

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

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

OCT 31 2011

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

**INGRID-JOY WARRICK,
Bar No. 019624**

Applicant.

No. PDJ-2011-9031 FILED
BY _____



REPORT and RECOMMENDATION

On October 3, 2011, the Hearing Panel ("Panel") composed of Douglas Pilcher, a public member from Maricopa County, Lori B. Patrick, an attorney member from Maricopa County, and George A. Riemer, Acting Presiding Disciplinary Judge ("PDJ"), held a two-hour hearing on Applicant's motion and application for reinstatement, pursuant to Supreme Court Rule 65(b)1., Ariz.R.Sup.Ct. Thomas M. Bayham appeared on behalf of the State Bar of Arizona ("State Bar") and Ingrid-Joy Warrick appeared on her own behalf. The rule on exclusion of witnesses was not invoked.

The Panel received the testimony of various witnesses, including Applicant, evaluated the credibility of their testimony, and admitted various exhibits into the record of the proceedings.¹ At the conclusion of the hearing, the State Bar stated that it does not support Applicant's reinstatement. The Panel now issues this "Report and Recommendation," pursuant to Rule 65(b)3., Ariz.R.Sup.Ct., recommending that Applicant's motion and application for reinstatement to the active practice of law (hereafter "motion") and amended motion and application for reinstatement to the active practice of law (hereafter "amended motion") be denied, but that the costs and expenses of these proceedings not be imposed against her.

I. FINDINGS OF FACT

1. By judgment and order dated April 6, 2010, the Arizona Supreme Court suspended Applicant from the practice of law for a period of ninety days, effective as of that date.²

2. Applicant filed a motion for reinstatement to the active practice of law in Arizona on June 22, 2011. As Applicant did not file for reinstatement within one hundred eighty (180) days of her suspension, she is required to satisfy the requirements of Rule 65, Ariz.R.Sup.Ct., to qualify for reinstatement. Rule 64(e)2.A, Ariz.R.Sup.Ct.

¹ Applicant's hearing exhibits were admitted as part of the record, including the affidavit of Alan E. Warrick. The State Bar's hearing exhibits were admitted as part of the record, with the exception of Exhibits 10, 13, and 18-27, which the State Bar withdrew.

² Applicant admitted to violating Rules of Professional Conduct 1.2, 1.4, 1.5, 1.7, 1.8, 1.15, 1.16, 4.2, 5.3, 5.5, 5.7, 7.3, and 8.4(a), and Rules 43 and 44, Ariz.R.Sup.Ct.

3. Applicant filed an amended motion for reinstatement to the active practice of law in Arizona on September 27, 2011.

4. Rule 65, Ariz.R.Sup.Ct., requires an applicant for reinstatement to submit detailed information in support of her application. The State Bar argued that Applicant did not provide all required information in her motion. Applicant claims she provided all required information in her motion, but chose to submit an amended motion which disclosed additional information in an abundance of caution based on the State Bar's concerns about the adequacy of the disclosures in her motion under Rule 65, Ariz.R.Sup.Ct.

5. The State Bar's concerns regarding Applicant's motion included a failure to (1) provide a statement showing monthly earnings and other income and the sources from which all such earnings and income were derived during the period of rehabilitation (Rule 65(a)1.E.); (2) disclose an adversarial complaint Applicant filed in a bankruptcy proceeding (Rule 65(a)1.H.); (3) disclose all of her business activities during the period of her rehabilitation (Rule 65(a)1.D.); and (4) provide a complete statement showing all financial obligations of Applicant at the date of the filing of her motion, together with the dates when such obligations were incurred and the names and addresses of all creditors (Rule 65(a)1.G.). Further, neither Applicant's motion nor amended motion included copies of her state and federal income tax returns from the period of her suspension as required by Rule 65(a)2.C.

6. Applicant has paid the costs and expenses of the disciplinary proceeding that led to her ninety (90) day suspension. Applicant's Exhibit 1-148.

7. Applicant was summarily suspended from the practice of law by the Board of Governors of the State Bar of Arizona on April 30, 2010 for non-compliance with Rule 34(h)1., Ariz.R.Sup.Ct. (completion of required course on professionalism). Applicant attended the required course on professionalism on August 25, 2010 and was deemed to have cured that suspension as of September 10, 2010. Applicant's Exhibit 1-150.

8. No claims have been filed against Applicant with the State Bar's Client Protection Fund. Applicant's Exhibit 1-149.

9. Applicant has paid all application and investigation fees associated with her motion.

10. Applicant has engaged in various business activities since her suspension, including work on behalf of a telecommunications network marketing company, as co-executive director of a direct selling representatives association, and as a business planning consultant. Applicant's income from such business activities has fluctuated between an average of approximately \$1,500 a month in 2009 to no income in 2010. Applicant's amended motion states that she received \$2,550 in income between June and September 2011 and \$8,500 as a result of the settlement of a lawsuit in August 2011. The settlement funds were used to reimburse her daughter for a loan she took out to cover monthly expenses.

Applicant's Exhibit 3-103. Applicant testified at the hearing that she was living with her daughter and had approximately \$47 to her name.

11. Applicant is currently delinquent in the repayment of various student loans totaling more than \$222,000. Applicant's Exhibits 2-101 and 3-104. Applicant has no present means to repay this obligation.

12. Applicant's motion stated that she had no significant financial obligations other than monthly living expenses and student loans. Applicant's Exhibit 1-103. Applicant's amended motion lists four promissory notes in the total amount of \$169,550 that were not listed in her motion (Cheney Trust: \$45,000; Beebe: \$45,000; Lowe: \$47,050; and Nielsen: \$32,500). Applicant testified at the hearing that she didn't owe anything to Mr. Beebe and that any claim on the Cheney note was time barred (Mr. Cheney is deceased). She asserted that the other notes had demand provisions that had not been exercised. And that as to the Nielsen notes, a co-obligor, Greg Zduniak, had agreed with her to be personally responsible for their repayment. Mr. Zduniak testified to this effect at the hearing (and his affidavit, Applicant's Exhibit 3-142, attested to this commitment as well). Applicant testified at the hearing that she did not consider the Nielsen promissory notes to be current financial obligations of hers because of Mr. Zduniak's commitment to her and because the promisee had not requested their repayment. Applicant stated in her amended motion that she never intended to be less than candid in her motion, particularly on issues that were easily verifiable through a cursory search of public records. Applicant's Exhibit 3-108. Rule 65(a)1.G. does not limit disclosure to current financial obligations. Applicants for reinstatement are required to provide "a statement showing all financial obligations of applicant at date of filing of the application, together with the dates when such obligations were incurred, and the names and addresses of all creditors[.]"

13. The Nielsen promissory note listed in Applicant's amended motion in the amount of \$32,500 is actually two promissory notes: one for \$25,000 signed by Applicant on March 15, 2010 and one for \$7,500 signed by Applicant on August 10, 2010 (the notary swore that Applicant signed the document on August 11, 2011). The Nielsen promissory note for \$25,000 was executed by Applicant on March 15, 2010. The primary and accrued interest were to be paid upon the occurrence of any one of three events, including "no later than March 12, 2010 in one (1) balloon payment of principal and all accrued interest, whichever occurs first." This date was before the date Applicant signed the promissory note. The \$7,500 promissory note provides that "The Principal and accrued interest shall be due no later than August 12, 2011 in one (1) balloon payment of principal and all accrued interest, whichever occurs first."

14. The Lowe promissory note (\$47,050) was executed by Applicant on September 21, 2010 and states it was due no later than one (1) year of the date "first written above". Applicant's Exhibit 3-134.

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

Preliminary Discussion

A lawyer seeking reinstatement to the practice of law under 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 she has identified the weaknesses that caused her misconduct and demonstrated that she has overcome these 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 she has been rehabilitated, that she is competent, and that she 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 her 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 (suspension in this matter);
- 2) The nature and character of the charges for which she was 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: Applicant presented herself as very sincere and earnest in her desire to be reinstated to the active practice of law. She testified that she accepted responsibility for her prior professional misconduct, attributing it to a lack of supervision of her employees. She stated that she learned that she could not abdicate supervision of her employees in the practice of law. Applicant testified that she does not intend to engage in the active law practice of law if reinstated. She stated that she needed to be reinstated to reestablish her credibility as a business person.

Applicant testified that she did not disclose the complaint she filed in a bankruptcy proceeding in her motion as she did not believe she was a party to the bankruptcy.

Applicant testified that she did not disclose the promissory notes in her motion as she did not consider them to be current financial obligations. She claimed she did not owe anything to Mr. Beebe, collection on the Cheney note was time barred, and as to the other notes, the creditors knew that payment was first to come from the liquidation of collateral, that they had to first demand payment, and that Mr. Zduniak would pay the Nielsen notes if they were called.

Applicant testified that she has been working in the business consulting arena since her suspension though, for various reasons, she has not been able to generate much income from those activities.

When asked about community activities, Applicant testified that she has been engaged in activities associated with the National Association of Women Business Owners and has helped mentor young people interested in becoming entrepreneurs through that organization. She estimated donating 20-30 hours to that activity in the recent past.

Applicant testified that she had attended the required number of hours of continuing legal education courses.

Applicant's Daughter. Applicant's daughter briefly testified that Applicant lived with her and that she provided financial support to Applicant.

Greg Zduniak. Mr. Zduniak testified that he was a business associate of Applicant's and that he assumed that if the Nielsen notes were called they would be claimed against him rather than Applicant.

Alan E. Warrick. Mr. Warrick, Applicant's brother, testified by way of affidavit to the circumstances surrounding the illness of his and Applicant's mother, the problems that arose regarding Applicant's law practice, and Applicant's efforts to ensure that the circumstances that caused her initial issues have been resolved.

Analysis

In re Arrotta, supra, is the roadmap for an applicant to follow in seeking reinstatement to the active practice of law. Applicant has not met her burden of proof to show, by clear and convincing evidence, that she has been rehabilitated and poses no further threat to the public if reinstated to the active practice of law.

Failure to Comply with Rule 65

Applicant's motion failed to contain the information required by Rule 65. Applicant should have disclosed the promissory notes under Rule 65(a)1.G. She should have explained why she believed they were not current financial obligations in her motion rather than first disclosing them in her amended motion. Applicant should have disclosed the complaint she filed in a bankruptcy case under Rule 65(a)1.H. Applicant failed to submit copies of her state and federal income tax returns for the period of her suspension as required by Rule 65(a)2.C.

Lack of Clearing and Convincing Evidence of Rehabilitation

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 suspension; 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.

While Applicant stated she accepts responsibility for her past acts of professional misconduct, the Panel believes she does not fully comprehend the scope of her prior misconduct. Applicant appears to believe it principally involved inadequate supervision of employees. Her misconduct involved far more than that. As noted in the hearing officer's report (State Bar Exhibit 6, p. 18, Bates Stamp 0079), "The hearing officer agrees with the parties that much of the misconduct in the instant matter resulted from Respondent's continuing failure to adequately supervise her non-lawyer assistants in her employ, and working on her behalf, as well as her failure to avoid conflicts of interest based on business and personal relationships." Applicant violated a multitude of rules of professional conduct. Her explanation of what she learned from her disciplinary proceeding was limited to an acknowledgement that she should not abdicate responsibility for supervising her employees in the practice of law. Applicant violated numerous other rules of professional conduct beyond Rule 5.3 (Responsibilities Regarding Nonlawyer Assistants). While Applicant was attending to other business interests and tending to her seriously ill mother, she did not explain why she had no other options than to allow what occurred to have happened. Nor did she adequately explain how she has addressed the weaknesses that led to her prior discipline so that she can be trusted to never again allow similar circumstances to develop.

With the exception of the affidavit provided by her brother and the testimony of her business associate, Mr. Zduniak, Applicant did not offer the testimony of any witnesses with knowledge of her behavior since being suspended supporting her claim of rehabilitation. Applicant testified that she has not obtained any professional counseling. While commendable, Applicant's community activities have been limited to 20-30 hours of mentoring-type assistance in the recent past.

The instruction Applicant has received during her suspension was required to maintain her license to practice law in other respects (professionalism course and attending continuing legal education courses).

Applicant's financial situation is dire. She is in default on over \$222,000 in student loans and admits to having less than \$50 in liquid assets. Yet during the period of her suspension she has borrowed even more money and signed promissory notes to secure those loans. Applicant does not appear to comprehend that her stunning lack of financial responsibility raises substantial concerns that ethical considerations will take a back seat to remuneration if she is permitted to again engage in the active practice of law. While Applicant indicates she will only

engage in business consulting if reinstated, she will still be an active member of the state bar and could practice law again at any time.

Applicant's explanation of her failure to disclose the promissory notes in her motion as not being current financial obligations and her explanation that the Nielsen notes had not been called undermined her credibility in claiming she was rehabilitated. As previously noted, Rule 65(a)1.G. does not limit disclosure to current financial obligations. Applicants for reinstatement are required to provide "a statement showing all financial obligations of applicant at date of filing of the application, together with the dates when such obligations were incurred, and the names and addresses of all creditors[.]" Furthermore, the provision in the Nielsen note for \$25,000 that Applicant referred to concerning a required five-day notice of default dealt with any acceleration of payment. The note provided that it was due on any one of three occurrences, including "no later than March 12, 2010 in one balloon payment of principal and all accrued interest, whichever occurs first." Applicant signed the note on March 15, 2010. Per the foregoing provision, payment appears to have already been due when the note was signed. No acceleration of payment would have been involved.

That Applicant has not been involved in any professional misconduct or law violations since her suspension is unremarkable. As 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.

Conclusion and Recommendation

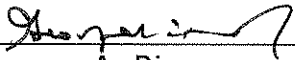
While Applicant appears to be very sincere and earnest in her desire to have the "stigma" of her suspension lifted so she can go about her non-law practice business activities as an active member of the state bar on a going-forward basis, she has not presented clear and convincing evidence that she has identified and overcome the weaknesses that lead to her prior professional misconduct, has not demonstrated financial responsibility during her suspension, has not engaged in the types of activities that demonstrate her rehabilitation during her suspension, and has been cavalier in the submission of required information in her motion and application for reinstatement. The Panel is not convinced that the public is protected if Applicant is reinstated to the active practice of law at this time.

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 does not persuade the Panel that the truth of her rehabilitation and fitness to practice law is highly probable. The Panel recommends Applicant carefully restudy the requirements for proving her rehabilitation as set forth in *In re Arrotta*, 208 Ariz. 509, 96 P.3d 213 (2004) so that,

when seeking reinstatement in the future, she will meet the required burden of proof.

The Panel recommends Applicant's motion and amended motion for reinstatement to the active practice of law be denied. As Applicant is financially impoverished, the Panel recommends that Applicant not be assessed any costs and expenses associated with this reinstatement proceeding.

DATED this 31ST day of October, 2011.


George A. Riemer
Acting Presiding Disciplinary Judge

CONCURRING:

Lori B. Patrick, Volunteer Attorney Member



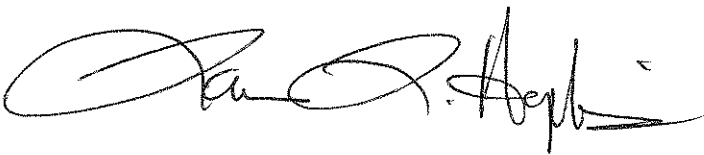
Douglas Pilcher, Volunteer Public Member

Original filed with the Disciplinary Clerk
this 31ST day of October, 2011.

COPY of the foregoing mailed this
31ST day of October, 2011, to:

Thomas M. Bayham
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when seeking reinstatement in the future, she will meet the required burden of proof.

The Panel recommends Applicant's motion and amended motion for reinstatement to the active practice of law be denied. As Applicant is financially impoverished, the Panel recommends that Applicant not be assessed any costs and expenses associated with this reinstatement proceeding.

DATED this _____ day of October, 2011.

George A. Riemer
Acting Presiding Disciplinary Judge

CONCURRING:



Lori B. Patrick, Volunteer Attorney Member

Douglas Pilcher, Volunteer Public Member

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