

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,

DANIEL P. BEEKS,
Bar No. 012628

Applicant.

PDJ-2013-9108

REPORT AND RECOMMENDATION

FILED APRIL 7, 2014

Background and Procedural History

On March 7, 2014, the Hearing Panel ("Panel") composed of public member, Michael Snitz, attorney member, Glen S. Thomas, 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. Craig D. Henley appeared on behalf of the State Bar of Arizona ("State Bar") and Mr. Beeks appeared pro se. The witness exclusionary Rule was invoked. The Panel considered the testimony, the admitted exhibits, the parties' Joint Prehearing Statement, the Applicant's individual prehearing statement, and evaluated the testimony and credibility of the witnesses including Mr. Beeks.¹

The State Bar did not oppose reinstatement. The Panel now issues the following "Report and Recommendation," pursuant to Rule 65(b)(3), Ariz. R. Sup. Ct,

¹ Consideration was given to the testimony of William D. Bishop, Esq., Matthew J. Kelly, Esq., Susan Daubenbis, MSW., and Rose McCaffrey, Esq.

recommending that Mr. Beeks' application for reinstatement to the active practice of law be approved.

Mr. Beeks was admitted to practice law in Arizona on October 21, 1989. He was suspended for six months and one day effective February 1, 2013, pursuant to an Agreement for Discipline by Consent for violating ERs 1.3 (diligence), 1.4(a)(3) (communication), and 8.4(c) misconduct. In addition, a term of probation was imposed with length and terms and conditions to be determined at the time of reinstatement. [Stipulated Exhibits 1-3.] Mr. Beeks self-reported his misconduct on March 28, 2012.

There are no prior disciplinary matters involved in this reinstatement. Mr. Beeks filed his Application for Reinstatement on November 25, 2013. The parties filed their Joint Prehearing Statement on February 14, 2014. Mr. Beeks filed his Individual Pre-Hearing Statement on February 28, 2014.

In the underlying misconduct, Mr. Beeks failed to act with reasonable diligence and promptness in representing two clients and, as a result, their respective cases were dismissed. He also failed to keep the clients reasonably informed about the status of their matters and misrepresented the case status on more than one occasion over an extended period of time. Mr. Beeks' conduct violated Rule 42, Ariz. R. Sup. Ct., specifically ERs 1.3, 1.4(a)(3) and 8.4(c).

Mr. Beeks admitted that he made relatively routine mistakes in handling the two files but rather than taking the appropriate steps necessary to reinstate the cases, he instead panicked and tried to cover up the dismissals. He testified that the cover-up made his anxiety and depression worse. Applicant's Prehearing Memorandum, P, 5.

I. FINDINGS OF FACT

1. At all times relevant, Respondent was a lawyer licensed to practice law in the state of Arizona having been first admitted to practice in Arizona on October 21, 1989. [Joint Prehearing Statement]

2. By letter dated March 28, 2012, Respondent self-reported certain alleged misconduct in two cases that he handled while a partner at Sherman & Howard L.L.C. (the Firm). By letter dated the same day, Joseph Bronesky, general counsel for the Firm, also reported Respondent's alleged professional misconduct. The substance of Mr. Bronesky's letter is consistent with that of Respondent. [Joint Prehearing Statement.]

3. In *Frantal v. Tourism and Sports Authority*, Maricopa County Superior Court Cause No. CV2008-028287, Respondent represented a dentist from Wisconsin who had slipped on water in the restroom during an Arizona Cardinals football game and injured his knee. Respondent filed a notice of claim and filed a complaint on November 6, 2008. [Joint Prehearing Statement]

4. Respondent failed to file a motion to set the case for trial and it was dismissed for lack of prosecution on October 21, 2009. [Joint Prehearing Statement.]

5. Sometime in 2010, Respondent determined through the online docket that the case had been dismissed. Respondent did not disclose to the plaintiff, his client, that the case had been dismissed in their subsequent conversations. Instead, Respondent told his client that "the case was still proceeding, and that we were waiting to receive a trial date." Respondent did this "on a number of occasions over the next two years." [Joint Prehearing Statement.]

6. In *Thwaites et al. v. Aguas et al.*, Maricopa County Superior Court Cause No. CV2010-009154, Respondent represented the plaintiff in a professional negligence case against an investment broker and his broker dealer. Respondent filed the complaint in March 2010. [Joint Prehearing Statement]

7. The defendants filed a motion to compel arbitration, to which Respondent filed a response. After the defendants filed a reply, the parties agreed to dismiss the litigation, without prejudice, and to proceed with arbitration before FINRA. [Joint Prehearing Statement.]

8. In late July 2010, the parties notified the court of the agreement. The court then placed the case on the inactive calendar for dismissal in September 2010, pending the filing of a notice of dismissal as part of the settlement. [Joint Prehearing Statement.]

9. Over the next few months, the parties exchanged several drafts of the settlement agreement. However, before the parties had finalized the settlement agreement, the court dismissed the case from the inactive calendar on October 1, 2010. [Joint Prehearing Statement.]

10. After the court dismissed the case, Respondent "basically panicked." In his self-report to the State Bar, Respondent states: "I did not seek to have it reinstated, I did not contact defense counsel to finalize the settlement agreement, and I did not file a FINRA arbitration." [Joint Prehearing Statement.]

11. On "several occasions" after the case was dismissed, Respondent informed another attorney at the Firm who was working on the case that the arbitration had been filed, but that they were waiting for FINRA to appoint the arbitrators. In his self-report to the State Bar, Respondent admits that he knew

that the attorney would pass this information on to the client. [Joint Prehearing Statement.]

12. During the week of March 19, 2012, another attorney in Respondent's firm who was working on the *Thwait's* case requested from Respondent copies of communications with FINRA, at which time he was "forced to admit what had actually happened." The next day, Respondent disclosed the misconduct in both cases to a member of the management committee of the Firm. [Joint Prehearing Statement.]

13. The Firm advised the clients of the status of their respective cases and advised them that they may wish to consult independent counsel regarding protecting their rights. The Firm also assigned a practice monitor to investigate whether there were similar problems in any of Respondent's other cases, and to facilitate the transition of Respondent's cases to other attorneys. The Firm asked Respondent to leave, which he subsequently did. [Joint Prehearing Statement.]

14. After being advised of the status of his case, Dr. Frantal retained attorney Charles J. Muchmore to represent him in connection with his claims against Respondent and the Firm. The parties attended a mediation with former Judge Lawrence H. Fleischman on September 24, 2012. On September 27, 2012, the parties entered into a confidential settlement agreement resolving the claims against Respondent and the Firm. [Joint Prehearing Statement.]

15. Respondent has substantial experience in the practice of law. [Joint Prehearing Statement]

16. Respondent engaged in multiple offenses, exhibiting a pattern of misconduct. [Joint Prehearing Statement]

17. Since disclosing his misconduct to the Firm, his clients, and the State Bar, Respondent has sought counseling and treatment for anxiety and depression. [Joint Prehearing Statement.]

18. Respondent has no prior disciplinary record. [Joint Prehearing Statement]

19. Respondent has made full and free disclosure to the State Bar of Arizona, and has exhibited a cooperative attitude toward these disciplinary proceedings. [Joint Prehearing Statement]

20. Mr. Beeks' former law firm did not request a contribution from Mr. Beeks in the settlement of the matter involving *Frantal v. Tourism and Sports Authority*. [Stipulated Exhibit 4, Bates 15.]

21. Mr. Beeks' misconduct in the *Thaits* action had no material effect on the settlement of that matter. [Stipulated Exhibit 4, Bates 17.]

22. All claims by Dr. Frantel were resolved at mediation in September 2012. [Application for Reinstatement, p.3, fn. 1.]

23. Mr. Beeks reached out to the State Bar's Member Assistance Program in July 2012 but did not enter into a formal contract. [Stipulated Exhibit 15, Bates 237, 244.]

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

Preliminary Discussion

An applicant seeking reinstatement to the practice of law under Arizona Supreme Court Rule 65 bears the burden of demonstrating possession of moral aptitude and legal knowledge required for admittance to the Arizona bar. Ariz. R. Sup.Ct. 64(a). Additionally, the applicant must prove by clear and convincing

evidence rehabilitation and/or an overcoming of the weakness that resulted in the lawyer's suspension. Ariz. R. Sup. Ct. 64(a); see also Ariz. R. Sup. Ct. 65(b)(2).

The standard for readmission to the Bar can, in a practical sense, be more difficult than initial admission and with good cause. An individual seeking readmission has the weight of their unethical behavior added to the balancing scales. It is not that the burden of proof changes; it is that there are more severe existing issues established for which positive change must be demonstrated to establish rehabilitation and good moral character. Regardless of whether a person is an initial applicant or one applying for readmission, the more egregious the past, the greater becomes the practical weight one must overcome. "Moreover, the more serious the misconduct that led to disbarment, the more difficult is the applicant's task in showing rehabilitation." *In re Arrotta*, 208 Ariz. 509, 512, 96 P.3d 213, 216 (2004) (citing *In re Robbins*, 172 Ariz. 255, 256, 836 P.2d 965, 966 (1992)).

To prove rehabilitation, an applicant must first identify the weaknesses that caused the misconduct. *In re Johnson*, 231 Ariz. 556, 558-59, 298 P.3d 904, 906-07 (2013). The applicant must then demonstrate the overcoming of these weaknesses. *Id.* at 559. The difficulty of this demonstration, as stated above, often turns on the seriousness of the underlying misconduct that resulted in suspension. *Id.* However, the Supreme Court cautions that the severity of misconduct does not itself preclude reinstatement. *Id.*

Neither the severity of the sanction nor the mere passage of time establishes rehabilitation. An applicant must demonstrate his rehabilitation and competency, which requires proof that he no longer poses a threat to the public. *In re Arrotta*, 208 Ariz. 509, 512, 96 P.3d 213, 216 (2004). Our duty in deciding whether

reinstatement is appropriate is always to protect the public. *Id.* In carrying out this duty, we must "weigh those factors tending to show rehabilitation against those tending to show a lack thereof" to decide whether the applicant has met his burden of proof. *In re Hamm*, 211 Ariz. 458, 465, 123 P.3d 652, 659 (2005). The four factors we consider are (1) the applicant's character and standing prior to disbarment, (2) the nature and character of the charges for which he was disciplined, (3) the applicant's conduct subsequent to the imposition of discipline, and (4) the time which has elapsed between suspension and application for reinstatement. *Arrotta*, 208 Ariz. at 512.

An attorney however, need not establish what was or might have been the underlying cause of the identified weakness that led to the misconduct. An "applicant however, must clearly and convincingly prove rehabilitation by specifically identifying the causal weakness leading to each count and explaining how the weakness has been overcome." *In re Johnson*, 231 Ariz. 556, 298 P.3d 904 (2013).

These factors aid in determining whether the applicant has met the burden of "affirmatively show[ing] the overcoming of those weaknesses that produced the earlier misconduct, i.e., whether the applicant has been rehabilitated." *Id.* (internal quotations omitted) (citation omitted) (emphasis omitted). Throughout these reinstatement proceedings, our focus is on whether the applicant has clearly and convincingly proven rehabilitation with respect to each of the ethical violations, because our duty to protect the public is not fulfilled unless we strive to ensure that a lawyer will avoid the pitfalls that led to his earlier misconduct. *Id.*

Rehabilitation

Mr. Beeks testified that through personal reflection and consultation with mental health professionals, he has identified his weakness as stress, anxiety and depression. He asserted that he was suffering with these conditions for a number of years leading up to his ethical lapses and did not seek the treatment that was needed. He experienced significant stress and anxiety as the economy collapsed and as his firm merged with a larger out of state firm. The stress increased over time as the new firm began terminating attorneys that were not generating significant income. Mr. Beeks said he feared he would be terminated for a lack of consistent financial production and especially if the firm learned of his negligence in letting the cases be dismissed. Mr. Beeks stated that he panicked and tried to cover up his negligence and hide it from the firm. He learned that the old adage of the cover up being worse than the crime is true.

He sought psychological help through the firm's employee assistance program and was diagnosed with anxiety and depression. He was prescribed antidepressants and sleeping pills. Mr. Beeks stated that running for an hour or two every day helps to relieve his stress. He also reached out to MAP, entered into a voluntary MAP contract and at Hal Nevitt's recommendation, began consulting w/Richard B. Canfield, LPC. Canfield then referred Mr. Beeks to a psychiatrist, Palpu Hazel for further treatment and medication management. Mr. Canfield left private practice and he was then referred to Susan Daubenbis, LCSW. He sees Ms. Daubenbis and Dr. Palpu to date. He feels he has made significant progress in dealing with his anxiety and depression and stated a practice monitor may be appropriate if he is reinstated.

Mr. Beeks has acknowledged his misconduct and accepted responsibility by self reporting his misconduct and by cooperating with the discipline process and entering into an agreement for discipline by consent. He has taken the steps necessary to overcome his weaknesses by obtaining treatment for his depression and anxiety, and by engaging in self-regulated discipline. [Stipulated Sealed Exhibits 17-19.]

Susan Daubenbis, MSW

Mr. Beeks sought treatment with Ms. Daubenbis, who assessed him on December 12, 2012, for ongoing treatment of depression and anxiety. Mr. Beeks continues treatment with Ms. Daubenbis and also with Dr. Hazel. She helped him to develop coping strategies to address stressful and depressing situations that may occur in the future. She said that Mr. Beeks is committed to continued treatment over the next few years.

Ms. Daubenbis testified that she sees Mr. Beeks every six weeks for depression and anxiety. When she first saw him, he was basically stabilized. She stated that they have discussed his ethical problems and that Mr. Beeks has expressed sincere remorse, accepted responsibility for his misconduct and has never blamed anyone for his transgressions. She opined that he is not anxious or depressed this time and stated that Mr. Beeks is readily aware of what can happen when physical or emotional distress occurs. She recommends continued treatment and is confident that should Mr. Beeks relapse, he would use the tools he has learned in therapy for managing stress and would also utilize the mental health services available to him. Ms. Daubenbis recommends that Mr. Beeks be reinstated to practice law. [Stipulated Sealed Exhibit 19.]

Palpu Hazel, MD [Stipulated Sealed Exhibit 17]

Dr. Hazel provided a medication log and his progress notes from May 2012-October 2013. He evaluated him on May 24, 2012, diagnosed him with depression and prescribed medication. Therapy with Dr. Hazel was effective and the medication prescribed also allowed him to sleep. Mr. Beeks stated that he takes an antidepressant regularly and intends to continue his medication. He first saw Dr. Hazel on a monthly basis and now sees him every three months.

Richard B. Canfield, LPC [Stipulated Sealed Exhibit 18.]

Applicant began treatment with Mr. Canfield on May 11, 2012 for anxiety and depression. Sessions with Mr. Canfield prepared him to use tools and techniques to cope with his anxiety and depression. After treating with him for approximately six months, Mr. Canfield left private practice and referred Mr. Beeks to psychiatrist, Palpu Hazel, who manages his medications. Mr. Beeks also reported that he had one counseling session with Clarice Parham on March 26, 2012.

Compliance with Disciplinary Rules and Orders

Mr. Beeks owes no monies to the Client Protection Fund. [Stipulated Exhibit 7.] He has paid all funds due the State Bar as a result of his prior discipline matter and there are no orders of restitution or outstanding issues with fee arbitration. [Stipulated Exhibit 8.] Mr. Beeks complied with the requirements of Rule 72, Ariz. R. Sup. Ct., including notice to clients and others. [Stipulated Exhibit 9.] There are no allegations of the unauthorized practice of law during the period of suspension.

Competence

Mr. Beeks has been involved in law related services during the period of suspension. He has worked as an independent contractor law clerk/paralegal for

Matthew J. Kelly of the law firm Kelly McCoy P.L.C., and William D. Bishop of Bishop & Martin Law Office, P.C., and was supervised by licensed attorneys. His duties include legal research, document review and document organization, and drafting briefs and motions. [Application for Reinstatement, pp. 4-5.] In addition, he has exceeded the hours mandated by Rule 45(a), Ariz. R. Sup. Ct. regarding continuing legal education during the period of suspension. [Stipulated Exhibit 20.]

Mr. Beeks has remained current in his legal knowledge by also subscribing to several daily e-mail services that focus on recent developments in the law as well as providing all published decisions issued by the Ninth Circuit and new opinions from AZ courts.

Fitness to Practice

Mr. Beeks has maintained one residence during the period of suspension.

[Joint Prehearing Statement.]

Income/Debts

During the period of suspension, Mr. Beeks has earned income in the amount of \$11,991.60 or approximately \$2,000.00 per month. [Application for Reinstatement, p. 5.] Mr. Beeks is current in his debts. [Stipulated Sealed Exhibits 5, 6.]

Taxes

Mr. Beeks provided copies of his income taxes for the year 2012. [Stipulated Sealed Exhibit 11.]

Civil/Criminal Actions

Mr. Beeks had no allegations of fraud during the period of suspension. He has not been the subject of any arrests or prosecution for any crime during the suspension period. He also was not a party to any civil actions. [Joint Prehearing Statement.]

Employment

Mr. Beeks maintained law related employment during the period of suspension. He has been assisting William Bishop, Esq. in three appellate matters performing legal research and writing for approximately 10-11 months. Mr. Bishop testified that he supervises Mr. Beeks' and that his work product was excellent and timely. He stated Mr. Beeks brought new thoughts and arguments to the cases and was on top of his game. He did not meet with clients. Mr. Bishop stated that Mr. Beeks has acknowledged his mistakes, blames only himself, and was doing everything he could to make it right. Mr. Bishop finds Mr. Beeks' underlying misconduct to be out of character for him. He stated Mr. Beeks is clearly competent and he would like him to assist him in the future.

Mr. Beeks also subleases office space and provides paralegal contract services for Matthew Kelly, Esq. He stated that he has assisted on approximately 13 matters performing witness interviews, assisting with disclosure, drafting appellate briefs. They made it abundantly clear to everyone, especially clients, that Mr. Beeks was serving in a paralegal capacity. Mr. Kelly testified that he and Mr. Beeks worked together at Mohr Hackett for nine years. He stated that Mr. Beeks was a mentor and good friend to him during that time. Mr. Kelly testified as to the toxic environment that ensued when the firm became Sherman Howard and stated that he himself left after 18 months of the merge because of the environment and

concern for his own mental health. Mr. Kelly described one incident know as Black Friday where people with 30 + years of experience were axed. While certainly not an excuse, Mr. Kelly stated that he believes that the takeover of the firm and the subsequent toxic environment may have contributed to Mr. Beeks' misconduct. Mr. Kelly said that Mr. Beeks was open and honest regarding his suspension and that the misconduct was out of character for Mr. Beeks. Mr. Kelly does not see Mr. Beeks' mental health issues impeding his ability to function or practice law. He sees no change in his legal abilities and has no concerns regarding Mr. Beeks' competency, as his work product has been excellent.

Mr. Kelly agreed to be Mr. Beeks' practice monitor if he is reinstated and will continue to sub-lease office space to him. Mr. Kelly stated that if he saw any signs of the depression or anxiety or if Mr. Beeks' performance began to suffer, he would urge Mr. Beeks' to see his counselor. He will refer clients to him without reservation and recommends his reinstatement.

Rose McCaffrey, Esq.

Ms. McCaffrey testified that she formerly worked with Mr. Beeks at Sherman and Howard and now at Kelly McCoy, PLC. She discussed the turmoil that took place during the merger and how it affected staff. Ms. McCaffrey stated that Mr. Beeks advised her of his impending suspension and his anxiety and depression issues before he left Sherman and Howard. She stated that Mr. Beeks was remorseful for the harm he caused clients and was helpful in transitioning his cases to other attorneys. She stated she has no concerns regarding his competence and fitness to practice and recommends that Mr. Beeks be reinstated.

Charitable/Volunteer Work

Mr. Beeks has been involved in various community and charitable organizations during his suspension. He is the vice president of the Desert Vista High School Boys Cross Country Boosters Association, volunteers with Feed My Starving Children, and is active in his church. He also donates blood/platelets regularly. [Prehearing Memorandum, p. 7.]

He has also been very involved in volunteer work for the legal community for the last 20 years. He served on the court's Committee on Examinations for 7 years and as a hearing officer for 10 years. He also served on the Arizona Board of Legal Specialization and the Personal injury and Wrongful Death subcommittee. [Application for Reinstatement.]

III. CONCLUSION AND RECOMMENDATION

The Panel determined that Mr. Beeks has demonstrated by clear and convincing evidence his rehabilitation, compliance with all discipline orders and rules, fitness to practice, and competence. Simply put, a series of unfortunate professional events, including the decline of the real estate development market that his prior firm was dependent upon, the mark crash that followed, the absorption of the A rated law firm he had worked for since his second year in law school, the more difficult environment of that new firm, and the secretarial changes that change brought created for Mr. Beeks a perfect storm for anxiety.

As he has straightforwardly testified; this does not excuse nor justify his actions. He quickly accepted responsibility. He wisely and immediately sought help. He self-reported, fully cooperated with the State Bar and entered into a Agreement for Discipline by Consent. We find these to be actions consistent with

remorse. To be clear, the absence of these would not mean an absence of remorse. However, the presence of these facts form the clear foundation and pillars of remorse. He has also satisfied the applicable criteria set for in *Arrotta*, therefore,

The Panel recommends reinstatement and probation for one (1) year with the State Bar's Member Assistance Program ("MAP"). The terms and condition of probation are as follows:

Terms of Probation

1. Within 30 days of reinstatement, Mr. Beeks shall contact the MAP director and schedule an assessment.
2. Mr. Beeks shall thereafter enter into a MAP contract based on the recommendation of the MAP director or a designee. Mr. Beeks shall comply with all recommended terms and pay costs associated with MAP. The MAP recommendations are incorporated herein by reference.
3. Mr. Beeks shall be responsible for any costs associated with MAP.
4. The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct., and a hearing may be held within thirty (30) days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

DATED this 7th day of April, 2014.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING

Michael Snitz

Michael Snitz, Volunteer Public Member

Glen S. Thomas

Glen S. Thomas, Volunteer Attorney Member

Original filed with the Disciplinary Clerk
this 8th day of April, 2014.

COPY of the foregoing mailed/emailed this
8th day of April 2014, to:

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