

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

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

HUBERT S. SINCHAK,
Bar No. 020682

Applicant.

PDJ-2013-9022

REPORT AND RECOMMENDATION

FILED SEPTEMBER 6, 2013

On August 9, 2013, the Hearing Panel ("Panel") composed of public member, Mel O'Donnell, attorney member, Kenneth L. Mann, 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. Hunter F. Perlmeter appeared on behalf of the State Bar of Arizona ("State Bar") and Nancy A. Greenlee appeared on behalf of Applicant. The witness exclusionary rule was invoked. The Panel considered the testimony, the admitted exhibits, the parties' Joint Prehearing Statement, the State Bar's Individual Pre-Hearing Statement and evaluated the testimony and credibility of the witnesses, including Applicant.¹

The State Bar opposes 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.

¹ Consideration was given to the testimony of Hubert S. "Hubie" Sinchak ("Applicant"), Karen Sinchak Higby, Esq. (Applicant's mother and employer), Jerry C. Bonnett, Esq., Ronald Adams, Esq., Joel Klinge, Esq., Patrick Quigley, Ph.D., and Aixza Sinchak (Applicant's wife).

I. PROCEDURAL HISTORY

Mr. Sinchak was admitted to practice in Arizona on October 29, 2001 and suspended for six (6) months and one (1) day effective March 13, 2008 for violating ERs 1.1 (competence), 1.7 (conflict of interest), 1.9 (duties to former clients), 1.16 (declining/terminating representation), and 8.4(d) (engage in conduct prejudicial to the administration of justice). [Hearing Exhibit 6, Bates 000046 ¶1] The offending conduct, more particularly described below, was a series of ethical violations regarding a client matter over a period of approximately nine months beginning in early November 2005. [Hearing Exhibit 6, Bates 000046-51] Prior to these actions he had been a practicing attorney for four years with an emphasis on wills, trusts, and estate and trust administration.

The misconduct of Mr. Sinchak in the underlying discipline matter was deemed admitted as a result of the entry of default. He did however, appear and participate in the aggravation/mitigation hearing. At his reinstatement hearing, Mr. Sinchak explained his actions leading to his default as having been the result of his "putting his head in the sand," putting the Bar's complaint, etc., in a desk drawer, and childishly hoping everything would miraculously go away. His misconduct is briefly summarized as follows:

(A) Mr. Sinchak was retained to assist a client in probating an estate, but he failed to obtain a signature on his fee agreement.

(B) He also filed an application for informal probate that was rejected by the court because of an error regarding the number of children involved.

(C) Mr. Sinchak thereafter refused the client's request for a copy of the erroneous documents and demanded further payment for continued representation. The client terminated Mr. Sinchak and hired new counsel, who subsequently requested the client's file.

(D) Mr. Sinchak did not forward the file (in particular, the original will) and asserted he was entitled to place a lien on the file because of his outstanding legal fees. The client filed an inquiry with the State Bar, which, expressly citing ER 1.16, urged Mr. Sinchak to promptly return the file to the client. [Hearing Officer's Report, ¶ 35, Hearing Exhibit 6 at 000049] Nevertheless, the following day, Mr. Sinchak rejected the Bar's urging and adhered to his view that he had an attorney's lien on the case file, including the will, because of his outstanding bill for legal services. [*Id.* ¶ 36]

(E) Mr. Sinchak continued to file documents on the client's behalf even though his services as a lawyer had been terminated. Mr. Sinchak also petitioned the court to be appointed personal representative and special administrator.

(F) Compounding the forgoing, Mr. Sinchak did not notify the former client or new counsel that he had filed documents with the court seeking the appointments, ignored statutory requirements in doing so, and was appointed Special Administrator.

In the underlying matter, the Hearing Officer expressly found as an aggravating factor, under ABA Standard 9.22(b) of the *ABA Standards for Imposing Lawyer Sanctions (1991 ed.)*, that Mr. Sinchak acted with a dishonest or selfish motive. Mr. Sinchak had, along with other related conduct, withheld documents to which his client was entitled. The hearing officer found Mr. Sinchak "was motivated by his desire to obtain payment of his fees; Applicant's argument at the [aggravation/mitigation] hearing to the contrary was not credible." [Hearing Officer's Report, Hearing Exhibit 6, Bates 000055, Lines 1-3]

If reinstated Mr. Sinchak was ordered to be placed on probation for two years with the State Bar's Law Office Management Assistance Program ("LOMAP") and

Member Assistance Program ("MAP"). [Final Judgment and Order filed February 12, 2008; Hearing Exhibit 1]

While at the reinstatement hearing, Mr. Sinchak disagreed that a selfish or dishonest motive was considered as a factor in his suspension, the record speaks for itself. The Disciplinary Commission unanimously recommended the "accepting and adopting the Hearing Officer's findings of fact, conclusions of law, and recommendation ..." The Supreme Court followed that recommendation. [*Id.* at Bates 000060]

Mr. Sinchak filed his Application for Reinstatement on March 12, 2013, one day before he would have otherwise been subject to the additional requirement that he also retake and pass the bar examination as set forth in Rule 64(c), Ariz.R.Sup.Ct.

II. FINDINGS OF FACT² AND DISCUSSION

1. As noted above, Mr. Sinchak was first admitted to the practice of law in Arizona on October 29, 2001.

2. By Order of the Supreme Court of Arizona dated February 12, 2008, Mr. Sinchak was suspended from the practice of law in Arizona for six months and one day, effective March 13, 2008.

3. Mr. Sinchak's suspension was a result of violations of ERs 1.1, 1.7, 1.9, 1.16 and 8.4(d).

4. Mr. Sinchak had no prior disciplinary history.

5. Mr. Sinchak has not applied for reinstatement prior to this matter.

6. Since his suspension, Mr. Sinchak has worked as a paralegal at Sinchak & Associates P.C., 8901 East Pima Center Parkway, Suite 135, Scottsdale, Arizona 85258.

² Findings 1-18 are stipulated facts set forth in the Joint Prehearing Statement filed May 21, 2013.

7. Mr. Sinchak's job responsibilities primarily involve preparing estate planning and probate documents, transferring assets to trusts, working on estate administration issues, doing legal research, tracking the probate calendar, and filing probate pleadings.

8. Mr. Sinchak lived at two residences during the period of suspension. Mr. Sinchak's residence at 4232 East Everett Drive, Phoenix, Arizona 85048, was sold at auction on August 16, 2010. In April of 2010, Mr. Sinchak moved into a rental property located at 16018 South 34th Way, Phoenix, Arizona 85048.

9. The IRS filed a \$68,000.00 [rounded] federal tax lien against Mr. Sinchak in April of 2012. Mr. Sinchak did not disclose the tax lien in listing financial obligations in his application for reinstatement.

10. Mr. Sinchak has not been a party to any criminal action during the period of suspension. [The parties stipulated to the foregoing language but listed (a) and (b) below and recited "Applicant pled guilty" as to both.]

a. In January 2009, Mr. Sinchak pled guilty to driving on a suspended /revoked license.

b. In August 2011, Mr. Sinchak pled guilty to failure to stop for a red light.

11. Mr. Sinchak has been a party to a civil action during the period of suspension.

a. Mr. Sinchak was a named defendant in *Nevin et al. v. Sinchak et al.*, CV2009-007761, Maricopa County Superior Court, filed March 5, 2009. A settlement was reached in the case.

12. Mr. Sinchak has taken continuing legal education courses since being suspended.

13. While the parties stipulated that Mr. Sinchak's notary license had been suspended we find consistent with the stipulated exhibit that it was actually

revoked. [Hearing Exhibit 21, Bates 000517] It was revoked as a result of his failure to disclose his suspension from the practice of law to the Secretary of State's Office in completing his notary application. The application asked, "Have you ever had a professional license revoked, suspended, restricted, or denied for misconduct, dishonesty, or any cause that substantially relates to the duties or responsibilities of a notary public?" Mr. Sinchak checked a box marked "No". Mr. Sinchak has requested a hearing on the revocation of his notary license and same [was] set for July 2013.

14. Mr. Sinchak, as part of his employment, has served as trustee and personal representative in one matter during his period of suspension: In the Matter of the Estate of Helen Fredericks.³

15. Attorneys for St. Jude's Children's Research Hospital moved to have Mr. Sinchak removed as trustee in October of 2011, for his repeated failures to respond on multiple occasions to their requests for information concerning the estate.

16. The attorneys for St. Jude's agreed to continue the hearing concerning their attempt to remove Mr. Sinchak as trustee when Mr. Sinchak's mother, as the attorney for the trustee, and who was known to and respected by counsel for St. Jude's, assured them that she expected a final accounting to be completed in 30 to 60 days. Yet, Mr. Sinchak did not complete a final accounting for more than one year.

17. Mr. Sinchak entered into a voluntary contract with the State Bar's Member Assistance Program. He has been in compliance with the terms of his voluntary contract.

³ The Panel notes that one of Applicant's character witnesses, Attorney Klinge, whose practice focuses on wills and trusts, acknowledged in response to a question from the Panel that it was unusual in his experience for a paralegal to serve as a trustee.

18. After his suspension, Mr. Sinchak did not file an affidavit pursuant to Rule 72(e), Ariz.R.Sup.Ct. Mr. Sinchak was not attorney of record for any clients on the date of his suspension and therefore had no clients or opposing counsel to notify of his suspension.

19. Mr. Sinchak testified his conduct which resulted in his being suspended was the result of immaturity, too big an ego, and related factors. We agree that these were factors, but we disagree they were the exclusive factors. As cited above, Mr. Sinchak also denied he had a dishonest or selfish motive in refusing to deliver the will to the former client or her attorney. The Hearing Panel declines to give credence to his collateral attack in opposition to the Hearing Officer's findings. Combined with the other factors discussed below, we find his testimony troubling and not entirely credible.

20. Mr. Sinchak claims he has matured greatly during these past five years. He attributes this to several factors. These include getting married to a wonderful woman, struggling through serious depression after his suspension, counseling, and having an established active mentor group that he will turn to if he has a legal or ethical question. He testified that he is now more responsible and is confident he will adhere to the profession's standards. He believes he is ready and is eager to return to the practice of law.

21. Yet, several events during his suspension as well as during this proceeding, preclude this Panel from recommending that Mr. Sinchak has been rehabilitated and has the present ability, willingness, and commitment to adhere to the ethical conduct required by the supreme court and justifiably expected by the public. We do consider an applicant's conduct subsequent to the imposition of discipline. *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)). His failure to file multiple tax returns, his avoidance of his accrued federal tax

obligation and failure to list this obligation on his reinstatement application are sufficient reasons to recommend denial of reinstatement. When those failings are coupled with the three other events described below, their totality constitutes more than sufficient reason to doubt both his rehabilitation and his fitness to practice.

22. In 2010, when Mr. Sinchak and his wife lost their home to foreclosure and were desperate for a place to move on short notice, either she or they falsified his occupation, their income, and a source of their income to their landlord in a rental application. The application stated he was an attorney (as opposed to a paralegal) and that besides his salary he made additional income as a “free lance attorney.”

23. Mr. Sinchak and his wife claimed at the hearing that he had signed the rental application in blank without reading it, as he relied upon and trusted his wife to fill it out. His wife testified she had also inflated their income to be assured the landlord would accept them as tenants because they were desperate for a place to live due to the loss of their home to foreclosure.

24. Mr. Sinchak’s wife testified that the handwriting stating “broken tile – kitchen” in elaboration of one of the questions was in *Mr. Sinchak’s* handwriting. [Hearing Exhibit 20, Bates 000516] That handwriting appears on one of the pages he signed. As a result it appears that he *did not* sign in blank.

25. In addition, Mr. Sinchak’s deposition testimony about their desperation to find a place to rent can reasonably be interpreted as inferring that he signed *after* one of them filled out the form rather than beforehand:

Obviously, if I signed it, I’m going to take responsibility for having read it. I might have done it online and, you know, at the time, I was losing that house, and I was kind of desperate to get into the next house. The only thing I could think of is I wanted to make sure they would accept my qualification.

Frankly, I don’t recall this. Everything else I put – I’m careful to put paralegal or legal assistant.

[Hearing Exhibit 25, Bates 000556 at 35/lines 6-15]

26. The burden of proof in proving rehabilitation is upon Mr. Sinchak. While the foregoing is not conclusive evidence that Mr. Sinchak made the misrepresentations on the rental application or signed after and with knowledge thereof, as opposed to signing in blank, the evidence was disconcerting for the hearing panel. In isolation, both the passage of time and his efforts at rehabilitation might have led us to give this less weight. However, his other actions combine to call his testimony into further question.

27. In 2005, Ms. Helen R. Fredericks executed her Last Will and Testament along with a Living Trust. She named Mr. Sinchak's mother, Karen K. Sinchak-Higby as personal representative and apparently as Trustee. Both documents were notarized by Hayden Sinchak. [Exhibit 10 Bates 0000178-185]

28. Upon the death of Ms. Fredericks, Ms. Sinchak-Higby, knowing the estate had no assets declined to serve as personal representative and declined to serve as trustee in favor of her son and employee, Mr. Sinchak. While an employee of his mother's law firm Mr. Sinchak hired his mother as the attorney for the Personal Representative. She testified that as attorney for the Personal Representative, her sole duty was to her son. The estate was opened in October 2008. [Testimony of Karen K. Sinchak-Higby]

29. The sole beneficiary of the trust was ALSAC St. Jude's Hospital that was represented by *Hoopes and Adams, PLC*. Mr. Ronald P. Adams on behalf of the firm requested from Mr. Sinchak an inventory on November 10, 2008, and December 9, 2008. Mr. Sinchak finally replied by email on February 4, 2009 with a partial inventory and a "laundry list of tasks to be completed." [Testimony of Ronald P. Adams and Exhibit 11]

30. Mr. Sinchak promised monthly reports. He failed to deliver those reports or make any other responsive correspondence. On May 7, 2009 a letter

was sent to Mr. Sinchak by Mr. Adams regarding a life insurance policy which was apparently to benefit the trust. Mr. Sinchak made no effort to respond. On April 21, 2010, Mr. Adams again made request for information regarding the trust and estate status. Having received no response from Mr. Sinchak to the letters or phone calls from Mr. Adams, a motion to remove him as personal representative and trustee was filed with the court on October 11, 2011. His mother set his fees for acting as personal representative and trustee at \$250 per hour. His fees were approximately \$30,000. The estate apparently remains open. No explanation was given for why there was no effort to respond to Mr. Adams from March 2009 to the filing date of the motion on October 11, 2011. [Exhibit 10, Bates 000125-157]

31. In filing an application for a notary public license in July, 2012, Mr. Sinchak was required to answer the following question under oath.

Have you ever had a professional license revoked, suspended, restricted, or denied for misconduct, dishonesty, or any cause that substantially relates to the duties of a notary public? If yes, attach an explanation statement. [Hearing Exhibit 17, Bates #000356]

He answered "no" and thereby failed to disclose that he had been suspended from the practice of law. He admitted in his deposition that the question gave him *brief pause*. [Hearing Exhibit 25, Bates 557 at page 41/lines 14-19]

32. He testified that he interpreted it as only inquiring about the existence of license suspensions that relate to a notary's duties; and he explained that because he didn't think his conduct that cost him his active license was related to a notary's duties, he concluded after his brief pause that he could permissibly answer it "no."

33. Mr. Sinchak's nondisclosure on his notary renewal application was compounded by what he wrote on May 31, 2013, to contest the revocation of his notary license after the Secretary of State's office learned of his nondisclosure. In doing so, he misquoted question 4b of the application to bolster his argument.

[Hearing Exhibit 22, Bates 000519] His conduct regarding his notary renewal application also appears inconsistent with his claim that as part of his rehabilitation, he learned the importance of developing a mentoring group to seek advice from when uncertain about important ethical or legal issues. Mr. Sinchak offered no evidence that he sought such guidance from any of his mentors (or for that matter, from the Secretary of State or statutes or administrative rules) in answering the question on his notary renewal application that he concedes gave him brief pause.

34. Again, in isolation, this event, while more disconcerting because of its current nature, might not necessarily cause us to recommend denial. However, the combination of these events concerns us. It appears to be a pattern of either a remarkably convenient inattention or worse. When coupled with his federal tax issues that are discussed below, it is more than troubling. Regardless, we find this to be another troubling misrepresentation by him. Because this event is far more recent in time, it gave us greater concern regarding his rehabilitation.

35. Most troubling, Mr. Sinchak failed to disclose on his application for reinstatement that by 2012, he had an outstanding income tax obligation of approximately \$68,000. Although Mr. Sinchak claimed he did not know of the recording of the *lien*, he failed to give a cogent explanation at the reinstatement hearing as to why he had failed to disclose on his application the *obligation* and consequential liability for unpaid federal income taxes.

36. In his deposition, Mr. Sinchak testified he knew he had an outstanding federal tax obligation, but not the specific amount, nor that a lien had attached. "You know, I know that there was probably going to be some amount, but I didn't know a specific amount, or I didn't have a specific idea as to what it might be." [Hearing Exhibit 25, Bates 000555 at page 30/lines 18-20]

37. He claimed that the obligation related his failure to file tax returns in "maybe 2003, 2004, 2005, I don't know off the top of my head ... when I had

income that was self-employment income that I did not properly have withholding done. [*Id.* at page 30/lines 23-25, Page 31/lines 2-3]

38. At the reinstatement hearing, Mr. Sinchak elaborated that he not only hadn't paid income taxes for a number of years, but he also had *failed to file* income tax returns for about five years (roughly 2001-2005). Mr. Sinchak sought to minimize the impact of his failure to file and failure to pay by again attributing this conduct to his prior immaturity and poor judgment, and by informing the Hearing Panel that he has only recently obtained a tax advisor who is helping him submit an offer in compromise to IRS, and that the tax advisor is confident they can resolve it. [Hearing Testimony of Hubert Sinchak]

39. Mr. Sinchak did not explain why he failed to report the tax obligation on his application or why he failed to file tax returns for multiple years when he knew they were required to be filed. We are persuaded that his reason was to try to conceal it from the Bar and this Court.

40. One of Mr. Sinchak's character witnesses was Mr. Bonnett. He testified that Mr. Sinchak had told him he didn't think he had to report his tax obligation on his application because it didn't occur to Mr. Sinchak that the obligation was a debt. Mr. Sinchak informed him he thought it was merely a *request* by IRS for payment. [Hearing Testimony of Jerry C. Bonnett, Esq.]

41. We are troubled that Mr. Sinchak testified that he *knew* he hadn't filed income tax returns for a number of years, had sufficient income that would require the returns be filed and knew he owed unpaid taxes. As importantly, we are troubled that Mr. Sinchak has only shortly before this hearing, and very possibly, only *because* of this hearing, taken any steps to resolve his obligations regarding his several years of unfiled income tax returns.

42. His psychologist, Dr. Patrick Quigley, discussed his finding of poor impulse control by Mr. Sinchak. His diagnosis and conclusion of rehabilitation was

based on what was reported to him. However, Mr. Sinchak did not report the failure to report his federal tax obligation on his reinstatement application to Dr. Quigley, nor that he had failed to file multiple returns or even that he has amassed a large federal tax obligation. Dr. Quigley testified that Mr. Sinchak was receptive to treatment within certain parameters but in considering his difficult past, was still in transformation. We, unfortunately, find the transformation not complete until Mr. Sinchak substantially addresses these tax issues and more adequately explains his prolonged failure to do so.

43. The general standard for readmission is set forth within Supreme Court Rule 64(a). In order to be reinstated to the active practice of law, a lawyer must show by clear and convincing evidence that the lawyer has been rehabilitated and possesses the moral qualifications and knowledge of the law required for admission to practice law in this state in the first instance. An individual seeking readmission has the weight of his or her unethical behavior added to the balancing of those scales. There is a resultant greater burden of proving rehabilitation and good moral character than that required for admission in the first instance. We are confident that a candidate for admission in the first instance would not be admitted without a resolution of resultant issues arising from failures to file multiple tax returns when required, especially with an unaddressed federal tax obligation and no effort to resolve that obligation prior to the application.

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

A lawyer seeking reinstatement must prove by clear and convincing evidence his or her rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice, and competence. Rule 65(b)(2).

Additionally, the Supreme Court of Arizona has held that the following factors also are considered in matters of reinstatement: (1) the applicant's character and standing prior to disbarment (suspension in this instance); (2) the nature and

character of the charge(s) for which disciplined; (3) the 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. *Matter of Arrotta*, 208 Ariz. 609, 96 P.3d 213 (2004).

An applicant for reinstatement is required to demonstrate rehabilitation by clear and convincing evidence. The applicant must prove by clear and convincing evidence that his or her disability has been overcome. *In re Johnson*, 231 Ariz. 556, 298 P.3d 904 (2013). Obviously, one must acknowledge the disability before one can overcome it. While an applicant need not pull back the "multiple layers of causation or psychoanalysis," the "applicant must clearly and convincingly prove rehabilitation by specifically identifying the causal weakness leading to each count and explaining how the weakness has been overcome." *Johnson supra at ¶ 13*.

Rehabilitation

The Panel finds the evidence supporting Mr. Sinchak's claim of rehabilitation is not credible. Indeed, he still doesn't acknowledge an aggravating factor in his suspension was greed if not dishonesty. And the underlying cause of Mr. Sinchak's disclosures and non-disclosures *after* he was suspended, including those specifically made in connection with his bid for reinstatement, are unfortunately more consistent with dishonesty than inadvertence.

In the case, *In re Johnson*, 231 Ariz. 556 at ¶¶ 18, 19, 298 P.3d 904 (2013), our Supreme Court emphasized the importance of an applicant for reinstatement demonstrating by actions that the applicant has "realigned" his or her moral compass, thus serving rehabilitation and thereby addressing the weaknesses that led to the misconduct:

Here, Johnson's charitable activities, community involvement, and recommitment to his faith are specific actions he took to overcome his prior shortcomings.

Community service, religious commitment, and meditative reflection are not a panacea for applicants seeking reinstatement. But in this case, Johnson's actions served to advance his rehabilitation. Those actions were designed to realign Johnson's moral compass and recalibrate his approach to developing personal and professional relationships, thereby addressing the weaknesses that led to his misconduct. We also find significant that Johnson engaged in the various rehabilitative activities throughout his extended time away from the practice of law.

The contrast between Mr. Johnson's successful efforts at rehabilitation and Mr. Sinchak's professed efforts are stark.

Compliance with Disciplinary Rules and Orders

Supreme Court Rule 65(a)(3)(B) requires verification of payment of any sums owing by the lawyer to the client security fund. Verification of such payment must accompany the application for reinstatement. Mr. Sinchak has provided an affidavit from the Client Protection Fund Administrator that no claims have been filed against him. [Hearing Exhibit 7, Bates 000063]

There are no allegations of the unauthorized practice of law during the period of suspension. Mr. Sinchak paid his filing and application fee totaling \$1,100.00. [Hearing Exhibit 7, Bates 000065, Affidavit of Sandra E. Montoya]

Mr. Sinchak further paid the costs in the underlying discipline matters. [Hearing Exhibit 7, Bates 000064, Affidavit of Sandra E. Montoya]

Pursuant to Rule 72(a), Ariz.R.Sup.Ct., once Mr. Sinchak's suspension became effective, Mr. Sinchak was required to notify clients of his inability to represent them and to inform the court of his compliance via affidavit. Rule 72(e). Mr. Sinchak testified that he did not comply with the requirements of Rule 72 because he did not have any clients at the time of his suspension.

Competence

Mr. Sinchak testified that he has remained active in the legal field as a paralegal, by attending continuing legal education seminars involving estate planning and probate, and attending meetings involving practice methods and practice management. [Hearing Exhibit 5, Bates 000043] Additionally, Mr. Sinchak has taken 5.75 hours of continuing legal education during the period of suspension. [Hearing Exhibit 26]

However, as discussed above and in the "Fitness to Practice" section below, it is unclear to the Panel, assuming Mr. Sinchak has taken adequate continuing education training in legal ethics during his suspension, that Mr. Sinchak has retained a sufficient amount of the knowledge he may have gained from that training.

Fitness to Practice

Based on the issues posed by Mr. Sinchak's post-suspension conduct discussed above, the Hearing Panel is concerned about Mr. Sinchak's present fitness to practice law.

IV. CONCLUSION

We do not ignore the credit that is due Mr. Sinchak in his efforts at rehabilitation. We likewise applaud the decision of Mr. Sinchak to delay the filing his application for reinstatement for so many years. It is clear to us that his past struggles were significant and difficult to overcome. We do not require perfection of an applicant. We are aware that innocent mistakes in judgment can occur. As a result we do find the two events during Mr. Sinchak's suspension that involved misrepresentations to be less significant than his prolonged failure to meet his federal tax return filing and payment obligations. However, as explained above, those events cast additional doubt upon his credibility and his rehabilitation in light of his multiple federal tax issues.

Mr. Sinchak generally referred to his weaknesses as “putting his head in the sand,” immaturity and too big an ego. He testified he would unrealistically hope that everything would miraculously go away. We generally refer to these as his avoidance behavior. Dr. Quigley referred to his “behavioral deficits.” [Exhibit 18, Bates 0000497] He also generally diagnosed him. [Exhibit 19, Bates 0000513] We evaluated the above described events by considering his identified weaknesses with his actions or inaction regarding each of these events to determine whether rehabilitation has occurred.

It is not surprising that his avoidance behavior was prevalent in 2010, regardless of what occurred regarding the rental agreement. Whether intentional, inadvertent or negligent it demonstrates avoidance behavior. That weakness remained unresolved in 2011 as demonstrated by his unexplained repeated failure to communicate with counsel for St. Luke’s for over 18 months. However, we also recognize he had not yet received counseling at those times and thus had few tools in place to overcome his weaknesses.⁴

Yet, on June 21, 2012, [Exhibit 17, Bates 000356], despite his ostensible progress and insights gained from his numerous counseling sessions with Dr. Quigley during the first quarter of 2012, we find the same avoidance behavior in place regardless of whether he misread or intentionally gave a misleading answer on his notary application. By May, 2013 his counseling was long concluded when he wrote the Secretary of State requesting a reconsideration of the revocation of that notary license – and misquoted, in that request for reconsideration, the application’s question that gave rise to the notary license revocation .

⁴ Mr. Sinchak did not enter into MAP until December 13, 2011 [Exhibit 18, Bates 000440), which included his undertaking numerous counseling sessions with Dr. Quigley from January 4, 2012 through March 27, 2012. [Exhibit 19, Bates 000512-13]

As explained above, most troubling is his avoidance of his tax obligation that he knew was long existent, and did not list on his application.

In summary, it is the Panel's report and recommendation that Mr. Sinchak's application should be denied at this time because his actions, at worst, contradict, and at best, cast reasonable doubt upon the credibility of his claim of rehabilitation. We are not convinced that he truly understands the underlying weakness that was the cause of his suspension. If he does understand these matters, then we are convinced he is not yet properly implementing the tools needed to sustain his attempt at rehabilitation.

Under the circumstances described above, in any future application for readmission, Mr. Sinchak should be required, at a minimum, to prove he has followed through with a demonstrable resolution of his federal tax filing and payment obligation and to prove a consistent multi-month pattern of payments towards that obligation. As stated above, we firmly believe this would be required for admission to the practice law in this state in the first instance of any applicant. Mr. Sinchak is not an applicant of first instance.

Accordingly, we find he has failed to demonstrate to this Panel his present rehabilitation, fitness to practice, and competence by clear and convincing evidence, as required by Rule 65(b)(2).

V. RECOMMENDATION

The Panel determined that Mr. Sinchak has failed to meet his burden by clear and convincing evidence, and therefore recommends that reinstatement be denied.

DATED this 6TH day of September, 2013.

/s/ William J. O'Neil

WILLIAM J. O'NEIL, PRESIDING DISCIPLINARY JUDGE

CONCURRING

/s/ Mel O'Donnell

Mel O'Donnell, Volunteer Public Member

/s/ Kenneth L. Mann

Kenneth L. Mann, Volunteer Attorney Member

Original filed with the Disciplinary Clerk
this 6th day of September, 2013.

COPY of the foregoing mailed/emailed this
6th day of September, 2013, to:

Hunter F. Perlmeter
Staff Bar Counsel
STATE BAR OF ARIZONA
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
E-mail: lro@staff.azbar.org

Nancy Greenlee
821 E. Fern Dr. North
Phoenix, AZ 85014-3248
E-mail: nancy@nancygreenlee.com
Applicant's Counsel

Sandra Montoya
Lawyer Regulation Records Management
STATE BAR OF ARIZONA
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288
E-mail: lro@staff.azbar.org

by: MSmith