

AUG 18 2011

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

FILED



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

**LISA S. FARRINGER,
Bar No. 012135**

Applicant.

PDJ-2011-9014
[No. 11-9014]

REPORT and RECOMMENDATION

On July 22, 2011, the Hearing Panel ("Panel") composed of Bruce M. Brannan, a public member from Maricopa County, Martin K. Zachreson, 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 Lisa S. Farringer appeared *pro per*. The Panel considered the testimony, the admitted exhibits, the parties' Joint Prehearing Statement, and evaluated the credibility of the witnesses. The State Bar recommends reinstatement. The Panel now issues the following "Report and Recommendation," pursuant to Rule 65(b)(3), Ariz.R.Sup.Ct, recommending reinstatement.

Background

Applicant was admitted to practice law in Arizona on January 30, 1989 and admitted to practice law in D.C. in May 1995 (non-active status). She was summarily suspended in Arizona for the nonpayment of bar dues effective June 18, 1998. Her Application for Reinstatement was filed on April 15, 2011.

Pursuant to Rule 64(f)(2)(B), Ariz.R.Sup.Ct., because Applicant has been suspended for over two years, she must submit to formal reinstatement proceedings pursuant to Rule 65. Rule 65(b)(2) requires that the lawyer seeking reinstatement has the burden of demonstrating by clear and convincing evidence the lawyer's rehabilitation, compliance with all disciplinary orders and rules, fitness to practice, and competence.

In addition, because Applicant has been suspended for well over five years, she also seeks a waiver from the additional requirement that she retake and pass the Arizona Bar Examination. See Rule 64(c), Ariz.R.Sup.Ct.

For a member to transfer to inactive status a written request is submitted to the executive director. Rule 32(c)(4), Ariz.R.Sup.Ct. An inactive member is still required to pay bar dues but at a reduced rate.

Applicant testified that in 1998, she contacted the bar to transfer to inactive status and was told that in order to become inactive, she should stop paying her bar dues. Applicant believes she received inaccurate information from the State Bar at that time and stopped paying her dues based on the erroneous information. Applicant acknowledges however, that she failed to inquire further about the process for changing to inactive status and was ultimately suspended for her failure to pay her bar dues.

In anticipation of filing an application for reinstatement, Applicant requested a copy of her administrative file which could not be found. (See Applicant's Motion for Reinstatement, Exhibit D; letter dated 4/14/2011 from Carolyn DeLooper, Manager, Membership Services). Applicant asserts that she first became aware of her suspension in 2004.

Applicant did not keep her address current with the State Bar of Arizona. Applicant's address history reflects that her address of record was 1825 I. Street, NW, Suite 400, Washington, DC, 2006-5403 until April 29, 2011.

I. FINDINGS OF FACT

1. Applicant was first admitted to practice law in Arizona on January 30, 1989 and admitted to practice law in Washington, D.C. in 1995, bar No. 446614.

2. Applicant's membership status with the Washington D.C. bar is inactive.

3. While an active member of the State Bar of Arizona, Applicant remained current with her bar dues and MCLE requirements.

4. Applicant moved to Washington DC 1985 to attend Georgetown University Law School and graduated *Order of the Coif* in 1998.

5. After graduating law school, Applicant was employed as a Special Assistant to the Deputy Attorney General and then Special Counsel to the Assistant Attorney General of the Civil Division at the Department of Justice. Applicant also held the position of Associate Solicitor at the Department of Interior. Thereafter, she and her husband formed a practice group focusing on administrative law.

6. Applicant returned to Arizona in 1997 and has lived in Arizona during the period of suspension but failed to update her address with the State Bar of Arizona. In 1998, she attempted to change her Arizona bar membership status to inactive. Applicant testified that she was informed by someone at the bar that in order to change her status to inactive, she merely needed to stop paying bar dues. Applicant did not verify this information.

7. On June 18, 1998, Applicant was summarily suspended from the practice of law by Order of the Board of Governors for her failure to pay her Arizona bar dues and remains suspended.

9. Applicant has not applied for reinstatement prior to this matter.
10. Applicant has not practiced law in any jurisdiction during the period of her suspension but has remained involved with the law in an informal setting.
11. During the period of suspension, Applicant was involved in various business ventures with her husband of 23 years that were unrelated to the practice of law.
12. Since 1998, Applicant has been committed to volunteering and providing services to her community and continues to do so. Applicant is the President of the Salvation Army's Auxilliary, a Board Member of the Mountain Shadows East Homeowner's Association, and a Board member of the Phoenix Public Library Foundation.
13. In 1998 Applicant and her husband, Vernon B. Parker started a vitamin company. Applicant was the Vice President for marketing and product development. Applicant's duties were to ensure FDA compliance in labeling, ingredients, marketing claims, and apply those regulations to the company's products. Applicant also worked with attorney Frank McGue in securing trademarks and copyrights for product names and marketing materials.
14. In 2001 Applicant became a full time stay at home mom. During this time, she assisted her mother and attorney John Vryhof in a complex estate matter involving the distribution of a trust.
15. From May 2004 – May 2006, Applicant was a full time law professor at Arizona State University and taught legal method and legal writing. During this time, she also authored and published a book entitled *Angels in the Darkness*.
16. In 2006, Applicant and her husband founded a practice group, *Parker, Farringer, Parker*. Applicant assisted her husband and the group with federal compliance issues and assisted the attorney of record in defending him against an unfounded SBA Inspector General's Report.
17. From 2007 – 2010, Applicant served as a board member on her homeowner's association. Applicant assisted the association and attorney James R. Nearhood with bylaw and contract issues and assisted with property rights involving a complex easement issue.
18. Applicant is a legal commentator and regular contributor to the *Arizona Republic*.
19. Applicant has not been a party to any criminal action during the period of her suspension.

20. Applicant and her husband, Vernon Parker are involved in an ongoing civil action against the federal government for abuse of process regarding a SBA Inspector General's Report concerning her husband. See *Parker v. United States*, No. CV 10-014707-PHX-SRB (D. Ariz. 2010).

21. Applicant does not owe any amount to the Client Security Fund.

22. Applicant paid a \$100.00 reinstatement application fee and the \$1,000.00 investigative fee to the Disciplinary Clerk. Applicant has not cured her delinquent membership dues and fees. Applicant however, must pay any outstanding dues prior to being reinstated by the court.

23. Applicant has not taken any continuing legal education courses since her administrative suspension.

24. During the period of rehabilitation, 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.

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

26. Applicant did not receive any material or correspondence from the bar during her suspension. Applicant has since provided updated personal information, including her address, telephone number, email address, to the Arizona State Bar membership office.

27. Applicant desires to practice law in Arizona and seeks reinstatement to active status.

28. Senior Bar Counsel at the conclusion of the evidentiary hearing recommended that Applicant be reinstated to active status.

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

Rule 65(b)(2) provides that in reinstatement matters, a lawyer seeking reinstatement must prove by clear and convincing evidence their rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice, and competence. Applicant bears the burden of proof that she has met the criteria for reinstatement.

Additionally, in *Matter of Arrotta*, 208 Ariz. 609, 96 P.3d 213 (2004), the court held that the following four factors are to be considered for reinstatement: 1) the applicant's character and standing prior to disbarment (suspension in this matter), 2) the nature and character of charge 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.

Arrotta further held that to establish rehabilitation, an applicant must identify and affirmatively show that they have overcome the weaknesses which produced the earlier misconduct.

Applicant testified that she was born and raised in Arizona. She graduated from Arizona State University *Phi Beta Cappa*. In 1985, she moved to Washington, D. C. and attended Georgetown University Law School, graduating *Order of the Coif* in 1988. After graduating law school, Applicant worked in various legal capacities for the federal government. She then went into private practice with her husband and they later founded a vitamin supplement company unrelated to the practice of law. Applicant thereafter, attempted to transfer to an inactive membership status. Applicant stated she was given misinformation by staff at the State Bar of Arizona regarding the transfer requirements and was ultimately suspended for non-payment of bar dues.

Applicant testified that she became aware of her suspension in 2004 and she never intended to be anything but inactive. Applicant admits she failed to keep her address current with the State Bar of Arizona and that she should have researched the transfer process more carefully, having transferred successfully to inactive status with the Washington, D.C. bar.

Applicant testified that during her suspension, she has been actively engaged in the practical application of the law and requests a waiver of the additional requirement set forth in Rule 64(c), Ariz.R.Sup.Ct., that she retake the Arizona bar exam. Applicant further testified that during her 12 year period of suspension, she continued to be involved with the law, consistently used her knowledge of the law and remained current in the law. If reinstated, Applicant advises that she would like to practice in the area of administrative or business law.

Rehabilitation

Applicant acknowledges that her failure to inquire further as to the proper procedures to transfer to inactive status resulted in her summary suspension. Applicant asserts that in the future, she will investigate the proper administrative requirements and not rely solely on the statement of others.

Applicant testified that to rehabilitate herself, she has notified the Arizona State Bar of her current address and if reinstated, she will hereafter comply with Rule 32(c), Ariz.R.Sup.Ct., and timely pay her bar dues.

Compliance with Disciplinary Rules and Orders

Applicant is compliant with all prior disciplinary orders and rules. There were no allegations involving the unauthorized practice of law during the period of suspension. Applicant does not owe any funds to the Client Protection Fund. To date, the State Bar has not filed its Statement of Costs and Expenses in this reinstatement matter.

Fitness to Practice and Competence

Applicant asserts that since her suspension, her ongoing active involvement with the law through her business ventures and her assistance with administrative, property law and family probate matters establishes her competence and fitness to practice. Specifically, Applicant testified regarding her FDA compliance and trademark and copyright work, her assistance with the civil and administrative law litigation, her assistance to the attorney of record in the family's complex estate matter, her full time work as a professor at ASU College of Law, and her contract and homeowner's association work. Additionally, Applicant provided four witnesses to testify about her competency and fitness to practice law.

Paul Charlton, Esq.

Mr. Charlton testified that he is a former U.S. Attorney and currently practices law at *Gallaher & Kennedy* handling white collar crimes, Indian law and internal investigations. He stated he is friends with Applicant and their children attended school together. Mr. Charlton advised that in the summer of 2008 he was retained by Applicant and her husband in a civil matter to rebuke allegations by the Inspector General that a government contract was improperly obtained while her husband was still a government employee; the matter is ongoing.

Mr. Charlton testified that although Applicant did not draft legal documents, she often assisted in the litigation by reviewing filings, providing case law interpretations and assisted with the legal strategy. Mr. Charlton further testified that he finds Applicant to be a good writer, logical thinker, careful, balanced and ethical. He is convinced that Applicant possesses the skills and ability to practice law.

Gerald K. Smith, Esq.

Mr. Smith testified that he has practiced law for over 50 years and is Of Counsel at *Lewis and Rocca* and in practice with his son John Smith. Mr. Smith met Applicant in 1961 through her father "Bud" Farringer and visited the Farringer family in South Africa in 1973. In 1982, he encouraged her to go to law school and was impressed with her law school record and the positions she held as an attorney while working in Washington, D.C. He persuaded *Lewis and Rocca* in 1997 to extend an employment offer to Applicant, which she declined due to other endeavors and commitments. Mr. Smith further testified that Applicant is competent and capable of practicing law again.

John Vryhoff, Esq.

Mr. Vryhoff testified that he met Applicant in 1999 or 2000 when he was retained to handle a family estate matter. Mr. Vryhoff testified that Applicant provided invaluable assistance in the matter by gathering facts, attending meetings, reviewing pleadings and providing comments. Mr. Vryhoff further

testified that Applicant is competent, has impeccable ethics and poses no threat to the public.

James Nearhood, Esq.

Mr. Nearhood testified that he is an Arizona attorney certified by the State Bar of Arizona in real estate law. He was the attorney of record in the Mountain Shadows Homeowner's Association litigation and met Applicant when she was a Board Member of the Association. Mr. Nearhood stated that Applicant was actively involved in the negotiations between Crown Realty and the Association and also assisted with the legal strategy used in the litigation. He found Applicant's input to be valuable to the case and found her competent. If reinstated, Mr. Nearhood stated that Applicant would pose no threat to the public.

Discussion

Pursuant to Rule 45, Mandatory Continuing Legal Education ("MCLE"), a lawyer on active status is required to take 15 hours of MCLE per year to demonstrate their continued competence to practice law. In addition, Rule 45(e) *Status Changes*, also provides that before a member is permitted to change from inactive status to the active practice of law, they must show completion of MCLE for each of the last two years on inactive status. (15 hours in each educational year). Rule 45(b)(1) however, provides that lawyers on inactive membership status are exempt from this requirement until they seek active status.

Here, Applicant originally sought a status change from active to inactive status but was unsuccessful in affecting that change by her failure to verify the proper procedure for doing so. Applicant now seeks to be reinstated to active status and further seeks a waiver of the requirement that she must re-take the bar exam because she has been summarily suspended for over five years. See Rule 64(c), Ariz.R.Sup.Ct. Rule 65(a), Ariz.R.Sup.Ct., also provides that a lawyer may be reinstated to active membership only. Applicant maintains that requiring her to re-take and pass the bar examination would be punitive and result in an unnecessary hardship.

Applicant testified and her witnesses corroborated that during her 12 year suspension, she has been involved in law related issues but she has not performed legal research or written legal briefs. Furthermore, Applicant has not taken any continuing legal education ("CLE") since her suspension which could offset or measure her fitness and competency by clear and convincing evidence and support her waiver of the requirement that she retake and pass the bar exam. Absent such evidence and moreover, because Applicant also seeks a waiver of Rule 64(c), the Panel recommends Applicant obtain CLE as a condition of reinstatement.

Proportionality


The Panel considered the proportionality offered by Applicant and found them instructive but not directly on point. Those matters are distinguished from the case

at bar as those applicants actively practiced law in other jurisdictions during their summary suspensions, sought reinstatement from a discipline matter or sought reinstatement under the former disciplinary system.

Conclusion

The Panel finds that Applicant has met her burden of proof and established by clear and convincing evidence her rehabilitation and compliance with all disciplinary orders and rules. The Panel finds she has not demonstrated her fitness to practice law nor competence by clear and convincing evidence as required by Rule 65. Therefore, the Panel recommends that Applicant be reinstated to active practice of law pending compliance with Rule 45(e). An affidavit of compliance shall be provided to the Disciplinary clerk and the Court.

DATED this 18 day of August, 2011.



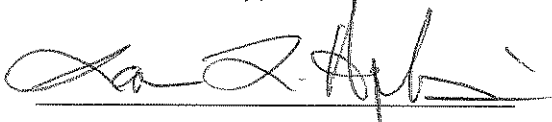
THE HONORABLE WILLIAM J. O'NEIL
PRESIDING DISCIPLINARY JUDGE

Original filed with the Disciplinary Clerk
this 18 day of August, 2011.


COPY of the foregoing mailed this
18 day of August, 2011, to:

Shauna R. Miller
Senior Bar Counsel
STATE BAR OF ARIZONA
4201 N. 24th Street, Suite 200
Phoenix, AZ 85016-6288

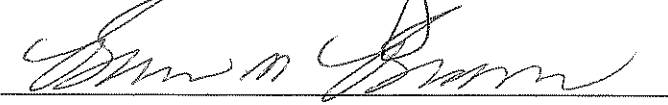
Lisa S. Farringer
Applicant
5635 E. Lincoln Drive, #18
Paradise Valley, AZ 85253



CONCURRING:



Martin K. Zachreson, Volunteer Attorney Member



Bruce M. Brannan, Volunteer Public Member