

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A SUSPENDED
MEMBER OF THE STATE BAR OF
ARIZONA,

RORY L. WHIPPLE,
Bar No. 014093

Applicant.

PDJ-2021-9036-R

**REPORT AND
RECOMMENDATION**

[State Bar No. 21-1016-R]

FILED November 12, 2021

On May 11, 2021, Rory L. Whipple filed an application for reinstatement pursuant to Rule 65, Ariz. R. Sup. Ct. An evidentiary hearing was held on September 16, 2021 before a hearing panel comprised of Presiding Disciplinary Judge Margaret H. Downie, attorney member Teri M. Rowe, and public member W. Keith Turner. Deputy Chief Bar Counsel Amy K. Rehm appeared on behalf of the State Bar. Mr. Whipple was present and was represented by Nancy A. Greenlee.

The parties stipulated to a number of facts and exhibits, some of which were filed under seal. The following individuals testified at the hearing:

- Patrick Quigley, PhD.
- Rory L. Whipple

At the conclusion of the hearing, bar counsel advised that the State Bar does not oppose reinstatement. For the following reasons, the hearing panel recommends that Mr. Whipple be reinstated to the practice of law in Arizona, subject to a two-year term of probation with specified terms.

FINDINGS OF FACT

1. Mr. Whipple was admitted to the State Bar of Arizona on October 26, 1991, after graduating from law school at Brigham Young University. He served as a law clerk at the Arizona Court of Appeals and worked in the Arizona Attorney General's office before entering private practice and ultimately opening a solo practice focusing primarily on family law.

2. Mr. Whipple received two informal reprimands (now known as admonitions): one in 1999 (file no. 98-1076) and one in 2000 (file no. 00-1091). The record in this proceeding does not include information regarding these matters.

3. In SB 07-0201-D, Mr. Whipple was suspended for 30 days, effective March 13, 2008, and was ordered to serve a term of probation upon reinstatement, including participation in the Member Assistance Program (MAP) and the Law Office Management Assistance Program (LOMAP). The conduct at issue in SB 07-0201-D involved a lack of diligence and communication in two client matters. Mr. Whipple was reinstated on May 13, 2008, whereupon his probationary term commenced.

4. In SB-09-0038-D, Mr. Whipple was suspended for six months and one day, effective July 29, 2009. The conduct at issue in that matter arose from Mr. Whipple's failure to comply with Rule 72, Ariz. R. Sup. Ct., after his suspension in SB-07-0201-D and based on statements in an affidavit avowing compliance with Rule 72. Mr. Whipple had advised the State Bar and Supreme Court that he had prepared an affidavit in compliance with Rule 72 but that it "apparently did not get filed due

to oversight, inadvertence or mistake.” However, he failed to respond to the State Bar’s screening investigation regarding the Rule 72 compliance issue or defend against the ensuing formal complaint.¹ As a result, SB-09-0038-D proceeded by way of default.

5. In SB-09-0060-D, Mr. Whipple was again suspended for six months and one day, with that suspension to run “consecutive to the term of suspension imposed in SB-09-00380-D.” The suspension was based on Mr. Whipple’s failure to comply with his terms of probation in SB-07-0201-D. As with the formal complaint in SB-09-0038-D, that matter also proceeded by way of default.

6. Effective May 29, 2009, Mr. Whipple was administratively suspended due to non-compliance with mandatory continuing legal education requirements.

7. After the suspension orders issued, two orders of restitution were entered in SB-09-0101 (Jack Layton -- \$600) and SB-09-2111 (Timothy Lane -- \$1500). Mr. Whipple has satisfied both restitution orders.

8. Mr. Whipple previously applied for reinstatement in 2018 (PDJ 2018-9037-R). After an evidentiary hearing, the hearing panel recommended against reinstatement. By order dated March 8, 2019, the Supreme Court of Arizona agreed that Mr. Whipple had not carried his burden of proof but permitted him to move to reopen his reinstatement application within twelve months of completing a MAP

¹ The formal complaint in SB-09-0038-D acknowledged that, “On May 1, 2008 [Mr. Whipple] submitted an affidavit to belatedly demonstrate his compliance with Rule 72.”

assessment. Mr. Whipple completed the MAP assessment and thereafter sought to reopen his application for reinstatement. However, he later withdrew that request.

9. While suspended, Mr. Whipple has worked primarily as a tax accountant. He has been employed by the same tax firm since January of 2018. He plans to pursue a CPA license and has been taking classes at Arizona State University in order to qualify to sit for the CPA exam.

10. The only relatively significant debt Mr. Whipple currently has is for student loans.

11. While suspended, Mr. Whipple has been a party to the following legal proceedings:

- *Robert Tuzon v. Rory Whipple*, Maricopa County Superior Court, CV2009-06719. Judgment of dismissal entered March 11, 2010.
- *Rory Whipple v. Marilee Whipple*, Maricopa County Superior Court, FC2010-090246. Consent decree of dissolution entered in 2010. Post-decree child support issues resolved as of 2017.
- *Stone Canyon/Alliance Residential LLC v. Rory Whipple*, East Mesa Justice Court, CC2011-158622F. Forcible detainer action. Judgment of \$1,349.49 satisfied in 2014.
- *IQ Data Int'l, Inc. as assignee of Stone Canyon/Alliance Residential LLC v. Rory Whipple*, Maricopa Justice Court, CV2013-0429. Dismissed based on a settlement in 2014.
- *Rory Whipple v. Lori Kruse*, Maricopa County Superior Court, FN2013-094640. Dissolution filed December 17, 2013 and dismissed on motion January 3, 2014.
- *Rory Whipple v. Lori Kruse*, Maricopa County Superior Court, FN2014-090322. Consent decree of dissolution entered in 2014.

- *Rory Whipple v. Marilee Smith*, Kyrene Justice Court, CC2017-123993. Matter was settled and dismissed in 2017.
- *Frances Stickel v. Rory Whipple*, Maricopa County Superior Court, FN2020-002931. Default decree of dissolution entered October 28, 2020.

12. Mr. Whipple was also a party to a misdemeanor criminal proceeding while suspended: *State of Arizona v. Rory Whipple*, Maricopa Municipal Court DV2013-129. We discuss this dismissed criminal charge in more depth *infra*, ¶ 20.

13. Mr. Whipple has completed the following continuing legal education courses while suspended:

- Practice Management Essentials: Tools for Avoiding Nasty Surprises (3 hours of ethics credit)
- Structuring Waterfall Provisions in LLC and Partnership Agreements (1.5 credit hours)
- Key Cross-Examination Tactics Every Lawyer Must Know (2 credit hours)
- When the IRS Comes Calling (2 credit hours)
- Collecting from LLCs: New Case Law (2 credit hours)
- Tax Law 101: The Nuts and Bolts of Tax Practice and Procedure (2 credit hours)
- Starting and Running a Small Law Firm (4 credit hours)
- Managing Your Trust Account: A Hands-On Seminar In Trust Accounting (3 hours of ethics credit)
- New Lawyer Boot Camp (6.25 credit hours, including 2.5 hours of ethics)
- Asset Protection Symposium (6 credit hours)

14. Mr. Whipple took the Arizona Uniform Bar Examination in February of 2016 and received a passing score. He also passed the Multistate Professional Responsibility Examination and completed the Essential Distinctions in Arizona Law course in 2016.

15. Other than the aforementioned State Bar proceedings, there has been no procedure, inquiry, or disciplinary action concerning Mr. Whipple's standing as a member of any profession or organization or holder of any license or office during his term of suspension.

16. While suspended, Mr. Whipple has participated in therapy with several individuals. In August of 2018, he submitted to a psychological assessment by Betsy L. Gilpin, PhD. In her evaluation report, Dr. Gilpin stated, in pertinent part:

During the months while he was fighting the suspension by the State Bar Mr. Whipple also had other significant stressors in his life that compounded his difficulties in focusing on the requirements of the Bar. He had marital issues that resulted in his making decisions that were outside his personal beliefs and morals as well as those of his church. He was ex-communicated from his church where he had held a position of leadership. His marriage ended and he struggled to meet financial responsibilities. His practice dropped off significantly as he prepared for his possible suspension, creating financial stress for him as he tried to meet his family's needs.

Ultimately Mr. Whipple decided to close down his practice and seek other employment. He stopped fighting the suspension decision and did not respond to Complaint filed by State Bar Counsel after he had been reinstated by the AZ Supreme Court. He was given a 6 month and one day suspension but did not attend the hearing regarding this. He did not respond to any requests for information about his practice; this resulted in a second suspension of 6 months and one day. He reached a point

where he was very discouraged about everything in his life and felt it was futile to fight situations that were out of his control.

* * * * *

His lack of awareness of his anger, his inability to communicate his beliefs and concerns, and his pattern of avoiding confrontations were the primary weaknesses that led to the problems that caused his suspension. He also has identified mitigating factors that played a role including marital problems, financial concerns, and being ex-communicated from his church.

17. In August of 2019, Mr. Whipple submitted to another psychological evaluation – this time with Dr. Phillip Lett. Dr. Lett recommended a counseling regimen but opined that Mr. Whipple “demonstrates recovery from anxiety and depression and has the ability to function safely as an attorney.” Mr. Whipple thereafter began participating in counseling with Patrick Quigley, PhD. As of the date of the reinstatement hearing, Dr. Quigley had seen Mr. Whipple 26 times, which exceeds the number of sessions recommended by Dr. Lett.

18. Dr. Quigley diagnosed Mr. Whipple with “adjustment disorder with mixed anxiety and depressed mood” and “avoidant personality disorder,” testifying that Mr. Whipple has had difficulty facing and dealing with challenging circumstances. Dr. Quigley opined that the two client complaints culminating in the first 30-day suspension were due to Mr. Whipple’s inability to confront and address problematic client situations. The same deficits, he believes, caused him to cease cooperating with the State Bar.

19. Mr. Whipple testified at some length on his own behalf. He discussed his history of failed marriages and acknowledged marital infidelity that led to his

2004 excommunication from the Church of Jesus Christ of Latter-Day Saints, where he had held the position of Bishop.²

20. The dismissed misdemeanor charges against Mr. Whipple require additional examination. In December of 2013, he and his then-wife got into an argument while driving. Mr. Whipple admits attempting to forcibly grab a cell phone from his wife, which escalated the conflict. He was charged in the Maricopa Municipal Court with assault and disorderly conduct. The charges were dismissed in April of 2014. The reasons cited by the prosecutor in seeking dismissal were: "Victim does not desire prosecution" and "In the interest of justice." Because the misdemeanor charges were dismissed, the hearing panel accords substantially less weight to this unfortunate event than it would had a conviction resulted. It also appears the event was aberrational; nothing in the record suggests any other allegations of physical aggression or domestic violence. Unfortunately, though, after being charged based on what he perceived to be false accusations, Mr. Whipple retaliated against his wife by sending her ex-husband - with whom she was embroiled in post-decree child custody proceedings - a letter asserting that she had mental health issues. At the reinstatement hearing, Mr. Whipple expressed remorse for that behavior. He testified that he was angry about the criminal charges and

² Mr. Whipple has been married to three different women (and he married and divorced his first wife three times). He has five children - some of whom he has a strained relationship with due to his conduct while married to their mother. Rehabilitating his relationship with his children is a primary goal.

believed his wife had offered a fabricated version of events. However, he readily conceded that sending the letter to her ex-husband was inappropriate.

21. The primary “weakness” that led to Mr. Whipple’s disciplinary suspension is a relatively extreme conflict-avoidance tendency, which caused him to withdraw and ignore situations that proved challenging or unpleasant. As Dr. Gilpin wrote in her evaluation report:

[H]e is very uncomfortable with conflict and confrontation; rather than recognizing his anger and dealing with it directly it was easier to walk away and not respond to anything. He has realized that he is uncomfortable with confrontations and that this discomfort became an over-riding weakness in his life. It caused him to make decisions that caused further stress and conflict and he lost his belief in himself and his ability to fight back.

When it proved difficult to revive his law practice after the initial 30-day suspension, Mr. Whipple closed the practice rather than working through the challenge. He similarly gave up on complying with his probation terms and stopped responding to the State Bar. His extreme avoidance behaviors have caused substantial disruption in his professional and personal life.

22. Through therapy, Mr. Whipple has made progress in addressing his pattern of conflict avoidance and tendency to “cut and run” when the going gets tough. He has better insight into situations that previously would have derailed him. He still has work to do. The hearing panel has lingering concerns about Mr. Whipple’s ability to view himself and his actions objectively, rather than instinctively seeking out external factors or sources to blame. He appears to have made positive

strides, though, and with continued counseling, will presumably make additional progress.

CONCLUSIONS OF LAW

1. In determining whether Mr. Whipple has carried his burden of proof, the hearing panel first considers the misconduct that led to his suspensions. “The more egregious the misconduct the heavier an applicant’s burden to prove his or her present fitness to practice law.” *In re Robbins*, 172 Ariz. 255, 256 (1992).

2. Although Mr. Whipple has a relatively significant disciplinary record, his misconduct cannot accurately be described as “egregious.” His 30-day suspension in 2008 stemmed from a lack of diligence and communication in two client matters. His problems with the State Bar snowballed after he was reinstated from that suspension because he quit cooperating with probation and failed to participate in screening investigations or formal proceedings. Had Mr. Whipple participated in SB 09-0038-D and SB-09-0060-D, it is likely he could have achieved a more favorable result than two consecutive suspensions. Bar counsel confirmed this likelihood at the reinstatement hearing.

3. The hearing panel that recommended against Mr. Whipple’s reinstatement in 2018 articulated a number of concerns, including “minimiz[ing] his misconduct, blam[ing] it substantially on others, and rationaliz[ing] it away.” Mr. Whipple concedes he was not effective at representing himself in the prior reinstatement case, and it is apparent he came across as defensive and lacking insight. With the passage of time, continued counseling, and the assistance of counsel,

though, he presented much more favorably during these proceedings. Dr. Quigley testified that Mr. Whipple exhibited a tendency to blame-shift when he first began treatment with him. At Dr. Quigley's request, Mr. Whipple developed a list of character weaknesses and deficiencies – both personal and professional -- as well as a plan for addressing those deficits. According to Dr. Quigley, Mr. Whipple has made substantial progress, and his re-established interactions with his church have been beneficial.

4. Mr. Whipple has a messy professional and personal past. A cursory review of his application could lead to the conclusion that he simply has too much baggage and too many strikes against him. The question becomes whether his past should forever disqualify him from the practice of law. The hearing panel concludes it should not. The State Bar agrees. *See Robbins*, 172 Ariz. at 256 (“It is significant, but not dispositive, that the State Bar does not oppose reinstatement . . .”). As noted *supra*, had Mr. Whipple participated in the two 2009 disciplinary proceedings, he might well have ended up with a sanction that did not require him to seek reinstatement at all (i.e., something less than a six-month-and-a-day suspension). Moreover, during that time period, he was experiencing significant stressors in his life. Some were of his own making. Those stressors, coupled with a history of rather extreme conflict avoidance, transformed a potentially manageable professional challenge into an escalating and exponentially worse personal and professional morass. There is not much more Mr. Whipple can do to establish the requisite rehabilitation. Thus, denying the current application for reinstatement would

essentially send the message that return to the practice of law will never happen due to Mr. Whipple's past transgressions.

5. The hearing panel concludes that Mr. Whipple has carried his burden of proving rehabilitation. *See* Rule 65(b)(2). He has identified the weaknesses that caused his underlying professional misconduct, established to the hearing panel's satisfaction that he has addressed those weaknesses, and demonstrated that he is not a threat to the public should he be reinstated to the practice of law. *See In re Arrotta*, 208 Ariz. 509, 513 (2004).

6. Mr. Whipple has complied with all applicable discipline orders and rules. *See* Rule 65(b)(2).

7. Mr. Whipple has established his fitness and competence to practice law. *See* Rule 65(b)(2).

8. Notwithstanding the findings of fitness and competence, the hearing panel has reservations about the prospect of Mr. Whipple returning to the active practice of law without substantial support and oversight - particularly as a sole practitioner. Mr. Whipple testified that he has no intention of resuming a law practice and wishes to remain with his tax accounting firm. In that setting, his fitness and competence pose no significant concerns. Should he be reinstated and decide to return to the practice of law, though, the hearing panel recommends additional terms of probation that would be triggered by that professional change.

CONCLUSION

The hearing panel recommends that Mr. Whipple be reinstated to the practice of law in Arizona, subject to a two-year term of probation with the State Bar's Member Assistance Program. No additional MAP assessment is required at this time. In addition to standard MAP terms, the terms of probation shall include: (1) continued counseling with a qualified therapist at least twice per month for the first 90 days after reinstatement and, thereafter, at least once per month; (2) quarterly reports of compliance and access to treatment information at the State Bar's request; and (3) should Mr. Whipple resume the active practice of law while on probation, he shall immediately notify the State Bar's Compliance Monitor, obtain a practice monitor, and enter into Law Office Management Assistance Program (LOMAP) terms of probation.³

As previously noted, Mr. Whipple took and passed the bar examination in 2016. The hearing panel has no authority to waive application of Rule 37(a)(1), Ariz. R. Sup. Ct., which states: "Failure to take the oath of admission and be admitted to the practice of law in Arizona within five years of successful Arizona uniform bar examination will void all examination scores, and the applicant will be required to successfully retake all required examinations and comply with all required procedures relating to Character and Fitness determinations." The Supreme Court

³ If Mr. Whipple regains his law license, he hopes to represent clients of the tax firm in IRS and tax court proceedings. That type of representation - while employed by the tax firm -- is not the type of active practice of law that would trigger the need for a practice monitor or LOMAP terms of probation.

of Arizona has the discretion to waive that provision on review. Neither the State Bar nor the hearing panel opposes such a waiver.

DATED this 12th day of November, 2021.

/s/ signature on file

Margaret H. Downie, Presiding Disciplinary Judge

/s/ signature on file

Teri M. Rowe, Attorney Member

/s/ signature on file

W. Keith Turner, Public Member

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