

APR 04 2011

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

FILED

BY

No. 10-6012

IN THE MATTER OF AN APPLICATION FOR
REINSTATEMENT OF A SUSPENDED MEMBER
OF THE STATE BAR OF ARIZONA,

**ROBERT A. ROJAS,
Bar No. 012864**

REPORT and RECOMENDATION

Applicant.

On March 3, 2011, the Hearing Panel ("Panel") composed of Mark E. Salem, a public member from Maricopa County, Harlan J. Crossman, an attorney member from Maricopa County, and the Honorable William J. O'Neil, Presiding Disciplinary Judge ("PDJ") held a one day hearing pursuant to Supreme Court Rule 65(b)(1), Ariz.R.Sup.Ct. James D. Lee appeared on behalf of the State Bar of Arizona ("State Bar") and Robert A. Rojas appeared *pro se*. On March 2, 2011, the parties filed a Stipulation of Facts. The rule for exclusion of witnesses was not invoked. The Panel considered the testimony, admitted exhibits, the parties' Pre-trial Memorandum, and evaluated the credibility of the witnesses. At the conclusion of the hearing, the State Bar stated that it does not support reinstatement. The Panel now issues the following "Report and Recommendation," pursuant to Rule 65(b)(3), Ariz.R.Sup.Ct, recommending that reinstatement be denied and costs of these proceedings be imposed. The Panel strongly encourages Applicant to review not only this report and recommendation but more specifically the reasoning of the Arizona Supreme Court in their ruling *In re Arrotta*, 208 Ariz. 509, 96 P.3d 213, (2004). The Panel hopes that by addressing more specifically the issues addressed in that case that Applicant will ultimately achieve the favorable outcome for his application that he seeks.

I. FINDINGS OF FACT

Stipulated statements of fact

1. By judgment and order dated December 12, 2001, the Arizona Supreme Court suspended Applicant for a period of seven months, effective January 11, 2002.¹

2. During the period of time Applicant was suspended from the practice of law in Arizona, he completed the State Bar's Trust Account Ethics Enhancement Program.

¹ Applicant violated E.R. 1.2, 1.3, 1.4, 1.15, 8.1, 8.4 and Rules 43, 44, 51(h) and 51(i).

3. During the period of time Applicant was suspended from the practice of law in Arizona, he paid \$8,000.00 restitution to Southwestern Center for Pain. The proper party to whom restitution was due, as ordered by the Supreme Court on December 12, 2001, was never set forth in the Amended Tender of Admissions and Agreement for Discipline by Consent, the Memorandum in Support of Amended Tender of Admission and Agreement for Discipline by Consent, the Supplemental Disciplinary Commission Report, or the Arizona Supreme Court's judgment and order.

4. During the period of time Applicant was suspended from the practice of law in Arizona, he met with the director of the State Bar's Member Assistance Program (MAP), entered into a contract with MAP, and completed the MAP requirement of probation.

5. During the period of time Applicant was suspended from the practice of law in Arizona, he met with the director of the State Bar's Law Office Management Assistance Program (LOMAP), entered into a contract with LOMAP, and completed that portion of the contract that he was required to complete while suspended from the practice of law (the contract stated it would continue in effect for a period of two years after Applicant was reinstated).

6. During the period of time Applicant was suspended from the practice of law in Arizona, he obtained a qualified Practice Monitor (Ben Miranda, Esq.) that was acceptable to the State Bar.

7. Applicant paid all costs and expenses associated with the terms of probation that were to be completed while he was suspended from the practice of law (Applicant was never charged any fee and never incurred any costs associated with MAP's oversight of the MAP contract; and Applicant paid \$200.00 of an initial \$750.00 charge by the State Bar for oversight of the LOMAP contract – the remaining \$550.00 was waived by the State Bar because Applicant could not fulfill all of the terms of the LOMAP contract while suspended from the practice of law).

8. Applicant paid the costs and expenses imposed in the underlying disciplinary proceeding that led to his suspension (Supreme Court File No. SB-01-0167-D).

9. Applicant reported, at least occasionally, to bar counsel his compliance with the terms of probation.

10. The State Bar never filed against Applicant a notice of non-compliance with the terms and conditions of probation ordered in Supreme Court File No. SB-01-0167-D.

11. No claims were filed against Applicant with the State Bar's Client Protection Fund.

12. Applicant passed the bar examination held in Phoenix, Arizona on July 27 and 28, 2010.

Other Findings of Fact

13. Applicant incurred student loan debt of \$49,606.47 while attending law school. He has never made payments towards those student loans. On July 3, 2001 an Arbitration Awards was entered against him for that debt, plus interest of \$9,606.74, costs and attorney fees. He still has made no payments towards that debt.

14. An IRS Tax lien of \$113,224.27 was assessed against Applicant on May 11, 1998 for unpaid taxes for tax periods 1994 – 1997. These were incurred while he was engaged in the practice of law. Applicant has made no payments towards this obligation.

15. Applicant had the means to make payments but gave no explanation for his failure to be fiscally responsible for those debts. By way of example in 2005 he paid \$5,000 down on a lease to own home.

16. Applicant was charged with failure to produce evidence of financial responsibility on January 17, 2003. Arraignment was set for February 11, 2003. On February 11, 2003 he requested a continuance. Arraignment was continued to March 25, 2003. On March 25, 2003 applicant filed a motion to continue. On May 14, 2003 the Court sent him a failure to appear warning. On May 28, 2003 his license was suspended for his failure to appear. On October 12, 2005 the court received a mail return from the address he had given and his bond was applied to pay his fine.

17. On January 21, 2003 Applicant was charged with Extreme D.U.I. (.15% or higher). On March 7, 2003 he was adjudged to have failed to appear pursuant to a written promise in violation of A.R.S. 13-3904. He later again failed to appear. His failures to appear and other delaying actions resulted in the matter not being resolved until three years later on January 19, 2006 when he was found guilty pursuant to a plea agreement and given a thirty day jail term with twenty days suspended.

18. Applicant has received no law related education since 2004.

19. The application of Applicant does not contain "a concise statement of facts claimed to support readmission to the state bar, including facts showing the lawyers' rehabilitation. Rule 65 M, Rules of the Arizona Supreme Court.

20. Applicant presented no current evidence of participation in community or charitable organizations, specialized instruction or education. His last "counseling" or other similar evidence to support his application ended in 2006. Although recommended to obtain a medical history and to follow up on counseling he has not.

II. ANALYSIS UNDER RULE 65(B)(2), ARIZ.R.SUP.CT.

Preliminary Discussion: In matters of reinstatement, the lawyer seeking reinstatement 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. Lawyers must also establish by clear and convincing evidence they have identified the weakness that caused the misconduct and demonstrate they have overcome those weaknesses. *In re Arrotta*, 208 Ariz. 509, 513, ¶ 17, 96 P.3d 213, 217 (2004). A vigilant adherence to the issues addressed in *Arrotta* is foundational for understanding what is required of any applicant seeking readmission to the Bar. *Arrotta* further 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. *Id.*, at 512 (quoting *In re Robbins*, 172 Ariz. at 256, 836 P.2d at 966 (1992)). "The central component of our assessment is, at all times, protection of the public." *Arrotta supra*. 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. *Hamm*, 211 Ariz. at 465, P25, 123 P.3d at 659. *In re Hamm*, 211 Ariz. 458, 123 P.3d 652 (2005).

The Court also considers the following four factors in determining if the lawyer should be reinstated:

- 1) Applicant's character and standing prior to disbarment (suspension in this matter);
- 2) the nature and character of charge for which disciplined;
- 3) Applicant's conduct subsequent to the imposition of discipline; and
- 4) the time which has elapsed between the order of suspension and the application for reinstatement.

Testimony

Applicant: The testimony of applicant was primarily a moving personal history regarding why and how he became a lawyer. He testified that his weakness as a lawyer was neglecting clients. Applicant believes he experienced "situational depression" due to the death of his mother in July 1998, which led to the neglect of his clients. He engaged in sloppy office work, failed to communicate with his clients or miscommunicated with clients, failed to close cases, and failed to monitor his trust account, which led to bar complaints in 1999.

Applicant testified that after his suspension he worked as a paralegal from 2002 – 2005. In 2004, he began the readmission process to practice law, but did not file for reinstatement at that time. Instead, when his father died, he took over the management of the construction business of his father from 2005-2008. Applicant stated that when his father died, he did not experience the level of depression he did with his mother's passing. When the economy started to fail, Applicant stated he lost everything, including the family business.

Applicant stated he attended Pastor Jean James' church from 2004-2006. Pastor James is also a chiropractor who encourages a healthy lifestyle and fellowship to address personal issues and for resolutions of those issues. Applicant admitted that Pastor James has no experience in treating psychological issues. He has not interacted with him since 2006. No evidence was submitted and Pastor James did not testify.

Applicant feels Pastor James helped him overcome his weaknesses through spiritual counseling, which in turn, helped him to control his depression. This advice apparently included among other recommendations: that he get out of the house and get some sun; go for walks with his wife (emphasis by applicant); drink more water and limit processed foods; and give thanks for what you have rather than complain. Applicant stated that based on the Pastor's advice, he established a regular sleep pattern and overall, strived to engage in a healthy lifestyle. He made an effort to get out of bed early and to enjoy life again. He would take long walks to help with endorphins and stress relief. He began to more consistently drink water and avoided processed foods. He started to socialize again and embarked on a complete change in attitude and lifestyle.

Applicant acknowledged his misconduct and stated he has now learned to set goals, to be thankful for what he has, and to not engage in self pity. Applicant asserts that he has experienced no symptoms of depression since 2004.

In order to address his weaknesses, Applicant stated he has established a support system for dealing with stress and depression, which will involve relying on his mentors, Mr. Benjamin Miranda and Mr. Mark Beridoni. Mr. Miranda has offered to be Applicant's practice monitor and both will help Applicant with stressors and to establish safeguards for his trust account funds.

Benjamin Miranda, Esq.

The testimony of Mr. Miranda touched on his knowledge of the Applicant. He has known Applicant since 1981. It is his observation that there is high level of integrity in the Rojas family. The death of Applicant's mother had a profound effect on the Applicant. He could visually see the toll her death was taking on him. He believes that prior to her death, the Applicant was a brilliant attorney and that he was very impressed with his work and legal abilities.

In 2001, he physically assisted Applicant with the closing of his office. Thereafter he employed Applicant for approximately the first seven months of the period of suspension. He has agreed to be Applicant's practice monitor and to review Applicant's trust account. He doesn't believe there was intent regarding Applicant's previous misappropriation of funds. Upon questioning by a panel member he stated he would be willing to be personally responsible for any future misappropriation of funds as Applicant's practice monitor. He is conscious of his own ethical reporting requirements as a lawyer.

Mr. Miranda stated that he and Applicant discussed the failure to pay medical liens in the underlying disciplinary matter. He is not aware of any specific steps that Applicant has taken to address the weaknesses that resulted in his suspension. He is not familiar with Applicant's indebtedness, why Applicant failed to pay his obligations, or what the current or recent income of Applicant is. He is aware of Applicant's criminal DUI conviction and has some familiarity with the personal problems Applicant has experienced. Mr. Miranda sees that Applicant has returned to his traditional roots and is now engaged in Bible study. He does not believe alcohol is a problem for Applicant. Mr. Miranda feels that Arizona could benefit from attorneys like Mr. Rojas, who provide services to persons of low economic background.

Mr. Miranda was unaware of what, if any, steps Applicant has taken to rehabilitate himself. He testified he was "somewhat" aware of Applicant's difficulties. He believed Applicant to be in a position to start a business and that he owned a car and home. When questioned about what steps Applicant had taken to prepare himself to return to the practice of law, he was unable to answer those questions.

Mark J. Berardoni, Esq.

Mr. Beradoni testified Mr. Rojas and he became friends while attending the same law school. He stated he knew the Rojas family and attended many family functions including Mrs. Rojas' funeral. It is his observation that Applicant was not the same after his mother died. Prior to her death, he found Applicant to be a brilliant lawyer who is especially skilled in civil right matters. Although not employed by Mr. Beradoni, Applicant has conducted jury trials for him and Mr. Beradoni appeared as co-counsel in the case that ultimately resulted in Applicant's suspension.

Mr. Beradoni advised that he felt Applicant was ready to return to the practice of law in 2005, but prior to that time, he felt Applicant needed more structure to successfully practice law again. Mr. Beradoni stated he has offered to be Applicant's mentor.

Mr. Beradoni testified that he has discussed Applicant's spiritual counseling with him and how to be happy again. He advised Applicant to stop hauling dirt (referring to the construction business), to overcome his depression and get back to the practice of law. Mr. Beradoni stated that he does not feel Applicant has an alcohol problem and is aware that Applicant owed money to the IRS and for student loans. Mr. Beradoni believes that Applicant hit a bump in road with his father's death but is now ready to practice law again. It is his opinion that Applicant's 2006 DUI conviction was related to stress brought on by his father's passing in 2005.

Despite his friendship, Mr. Berardoni has not used Applicant as a paralegal nor has he referred him to anyone to serve as a paralegal. The only advice he could recall giving him was to come back to the practice of law. He encouraged Applicant to get over his depression and move on. He opined that Applicant was not ready to

return to the practice of law until 2005 but offered no explanation of why he believed his return was appropriate then or now.

The Panel does not discount the testimony of either of these witnesses. They demonstrate that Applicant has individuals who are strong supporters and loyal. They have remained friends despite his difficult times. However, neither could articulate how or why they believe Applicant has overcome the weaknesses that led to his misconduct.

Other Evidence

Criminal History

Applicant acknowledges a DUI arrest in 1991. (See Respondent's Exhibit K, Sucher's Report) During his suspension, he added to his criminal history.

- On January 17, 2003 Applicant was cited for Failure to produce Evidence of Professional Responsibility on January 17, 2003. [SB Exhibit 5]
- On January 31, 2003, Applicant was arrested and cited for DUI.²
- On March 7, 2003, Applicant was arrested for a Violation of Promise to Appear for court ordered hearing;
- On October 4, 2005, Applicant was charged with Driving with License Suspended/Revoked or cancelled;
- Applicant pled guilty and paid a fine.
- On January 19, 2006 Applicant pled no contest and was convicted of one count of DUI and one count of Extreme DUI. He was sentenced to 30 days in jail with 20 days suspended and SAS counseling. [SB Exhibit 6 and 7]
- On April 24, 2006 his Driving with License Suspended/Revoked or Cancelled was resolved. [SB Exhibit 8 and 9]
- On February 28, 2008, Applicant was involved in a forcible detainer hearing. [SB Exhibit 11]. Applicant stated that he is currently meeting obligations regarding rent.

The failures to appear are troubling. They reflect that Applicant disregarded court orders. This is considered serious misconduct by the Panel that could lead to ethical violations. [See Rule 53(c), Ariz.R.Sup.Ct.] None of these issues were addressed by Applicant. They mirror the failure to address the fundamental "attention to detail" that Applicant believes resulted in his suspension in the first place.

Financial History

² This is the only arrest that was disclosed in Applicant's Petition for Readmission filed on November 23, 2010.

Applicant's financial situation is of concern to the Panel. A substantial IRS Tax lien was imposed during the time of his practice of law for tax periods 1994 – 1997. [SB Exhibit 10]. This lien was incurred prior to the death of his mother and was wholly unexplained by him. Applicant testified that no payments to the IRS have been made during the period of suspension. Applicant also has significant credit card debt and the status of those accounts reflect that all accounts are past due. [SB Exhibit 12]. Applicant also has a Federal Student loan in the amount of approximately \$66,000.00 which he failed to make payments towards both prior to his mother's death and after. Again the Panel was given no explanation for this. An Arbitration Award and Judgment was entered against him for his student loans in 2001 [SB Exhibit 4]. Applicant testified that he has not paid any amount toward the 2001 Arbitration Award during his suspension.

Applicant advised that if reinstated, he has no current employment offers at this time, but he is interested in returning to trial practice and /or apply to the Public Defenders' Office in Tucson or Prescott. Applicant shared that his passion is Constitutional or Civil Rights law, but if no one will hire him, he would consider going into private practice. Applicant advised he is currently employed by Richard Estrada to perform general maintenance and handyman work. He estimated his income is approximately \$800.00 per month. He further advised that his wife is not employed at this time but occasionally babysits and earns approximately \$200.00 per month.

General Analysis

In re Arrotta *supra*, outlines a roadmap for an applicant to follow in a readmission effort. Unfortunately the evidentiary presentation of Applicant in many ways inexplicably mirrors the unsuccessful presentation found in *Arrota*. Applicant pointed out that he had done more than any first time applicant taking the Bar examination. However the reason for requiring more of an applicant for reinstatement is clear. Applicant has already violated the "trust placed in him as an officer of the court and has revealed that, at least in some circumstances, he poses a threat to members of the public. We must "endeavor to make certain that [we do] not again put into the hands of an unworthy petitioner that almost unlimited opportunity to inflict wrongs upon society possessed by a practicing lawyer." *In re Pier*, 1997 SD 23, 561 N.W.2d 297, 300 (S.D. 1997) (quoting *In re Morrison*, 45 S.D. 123, 186 N.W. 556, 557 (1922)). *Arrota, supra*. "Applicant's burden is to show, 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." *Robbins*, 172 Ariz. at 256, 836 P.2d at 966.

Rather than quote extensively from *Arrota*, Applicant is strongly encouraged to consider the steps and evidence required in that case. It appears to this Panel that the evidentiary presentation of Applicant fails for the same fundamental evidentiary shortcomings that are discussed in *Arrota*. It is cited with the hope that if the Supreme Court follows the recommendation of this Panel, that Applicant will

carefully plan his rehabilitative course of action based upon a careful consideration of the reasoned approach in that case.

Compliance with Disciplinary Rules and Orders

Applicant has paid the costs of the underlying discipline matter and satisfied the ordered restitution. Applicant also met with the LOMAP and MAP designee regarding his probation contract and also completed the Trust Account Ethics Enhancement Program as ordered. [Respondent's Exhibits H-J]. Applicant disclosed that after the suspension became effective, he failed to comply with former Rule 63 (notice to clients and the court).

Competence

Applicant has not participated in any legal related or Continuing Legal Education ("CLE") since 2004. In April of 2004, Applicant obtained 3 ½ hours of CLE in the area of ethics. [Respondent's Exhibit D]. Applicant did however, successfully pass the bar exam in July 2010, which reflects that he is knowledgeable of the law. However, nothing else is submitted demonstrating a competence beyond the basic ability to pass that examination.

Rehabilitation and Fitness to Practice

Arrota clarified that evidence of rehabilitation is accepting responsibility for past misdeeds; 1) testimony from those in the community with knowledge of the applicant's behavior during the period of suspension; 2) testimony from mental health professionals; 3) participation in community or charitable organizations; 4) specialized instruction, education or counseling may provide the positive action to establish rehabilitation. *Arrota* at 515-6, ¶¶ 29-31, 96 P.3d at 219-20. Unfortunately, there is little evidence presented in this case regarding the above requirements that the panel can rely upon or that is even current. Our recommendation may be different with such evidence.

Similar to the *Rosellini* case cited by the Supreme Court in *Arrota*, Applicant misappropriated funds when he failed to pay medical liens which he had promised to pay. Unlike the applicant in that case, more questions are raised than answers given regarding the financial responsibility of Applicant. He leans on a single reference to situational depression in a 2002 document but offers nothing to demonstrate that he has the tools to overcome such "situational" depression nor why his succumbing to it led to unethical behavior.

Applicant provided a MAP evaluation from Michel Sucher, M.D. dated July 30, 2002, which diagnosed Applicant with situational depression, mostly resolved. Dr. Sucher recommended a full medical history and evaluation of Applicant's current state of depression and to determine if medication or a psychiatric referral was necessary. [Respondent's Exhibit K].

Dr. Sucher found that Applicant was depressed and distraught after his mother died from cancer in July 1998, following a seven month illness. Dr. Sucher stated that Applicant also experienced other significant stressors due to financial problems that arose because of a lack of income. In addition, Applicant advised his daughter was experiencing emotional difficulties, which caused Applicant significant distress. Dr. Sucher performed the Michigan alcohol screening test and a CAGE test which evidenced no ongoing or current alcohol or drug problems. Applicant disclosed to Dr. Sucher that he had seen a priest about his depression but Applicant did not obtain any medical help for his depression.

In March of 2004, Applicant was seen by John F. Madden, M.D. [Respondent's Exhibit L]. Dr. Madden stated that Applicant experienced severe depression approximately 5 years ago due to the death of his mother, and the depression had a severe adverse effect on his legal practice. Dr. Madden at that time found Applicant to have fully recovered from his depression and recommended he be allowed to re-enter the practice of law; however, no evidence was provided as to how Dr. Madden arrived at this conclusion or to support his conclusion.

Applicant testified his depression was situational (mother's death) and maintains that he has since recovered and has not had a relapse. He argues he has developed the tools to overcome that depression. But those tools are stated as a complete change in attitude and lifestyle. The Panel is presented nothing of what his lifestyle was prior to his suspension or precisely what tangible steps he has taken to address this condition. That Applicant stated he did not experience situational depression when his father died is not sufficient for this Panel to conclude he may not succumb in the future.

Although *Arrotta* held that professional treatment and testimony is not required for the lawyer seeking reinstatement in order to demonstrate rehabilitation, without treatment or testimony, more is needed to meet the burden of proof by clear and convincing evidence. *Arrotta*, 208 Ariz. at 514, 96 P.3d at 218. Here, the Panel determined that Applicant has failed to meet his burden of proof regarding rehabilitation and fitness to practice.

The practice of law can at times be incredibly stressful, which can often lead to mental illnesses such as depression and even anxiety related disorders. Applicant has presented little towards the clear and convincing evidence burden he is faced with that demonstrated he has established any coping skills, action plan or safety network should he experience a recurrence of depression. Applicant's most recent medical evidence is an evaluation from March 2004, however, the record is devoid of any current medical evidence regarding the status of Applicant's depression and/or treatment.

To establish clear and convincing evidence of rehabilitation and fitness to practice, a current formal independent assessment and evidence of ongoing treatment or counseling could assist the Panel in determining the root of Applicant's criminal behavior and the current status of Applicant's depression. Moreover, in

order to protect the public, it is critical to demonstrate that sufficient coping mechanisms are in place should Applicant again experience stressful situations.

Clearly financial issues and significant stressors are still present here, and it is troubling that some of Applicant's criminal conduct occurred after he was evaluated and deemed "fully recovered" from his depression by general practitioner, Dr. Madden in 2004. As *Arrotta* held, the passing of time without further incident is also not clear and convincing evidence of rehabilitation. The Panel is not convinced that the public would be protected if Applicant were reinstated at this time.

Conclusion

While Applicant has a demonstrated two attorney mentors who are committed friends, clear and convincing evidence is required that Applicant has overcome the weaknesses that led to his misconduct. Applicant has not led a blameless and law-abiding life while suspended. While his criminal record is minor, elements of it are troubling. Applicant addressed none of those issues. "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 the applicant's burden. *In re J.J.T.*, 761 So. 2d 1094, 1096 (Fla. 2000) *Arrota, supra*.

In addition, Applicant must prove by clear and convincing evidence the positive actions he has taken to overcome the weaknesses that led to his discipline. Unfortunately Applicant has only submitted his own testimony regarding these actions and nothing is offered to explain why these actions are actually meaningful. *Arrota* uses as an example the case *In re Rossellini*, 108 Wn.2d 350, 739 P.2d 658, 659 (Wash. 1987). Both in that case and the case *sub judice* the applicant had been disciplined for misuse of his client trust account and funds. Unlike in *Rossellini*, Applicant has not demonstrated financial responsibility "with regard to personal obligations since his disbarment." While Applicant has paid restitution to his multiple victims in his disciplinary case, he had other prior financial obligations that preceded those restitution obligations. Applicant never addressed the seminal cause of his substantial tax obligations that were incurred during his practice of law. This Panel cannot help but wonder to what extent those twin enormous obligations of his school and tax debts played in his underlying discipline. The Disciplinary Commission may have also questioned this connection in its supplemental report cited by the Bar in its prehearing memorandum. The Commission sought additional information regarding the stipulation of the Bar and Respondent relating to "the absence of a dishonest or selfish motive, given respondent benefitted from the money he failed to deliver."

Applicant testified he attended church, but unlike *Rossellini* offered nothing of what that involvement was or of any community involvement. Again, unlike in *Rossellini*, Applicant failed to demonstrate that he sought professional psychiatric help or psychological help or even any type of counseling since 2006. Again, unlike in *Rossellini*, there was no opinion offered of any witness that bolstered Applicant's

own self-serving statement that it was unlikely that he would repeat the conduct leading to his suspension other than the general support of his friends whose opinions were based on that friendship alone.

"But the burden is on the applicant to show more than that he has successfully lived by the rules of society after his misconduct. This record does not contain such a demonstration by clear and convincing evidence." *Arrotta, supra*.

The Panel evaluated Applicant's testimony and evidence, including the credibility of the friends and mentors who testified on his behalf. It is clear that his friends are both loyal and desirous of aiding him. They are a wellspring of strength for him and were his strongest evidence. However, the Panel concludes Applicant failed to carry his burden of establishing rehabilitation and fitness to practice by clear and convincing evidence as set forth in Rule 65 and *In re Arrotta, supra*, and therefore, the recommends that reinstatement be denied.

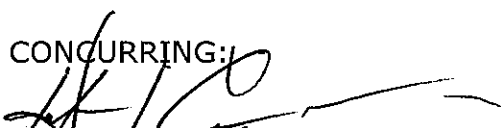
The Panel believes Applicant failed to fully evaluate *Arrotta* and could better present his case if he presented testimony from those who counseled him including current counseling and current evaluations. Further competence is best demonstrated through the efforts of education and legal work, even if volunteer aid. This panel is hopeful that Applicant will more closely adhere to the evidentiary requirement necessary to gain a favorable recommendation for reinstatement. The Bar is commended for its efforts to assist him. It is this Panel's hope that it will further aid Applicant by offering a candid view of what evidence would be required to obtain a favorable recommendation by the State Bar for his reinstatement.

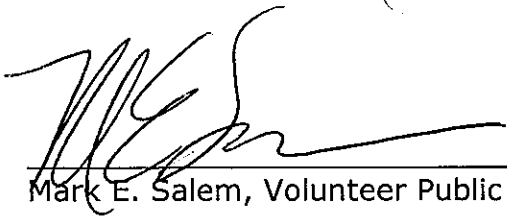
DATED this 4 day of April, 2011.



THE HONORABLE WILLIAM J. O'NEIL
PRESIDING DISCIPLINARY JUDGE

CONCURRING:


Harlan Crossman, Volunteer Attorney Member



Mark E. Salem, Volunteer Public Member

Original filed with the Disciplinary Clerk
this 4th day of April, 2011.

COPY of the foregoing mailed this
5th day of April, 2011, to:

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