

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 AN APPLICATION FOR  
REINSTATEMENT OF A DISBARRED MEMBER  
OF THE STATE BAR OF ARIZONA,

**RICHARD C. PARKS, II**  
**Bar No. 010088**

Applicant.

No. PDJ-2013-9037

**REPORT and RECOMMENDATION**

**FILED SEPTEMBER 3, 2013**

**PROCEDURAL BACKGROUND**

On August 22, 2013, the Hearing Panel ("Panel") comprised of Linda Sue Smith, a public member from Maricopa County, Paul D. Friedman, an attorney member from Maricopa County, and George A. Riemer, Acting Presiding Disciplinary Judge ("APDJ"), held a day-long hearing on Richard C. Parks, II's application for reinstatement, pursuant to Rule 65(b)1., Ariz.R.Sup.Ct. Staff Bar Counsel Nicole S. Kasetta appeared on behalf of the State Bar of Arizona (hereafter State Bar) and Robert D. Van Wyck, appeared on behalf of Mr. Parks. The rule on exclusion of witnesses was invoked.

The Panel received the testimony of the following witnesses: T. Diane MacPherson, Licensed Clinical Social Worker, Perry Lank, Anthony Vodvarka, Christopher Parks, and Richard C. Parks, II (hereafter Applicant) and admitted

various exhibits into the record of the proceeding.<sup>1</sup> At the conclusion of the hearing, the State Bar recommended that Applicant be reinstated to the active practice of law, subject to various terms of probation. The Panel now issues this "Report and Recommendation", pursuant to Rule 65(b)3., Ariz.R.Sup.Ct., recommending that Applicant's application for reinstatement to the active practice of law be approved, subject to the terms of probation set forth in the Conclusion and Recommendation Section of this report.

### **PRELIMINARY FINDINGS OF FACT**

1. By order filed January 22, 1996, Applicant was informally reprimanded for failing to cooperate with the State Bar concerning its investigation of a complaint filed against him.
2. By judgment and order of the clerk of the Arizona Supreme Court dated August 3, 1999, the Applicant was disbarred from the practice of law in the State of Arizona.
3. Two complaints, see Exhibits 28 and 29, were not considered in Applicant's disbarment proceeding. Both allege misconduct similar to the misconduct for which Applicant was disbarred. Mr. Lank testified about his and his wife's complaint against Applicant at the hearing in this matter (Exhibit 29).

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<sup>1</sup> The parties initially stipulated to the admission of 32 exhibits and they were admitted as evidence in this proceeding. The parties subsequently stipulated to the admission of Exhibit 33, which is a drug test report dated August 9, 2013, and Exhibit 34, which is a copy of a letter from the Arizona Supreme Court Committee on Examinations to Applicant dated October 12, 2012, and they have been made a part of the record in this case. The panel asked the parties to agree to submit Mr. Parks' 2012 federal income tax return as an additional exhibit after the hearing and the parties did so. That document is also a part of the admitted evidence in this proceeding and is Exhibit 35. The 35 exhibits and the various pleadings in this matter constitute the record in this case.

4. Applicant filed an application for reinstatement to the active practice of law in Arizona on April 25, 2013.

5. Applicant has paid the costs and expenses of the disciplinary proceeding that led to his disbarment.

6. No claims were filed against Applicant with the State Bar's Client Protection Fund as a result of his disbarment.

7. The State Bar submitted a report to the Disciplinary Commission in January 1999 concerning restitution to clients affected by the misconduct that led to Applicant's disbarment. Exhibit 30. The report reflects that Applicant agreed to pay former client Shawn Sweeney \$1,500 and former client Sherri Hall \$1,000 to settle potential malpractice claims, but appears never to have made those payments, and that Applicant did not pay \$800 to TMC Radiology on behalf of former client Susan Busseuil even though he received the funds to do so. Applicant conceded during his testimony in this proceeding that he did not defend against the allegation in his disbarment proceeding that he misappropriated client funds to the extent of the \$800 owed TMC Radiology. He nevertheless thought TMC Radiology's bill could have been for services rendered after the settlement was reached and thus not required to be paid from the settlement proceeds.

8. Applicant has no disciplinary complaints pending investigation by the State Bar as of the date of the hearing in this matter other than those described in paragraph 3 above, which were stayed.

9. Applicant has paid all application and investigation fees associated with his application for reinstatement.

10. Applicant successfully passed the July 2012 administration of the Arizona Bar Examination, the required course on Arizona law, and received a passing score on the Multistate Professional Responsibility Examination in March 2012. Exhibit 34. The Panel believes he has met the educational requirements for admission to the practice of law in Arizona.

### **ANALYSIS UNDER RULE 65(b)2., ARIZ.R.SUP.CT.**

#### **Preliminary Discussion**

A lawyer seeking reinstatement to the practice of law under Arizona Supreme Court Rule 65 must prove by clear and convincing evidence the lawyer's rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice, and competence. Rule 65(b)2., Ariz.R.Sup.Ct. An applicant must also establish by clear and convincing evidence that he has identified the weakness or weaknesses that caused his misconduct and has overcome the weakness or weaknesses. *In re Arrotta*, 208 Ariz. 509, 513, 96 P.3d 213, 217 (2004). *Arrotta* cautions that neither the severity of the original sanction nor the mere passage of time establishes rehabilitation or an applicant's fitness to practice. An applicant must demonstrate, by clear and convincing evidence, that he has been rehabilitated, that he is competent, and that he poses no further threat to members of the public. *Arrotta, supra*, 208 Ariz. at 512 (quoting *In re Robbins*, 172 Ariz. at 256, 836 P.2d at 966 (1992)). ". . . our primary responsibility remains at all times the protection of the public." *Arrotta, supra*, 208 Ariz. at 512. The Panel must "weigh those factors tending to show rehabilitation against those tending to show a

lack thereof" to decide whether Applicant has met his burden of proof. *In re Hamm*, 211 Ariz. 458, at 465, 123 P.3d 652, at 659 (2005).

As noted in *Arrotta*, 208 Ariz. at 512, the Arizona Supreme Court considers the following four factors in determining if the lawyer should be reinstated:

- 1) Applicant's character and standing prior to disbarment;
- 2) The nature and character of the charges for which he was disciplined;
- 3) Applicant's conduct subsequent to the imposition of discipline; and
- 4) The time which has elapsed between the order of disbarment and the application for reinstatement.

As the Arizona Supreme Court recently indicated in *In re Johnson*, 231 Ariz. 556, 298 P.3d 904 (2013), as a lawyer seeking reinstatement has already violated the trust previously placed in him as an officer of the court, the Court endeavors to made certain that it does not again put into the hands of an unworthy petitioner the almost unlimited opportunity to inflict wrongs upon society by a practicing lawyer.

The Court considers the nature and extent of the past misconduct because the more serious the misconduct that lead to disbarment, the more difficult the applicant's task in showing rehabilitation. An applicant must identify the weakness or weaknesses that caused the prior misconduct and establish by clear and convincing evidence that he has overcome the indicated weakness or weaknesses. Such a showing can be made by presenting evidence of positive action such as participating in community or charitable organizations, receipt of specialized instruction or education, counseling or other similar activities, the presentation of character witnesses, and an applicant's acceptance of responsibility for his past misdeeds. No single piece of evidence is necessary or sufficient to prove

rehabilitation. The totality of the proffered evidence is to be considered in determining if an applicant has met his burden to prove he is truly rehabilitated.

### **Testimony and Admitted Evidence**

Perry Lank testified on behalf of Applicant at the hearing. Mr. Lank and his wife were prior clients of Applicant. They had entrusted the preparation of a federal income tax return to Applicant. Applicant did not follow through with various promises to complete their tax return and they had to go to considerable efforts to reconstruct their records and then file the required return on their own. Mr. Lank testified that he had a confrontation with Applicant about his failure to complete the tax return in question. Shortly after the confrontation Applicant moved to Louisiana with his children and resided with his parents there for a period of time.

Mr. Lank testified that several years later a friend told him someone he previously knew wanted to talk to him. He learned it was Applicant and he agreed to meet with him. The reunion was emotional for both him and Applicant. Mr. Lank testified that he forgave Applicant for what he had done to him and his wife and that he has maintained a friendship with him since that time. He testified that Applicant is now the "Richard Parks" he used to know and believes him to be drug free and presently leading a productive life. The Panel found Mr. Lank's testimony to be forthright and credible.

Anthony Vodvarka testified on behalf of Applicant at the hearing. Mr. Vodvarka is a supervisor for Fed-Ex, Applicant's current employer. Mr. Vodvarka testified Applicant has worked as a part-time employee for Fed-Ex for a number of years. Mr. Vodvarka has in the past and on a periodic basis currently supervises Applicant in the performance of his job duties. Mr. Vodvarka testified that he has

known of Applicant's status as a disbarred lawyer for some time. He testified that he knows Applicant to be a responsible and trustworthy employee. Mr. Vodvarka supports Applicant's quest to reinstate his license to practice law in Arizona. The Panel found Mr. Vodvarka's testimony to be forthright and credible.

Christopher Parks testified on behalf of Applicant at the hearing. Mr. Parks is Applicant's younger brother. Mr. Parks testified to his and Applicant's upbringing, education, and relationship both prior to and after Applicant's disbarment. Mr. Parks also testified to the hearing problems both he and Applicant have had over the course of time and the benefits of each of their having had cochlear implants to help improve their hearing. Mr. Parks supports Applicant's efforts to obtain the reinstatement of his license to practice law and believes he has overcome his prior drug problems and is presently fit to again engage in the practice of law. The Panel found Mr. Parks' testimony to be forthright and credible.

T. Diane MacPherson, Licensed Clinical Social Worker, testified on behalf of Applicant at the hearing by telephone. Ms. MacPherson met with Applicant a number of times over the period of April 2011 to September 2012. Their meetings ended when Ms. MacPherson moved back east. Ms. MacPherson supports Applicant's petition for reinstatement subject to certain conditions. See Exhibit 8 to Exhibit 5 (Applicant's application for reinstatement). Ms. MacPherson recommended:

- (1) Identification and regular contact with a sponsor who meets his needs for maintaining ongoing recovery;
- (2) Continuing regular attendance at 12-step meetings, particularly during his transition to resuming his law career;

(3) Full disclosure and investigation of the risks of various medications that may be prescribed for pain management in the future; and

(4) Periodic "checkups" with a therapist skilled in addictions and recovery issues for monitoring of his behaviors and thinking for signs of relapse.

The Panel found Ms. MacPherson's testimony to be forthright and credible.

Applicant presented himself at the hearing on August 22, 2013, as forthright and sincere in his testimony and earnest in his desire to be reinstated to the active practice of law.

Applicant traced the history of his law practice prior to his disbarment. He indicated he was fired by a high-volume personal injury law firm because he was a "junkie". Applicant admitted to having used cocaine prior to using Methamphetamine (hereafter meth). After being fired from the firm, Applicant went into solo practice in the same practice area. His use of meth lead to his abandonment of various clients and his disbarment. He did not defend himself in that proceeding, instead moving to Louisiana to reside with his parents for a period of time. He was a teacher for a period of time in Louisiana and then moved to Moscow, Russia, to teach English as a second language. He left that position due to the company not paying him as promised. On his intended way back to the United States he traveled to Prague, Czech Republic, and decided to stay there. While he was there he met his second wife and they eventually returned to Arizona.

Applicant indicated he has not used meth since approximately October 1998. Upon returning to Arizona, Applicant took a number of part-time jobs. He is presently working for Federal Express (Fed-Ex) as a courier. He was subject to a drug test when hired by Fed-Ex and is subject to such a test if, for example, he was

involved in an accident while driving a company vehicle. Applicant has taken and successfully passed a number of drug tests over the course of time and as recently as August 9, 2013. Exhibit 33. He is willing to be subject to random blood and hair testing for drugs as a condition of his reinstatement to the active practice of law.

Applicant has been actively involved in Alcoholics Anonymous (hereafter AA) for a number of years. He has had a number of sponsors and has sponsored other participants. He credits AA as greatly assisting him in maintaining his abstinence from the use of illegal drugs. Applicant drinks alcohol, but testified he does so very infrequently - a beer now and then.

Applicant testified to his recent divorce from his second wife. He indicated that she had substance abuse problems which lead to other problems of trust in their relationship. His divorce from her is now final and except for unwinding some financial entanglements, he does not intend to see her again.

Applicant testified that he accepts full responsibility for the misconduct he engaged in that led to his disbarment. One set of clients obtained a default judgment against him for legal malpractice in the amount of \$200,000. He listed that judgment in his 2010 personal bankruptcy and it was discharged in that proceeding. Applicant was asked about other claims by clients and it does not appear any other client pursued a claim to judgment. Applicant was asked if he intended to attempt to make amends to the clients he damaged notwithstanding the lack of any legal obligation to do so. He said he intended to do so within his financial ability.

Applicant testified that he has satisfied prior state and federal tax liens filed against him. He indicates the Social Security Administration has sought for some

time to have him repay disability payments it says he was not entitled to receive. He is currently subject to a wage garnishment in this regard. Applicant has only recently contacted the Social Security Administration to argue that he was not overpaid. If successful, Applicant indicates he would use any freed up funds to begin repaying past due student loans (from law school) which are seriously delinquent at this time.

Applicant stated he is close to paying off a judgment a homeowners association obtained against him.

Applicant testified that he stopped taking meth on his own and has stayed off that drug using willpower and through AA. When asked how hard it is to stay off of meth, Applicant stated that it was easy. The Panel interpreted that statement in the context of Applicant testifying that he has not used meth in over fifteen years.

Applicant testified that while desires to be reinstated, he is "OK" if the decision is made that he should not be. He stated he had a good job and had a good life as things presently stand. If reinstated, Applicant indicated he did not desire to practice in the personal injury arena again. He would like to obtain a position in the criminal defense area or doing corporate transactional work, possibly for his current employer, Fed-Ex.

Applicant indicated that he would accept any condition of probation that the Court thought appropriate to impose should it approve his reinstatement.

### **Analysis**

*In re Arrotta, supra*, is the roadmap for an applicant to follow in seeking reinstatement to the active practice of law. While a close question, the Panel believes Applicant has met his burden of proof to show, by clear and convincing

evidence, that he has been rehabilitated and poses no further threat to the public if reinstated to the active practice of law, subject to various terms of probation to ensure, to the extent possible, he in fact will not pose such a threat in the future.

### **Clearing and Convincing Evidence of Rehabilitation**

The Supreme Court in *In re Arrotta* stated that four factors are to be considered in evaluating an application for reinstatement:

**1. The applicant's character and standing prior to, in this case, his disbarment.**

Applicant admitted to problematic conduct prior to the misconduct addressed in his disbarment proceeding, including intentional use of cocaine and meth.

Applicant had been informally reprimanded prior to his disbarment proceeding for having failed to cooperate with the State Bar in the investigation of a prior complaint.

**2. The nature and character of the charge for which he was, in this case, disbarred.**

Applicant's disbarment proceeding established that he had engaged in a broad range of ethics violations, including misappropriation of trust funds. Applicant completely abandoned a number of clients, causing them substantial injury. He lied about another lawyer taking over some of his clients' cases. Mr. Lank testified that Applicant had tossed his law license in the trash just prior to his leaving Arizona.

**3. The Applicant's conduct subsequent to, in this case, his disbarment.**

The Panel has no way of knowing the propriety of Applicant's conduct in Russia or the Czech Republic prior to his return to Arizona. Applicant has had a positive record of employment and abstinence from the use of illegal drugs for many years in Arizona. He has actively participated in AA and other activities, including consulting with Ms. MacPherson to augment his other efforts to show he is a worthy candidate for the reinstatement of his law license.

**4. The time that has elapsed between, in this case, Applicant's disbarment and his application for reinstatement.**

Applicant's disbarment was effective August 3, 1999. He filed his application for reinstatement on April 25, 2013. Applicant has not had a license to practice law for over fourteen years to the date of the hearing in this matter.

**Rehabilitation**

Applicant has the burden to show, by clear and convincing evidence, that he has overcome the weaknesses that produced his earlier misconduct – that he has been rehabilitated.

Evidence of rehabilitation includes accepting responsibility for past misdeeds; testimony from those in the community with knowledge of Applicant's behavior during the period of disbarment; testimony from mental health professionals; participation in community or charitable organizations; and the receipt of specialized instruction, education or counseling. *In re Arrotta*, 208 Ariz. at 515-6, 96 P.3d at 219-20.

Applicant accepts responsibility for his misconduct. Of course, it would be difficult for him not to as he failed to defend himself and the order of disbarment was essentially a default judgment. The most serious allegation, of misappropriation of client funds, is very troubling to the Panel, but no client filed a claim with the State Bar Client Protection Fund. The only readily ascertainable misappropriation relates to the receipt of funds to pay an \$800 bill of a service provider in a personal injury case. The Panel addresses this item in its recommendations.

All the other witnesses at the hearing were supportive of Applicant's application for reinstatement. The favorable testimony of a brother would be expected. The favorable testimony of one of Applicant's supervisors at Fed-Ex and one of the clients he abandoned was noteworthy. The testimony of Ms. MacPherson, who Applicant sought out for counseling in aid of his application, was forthright and credible. Her recommendations were based on eight counseling sessions with him. Applicant has actively participated in AA and has assisted others in their recovery efforts.

Applicant identified his weaknesses as isolation as a result of an abrupt and serious loss of hearing and gross disaffection to the type of law practice he was engaged in. He turned to cocaine and apparently by accident to meth (he thought he was snorting cocaine) for relief. Applicant self-described an instantaneous love affair with meth. His interests in his practice, his clients, his profession, and his children fell by the wayside.

While Applicant hit bottom fairly quickly (he said he stopped using meth before his disbarment became effective), it took him a number of years to get to

the point of participating in AA meetings and taking other steps to understand himself and his particular vulnerabilities.

Applicant's two large outstanding debts are of concern to the Panel, but he is in contact with the Social Security Administration and hopefully can resolve that dispute on favorable terms and then work out a payment plan to retire his outstanding student loan debt.

The Panel has no indication that Applicant has been involved in any professional misconduct or law violations since his disbarment, but as the Supreme Court noted in *Arrotta*, the passing of time without further incident is not clear and convincing evidence of rehabilitation. "Merely showing that [an individual] is now living and doing those things he . . . should have done throughout life, although necessary to prove rehabilitation," is not sufficient to meet Applicant's burden. *In re J.J.T.*, 761 So. 2d 1094, 1096 (Fla. 2000)", *Arrotta, supra*, 208 Ariz. at 515.

Applicant testified that his cochlear implant has changed his life. He is hopeful of being about to afford a second cochlear implant which, if successful, will enhance his level of hearing even more. The Panel believes Applicant's sudden hearing loss contributed to his continuing use of meth and that the recovery of his hearing through the cochlear implant has addressed one of the weaknesses that lead to his disbarment.

Applicant has been tested in his recovery by a work-related back injury. He took certain physician-prescribed drugs to alleviate the pain. He has been counseled to be certain to advise his physicians of his prior drug abuse and recovery to ensure he does not abuse pain medication in the future. His second wife

was also involved in drug abuse which eventually resulted in Applicant seeking a divorce from her. The Panel believes Applicant needs to avoid situations that expose him to a higher risk of relapse than the normal vagaries of life.

Applicant admitted to Ms. MacPherson that he has certain "addictions" - to food, to exercise. See Exhibit 32. He also admitted in his deposition (Exhibit 25, Bates SBA000461, lines 9-13) that he has an addictive personality. The Panel is concerned that without ongoing checks and balances, Applicant could let his addictive/compulsive tendencies adversely affect future professional activities. Reinstating Applicant without appropriate restrictions and safeguards risks exposing future clients to the substantial damage Applicant caused many former clients.

### **CONCLUSION AND RECOMMENDATIONS**

As previously indicated, the Panel believes it is a close judgment call whether Applicant has met his burden to show by clear and convincing evidence that he is rehabilitated and again fit to practice law. Applicant's disbarment was based on serious misconduct that damaged many people. He is susceptible to addictive/compulsive conduct. He has not addressed significant financial issues in a timely manner though he appears to be beginning to do so now.

On the other hand, it appears Applicant has not used any illegal drug for many years, has participated in AA and other recovery activities for a significant period of time and represents that he will continue to do so, has been successfully employed by Fed-Ex for a number of years, has, within his financial means, improved his hearing through a cochlear implant, and is willing to comply with whatever conditions of probation the Court deems appropriate should he be reinstated to the active practice of law.

Clear and convincing evidence is that which may persuade that the truth of the contention (in this case, Applicant's rehabilitation and fitness to practice law) is highly probable. *In the Matter of Neville*, 147 Ariz. 106, 111, 708 P.2d 1297, 1302 (1985). The evidence Applicant has presented persuades the Panel that the truth of his rehabilitation and fitness to practice law is highly probable. The Panel recommends Applicant be reinstated to the active practice of law subject to probation for two years. The Panel recommends the following terms of probation:

(1) Within fifteen days of the effective date of the Order of Reinstatement, Applicant shall contact the appropriate representatives of the State Bar's Member Assistance Program (MAP) to schedule a MAP assessment. Based on the assessment, Applicant will promptly enter into a MAP contract and shall comply with the terms and conditions set forth in the contract to include, but not limited to, the following:

(a) Applicant shall agree to be subject to random drug testing (blood and/or hair follicle) at such times and places as directed by MAP and shall agree that each results report shall be filed with the State Bar. Applicant shall agree that his interaction with and reports by MAP shall not be confidential and that MAP may freely report Applicant's compliance or noncompliance with its random drug testing requirements and the results thereof and/or any other term or condition of his MAP contract to the Presiding Disciplinary Judge. All required interaction with MAP, including required drug testing, shall be at Applicant's expense.

(b) Applicant shall agree to continue to participate in AA throughout the term, and any extensions, of his probation. If his counselor (see paragraph (3) below) recommends Applicant participate in MA (Crystal Meth Anonymous),

Applicant shall agree to participate as recommended throughout the term, and any extensions, of his probation. Applicant shall agree to maintain a sponsor through AA throughout the term, and any extensions, of his probation.

(2) Within fifteen days of the effective date of the Order of Reinstatement, Applicant shall contact the director of the State Bar's Law Office Management Program (LOMAP) to schedule a meeting to discuss his plans for reentering the active practice of law. Based on the director's assessment of his plans, Applicant will promptly enter into a LOMAP contract and shall comply with the terms and conditions set forth in the contract to include, but not limited to, the following:

(a) Applicant shall obtain a practice monitor at his expense, whose service shall be subject to approval by the State Bar. The terms and conditions of his LOMAP contract may include restrictions on his areas of practice, type of practice, and his handling of client funds. Applicant shall further agree to direct his practice monitor to file with the director quarterly reports as to his compliance or noncompliance with the terms and conditions of his LOMAP contract. Applicant shall agree that his interaction with and reports by his practice monitor and/or LOMAP shall not be confidential and that his practice monitor and/or LOMAP may freely report Applicant's compliance or noncompliance with his LOMAP contract to the Presiding Disciplinary Judge. All interaction with and requirements imposed by LOMAP shall be at Applicant's expense.

(3) Applicant shall agree, within thirty days of the effective date of the Order of Reinstatement, to find a local replacement for the counseling he previously received from Ms. MacPherson and to maintain an on-going relationship with such a counselor throughout the term of his probation and any extensions thereof. The

counselor shall be skilled in addictions and recovery issues. Such counseling shall be at Applicant's expense.

(4) Applicant shall agree, within thirty days of the effective date of the Order of Reinstatement, to investigate and determine if he did or did not pay TMC Radiology \$800 that it should have received when he settled a personal injury claim on behalf of Susan Busseuil. Applicant shall report the results of his investigation to Staff Bar Counsel Nicole Kasetta within fifteen days of the completion of his investigation. If it is determined that he did not make that required payment, he shall pay \$800 to TMC Radiology or its successor in interest, or if the company cannot be located, \$800 to Susan Busseuil, or if she cannot be located, \$800 to the State Bar Client Protection Fund. Evidence of said payment shall be submitted to Staff Bar Counsel Nicole Kasetta within 180 days of the date of his required report to her.

(5) Applicant shall promptly and fully respond as requested by the State Bar should it undertake any further investigation of the complaints mentioned in paragraph (3) of the Preliminary Findings of Fact Section of this report.

(6) Applicant shall complete the State Bar Course on Professionalism within six months of the effective date of the Order of Reinstatement.

(7) Applicant shall diligently and in good faith endeavor to resolve the issue of the alleged overpayment of disability benefits to him with the Social Security Administration and diligently and in good faith endeavor to establish a student loan repayment plan acceptable to the lender.

(8) Applicant shall not use any prescription pain medication without fully disclosing his prior addiction and medical history to the prescribing physician and shall not use more than the prescribed dosage.

(9) Applicant shall agree that the Presiding Disciplinary Judge shall have the discretion, at the request of the State Bar or on his own motion, to schedule and hold a hearing to determine if the terms of Applicant's probation should be changed, the length of his probation extended for an additional period of up to two more years pursuant to Rule 60(a)(5)(A), Ariz.R.Sup.Ct., or other sanctions imposed to address violations of these terms of probation (paragraphs (1) to (8) above) pursuant to Rule 60(a)(5)(C). In any such probation violation hearing, a violation must be proven by a preponderance of the evidence. The Presiding Disciplinary Judge shall not be bound by common law or rules of evidence or by technical or formal rules of procedure and may conduct the probation violation hearing in any manner that will achieve substantial justice. Applicant shall have the right to present evidence, cross-examine witnesses, and be represented by counsel.

Dated this 3<sup>rd</sup> day of September, 2013.

*/s/ George A. Riemer*

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George A. Riemer  
Acting Presiding Disciplinary Judge

CONCURRING:

*/s/ Paul D. Friedman*

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Paul D. Friedman, Volunteer Attorney Member

*/s/ Linda W. Smith*

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Linda Sue Smith, Volunteer Public Member

Original filed with the Disciplinary Clerk this 3<sup>rd</sup> day of September, 2013.  
A copy of the foregoing was emailed and mailed this 3<sup>rd</sup> day of September, 2013, to:

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