

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

APR 26 2012

FILED

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

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

**JOHN T. BANTA,
Bar No. 010550**

Respondent.

PDJ-2012-9001

**REPORT AND
RECOMMENDATION**

On March 27, 2012, the Hearing Panel ("Panel") composed of Ben Click, a public member from Maricopa County, Ralph J. Wexler, 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. Shauna R. Miller appeared on behalf of the State Bar of Arizona ("State Bar") and James J. Belanger appeared on behalf of the Applicant. The Panel considered the testimony, admitted exhibits, the Joint Prehearing Statement and the State Bar's Supplement to Joint Prehearing Statement, Pre-trial Memorandums, and evaluated the credibility of the witnesses. At hearing, the rule requiring exclusion of witnesses was invoked. The State Bar at the conclusion of the hearing opposed the reinstatement having concluded that Applicant has not met his burden by clear and convincing evidence. The State Bar determined that Applicant has not demonstrated a sustained period of rehabilitation and that a recurrence of the misconduct is unlikely. The Panel now issues the following "Report and Recommendation," pursuant to Rule 65(b)(3), Ariz. R. Sup. Ct.

I. FINDINGS OF FACT

1. Applicant was first admitted to the practice of law in Arizona on May 10, 1986.

2. By Judgment and Order of the Supreme Court of Arizona, filed on June 15, 2011 in SB-11-0044-D (State Bar file number 09-1781), Applicant was suspended from the practice of law for a period of six months, effective July 15, 2011.

3. The six month suspension in this matter, which ultimately became the Judgment and Order of the Supreme Court of Arizona, was imposed *sua sponte* by the Disciplinary Commission after the Hearing Officer in this matter recommended a 30 day suspension.

4. In SB-11-0044-D, file no. 09-1781, Applicant's suspension was the result of his violations of 3.5(d) and 8.4, and Rule 41(c) and (g), Ariz. R. Sup. Ct. Mr. Banta disagreed with the judge's ruling, became abusive in open court, disregarded the judge's instructions, used a profanity, and then moved abruptly towards the prosecutor in what was perceived to be in a threatening manner.

5. By Order of the Presiding Disciplinary Judge of the Supreme Court of Arizona, filed on October 3, 2011 in PDJ 2011-9032 (State Bar file numbers 10-2197 and 11-0155,) Applicant was suspended for a period of six months and one day, effective the date of the Order.

In PDJ 2011-9032, Applicant's suspension was the result of violations of Rule 42, Ariz. R. Sup. Ct., Ct., specifically ERs 1.5(a), (b), and (d)(3), 1.15(d), 1.16(d), 3.5(d), 4.4(a), and 8.4(d), and Rule 41(c) and (g), Ariz. R. Sup. Ct.

In Count One, Applicant failed to perform a retrospective analysis, at the end of his representation of Mr. Densford, to determine if the fee was reasonable in light of the work actually required in the case; failed to retain evidence that he communicated the scope of the representation and the basis of the fee to the client in writing before or within a reasonable time after commencing the representation; failed to retain evidence that he notified Mr. Densford in writing, at the start of the representation, about the nonrefundable/earned upon receipt nature of the fee; and failed to provide Mr. Densford an accounting of the time he spent working on Mr. Densford's file.

In Count Two, Applicant's behavior during the hearing on January 6, 2011, was conduct likely to disrupt a tribunal; was disrespectful to Judge Metcalf and Detective Moncrief; and was prejudicial to the administration of justice.

6. Pursuant to the Agreement for Discipline by Consent, jointly submitted by Mr. Banta and the State Bar, the six months and one day suspension in PDJ 2011-9032 ran concurrent with the six-month suspension in SB-11-0044-D.

7. The State Bar joined in the Brief in Support of the Agreement for Discipline by Consent, which, as noted, requested a six months and one day suspension in PDJ 2011-9032 to run concurrent with the six month suspension in SB-11-0044-D.

8. Applicant was reciprocally suspended from the practice of law in Arizona by the U.S. Court of Appeals, Ninth Circuit, on September 14, 2011, due to his suspension by the Arizona Supreme Court on July 15, 2011. Applicant did not object to the imposition of reciprocal discipline.

9. Subject to being reinstated, Applicant's six months and one day suspension expired on January 12, 2012. Applicant was eligible to apply for reinstatement on October 14, 2011; however, Applicant did not apply for reinstatement until January 3, 2012.

10. Applicant's prior history includes a March 23, 2005 censure (now known as a reprimand), and one year probation, for violation of ERs 1.15(b), 1.15(c), in State Bar File nos. 02-1070, 02-1628 and 02-2066.

11. Applicant's prior history also includes an October 8, 2007 censure (now known as a reprimand), for violation of ERs 1.2, 1.3, 1.4, 3.1, and 8.4(d), in State Bar File no. 06-0115.

12. Applicant filed his Rule 72 Affidavit in file no. 09-1781 on July 25, 2011, and on November 19, 2011 in file nos. 10-2197 and 11-0155.

13. Applicant has paid in full all sums owing to the State Bar related to these discipline matters.

14. Applicant has not applied for reinstatement prior to this matter.

15. Applicant has not been employed in any capacity during the period of suspension. Applicant did volunteer work at Central High School in Phoenix, Arizona and applied for a substitute teaching certificate with the Department of Education, which was received March 26, 2012. At hearing he stated lived off of his savings during the period of suspension.

16. Applicant maintained a residence at 601 W. Linger Lane, Phoenix, during the period of suspension.

17. Applicant maintained the law firm address of 2228 W. Northern Ave., Ste. B212, Phoenix, AZ, as his address on record with the State Bar of Arizona.

18. Applicant has not been a party to any criminal action during his period of suspension.

19. Applicant has not been a party to civil litigation.

20. Applicant does not owe any amount to the Client Protection Fund.

21. Applicant does not owe delinquent membership dues and fees.

22. There has been no procedure or inquiry concerning Applicant's standing as a member of any profession or organization or holder of any license or office which involved the reprimand, removal, suspension, revocation of license or discipline of the Applicant.

23. There have been no charges of fraud made or claimed against Applicant during the period of rehabilitation, formal or informal.

24. Applicant did not take continuing legal education courses since his suspension. Applicant was notified of his MCLE delinquency for the 2010-2011 reporting year on November 17, 2011 and sent a certified notice of suspension letter on January 13, 2012.

25. Applicant complied with the MCLE requirements for the 2010-2011 reporting year by filing an Affidavit of Compliance on January 26, 2012.

26. Applicant has not participated in any formal counseling or treatment monitored by MAP. Applicant has attended weekly counseling sessions with Dr. Scott Sindelar.

27. Applicant filed for fee arbitration as agreed to in lieu of restitution in the Agreement for Discipline by Consent in State Bar File No. 10-2197 (Densford). Although the Agreement for Discipline was filed on August 23, 2011, and the final Judgment and Order filed on October 3, 2011, Applicant stated at hearing he filed

for fee arbitration on March 26, 2012. Applicant further stated that he delayed in filing the petition for fee arbitration because he did not have the funds available to pay an award, if ordered.

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

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. In addition, lawyers must also establish by clear and convincing evidence that they have identified the weakness(es) that caused the misconduct and demonstrate that they have overcome those weaknesses. *In re Arrotta*, 208 Ariz. 509, 513, ¶ 17, 96 P.3d 213, 217 (2004).

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

- 1) an applicant's character and standing prior to disbarment (suspension in this matter);
- 2) the nature and character of the charge for which disciplined;
- 3) an 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.

In re Robbins, 172 Ariz. 255, 256, 836 P.2d 965, 966 (1992) (citing *Application of Spriggs*, 90 Ariz. 387, 388 n. 1, 368 P.2d 456, 457 n. 1 (1962)). *Robbins* further held that when considering an application for reinstatement, the court's first concern is protecting the public.

Applicant's testimony

Applicant testified his issues in the past arose from stupidity, arrogance, a temper, a lack of professional decorum borne in equal parts from frustration and a lack of humility and empathy regarding the process of the law. Applicant stated he has had a personal epiphany about his issues; has shed his anger and frustration and now passed into a state of acceptance. Applicant stated that he feels that he is different person today because he better understands himself and understands the stressors that were keyed by frustration. His suspension caused him to do some soul searching, introspection and remediation. Applicant further stated that both he and his wife analyzed the stressors experienced at home and he has not raised his voice in over four months.

Applicant stated that although he has had some counseling in the past,¹ he has not experienced the level of skill possessed by Dr. Sindelar. Dr. Sindelar has provided a valuable insight into his past behavior and helped him develop a methodology and the coping skills to ensure past behavior is not repeated. Applicant advised that in addition to counseling, he has also participated in a disciplined lawyer support group, which he finds to be invaluable. Applicant further stated that his weaknesses were stress, arrogance, unreasonable expectations of others and frustration, coupled with an overall lack of understanding. He is committed to continued counseling with Dr. Sindelar so there are no recurrences of his past behavior. His therapy with Dr. Sindelar is the beginning of a process and they have effectively dealt with the anger issues and can start to deal with other issues, i.e. the anxiety attacks. Applicant

¹ Applicant testified that he has previously participated MAP but did not have formal effective counseling until his treatment with Dr. Sindelar.

testified he will avoid future pitfalls because he understands people act as they “should act” and he has reached the point that he is able to refrain from correcting people when they are wrong, understands his responsibility to others and that there is really no reason to get upset with people if you don’t agree. In the future, he will be better prepared and able to calmly share knowledge, if asked.

At the October 2010 hearing in the underlying discipline matter, Applicant stated he could not give the hearing officer assurances that he would not repeat the misconduct. At that time, he stated he did not fully understand or accept his weaknesses and what caused those weaknesses. Applicant further stated that what is different today is he has since learned skills and acquired the ability to walk away or to professionally make a record for an appeal in the courtroom. If reinstated, Applicant stated he will be on a “short leash” and is painfully aware if he engages in similar misconduct in the future, he will most likely be disbarred. In his mind, he has reached the point that he is able to effectively manage the anger.

Regarding the participation in fee arbitration contained in the Agreement for Discipline by Consent, Applicant testified that his petition for fee arbitration was submitted “yesterday” because he wanted to have funds available for any “shortfall” if it is determined that he owes Mr. Densford monies. [Applicant’s Hearing testimony].

Witness testimony

Tyler K. Allen, Esq.

Mr. Tyler testified he was admitted to practice in 2009 and currently is handling Applicant’s practice as a result of his suspension. The majority of cases involve representation of licensed commercial drivers in criminal and civil traffic matters. Mr. Tyler stated as a sole practitioner, he was introduced to Applicant by two other

attorneys that he rented office space with. He approached Applicant with some questions about a criminal traffic case he was defending and they became friends. Mr. Tyler stated he offered Applicant assistance during the transition to his suspended status as his schedule was flexible. Prior to the suspension taking effect, he shadowed Applicant for several weeks and they discussed the law.

Mr. Tyler stated he is aware of Applicant's prior discipline and that it relates to an inability to control his temper, but that he has never seen Applicant lose his temper or be offensive. Applicant has been a good mentor to him and has considerable expertise in the area of defending commercial licensed drivers. Other attorneys often call Applicant for guidance. Mr. Tyler stated Applicant has great rapport with his clients and cares about them and the outcome of their case.

Most representation is in the municipal city and justice courts; commercial drivers law is complex and you need to not only know the law of Arizona but also the way the law will effects the driver in their licensed (home state).

During the period of suspension, Mr. Tyler stated that on occasion, Applicant would answer general questions of law for him but Applicant did not meet with clients or engage in the unauthorized practice of law.

Shannon Leigh Peters, Esq.

Ms. Peters testified she considers Applicant to be an amazing mentor and friend. In her past employment and as a young lawyer, she would often find herself uninformed or ill-prepared and Applicant offered his knowledge and assistance to her. Ms. Peters stated that Applicant has always treated her with respect. She stated she is aware of Applicant's prior discipline but has never observed any aggressive behavior. Ms. Peters stated that Applicant has considerable knowledge in this unique

area of practice and in the past, has provided her with valuable guidance, constructive criticism and support. Ms. Peters stated that Applicant is highly regarded in this area of practice and is considered the "go to guy" in representing commercial drivers. Ms. Peters further stated that his presence in this practice area is missed.

Judy Banta

Mrs. Banta testified she received her clinical psychology degree in 1975 and has a doctorate in special education. She was a school counselor for 40 years and has since retired. Currently she is an adjunct professor at Ottawa College. She has been married to Applicant for 44 years and companions for 48 years so she knows him best. Ms. Banta stated that her husband is highly intelligent and it is her experience that gifted people project an outward appearance of arrogance. It is her opinion that this has contributed to his unprofessional behavior and a lack of respect for the court.

Mrs. Banta opined that the issues leading up to her husband's suspension were his temper and quickness to respond when he feels he is in the right and someone disagrees with him. In the last 12 months she sees a change in his day to day behavior. He is not angry anymore and does not use abusive language. The suspension changed his self concept and identity. The suspension caused a considerable financial hardship and contributed to the loss of his loss of self esteem.

Mrs. Banta stated that Applicant did not get it when he was previously censured. His identify as an attorney is extremely important to him and he see himself as the "champion of the little guy." She sees he is now more temperate in his responses. His shortcomings have led him to this point and he has had a significant awakening. He now realizes how short life is. He values family and his behavior has kept him from being the family patriarch and he feels he has let people down. He

finally reached a turning point, has re-evaluated his priorities and concluded that he needs to be a better person and grow. Mrs. Banta advised that since the suspension, the family has experienced some personal tragedies including the illness and death of her brother, and the financial responsibility for his family fell upon her husband.

Mrs. Banta advised that she has been supportive but has not participated in joint counseling session with her husband. She said she is willing to do so if Dr. Sindelar thinks it would be beneficial. Mrs. Banta stated that she perceived her husband's weaknesses to be his inability to demonstrate humility and accept others point of view. Mrs. Banta also stated that her husband grew up poor and lost his father at an early age. Because of his father's death, his mother was overprotective. His mother did not allow him to assume the role of the man of the house, which ultimately caused him to harbor some resentment towards his mother and caused some difficulty with authority figures. Because of the counseling sessions with Dr. Sindelar, Mrs. Banta stated her husband has made significant strides but that his rehabilitation is an ongoing process. She has observed that he has a new perspective on validating others views and does not berate them and now gives credence to suggestions from others and takes those suggestions to heart.

Scott Sindelar, Ph.D

Dr. Sindelar testified that Applicant has had approximately 13 sessions with him beginning on September 8, 2011. Dr. Sindelar opined that Applicant's issues from an emotional standpoint are a long standing history of depression² and

² In his underlying suspension imposed in February 2011, File No. 09-1781, Applicant offered evidence of mitigating factor, personal and emotional problems (depression) Those documents were sealed by Protective Order filed September 28, 2010.

accompanying anxiety that waxes and wanes depending on the stressors that occur, the threat of criticism or threat of personal attack, frustration and anger including a lack of understanding and coping skills regarding and where the anger comes from and the difference between assertiveness vs aggression. Applicant's lack of coping skills have caused him to engaged in his misconduct.

Dr. Sindelar stated that there were many significant stressors in Applicant's personal life including marital difficulties, his son's inability to progress in life and the financial difficulties from helping other family members. These things accelerated, Applicant could not cope, became overwhelmed and lost the ability to manage the stressors. He would arrive to work or the courtroom preloaded and predisposed to outbursts and it would not take much to set him off.

By examining his history and attempts at coping they were able to identify the significant family stressors that affected Applicant's work performance and examined the ineffectiveness of coping. Applicant was highly motivated to change. Through counseling they were able to focus on the dynamics of his anger and develop additional tools for the emotional and stress management.

Dr. Sindelar stated that Applicant has gained an understanding of his behavior. He has identified the triggers for anger and impulsive actions. He has learned to analyze his emotions and how he made errors based on them. Past attempts to address his behavior has not been successful as Applicant could not manage the stressors on his own and needed tools to help manage those stressors.

Has made significant progress and change has occurred. He has reduced his stress, learning formula and techniques to reducing level of frustration and anger which can lead to aggressive behavior. Since counseling sessions, his tolerance for

frustration is increasing; developed coping skills to deal with frustration and anger including practicing appropriate responses or non responses in provocative situations, which will prevent a recurrence of past behavior.

Dr. Sandelar recommends Applicant continue therapy to further address the anxiety and monitor his long standing depression issues. Applicant is "going forward" but his therapy is incomplete. More work is needed to address Applicant's anxiety issues but currently, he is emotionally healthy and has developed the necessary coping skills and a foundation that can be applied to specific areas. Breathing techniques are beneficial for anxiety issues and they would explore some of those additional tools in future therapy sessions and work on his interpersonal skills.

Dr. Sindelar acknowledged that he did not perform any psychological testing on Applicant as tests for anger are not that useful to him as he can obtain the needed information and result through conversation with them. Dr. Sindelar stated that Applicant did not meet criteria anti-social personality disorder and Applicant understands he is not above the law, a factor that is present in those with narcissistic personality disorders; we all have certain traits but that does not mean we have a disorder. Dr. Sindelar further stated that Applicant has always blamed himself and he finds that the frequency of Applicant's outbursts has diminished as well as the intensity and duration but he cannot say with any psychological certainty that the behavior would not reoccur. His impression is that Applicant has applied the principles and skills he has obtained and since therapy, has handled stressful situations differently. Dr. Sindelar advised that it is a change in attitude and that is going to dictate your emotional reaction. He further advised that a sustained period of rehabilitation is often measured by a time metric but he stated he looks more to

attitude changes and how person is dealing with and interpreting situations is key. He sees no evidence of malingering in his sessions with Applicant. Dr. Sindelar opined that Applicant possesses the intellectual and emotional insight to sustain these changes and not reoffend, but also recommends continued therapy.

Dr. Sindelar offered a copy of his psychological intake and progress notes from September 2011 – February 2012. The exhibit also includes a list of medications taken by Applicant but Dr. Sindelar noted that those medications generally are not ones that control this behavior . [Sealed Exhibit 13].

Susan Banta

Ms. Banta stated she is Applicant's daughter and an English teacher at Central High. Ms. Banta testified she is familiar with his past discipline history and initially, her Father was angered and hurt by his suspension, but since his therapy began, she has not seen him lose his temper. She has had discussions with him and he is now a different, calmer man. The suspension was life altering and he seems more self reflective; her Mother is doing her part too. She feels her Father now understands what triggers his behaviors and has tools to control his responses and look at both sides equally.

Ms. Banta advised that she coaches academic decathlon and in November 2011 and January-February 2012, her Father volunteered as an academic coach at Central High and was selected as a judge for a district competition. He enjoyed the environment and offered to help with the regional competition. He assists the students with public speaking, interview skills and posturing. He had a significant impact on the students and they request him as a coach.

Letters in Support and accepted offer of proof

Applicant presented seven (7) letters in support of his reinstatement which by stipulation are part of the record. See Exhibit 10.

Compliance with Disciplinary Rules and Orders

Applicant has complied with all applicable discipline rules and orders. Applicant paid the costs of the underlying discipline and complied with Rule 72, Ariz.R.Sup. Ct. (notice to clients and the court). It was noted during the hearing that fee arbitration with Densford has not yet occurred. Applicant advised he filed to participate in fee arbitration on the day before this reinstatement hearing. The Panel notes that the final Judgment and Order however, did not order Applicant to participate in fee arbitration. The language did however appear in the Agreement for Discipline by Consent in lieu of restitution to Mr. Densford and the Panel recommends that Applicant comply with the terms of the Agreement and any award issued by the fee arbitrator prior to being reinstated by the Court.

There have been no allegations that Applicant engaged in the unauthorized practice of law during the suspension period.

Competence and Fitness to Practice

Applicant's underlying discipline matter did not involve violations of ER 1.1 (competence). He has completed his continuing legal education requirements for the year 2010 – 2011 and filed his affidavit on January 26, 2012.

Rehabilitation

The Panel was concerned that Applicant has had these issues in the past and has not respond to progressive discipline or to efforts of rehabilitation, however,

with counseling the record supports that Applicant has made significant progress in his rehabilitation.

It is foundational that "Attorney discipline serves to protect the public, the legal profession, and the legal system, and to deter other attorneys from engaging in unprofessional conduct." *In re White-Steiner*, 219 Ariz. 323, 325 ¶ 9, 198 P.3d 1195, 1197 (citing *In re Scholl*, 200 Ariz. 222, 227 ¶29, 25 P.3d 710, 715 (2001)). It is fundamental that "[a]nother purpose is to instill public confidence in the Bar's integrity." *In re Phillips*, 226 Ariz. 112, 117 ¶ 28, 244 P.3d 549, 554 (2010); also "assisting, if possible in the rehabilitation of the errant lawyer." *In re Scholl*, 200 Ariz. 222, 25 P.3d 710 (2001).

In matters of reinstatement, the Supreme Court of Arizona has held that evidence of rehabilitation is accepting responsibility for past misdeeds; testimony from those in the community with knowledge of the applicant's behavior during period of suspension; testimony from mental health professionals; participation in community or charitable organizations; specialized instruction, education or counseling may provide the positive action to establish rehabilitation. *Arrotta* at 515-516, ¶¶ 29-31, 96 P.3d at 219-20. In addition, an applicant must demonstrate that he has corrected the weaknesses that led to the unethical behavior. *Arrotta* at 513, 96 P.3d at 217 (citing *In re Wiederholt*, 24 P.3d 1219, 1224 (Alaska 2001)).

"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." (citation omitted); *Matter of Robbins*, 172 Ariz. 255, 256, 836 P.2d 965, 966 (1992).

There are multiple questions that always arise when an attorney with multiple occurrences seeks readmission. At its core, the Hearing Panel must be convinced that Applicant can be trusted. Here, the Panel has confidence that Dr. Sindala has found the key to Applicant's past behavior. He has equipped, in the most basic sense, Applicant with the tools to overcome these past unethical obstacles that have hindered him as an attorney. However, knowledge alone is not sufficient to overcome the problems of life. It is the application of knowledge in the daily stressors of practice and life that demonstrate the wisdom needed to be an overcomer, rather than be overcome. Respondent must continue to demonstrate that he has the coping skills necessary for the onslaught of professional life. Probation is critical in this regard.

The Panel is satisfied that Applicant now understands the cause of his misconduct, his contributions to the misconduct, and possesses the necessary steps and coping mechanisms to reduce the likelihood that the behavior will return.

III. Conclusion

The Panel finds that Applicant has met his burden of proof and established, by clear and convincing evidence, his rehabilitation, compliance with all disciplinary orders and rules, fitness to practice and competence as required by Rule 65 and as set forth in *Arrotta*. The Panel therefore, recommends that Applicant be reinstated to the practice of law *conditional* on his compliance with any award order by fee arbitration, placed on two years of probation (MAP) and pay costs associated with these proceedings. The recommended terms of probation are as follows:

Terms of Probation

1. Applicant shall be placed on two (2) years of Probation with the State Bar's Member Assistance Program (MAP) effective the date of the Order of Reinstatement. The terms of probation are as follows:

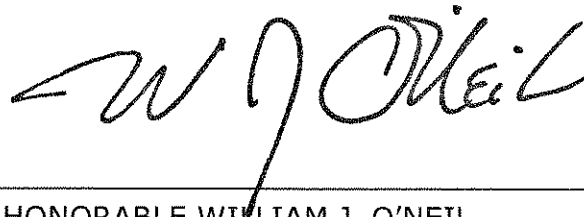
2. Within thirty (30) days of the Order of Reinstatement, Applicant shall contact the MAP director and schedule an assessment. Respondent shall thereafter enter into a contract based upon the recommendation made by the MAP director or designee. Applicant shall comply with all recommended terms and pay costs associated with MAP. Those recommendations shall be incorporated herein by reference.

3. Applicant shall continue his counseling sessions with Dr. Sindelar who the counselor provide a counseling report to the MAP director every 60 days for the first year of probation and quarterly, thereafter.

4. 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 (30) 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.

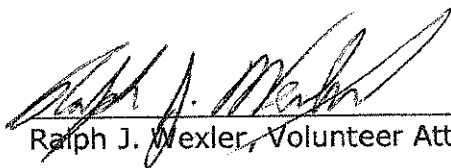
5. Applicant shall pay the costs of these proceedings. The State Bar shall submit a Statement of Costs and Expenses pursuant to Rule 60(b), Ariz.R.Sup.Ct. Respondent may file objections within five (5) days of service of the Statement of Costs and Expenses and shall serve a copy on the State Bar and the Disciplinary Clerk.

DATED this 26th day of April, 2012



THE HONORABLE WILLIAM J. O'NEIL
PRESIDING DISCIPLINARY JUDGE

CONCURRING:



Ralph J. Mexler, Volunteer Attorney Member



Ben Click, Volunteer Public Member

Original filed with the Disciplinary Clerk
of the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 26th day of April 2012.

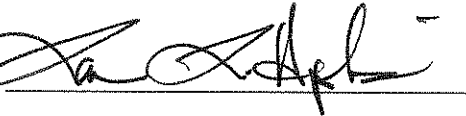
Copies of the foregoing mailed/emailed
this 26th day of April 2012, to:

Copy of the foregoing hand-delivered/emailed
this 26th day of April 2012, to:

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by  _____