

SUPREME COURT OF ARIZONA

In the Matter of a Member of the ) Arizona Supreme Court  
State Bar of Arizona ) No. SB-14-0038-AP  
) )  
SCOTT K. HENDERSON, ) Office of the Presiding  
Attorney No. 10002 ) Disciplinary Judge  
) No. PDJ20149019  
Respondent. )  
) )  
) **FILED 01/07/2015**

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**DECISION ORDER**

Pursuant to Rule 59, Ariz. R. Sup. Ct., the State Bar appealed the hearing panel’s findings and referral of Respondent Scott K. Henderson to diversion for one year, with participation in the State Bar of Arizona’s Member Assistance Program (“MAP”), and imposition of costs of the disciplinary proceedings. The Court has considered the parties’ briefs and the record in this matter. Upon consideration, the Court concludes that the hearing panel erred in its referral to diversion.

Respondent was convicted of one count of endangerment, a Class 6 designated felony, and one count of DUI, a Class 1 misdemeanor, after driving erratically with a BAC of .309 and nearly colliding twice with a vehicle containing two people. Consequently, this Court accepts the hearing panel’s conclusion that Respondent violated Arizona Rules of the Supreme Court, Ethical Rule (“ER”) 8.4(b) by “commit[ting] a criminal act that reflects adversely on the lawyer’s trustworthiness or fitness as a lawyer in other respects.”

A matter generally is not eligible for diversion if “[t]he presumptive form of discipline in the matter appears likely to be greater than a reprimand.” See *Arizona Attorney Diversion Guidelines* III(1). The presumptive form of discipline for Respondent’s violation of ER 8.4(b) is greater than a reprimand.

In considering an appropriate sanction, this Court is guided by the American Bar Association *Standards for Imposing Lawyer Sanctions* (“Standards”). Ariz. R. Sup. Ct. 58(k). Standard 5.12 provides that “[s]uspension is generally appropriate when a lawyer knowingly engages in criminal conduct [other than conduct warranting disbarment] and that seriously adversely reflects on the lawyer’s fitness to practice.” By violating ER 8.4(b), Respondent necessarily committed a criminal act that reflects adversely on his fitness to practice. The adverse reflection was “serious” because Respondent committed a felony that involved “a substantial risk of imminent

death" to others. See A.R.S. § 13-1201(B) (providing that endangerment must involve a substantial risk of imminent death to constitute a felony); Standard 5.12 cmt. (noting that most cases governed by Standard 5.12 commonly involve lawyers who commit felonies).

The Court finds that Standard 5.12, suspension, provides the appropriate presumptive discipline. Consequently, Respondent is not eligible for diversion.

Considering the mitigating and aggravating factors as found by the hearing panel,

IT IS HEREBY ORDERED affirming the decision of the hearing panel that Respondent Scott K. Henderson violated ER 8.4(b) and modifying the sanction to reflect a three month suspension, effective thirty days from the date of this order.

IT IS FURTHER ORDERED that Respondent shall be placed on probation for a period of one-and-one-half years beginning on the date of his reinstatement under the terms and conditions as listed below:

1. Within thirty days of reinstatement, Respondent shall contact MAP and submit to an assessment. Respondent shall thereafter enter into a MAP contract based on the recommendations made by the MAP director or designee. Respondent shall comply with all the terms of the MAP contract which shall be incorporated herein by reference. Respondent shall be responsible for any costs associated with MAP.
2. The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct., and a hearing may be held within thirty days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

IT IS FURTHER ORDERED accepting the hearing panel's conclusion that Respondent shall be assessed the costs and expenses of the disciplinary proceedings as provided in Rule 60(b).

DATED this 7<sup>th</sup> day of January, 2015.

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Ann A. Scott Timmer  
Justice

TO:

J Scott Rhodes

Kerry A Hodges PLC

Hunter F Perlmeter

Jennifer Albright

Maret Vessella

Sandra Montoya

Perry Thompson

Don Lewis

Beth Stephenson

Mary Pieper

Netz Tuvera

Lexis Nexis

IN THE  
**SUPREME COURT OF THE STATE OF ARIZONA**  
BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE  
1501 W. WASHINGTON, SUITE 102, PHOENIX, AZ 85007-3231

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

**SCOTT K. HENDERSON,**  
**Bar No. 010002**

Respondent.

**No. PDJ-2014-9019**

**REPORT AND ORDER**

[State Bar Nos. 13-2333]

**FILED JULY 3, 2014**

On May 29, 2014, the Hearing Panel ("Panel"), composed of Mel O'Donnell, a public member, Harlan Crossman, an attorney member, and the Presiding Disciplinary Judge, William J. O'Neil ("PDJ"), held a one day hearing pursuant to Rule 58(j), Ariz. R. Sup. Ct. Hunter F. Perlmeter appeared on behalf of the State Bar of Arizona ("State Bar"). J. Scott Rhodes, *Jennings Strouss & Salmon, PLC*, appeared on behalf of Mr. Henderson. Rule 615 of the Arizona Rules of Evidence, the witness exclusion rule, was invoked. The Panel carefully considered the Complaint, Answer, the parties individual Pre-Hearing Memorandum, testimony including that of Mr. Henderson, admitted exhibits, and Respondent's Post Hearing Memorandum. <sup>1</sup> The Panel now issues the following "Report and Order Imposing Sanctions," pursuant to Rule 58(k), Ariz. R. Sup. Ct.

**I. SANCTION IMPOSED:**

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<sup>1</sup> Consideration was given to sworn testimony of Dr. Michel Sucher and Michael L. Gallagher, Esq.

## **DIVERSION AND COSTS OF THESE DISCIPLINARY PROCEEDINGS**

### **II. BACKGROUND AND PROCEDURAL HISTORY**

An Order of Probable Cause was filed in this matter on January 29, 2014. The State Bar filed its Complaint on February 21, 2014. The factual allegations in the complaint consist of four paragraphs. The fifth and final paragraph cites Rule 42, ER 8.4(b) (commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects). The final sentence of that paragraph concludes the actions of Mr. Henderson reflect adversely on his fitness as a lawyer.

Mr. Henderson filed his Answer on March 24, 2014. He admitted the four factual allegations but denied that his actions reflected adversely on his fitness as a lawyer. The initial case management conference was held on April 15, 2014. The only issues before this hearing panel are whether the admitted actions of Mr. Henderson violated ER 8.4(b) and if they did, what sanction should be imposed.

The State Bar requests a one year suspension and two years of probation with the State Bar's Member Assistance Program ("MAP") be imposed. Respondent asserts he did not violate ER 8.4(b) and asserts if a violation is found, diversion with participation in MAP is the appropriate sanction.

### **III. FINDINGS OF FACT**

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 May 18, 1985. He graduated from DePauw University with a B.A. in Economics and English Composition. He obtained his Juris Doctor Degree from Indiana University School of Law in 1984. He began his legal career as an associate with the national firm of *Winston & Strawn*. Mr. Henderson testified he came to Arizona due to the growth

and opportunity this state offered. He enjoyed and specialized in real estate development and lending at an institutional level. He worked for over eight years at, and was an equity partner with, the *Streich Lang* law firm (n.k.a. *Quarles & Brady LLP*) until 1994. He then became a partner with the law firm of *Gallagher & Kennedy* until 2001. He was an equity partner with *Squire Sanders LLP* until 2005 when he formed his own law firm.

He testified the financial crush that plagued the nation impacted heavily his area of expertise and caused him to close his law firm in 2009. He became an equity partner with the *Polsinelli Schughart* law firm (n.k.a. *Polsinelli PC*) and left in 2012. That employment was followed by a return to *Gallagher & Kennedy* approximately in 2013. During his career he has never been asked to leave a firm due to bad conduct and never had any ethical allegations made against him.

Civic and community service are important to Mr. Henderson. He has served on the Greater Phoenix Economic Council, including its Board of Directors. He is a member of the advisory Board of Directors of Stand for Children. He has been a member of The Thunderbirds for ten years, a civic organization promoting the valley through sports and hosting the Phoenix Open. He has served in multiple offices in that organization including chairman, tournament chairman, and the advisory board. He has served on the PGA Tour Tournaments Association Board of Directors, and the Special Olympics of Arizona Board of Directors. He was on the Board of Trustees for Homeward Bound. He was a member of the Men's Art Council for nine years and on the Fiesta Bowl Committee for five years.

Mr. Henderson is also an alcoholic. He began drinking alcohol in high school. [Testimony of Mr. Henderson and Respondent's Pre-Hearing Memorandum Page 9, Line 9.] In 2002, he was cited and convicted for a misdemeanor DUI. The

consequences of his conviction were ten days in the "tent city" of the Maricopa County Sheriff, one year with an interlock device on his vehicle, 72 hours of alcohol awareness classes, Traffic Survival School, regular meetings with a court-ordered counselor, his driver's license was suspended for thirty days and restricted for sixty days. In addition there were the associated fines. It is undisputed that Mr. Henderson complied with all of these sanctions. Mr. Henderson was never asked to turn in his driver's license, nor did he know he was to physically relinquish it.

After his 2002 DUI conviction, Mr. Henderson attempted to moderate his drinking. As a professional, he "worked hard and played hard." However, it became problematic with his family and work. [Respondent's Exhibit 1, Bates 002.] In the Fall of 2004 he entered into a thirty day treatment program at Sierra Tucson. However, he never "bought into" the Alcoholics Anonymous Program. [Respondent Exhibit 1, Bates 001.] After a year and a half, he thought he could begin drinking again. He thought he was hasty in concluding he was an alcoholic. He had no cravings or issues and believed he could control it. He went through a difficult divorce during this period, was Chairman of the Phoenix Open, started his own law firm and began handling these stressors with alcohol.

However, in 2008, due to drinking all night, he missed a law firm meeting, something that had never happened to him before. He entered an outpatient program at Banner Behavioral Health Hospital in May, 2008, accepted he was an alcoholic and began going to AA meetings. He followed the steps, but he testified his "approach and attitude" were not in line. He testified he neglected the "spiritual side" of going and speaking daily and recognizing the "need to stand in the middle of the herd." This would lead to him ultimately "drifting away" from AA. [Respondent's Exhibit 1, Bates 002.]

In 2007, he misplaced his driver's license. When he sought to obtain a duplicate, he was informed by the Motor Vehicle Division (MVD) that it was suspended. However, no one within MVD was able to tell him why. It is undisputed that Mr. Henderson tried, repeatedly, to rectify the issue through numerous meetings with MVD personnel, and was sent from supervisor to supervisor. The story was always the same, the individuals were pleasant but the meetings ended with the same refrain. Until the why of the suspension could be established, no one could tell him if it was a computer or clerical error or even if he had to do anything. It appeared to be a technical error that with the passage of time could not be uncovered. Years passed in this process.

Mr. Henderson filed an action with an MVD administrative judge in an attempt to resolve the matter. The judge ruled he had no jurisdiction and suggested he go to the MVD headquarters, which he did. They reviewed his documents and suggested it was likely a clerical error. We find Mr. Henderson believed his driver's license was valid and believed that the "suspension" was an administrative error. [Mr. Henderson Testimony.]

As time passed, Mr. Henderson continued to drift from AA and found himself drinking after Thanksgiving weekend, 2010. He "went on a five day 'bender' from the Sunday after Thanksgiving until the following Friday. During that entire time he was in an alcohol induced blackout (amnesic event). On that Tuesday, while in the blackout, he was pulled over by law enforcement for 'weaving' and was arrested for DUI." [Respondent's Exhibit 1, Bates 002.]

He returned home and remained there drinking until Friday. He called the AA program and informed them what occurred. He had a withdrawal seizure the following Tuesday and was taken to the hospital. He enrolled in the Intensive



Outpatient Program at Banner Chandler for eight weeks and returned to attending AA. He has remained sober since. [Respondent's Exhibit 1, Bates 002, Testimony of Dr. Sucher and Mr. Henderson.]

On January 18, 2013, Mr. Henderson entered into a plea agreement and was convicted of a Class 6 felony, endangerment (one count), and a Class 1 misdemeanor, DUI (one count). Pursuant to A.R.S. 13-1201, endangerment is classified as follows: A) A person commits endangerment by recklessly endangering another person with a substantial risk of imminent death or physical injury. B) Endangerment involving a substantial risk of imminent death is a class 6 felony. In all other cases, it is a class 1 misdemeanor.

On June 18, 2013, he was sentenced to probation for Endangerment and four months of work release incarceration followed by probation for the DUI. He successfully completed his work release program on October 20, 2013, and remains on probation until June 20, 2014, for count one, endangerment. He is compliant with the terms and conditions of criminal probation. In connection with the 2002 DUI matter, Mr. Henderson's counsel determined that Mr. Henderson failed to file an SR-22 certificate and to pay a \$35.00 reinstatement fee and therefore, his license remained suspended. We find Mr. Henderson believed the suspension of his driver's license was an administrative error and that he did not knowingly drive on a suspended license.

Dr. Sucher testified that sometimes individuals need enough consequences to acknowledge the reality of their alcoholism. He testified that relapses or failures are common and that relapse is part of the chronic nature of the disease. It is his opinion that the relationships Mr. Henderson has formed in AA, his commitment to that program and his reality based recognition of his alcoholism forms a strong sobriety

program for him. He found Mr. Henderson needs no monitoring and confirmed the diagnosis in his report that "his prognosis for ongoing abstinence and sobriety is excellent. He believes that the likelihood of his reoffending is "extremely low."

We agree with the opinion and conclusions of Dr. Sucher. Sometimes the difference in life choices are governed by how an individual views a prior mistake. We find the life choices of Mr. Henderson have been significantly altered by these events. His view has changed. Mr. Henderson has testified he is fully remorseful. We find he is remorseful. We make this finding because his words are underscored by 3 and ½ years of sobriety and a kind of consistency that forms the ingredients for real remorse. We have seen him. We believe him based on his actions, his words and candor.

#### **IV. CONCLUSIONS OF LAW AND DISCUSSION OF DECISION**

The Panel finds clear and convincing evidence that Mr. Henderson violated Rule 42, ER 8.4(b). Ethical Rule 8.4(b) provides: "It is professional misconduct for a lawyer to...commit a criminal act that reflects adversely on the lawyer's trustworthiness or fitness as lawyer in other respects." The *Commentary* to that rule also provides that many types of illegal conduct reflect adversely on the practice of law, such as offenses of fraud or offenses involving moral turpitude. The Rule states that "Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate a lack of those characteristics relevant to the practice of law."

The *Commentary* further provides that offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice fall into that category. In the instant matter, Mr. Henderson was convicted of a Class 6 felony,

endangerment, which could be a crime of violence but under the circumstances of this case was not a violent act.

We are disinclined to weigh this matter as a felony DUI. Mr. Henderson carried the Constitutional shroud of innocence that protects each defendant in a court within the United States. We measure him by his convictions in criminal court, not the allegations leveled against him. The purpose of attorney discipline is not intended to punish the offending attorney, although the sanctions imposed may have that incidental effect. *In re Swartz*, 141 Ariz. 266, 686 P. 2d 1236,

#### Interim Rehabilitation

Mr. Henderson has approximately 3 and 1/2 years of sustained sobriety and prior to the criminal conduct, 18 months of sobriety. He is currently participating in a relapse avoidance program. He has acknowledged his misconduct and established significant interim rehabilitation during this period. An attorney who refuses to address his substance abuse problem (chronic alcoholism here), may not be entitled to leniency in disciplinary proceeding, however, when attorney demonstrates a sincere, long-term commitment to health or in this matter, rehabilitation, those efforts may be considered in mitigation. *Matter of Arrick*, 180 Ariz. 136, 882 P.2d 943 (1994).

Mr. Henderson relapsed after 18 months of sobriety because he took his contacts for granted and had drifted away from his support network. He was isolated and thought he could sustain sobriety on his own. He now knows that is not possible and has a deeper understanding of his alcoholism. His current sobriety program consists of regular AA meeting attendance, daily conversations with other alcoholics and works with others with alcohol problems. Since he has a long term sustained period of sobriety (December 3, 2010), his focus now is on relapse prevention.

## **V. SANCTIONS**

In consideration of an appropriate sanction, the Panel considered the American Bar Association's *Standards for Imposing Lawyer Sanctions* ("Standards") as a guideline. Rule 58(k), Ariz. R. Sup. Ct. The appropriate sanction however, turns on the unique facts and circumstances of each case. *In re Wolfram*, 174 Ariz. 49, 59, 847 P.2d 94, 104 (1993). We find the facts and circumstances completely unique.

### **Analysis under the ABA Standards**

In weighing what sanction to impose, the Panel considers 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. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004). *See also Standard 3.0.*

*Standard 5.1, Failure to Maintain Personal Integrity*, is applicable to Mr. Henderson's violation of ER 8.4(b). Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud deceit, or misrepresentation.

*Standard 5.14* provides that: Admonition is generally appropriate when a lawyer engages in any other conduct that reflects adversely on the lawyer's fitness to practice law. The Panel determined that the presumptive sanction is admonition.

### **Standard 9.0, Aggravating and Mitigating Factors**

Generally, after misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose. *Standards 9.1.* Aggravation or aggravating circumstances are any considerations or factors that

may justify an increase in the degree of discipline to be imposed. *Standards* 9.2. In attorney discipline proceedings, aggravating factors need only be supported by reasonable evidence. *In re Matter of Peasley*, 208 Ariz. 27, 90 P.3d 764 (2004).

#### Aggravating factors

The Panel finds the evidence supports the existence of the following aggravating factors:

9.22(k) (illegal conduct). Respondent was convicted of endangerment and DUI.

9.22(i) substantial experience in the practice of law. Respondent has practiced law in Arizona since 1985.

We acknowledge the request from the State Bar to consider the additional aggravating factor of 9.22(b), dishonest or selfish motive based on the argument that Mr. Henderson was not forthcoming with the arresting officer regarding his alcohol consumption or suspension. He was in the middle of an amnesic event. We do not doubt that an individual in such a condition may be able to carry on conversations or even manage to accomplish difficult feats. However, there is less than a paucity of evidence from which we could deduce a coherent selfish motive or dishonest intent. We decline to find Mr. Henderson had a dishonest or selfish motive.

#### Mitigating factors

The Panel finds the following mitigating factors are present:

9.32(a) absence of prior disciplinary offenses. Although Mr. Henderson had a prior DUI in 2002, no disciplinary action was taken by the State Bar in that matter and it is remote in time. [See factor 9.32(m).]

9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

9.32(g) character or reputation [Respondent's Exhibits 2, 3, and 4]; and  
9.32 (k) imposition of other penalties or sanctions.

Interim rehabilitation (non-ABA factor). The Panel gives great weight to Mr. Henderson's efforts regarding rehabilitation since his arrest in 2010 and his full cooperation with the State Bar. [State Bar Exhibits 1-4.] He has demonstrated a sustained period of sobriety and the likelihood this type of misconduct will reoccur, as opined by expert witness, Dr. Michael Sucher, is extremely low. Given Mr. Henderson's significant efforts of interim rehabilitation and on his ongoing efforts to prevent relapse, the Panel determined that a reduction in the presumptive sanction is justified. We find Diversion is the appropriate sanction in this matter and will also fulfill the purposes of discipline.

None of Mr. Henderson's convictions reflect on the dynamic aspects of honesty or fitness to practice. There is no suggestion that this event resulted in harm, either to clients, lawyers, judges or the public. Public confidence is instilled when the State Bar in matters such as this properly charges a complaint, as the State Bar did here, and fully prosecutes the matter. In the unique circumstances this case presented, we believe public confidence is increased when a matter such as this is openly tried.

## **VI. CONCLUSION**

The Panel has weighed the facts and circumstances in this matter and has considered the applicable *Standards* including the aggravating and mitigating factors.

**IT IS ORDERED** that Mr. Henderson be placed on Diversion (MAP) for a period of one (1) year. The terms and conditions of Diversion will include but not be limited to:

1. Within ten (10) days of the date of this Report and Order, Mr. Henderson shall contact the State Bar's Compliance Monitor at 602 340-7258 and schedule a MAP assessment.

2. Mr. Henderson shall thereafter enter into a diversion (MAP) contract based on the recommendation of the Compliance Monitor or designee. Mr. Henderson shall comply with all recommended terms and pay costs associated with diversion. The diversion recommendations are incorporated herein by reference. Diversion is effective the date of this Order and will conclude one (1) year from that date.

3. Pursuant to Rule 56 (d), Ariz. R. Sup. Ct., if a respondent violates a term of Diversion, bar counsel may reinstate the discipline proceeding and go forward with proceeding as provided in these rules.

**IT IS FURTHER ORDERED** that Mr. Henderson shall pay costs associated with these disciplinary proceedings.

An Order of Diversion will follow.

**DATED** this 3<sup>rd</sup> day of July, 2014.

*William J. O'Neil*

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**William J. O'Neil, Presiding Disciplinary Judge**

**CONCURRING**

*Mel O'Donnell*

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**Mel O'Donnell, Volunteer Public Member**

*Harlan Crossman*

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**Harlan Crossman, Volunteer Public Member**

COPY of the foregoing e-mailed/mailed  
this 3<sup>rd</sup> day of July, 2014, to:

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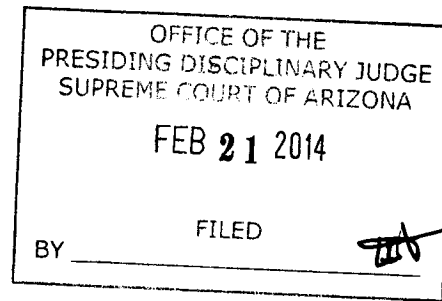
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**BEFORE THE PRESIDING DISCIPLINARY JUDGE  
OF THE SUPREME COURT OF ARIZONA**

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

**Scott K. Henderson,  
Bar No. 010002,**

Respondent.

PDJ 2014-9019

**COMPLAINT**

[State Bar No. 13-9091]

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 May 18, 1985.

**COUNT ONE (File no. 13-9091/Arizona)**

2. On November 30, 2010, Respondent was arrested for DUI and driving on a suspended license. His blood alcohol concentration was .309. Because he was driving on a suspended license, he was charged with aggravated DUI.

3. On January 18, 2013, Respondent entered into a plea agreement for one count of Endangerment, a class 6 designated felony, and one count of DUI, a class 1 misdemeanor.

4. At the time of his arrest, Respondent knew that he was driving on a suspended license.

**Rule Violation**

5. ER 8.4(b) prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. Respondent drove a vehicle with a license that he knew to be suspended and a blood alcohol concentration of .309. His actions reflect adversely on his fitness as a lawyer.


**DATED** this 21<sup>st</sup> day of February, 2014.

**STATE BAR OF ARIZONA**

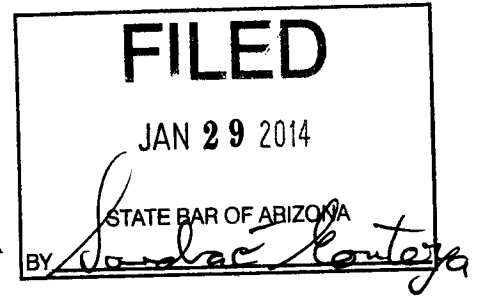


Hunter F. Perlmeter  
Staff Bar Counsel

Original filed with the Disciplinary Clerk  
of the Office of the Presiding Disciplinary Judge  
of the Supreme Court of Arizona  
this 21<sup>st</sup> day of February, 2014.

by:   
HFP.jo

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. 13-2333

SCOTT K. HENDERSON,  
Bar No. 010002

PROBABLE CAUSE ORDER

Respondent.

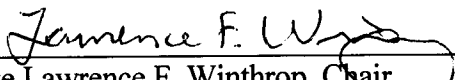
The Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona ("Committee") reviewed this matter on January 17, 2014, pursuant to Rules 50 and 55, Ariz. R. Sup. Ct., for consideration of the State Bar's Report of Investigation and Recommendation.

By a vote of 7-0-2<sup>1</sup>, the Committee finds probable cause exists to file a complaint against Respondent in File No. 13-2333.

**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 29 day of January, 2014.

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

<sup>1</sup> Committee members Jeffrey B. Messing and Ella G. Johnson did not participate in this matter.

Original filed this 29<sup>th</sup> day  
of January, 2014, with:

Lawyer Regulation Records Department  
State Bar of Arizona  
4201 North 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016-6266

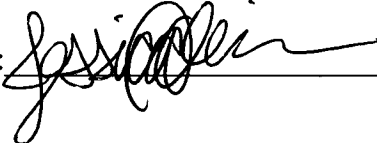
Copy mailed this 31<sup>st</sup> day  
of January, 2014, to:

J. Scott Rhodes  
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One East Washington Street, Suite 1900  
Phoenix, Arizona 85004-2554  
Respondent's Counsel

Copy emailed this 31<sup>st</sup> day  
of January, 2014, to:

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by:  \_\_\_\_\_