,**

Respondent.

PDJ-2013-9028

**REPORT AND ORDER IMPOSING
SANCTIONS**

[State Bar No. 12-2653]

PROCEDURAL HISTORY

The State Bar of Arizona ("SBA") filed its complaint on March 20, 2013.¹ On March 22, 2013, the complaint was served on Respondent by certified, delivery restricted mail, as well as by regular first class mail, pursuant to Rules 47(c) and 58(a)(2), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge ("PDJ") was assigned to the matter. A notice of default was properly issued on April 17, 2013, given Respondent's failure to file an answer or otherwise defend. On April 27, 2013, Respondent filed his answer. On April 29, 2013, the PDJ scheduled an initial case management conference for May 6, 2013 at 1:30 p.m. Despite receiving notice of the hearing, the disciplinary clerk contacting Respondent multiple times on the date of the hearing, and delaying the hearing for fifteen minutes, Respondent did not

¹ Prior to filing its complaint, the SBA filed a motion for interim suspension. See PDJ-2013-9021. On April 11, 2013, pursuant to a stipulation of the parties, the PDJ granted the SBA's motion, immediately suspending Respondent.

appear for the initial case management conference on May 6, 2013. On the same date, the PDJ entered Orders Re Initial Case Management Conference Pursuant to Rule 58(c) ("Order"), sending the order to both parties. In the Order, the PDJ noted that Respondent did not deny any allegation within the complaint, except that he disputed the facts admitted constitute a violation of E.R. 8.1(b), and that Respondent clearly admitted each allegation. Accordingly, the PDJ scheduled an aggravation/mitigation hearing for May 23, 2013 at 11:00 a.m. The PDJ also ordered that Respondent explain his failure to appear at the initial case management conference within five business days. Respondent failed to explain his nonappearance as ordered by the PDJ.

On May 23, 2013, the Hearing Panel, composed of public member Ellen Kirschbaum and attorney member Sandra E. Hunter, heard argument.

FINDINGS OF FACT

The facts listed below are those set forth in the SBA's complaint. In Respondent's answer to the complaint, he admitted the below factual allegations but denied that the facts admitted constituted a violation of E.R. 8.1(b). The State Bar, however, provided documentation at the aggravation/mitigation hearing showing by clear and convincing evidence that Respondent violated E.R. 8.1(b).

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 15, 1983.

2. On February 22, 2013², Respondent was summarily suspended from the practice of law for non-compliance with Ariz. R. Sup. Ct. 45 for the 2011-12 MCLE educational reporting year.

COUNT ONE (File no. 12-2653/Patten)

3. On March 17, 2012, Respondent was arrested after he was stopped for an expired registration, a suspended license, and a search of his vehicle yielded two baggies of methamphetamine.

4. On April 5, 2012, Respondent was charged with possession of a dangerous drug, methamphetamine, a class four felony, and possession of drug paraphernalia, a class six felony.

5. On July 16, 2012, Respondent executed a plea agreement and pled guilty to solicitation to possess a dangerous drug, a class six undesignated offense, and possession of drug paraphernalia, a class six undesignated offense.

6. On August 27, 2012, the court entered a judgment finding Respondent guilty of solicitation to possess a dangerous drug, methamphetamine, a class six undesignated offense, and possession of drug paraphernalia, a class six undesignated offense. The court suspended imposition of a sentence and placed the defendant on probation for 18 months.

7. On the same date, Respondent executed Uniform Conditions of Supervised Probation. Respondent's probation terms include maintaining a

² In the SBA's Complaint, the SBA mistakenly listed the date of Respondent's summary suspension as February 22, 2012. The correct date of Respondent's summary suspension is actually February 22, 2013.

crime-free lifestyle, not knowingly associating with any person engaged in criminal behaviors, not possessing or using any illegal drugs or controlled substances, and submitting to drug testing.

8. In September of 2012, Respondent reported his conviction to the State Bar.

9. The State Bar commenced an investigation of Respondent in October of 2012 and sent Respondent a screening letter on October 3, 2012. The State Bar requested a response within twenty days.

10. Respondent did not respond to the State Bar's October 3, 2012 letter.

11. On November 2, 2012, the State Bar sent Respondent a second letter and requested a response within ten days.

12. Respondent did not respond to the State Bar's November 2, 2012 letter.

13. On November 13, 2012, the State Bar followed up with Respondent via email. Respondent replied to this email and stated that he wanted to cooperate with the State Bar.

14. The State Bar provided Respondent a twenty day extension of time to submit a response or until December 6, 2012.

15. Respondent still has not submitted a written response to the State Bar's requests for information.

16. Because Respondent failed to voluntarily respond to the State Bar's requests for information, the State Bar deposed Respondent on February 27, 2013.

17. Respondent testified in his deposition that he started smoking methamphetamine in 1988-1989 for approximately a year but then quit until November of 2009.

18. When Respondent started smoking methamphetamine again in 2009, he did it daily unless he did not have the money to purchase enough for daily use.

19. Respondent continued using methamphetamine after he was arrested in March of 2012.

20. Respondent allegedly stopped using methamphetamine in August of 2012.

21. In January of 2013, Respondent again smoked methamphetamine for several days.

22. Respondent's use of methamphetamine in January of 2013 caused him to fail a drug test that his probation required.

23. Respondent violated ER 8.4(b), which provides that it 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. Respondent was found guilty of solicitation to possess a dangerous drug, methamphetamine, a class six undesignated offense, and possession of drug paraphernalia, a class six undesignated offense. Additionally, Respondent smoked methamphetamine from November of 2009 until at least August of 2012 and then again in January of 2013 in violation of his probation.

24. Respondent violated ER 8.1(b) and Rule 54(d), which provide that the failure to furnish information or respond promptly to any inquiry or request from the State Bar constitutes grounds for discipline and that a lawyer shall not knowingly fail to respond to a lawful demand for information from disciplinary authority. Respondent failed to respond to the State Bar's written requests for information.

CONCLUSIONS OF LAW

Respondent filed an answer in which he did not deny any allegation in the complaint, with the exception of disputing that the admitted facts constitute a violation of E.R. 8.1(b). Respondent admitted each allegation in the complaint and admitted that he violated E.R. 8.4(b). Based upon Respondent's answer and the exhibits presented by the SBA at the aggravation/mitigation hearing, the Hearing Panel finds by clear and convincing evidence that Respondent violated the following: Rule 54(b), Ariz. R. Sup. Ct., and Rule 42, Ariz. R. Sup. Ct., specifically E.R.s 8.4(b) and 8.1(b).

ABA STANDARDS ANALYSIS

The American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") are a "useful tool in determining the proper sanction." *In re Cardenas*, 164 Ariz. 149, 152, 791 P.2d 1032, 1035 (1990). In imposing a sanction, the following factors should be considered: (1) the duty violated; (2) the lawyer's mental state; (3) the actual or potential injury caused by the lawyer's misconduct; and (4) the existence of aggravating or mitigating factors. *Standard 3.0*.

Duties violated:

Respondent violated his duty to the public by violating E.R. 8.4(b) and his duty as a professional by violating E.R. 8.1(b) and Rule 54(d).

Mental State and Injury:

Respondent violated his duty to the public, thereby implicating *Standard 5.1*. *Standard 5.11* provides: "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 other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice."

Standard 5.12 states: "Suspension is generally appropriate when a lawyer knowingly engages in criminal conduct which does not contain the elements listed in *Standard 5.11* and that seriously adversely reflects on the lawyer's fitness to practice."

Standard 5.12 applies here as the criminal conduct involved does not contain the elements listed in *Standard 5.11* and Respondent knowingly engaged in criminal conduct that seriously adversely reflects on his fitness to

practice. Respondent pled guilty to and was convicted of solicitation to possess a dangerous drug, methamphetamine, a class six undesignated offense, and possession of drug paraphernalia, a class six undesignated offense. Respondent further admits that he smoked methamphetamine from November of 2009 until August of 2012 and then again in January of 2013 in violation of his probation. Therefore, *Standard* 5.12 is applicable.

Respondent also violated his duty owed as a professional, which implicates *Standard* 7.0. *Standard* 7.2 states, "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."

In this matter, Respondent failed to respond to the SBA's investigation even though the SBA provided Respondent an extension of time and corresponded with Respondent regarding his failure to respond, resulting in the SBA having to subpoena Respondent for a deposition. *Standard* 7.2, therefore, is applicable.

AGGRAVATING AND MITIGATING FACTORS

The Hearing Panel finds the following aggravating factors are present in this matter:

- *Standard* 9.22 (e): Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency: Respondent did not respond to the SBA's investigation. "Failure to cooperate with disciplinary authorities is a significant aggravating factor." *Matter of Pappas*, 159 Ariz. 516, 527, 768 P.2d 1161, 1172 (1988).

- *Standard 9.22(i)*: Substantial experience in the practice of law.

Respondent has been licensed in Arizona since 1983.

Standard 9.22(k): Illegal conduct, including that involving the use of controlled substances. Respondent admitted in his answer that he used methamphetamine again in January of 2013, after his conviction and after the State Bar began its investigation.

The Hearing Panel finds the following mitigating factor applies:

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

Respondent has no prior discipline.

CONCLUSION

The Supreme Court "has long held that 'the objective of disciplinary proceedings is to protect the public, the profession and the administration of justice and not to punish the offender.'" *Alcorn*, 202 Ariz. at 74, 41 P.3d at 612 (2002) (quoting *In re Kastensmith*, 101 Ariz. 291, 294, 419 P.2d 75, 78 (1966)). It is also the purpose of lawyer discipline to deter future misconduct. *In re Fioramonti*, 176 Ariz. 182, 187, 859 P.2d 1315, 1320 (1993). It is also a goal of lawyer regulation to protect and instill public confidence in the integrity of individual members of the SBA. *Matter of Horwitz*, 180 Ariz. 20, 24, 881 P.2d 352, 356 (1994).

The Hearing Panel has made the above findings of fact and conclusions of law. The Hearing Panel has determined the appropriate sanction using the facts deemed admitted, the *Standards*, the aggravating factors, the mitigating factor, and the goals of the attorney discipline system. Based upon the above, the Hearing Panel orders as follows:

IT IS ORDERED:

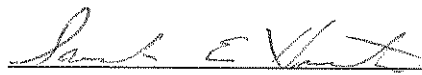
1. Mr. Patten shall be suspended from the practice of law for eighteen (18) months retroactive to February 22, 2013, the date of his MCLE suspension effective immediately.
2. Upon reinstatement, Mr. Patten shall participate in the State Bar's Member Assistant Program for two (2) years. Specific terms of probation shall be determined at the time of reinstatement.

Respondent shall pay all costs and expenses incurred by the SBA in these proceedings. 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 23rd day of May 2013.


Hon. William J. O'Neil
Presiding Disciplinary Judge

CONCURRING

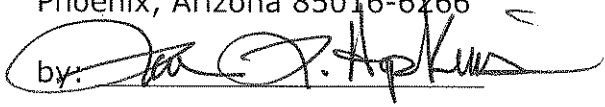

Ellen Kirschbaum, Volunteer Public Member
Sandra E. Hunter, Volunteer Attorney Member

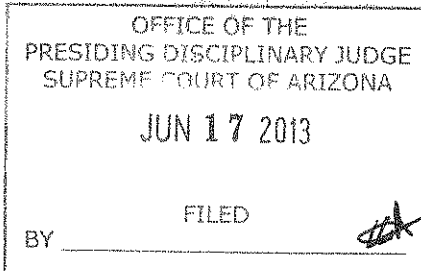
Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 23rd day of May, 2013.

Copies of ~~the~~ foregoing mailed/emailed
this 23rd day of May, 2013, to:

Jeffrey L. Patten
3671 E 3rd St
Tucson, AZ 85716-4609
Email: jpatten10157@gmail.com
Respondent

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

by: 



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

IN THE MATTER OF A SUSPENDED
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JEFFREY L. PATTEN,
Bar No. 009238

Respondent.

PDJ-2013-9028

FINAL JUDGMENT AND ORDER

[State Bar File No. 12-2653]

This matter having come on for an aggravation/mitigation hearing before a Hearing Panel of the Supreme Court of Arizona and a decision in this matter having been duly rendered on May 23, 2013, and no appeal having been filed and the time for appeal having expired, accordingly:

IT IS HEREBY ORDERED that Respondent, **JEFFREY L. PATTEN**, is suspended from the practice of law for a period of eighteen (18) months retroactive to February 22, 2013, the date of Respondent's summary suspension for his failure to comply with mandatory continuing legal education requirements, for conduct in violation of the duties and obligations as a lawyer, as disclosed in the Hearing Panel's Report.

IT IS FURTHER ORDERED that Mr. Patten 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 that upon reinstatement, Mr. Patten shall be placed on probation for a period of two (2) years with the State Bar's Member

Assistance Program with specific terms and conditions to be determined at the time of reinstatement.

IT IS FURTHER ORDERED granting Judgment to the State Bar of Arizona for costs in the amount of \$2,803.18, with interest as provided by law.

IT IS FURTHER ORDERED that Mr. Patten pay those costs and expenses awarded to the State Bar of Arizona in the amount of \$2,803.18, within thirty (30) days from the date of service 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 17th day of June 2013.

/s/William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

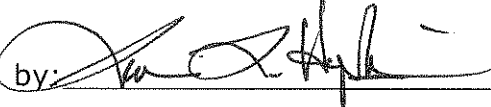
Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
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this 17th day of June, 2013.

Copies of the foregoing mailed/emailed
this 17th day of June 2013, to:

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Respondent

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by:  _____