

**BEFORE THE PRESIDING DISCIPLINARY JUDGE**

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

**COURTNEY JOSEPHINE VERNON,  
Bar No. 031057**

Applicant.

**PDJ-2020-9090-R**

**REPORT AND  
RECOMMENDATION**

[State Bar No. 20-2134-R]

**FILED APRIL 12, 2021**

**I. PREFACE**

Courtney Josephine Vernon petitioned for reinstatement pursuant to Rule 65 Ariz. R. Sup. Ct. A one-day hearing<sup>1</sup> was held before a hearing panel via Zoom. The panel comprised of the Presiding Disciplinary Judge, voluntary attorney member Teri Rowe, and public member Ina (Kelly) Moreno. The State Bar was represented by Senior Bar Counsel Hunter Perlmeter. Ms. Vernon was represented by J. Scott Rhodes, *Jennings, Strouss & Salmon, P.L.C.*

The parties in their Joint Prehearing Statement (“JPS”) stipulated to certain facts. “A stipulation by the parties as to the facts, so long as it stands, is conclusive

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<sup>1</sup> Applicant and Dr. Richard Burton testified. All exhibits were admitted. Exhibits 2-4 were sealed as well as medical testimony; Ex. M (letter to J. Scott Rhodes dated 9/23/20) and 2(C) (income taxes) attached to Ms. Vernon’s application are also sealed. The entire application for reinstatement is an exhibit.

between them, and cannot be contradicted by evidence tending to show the facts otherwise.” *Higgins v. Guerin*, 74 Ariz. 187, 190 (1952) (citation omitted).

Standard initial case management orders require an applicant to file and the State Bar the discretion to file, a written closing which must “*be in the form of proposed findings of fact and conclusions of law supported by citations to the testimony and admitted exhibits.*” [See initial case management conference order.]

Rule 65(b)(1)(C) Ariz. R. Sup. Ct. requires bar counsel at the conclusion of the hearing provide a recommendation as to whether or not the lawyer should be reinstated. The State Bar does not object to the reinstatement of Ms. Vernon. Mr. Rhodes timely filed proposed findings of fact and conclusions of law. Time is expanded for issuing this report and recommendation pursuant to Rule 51(d)(4).

### ***Conclusion***

The hearing panel finds Ms. Vernon has met her burden of proof and recommends granting her petition for reinstatement.

## **II. FINDINGS OF FACT UNDER RULE 65 AND *IN RE ARROTTA*<sup>2</sup>**

Under Rule 65 and *In re Arrotta*, 208 Ariz., 509 (2004) at 512 we examine: (1) the character and standing of the applicant prior to suspension; (2) the nature and

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<sup>2</sup> *In re Johnson* involved a suspension but often references *In re Arrotta* in its analysis. We utilize the stated methodologies from *In re Arrotta*, not because of the sanction imposed but rather to assure completeness in analysis. The facts in this matter bear no semblance to *In re Arrotta*.

character of the charges for which the applicant was disciplined; (3) the time which has elapsed between suspension and application for reinstatement; and (4) the conduct of the applicant after the suspension.

***Character and standing of the applicant prior to suspension***

1. Ms. Vernon grew up in Peoria, Illinois and is an only child. She did her undergraduate work in Iowa City. She obtained her juris doctorate from John Marshall College of Law in 2002. Before moving to Arizona, Ms. Vernon had practiced law in Chicago, Illinois, Nebraska. She was first admitted to practice in Illinois. Ms. Vernon is also admitted to practice law in Iowa and Nebraska. Her practice in Iowa was in-house at an insurance company handling insurance defense litigation. [Application 1M; hearing testimony; Ex. 2.]

2. Ms. Vernon and her family (consisting of her husband, a 15-year old daughter and a 12-year-old daughter) moved to Arizona in 2016 from Iowa. Ms. Vernon had applied for and obtained admission on motion in Arizona in 2014, but they did not move until 2016. She initially was not employed as the family's plan was for her not to work for a few months to help their daughters get settled. [Id.]

3. Just after she began employment as an attorney in Arizona, she began treatment on October 4, 2016, under the care of Richard Burton M.D. [Testimony of Dr. Burton; sealed Ex. 2, at 178-184.]

4. Ms. Vernon obtained employment in Arizona starting in the Fall of

2016. She tried several positions and left each one on her own volition and in good standing because she did not find the jobs to be a good fit for her. Her last job was with an insurance company doing insurance defense, starting in January 2018. She resigned from that job in May 2019 in good standing. [Testimony of Ms. Vernon.]

5. She resigned from her job because she realized that the family's move to Arizona had made her unhappy, that her marriage and general health were negatively impacted, and she needed to focus on her health. [Id.]

6. On June 13, 2019, she asked her Dr. Burton to increase the frequency of their counseling sessions. [Testimony of Ms. Vernon and Dr. Burton; sealed Ex. 2 at 000133-137.]

Conclusion. The events which led her suspension began in 2017 and culminated on June 25, 2019 as are discussed below. We conclude until those events occurred her character and standings were excellent.

***The nature and character of the charges for which the applicant was disciplined.***

7. The parties' JPS stipulated factual basis for Ms. Vernon's suspension consisted of the following five (5) items:

- a) On February 18, 2017, Respondent was arrested in Gilbert, Arizona on trespass charges after harassing customers and refusing to leave an indoor amusement park.
- b) On June 2, 2017, Respondent pled guilty to Criminal Trespass

Second Degree, a class 2 misdemeanor and received a suspended sentence of 180 days in jail and unsupervised probation.

c) At the time of the arrest, Respondent was intoxicated. She made demeaning and derogatory comments to law enforcement upon being arrested.

d) In December of 2017, Respondent was arrested again in Iowa. She pled guilty to public intoxication and assault stemming from an incident at a bar. At the time of the incident, Respondent was intoxicated. Upon being arrested, Respondent made demeaning and derogatory comments to law enforcement.

e) Respondent was arrested again on June 25, 2019 in Gilbert, Arizona for disorderly conduct. The charges against her were later dismissed, but at the time of her arrest, Respondent announced to law enforcement that she was a lawyer, threatened that the arresting officers would be fired, and made racially insensitive and demeaning comments to the officers. Respondent was intoxicated at the time of her arrest.

8. On February 4, 2020, Ms. Vernon and the State Bar filed an Agreement for Discipline by Consent (“Consent”). In the Consent, the parties agreed that Ms. Vernon would be suspended from the practice of law for six months and one day, plus pay costs, was required to take a CLE on bias by May 11, 2020, and probation upon reinstatement. [Ex. 5.]

9. After accepting the Agreement, the Presiding Disciplinary Judge entered a Judgment and Order dated February 7, 2020 (“Judgment”). Ms. Vernon was suspended from the practice of law in Arizona for 6 months plus 1 day effective 30 days from the Order, or March 9, 2020. [Ex. 5, 6.]

10. Under the Agreement, the Judgment was based on violations of ER 8.4(b) for Ms. Vernon’s criminal offenses, and Rule 41(g), Ariz. R. Sup. Ct. [Id.]

11. The Agreement and Judgment provided upon reinstatement, she would be placed on Probation for two (2) year under the LRO MAP program. [Id.]

12. Ms. Vernon is admitted to practice law in Illinois, Iowa and Nebraska but is suspended in each on a reciprocal basis due to her suspension in Arizona. She had not applied for reinstatement in any of these jurisdictions. [Application at ¶ 1K.]

Conclusion. The ABA Standards for Imposing Lawyer Sanctions (“Standards”) generally provide that under *Standard 2.3* suspension should be for a period of time equal to or greater than six months....” Ms. Vernon was suspended for six months and 1 day which we find to be a slightly enhanced sanction.

***The time which has elapsed between suspension and application for reinstatement.***

13. Ms. Vernon was suspended effective March 9, 2020 for six months and one day. Under Rule 64(e)(1) the earliest Ms. Vernon could apply for reinstatement was June 10, 2020. Ms. Vernon applied for reinstatement on October 3, 2020. 208 days elapsed between her suspension and her application for reinstatement.

***The conduct of the applicant after suspension.***

14. During the period of rehabilitation, Ms. Vernon has been working as a Personal Lines Claims Representative III for an insurance company in Arizona. Ms. Vernon's job responsibilities primarily involve managing and processing auto claims, homeowner's claims, medical payment claims, and bodily injury claims. [Application at 1D; Hearing Testimony, JPS Stip. 5-6.]

15. Ms. Vernon has maintained one residence during the period of rehabilitation in Gilbert, Arizona. [Application at ¶ 1F and JPS Stip. 7.]

**III. DISCUSSION AND ANALYSIS UNDER RULE 65**

Under Rule 65, the burden of proof upon an applicant is to establish by clear and convincing evidence: 1) rehabilitation; 2) compliance with all applicable discipline orders and rules; 3) fitness to practice; and 4) competence.

***1) Rehabilitation***

An applicant must establish by clear and convincing evidence the identification of the weakness that caused the misconduct, prove that it has been overcome, and that it no longer poses any further threat to the public. *In re Arrotta*, 208 Ariz. 509, 513 (2004.)

Weakness. Ms. Vernon identified the weakness that led to her misconduct as “binge drinking caused by parents (especially her mother) with severe alcohol use disorders, which led to underlying medical issues. These she did not start to seriously

address until about the time of her June 2019 Gilbert police incident. [Application, Sealed Ex. 1M; hearing testimony.] We accept this as her weakness.

Her treating physician, Richard Burton, M.D., does not believe that Ms. Vernon has an alcohol use disorder because she did not consume alcohol on a regular basis but instead had incidents of binge drinking, sometimes to the point of blacking out. Dr. Burton nevertheless concludes that her behavior while intoxicated strongly indicates that she should abstain from alcohol consumption. Ms. Vernon describes herself as an “alcoholic.” [Testimony of Dr. Burton; Ms. Vernon; Ex. 2.]

Rehabilitation. An applicant must not only establish by clear and convincing evidence the identification of the weakness that caused the misconduct. The applicant must also prove that weakness has been overcome, and that it no longer poses any further threat to the public. *In re Arrotta*, 208 Ariz. 509, 513 (2004.) We find Ms. Vernon has met her burden of proof

Ms. Vernon has abstained from consumption of alcohol since October 2019. She presented four negative random alcohol test results between June 2017 and July 2017 in connection with her 2017 criminal trespass case. She presented 16 negative drug and alcohol test results between May 4, 2020 and December 31, 2020. [Sealed Ex. 3-4.] We find that Ms. Vernon also had negative tests on January 26, 2021 and January 28, 2021. Dr. Burton opined Ms. Vernon has been in a period of alcohol abstention since October 2019. [Testimony of Dr. Burton; Ex. 2.] The Panel finds



the evidence of abstention from alcohol is clear and convincing.

Ms. Vernon has undergone counseling with Dr. Burton since October 4, 2016. At first, their doctor-patient relationship was primarily to prescribe and monitor medications. However, in June 2019, Ms. Vernon realized that the stresses of her move to Arizona and of unresolved issues from her childhood required a counseling relationship, and she asked Dr. Burton to change to traditional counseling relationship. [Testimony of Dr. Burton; Ms. Vernon; Ex. 2.]

The frequency of counseling sessions increased from about one time per quarter to about twice a month. Since the change to the date of the hearing, Ms. Vernon had had 26 counseling sessions with Dr. Burton. [Id.]

Dr. Burton testified that Ms. Vernon is engaged in her counseling process, has embraced sobriety, and has made progress on gaining insight into issues related to her youth and upbringing. Dr. Burton opines that Ms. Vernon is a low risk for relapse. [Application, Sealed Ex. 1M (letter to J. Scott Rhodes dated 9/23/20; Hearing Testimony; and Ex. 4.) We found his testimony credible throughout.

Ms. Vernon testified that her drinking caused problems with her marriage, but since she had stopped drinking, communications with her husband are healthier. She does not keep alcohol in her home and does not feel a need or desire to imbibe. She enjoys being sober. She is committed that her two daughters will not experience the same issues that she experienced with her own mother. [Testimony of Ms. Vernon.]

The Panel finds that Ms. Vernon's evidence of rehabilitation from binge drinking is clear and convincing.

To her credit, Ms. Vernon has also reflected and addressed with her counselor whether racism or unrecognized bias is also a weakness. Both Ms. Vernon and her doctor believe that her outburst during her June 2019 police incident were caused by extreme intoxication and feeling trapped and confused.

We find Ms. Vernon was fully reflective regarding this concern. Ms. Vernon does not believe her comments mirrored her "true feeling or beliefs ...." Still she underwent counseling and sought professional assistance to address this. Ms. Vernon, who is Caucasian, testified that she has relatives of different races and that one motive for moving to Arizona was for her children to be exposed to a more racially diverse population than they experienced in Iowa. To better exam herself on this issue she completed the required CLE on bias before applying for admission. [Application at 2D; Sealed Ex. 1M; Testimony of Ms. Vernon].

It is clear to us that racism or unrecognized bias is not the weakness that led to her misconduct, but her binge drinking weakness resulted in unexplored racial feelings. We find the evidence clear and convincing evidence that Ms. Vernon wisely professionally explored the possibility of bias with Dr. Burton and reflectively examined her own thoughts regarding this issue. Notwithstanding, and

out of an abundance of caution, we recommend additional education in implicit bias, evaluation and counseling about bias is appropriate during the period of Probation.

## ***2) Compliance with Disciplinary Orders and Rules***

16. Ms. Vernon has met all her notice requirements related to her suspension under Rule 72, Arizona Rules of the Supreme Court. [Application at 2D.]

17. Ms. Vernon timely met her requirement to take the bias CLE and provide proof thereof to the State Bar. [Id.]

18. Ms. Vernon timely paid the costs associated with her suspension.

19. Ms. Vernon has not engaged in the unauthorized practice of law.

## ***3) Fitness to Practice Law***

We find Ms. Vernon is fit to practice law. We are mindful that the Supreme Court has held that if the proof of good moral character falls short, there is a “duty not to recommend admission.” *In re Klahr*, 102 Ariz. 529, 531 (1967). “In this it has no discretion; if the members entertain any reservations whatsoever as to the applicant's good moral character, it should not make a favorable recommendation to this court.” *In re Courtney*, 83 Ariz. 231, 233 (1957).

Upright character is something more than an absence of bad character. It means that he [an applicant for admission] must have conducted himself as a man of upright character ordinarily would, should, or does. Such character expresses itself not in negatives nor in following

the line of least resistance, but quite often in the will to do the unpleasant thing if it is right, and the resolve not to do the pleasant thing if it is wrong.”

*In re Walker*, 112 Ariz. 134, 138 (1975).

Both Ms. Vernon and Dr. Burton were credible witnesses. We find the evidence clear and convincing that Ms. Vernon has met her burden of providing that she is fit to practice law upon reinstatement.

#### ***4) Competence to Practice Law***

Ms. Vernon has completed 2.0 hours of continuing legal education entitled “Explicit Bias” as required as a condition to applying for reinstatement. The misconduct was unrelated to her practice of law. There is no evidence that the misconduct affected any client. We find Ms. Vernon is competent to practice law.

### **IV. RULE 64(a) QUALIFICATIONS FOR ADMISSION**

Rule 64(a) mandates that the lawyer “possesses the moral qualifications and knowledge of the law required for admission to practice law in this state in the first instance.” Other relevant conduct is listed under Rule 36(b)(3), Ariz. R. Sup. Ct.

After passage of the Bar Examination, the prerequisite requirements for initial admission to the Arizona Bar “in the first instance” relate to determining the traits and characteristics of character and fitness under Supreme Court Rule 36(b).

An applicant shall demonstrate current and past possession of the following traits and characteristics; a significant deficiency in one or more of these traits and characteristics

in an applicant may constitute a basis for denial of admission: That list includes: A. honesty; B. trustworthiness; C. diligence; D. reliability; and E. respect for law and legal institutions, and ethical codes governing lawyers. Rule 36(b)(1), Ariz. R. Sup. Ct.

We find by clear and convincing evidence that Ms. Vernon has taken her rehabilitation seriously and meets these requirements.

## **V. CONCLUSION AND RECOMMENDATION**

Ms. Vernon possesses the required fitness and competence to practice law. Pursuant to Rule 65, Ariz. R. Sup. Ct., she has identified the weaknesses that caused her misconduct and taken steps to address them. She has proven by clear and convincing evidence she is rehabilitated as that term is defined in *In re Arrotta*, 208 Ariz. 509, 96 P.3d 213 (2004). Ms. Vernon has met all conditions precedent for reinstatement, has complied with all applicable discipline orders and rules and has paid all required costs.

### **IT IS RECOMMENDED:**

Ms. Vernon be reinstated as a member in good standing of the State Bar of Arizona upon an order of the Arizona Supreme Court. Ms. Vernon shall be placed on Probation for two (2) years from the effective date of the order of reinstatement, under these terms and conditions:

1. Within ten (10) days of the effective date of her reinstatement, Ms. Vernon shall contact the Compliance Monitor (602-340-7258) to enroll in the LRO Member Assistance Program (LRO MAP). She shall remain enrolled in LRO MAP during the period of probation.
2. Ms. Vernon having been under the care of a treating physician for a substantial period, no additional LRO MAP assessment is ordered.
3. Ms. Vernon shall remain under the treatment of either Dr. Richard Burton, or if he becomes unavailable, an alternative health care provider (both called "Provider") acceptable to LRO MAP. The frequency of counseling sessions with the Provider shall be at an interval that the Provider shall determine, but not less than one time per month. Occasionally missed appointments due to scheduling issues shall not constitute a probation violation, provided that missed sessions are made up within 30 days, and the Compliance Provider is informed of any missed appointment either before or within two days after the scheduled appointment.
4. The Provider shall provide quarterly reports to LRO MAP that shall consist of the number of counseling sessions during the reporting period with Ms. Vernon and a statement whether the Ms. Vernon is cooperative and compliant with the Health Care Provider's treatment regimen.
5. Ms. Vernon shall abstain from any consumption of alcohol.

6. Ms. Vernon shall submit to random biological screening tests at a frequency to be determined by the Health Care Provider but not less than one test per month for the first year of the term of probation.

7. Within six (6) months of the start of probation, Ms. Vernon shall engage Professor Ray English of Sandra Day O'Connor College of Law to conduct a one-time evaluation and one-on-one training with Ms. Vernon on the subject of bias. Ms. Vernon shall provide the Practice Monitor with proof of completion of this training.

8. Ms. Vernon's counseling with Dr. Burton shall include methods and strategies for recognizing bias including implicit bias. This counseling shall not replace other topics of counseling but shall be an additional topic. Bias counseling shall continue for the first six months of probation, or for however long Dr. Burton believes is necessary, whichever is longer.

**DATED** this 12<sup>th</sup> day of April 2021.

*William J. O'Neil*

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**William J. O'Neil, Presiding Disciplinary Judge**

*Signature on File*

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**Teri Rowe, Volunteer Attorney Member**

*Signature on File*

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**Ina (Kelly) Moreno, Volunteer Public Member**

COPY of the foregoing e-mailed/mailed  
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