

OFFICE OF THE PRESIDING DISCIPLINARY JUDGE SUPREME COURT OF ARIZONA JUL 13 2011 FILED 

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

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

**CINDRA L. WHITE,
Bar No. 012410**

Applicant.

PDJ-2011-9008
[No. 11-9008]

REPORT and RECOMMENDATION

On June 13, 2011, the Hearing Panel ("Panel") composed of Douglas Pilcher, a public member from Maricopa County, Daniel S. Jurkowitz, an attorney member from Pima 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. Russell J. Anderson, Jr. appeared on behalf of the State Bar of Arizona ("State Bar") and Cindra White appeared *pro per*. The Panel considered the testimony, the admitted exhibits, the parties' Joint Stipulation and prehearing memorandums, 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 October 21, 1988 and transferred to inactive status in 1998. Applicant was summarily suspended on May 18, 2007 for non-payment of bar dues and filed her Application or Reinstatement on March 7, 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.

I. FINDINGS OF FACT

1. Applicant was admitted to the practice of law in Arizona on October 21, 1988.
2. Applicant voluntarily moved to inactive status as a member of the Arizona bar in 1998.

3. From 1998 until present, Applicant has not practiced law in Arizona or any other jurisdiction.

4. By Order of the Board of Governors dated May 18, 2007, Applicant was suspended from the practice of law in Arizona.

5. Applicant's suspension was a result of her negligent failure to pay membership dues and negligent failure to keep her address information with the State Bar of Arizona current.

6. Applicant has not applied during the period of rehabilitation for a license requiring proof of good character as to its procurement.

7. Applicant has no prior formal disciplinary history.

8. Applicant has not applied for reinstatement prior to this matter.

9. Applicant has worked as a homemaker during her period of suspension.

10. Applicant has not practiced law in any jurisdiction during the period of her suspension.

11. Applicant did not earn any wages or income during the period of her suspension but was supported financially by her husband.

12. Applicant's husband is Stephen White, a lawyer formally licensed to practice in Arizona but currently on inactive status.

13. At the time of her suspension, Mr. White was managing the payment of Applicant's membership fees but failed to pay them in 2007.

14. Applicant discovered her summary suspension when she noticed Mr. White received a bar identification card from the Arizona State Bar but she negligently failed to make inquiry or take steps to determine why she received a summary suspension.

15. Applicant has lived at 7365 Rancho Catalina Trail, San Diego, California 92127 during the period of her suspension but negligently failed to notify the State Bar of Arizona of this change in address.

16. Prior to moving to San Diego, Applicant managed the family finances, but Mr. White took over that role after the move.

17. Following her discovery of her summary suspension, Applicant again took control of managing family finances and opened a separate bank account so that she can directly pay for her future bar membership dues.

18. Applicant has not been a party to any criminal action during the period of her suspension.

19. On May 4, 2010, Applicant was stopped for a civil traffic violation in Riverside County California for crossing a double yellow line.

20. Applicant paid a fine for the civil traffic violation and attended traffic school.

21. The only civil litigation during the rehabilitation period involving Applicant was a civil action in which Applicant was a plaintiff alleging medical malpractice. The action had commenced before the rehabilitation period and was resolved during the rehabilitation period.

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

23. Applicant has paid a \$100 application fee and \$415.00 in delinquent membership dues and fees and does not owe additional funds to the Arizona State Bar.

24. Applicant has not taken any continuing legal education courses since her administrative suspension as she was on inactive status at the time of her suspension.

25. 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.

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

27. Applicant has provided updated personal information, including her address, telephone number, email address, to the Arizona State Bar membership office.

28. Applicant is not seeking to be reinstated as an active member of the State Bar of Arizona. As a result, Applicant is not required to complete any continuing legal education as this time. If she chooses to become an active member in the future, Applicant is required to fulfill the continuing legal education requirements outlined in Rule 45, Ariz.R.Sup.Ct.

29. Applicant intends to remain on inactive status until her three children are old enough to permit her time to practice law.

30. Applicant's children are nine, eleven, and thirteen years old, respectively.

Compliance with Disciplinary Rules and Orders

Applicant is compliant with all prior disciplinary orders and rules. There were no allegations that she practiced law during the period of suspension. She does not owe any monies to the Client's Protection Fund. On June 14, 2011, the State Bar filed its Statement of Costs and expenses reflecting that Applicant owed \$445.95. Applicant has since paid all costs in full related to these reinstatement proceedings. See Notice of Payment of Investigative Costs and Affidavit filed June 28, 2011.

Fitness to Practice and Competence

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. Rule 45(b)(1) provides that lawyers on inactive membership status are exempt from this requirement until they seek active status.

Because she was on inactive status prior to her summary suspension, Applicant has not taken any continuing legal education courses and is not required to comply with Rule 45. Rule 45(e) *Status Changes*, 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).

Applicant at this time seeks reinstatement to inactive status, however, Rule 65(a) provides for reinstatement "to the active practice of law." The Panel considered *Matter of Cooper*, File No. SB-10-0112-R (2010), which ordered that the applicant be reinstated to active status with the parties stipulating to a transfer to inactive status.

Reinstatement to active status recommendation with a concurrent and contingent stipulation to transfer to inactive status

Applicant and counsel for the State Bar of Arizona stipulated on the record that *if reinstated*, Applicant would immediately transfer to inactive status by order of the Supreme Court. But for such stipulation, the panel would not have recommended reinstatement as Applicant has not demonstrated her fitness to practice and competence to practice law.

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 a fitness to practice law nor competence as required by Rule 65. However, the stipulation obviates such requirement if accepted by the Supreme Court. Therefore, contingent upon the acceptance of the stipulation to transfer to inactive status, the Panel therefore, recommends that Applicant be directly reinstated to an inactive membership status.

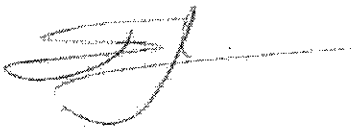
In the alternative, the Panel recommends that Applicant be reinstated to the active practice of law and immediately transferred to inactive status as stipulated by the Parties at the evidentiary hearing.

DATED this 7 day of July, 2011.

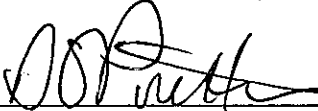


THE HONORABLE WILLIAM J. O'NEIL
PRESIDING DISCIPLINARY JUDGE

CONCURRING:



Daniel S. Jurkowitz, Volunteer Attorney Member



Douglas Pilcher, Volunteer Public Member

Original filed with the Disciplinary Clerk
this 13th day of July, 2011.

COPY of the foregoing mailed this
13th day of July, 2011, to:

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