

**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,

**ANN P. WOODRICK,
Bar No. 019639**

Applicant.

PDJ-2012-9099

REPORT AND RECOMMENDATION

On February 4, 2013, the Hearing Panel ("Panel") composed of public member, Mark E. Salem, attorney member, Scott I. Palumbo, 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. Roberta L. Tepper appeared on behalf of the State Bar of Arizona ("State Bar") and Karen Clark appeared on behalf of Applicant. The witness exclusionary Rule was invoked. The Panel considered the testimony, the admitted exhibits, the parties' Joint Prehearing Statement, pre-hearing memorandum and evaluated the testimony and credibility of the witnesses including Applicant.¹ The State Bar opposes reinstatement. The Panel now issues the following "Report and Recommendation," pursuant to Rule 65(b)(3), Ariz.R.Sup.Ct, recommending that reinstatement be denied.

Background

Ms. Woodrick was admitted to practice law in Arizona on July 8, 1999. She was summarily suspended effective March 22, 2002 for failure to comply with Rule

¹ Consideration was given to the testimony of Elizabeth A. Kohlhepp, M.D., Hal Nevitt, Michele Lawson, Esq., Lisa Bolinger, Esq., Cathy Schmit, Scott Cohen, Esq. and Leslie Rakestraw, Esq.

45, Mandatory Continuing Legal Education ("MCLE") requirements. Her Application for Reinstatement was filed on October 12, 2012.

Pursuant to Rule 64(f)(1)(B), Ariz.R.Sup.Ct., because Ms. Woodrick 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.

Rule 64(c), *Additional Requirement*, also provides in part that "If the applicant has been suspended for a period of five (5) years at the time the application is filed...applicant shall be required to apply from admission and pass the bar examination as required." Because Applicant has been suspended for over five years, she must apply for admission and pass the Arizona Bar Examination. Ms. Woodrick seeks a waiver of that requirement.

On January 11, 2013, Ms. Woodrick filed a Motion for Ruling Re Rule 64(c) Issue regarding the authority of the PDJ and/or Hearing Panel to waive the requirement that she be required to take and pass the Arizona Bar Examination as a prerequisite to being readmitted to practice in Arizona. The State Bar filed a response stating that the bar examination requirement is mandatory and Ms. Woodrick filed a reply. The PDJ distinguished the previous reinstatement cases offered by Ms. Woodrick in support of her motion and denied the motion. See PDJ Order filed January 25, 2013.

Neither the PDJ nor the Hearing Panel has the authority to waive the expressed mandate found in Rule 64(c). Ms. Woodrick subsequently takes the

position that the Hearing Panel has the authority to recommend to the Supreme Court that the requirement be waived. However, the Panel is not inclined to recommend the requirements of the rule be waived as it finds no unique or extraordinary circumstances warranting such a waiver nor recommendation. The Hearing Panel does recognize that the Supreme Court has the inherent authority to waive such a requirement.

The powers and duties of hearing panels are set forth in Rule 52, Ariz.R.Sup.Ct. No rule currently gives the authority to the PDJ or hearing panel to waive or make a recommendation regarding waiving the bar examination requirement. It is for the Court to determine if waiver is appropriate or if it prefers a recommendation on such issue from a hearing panel.

Ms. Woodrick is not eligible to reinstate under the active practice exemptions listed 64(f)(1)(B), as she was not a member in good standing in Michigan and did not actively practice law in that jurisdiction during her summary suspension in Arizona.

I. FINDINGS OF FACT

1. Ms. Woodrick was first admitted to the practice of law in Arizona on July 8, 1999. Joint Pre-Hearing Statement.

2. Ms. Woodrick was also admitted to the practice of law in Michigan on December 8, 1994. Joint Pre-Hearing Statement.

3. Ms. Woodrick was summarily suspended from the practice of law in Arizona effective March 22, 2002.

4. Ms. Woodrick was also administratively suspended from the State Bar of Michigan on February 7, 2002. Joint Pre-Hearing Statement.

5. Ms. Woodrick's Arizona's summary suspension was a result of her failure to comply with Mandatory Continuing Legal Education requirements. Joint Pre-Hearing Statement.

6. Ms. Woodrick's State Bar of Michigan suspension was a result of her failure to pay membership dues. Joint Pre-Hearing Statement.

7. Ms. Woodrick has no prior disciplinary history and was never the subject of any State Bar charge, investigation, or disciplinary proceeding. Joint Pre-Hearing Statement.

8. Ms. Woodrick filed her Application for reinstatement on October 12, 2012 and paid the State Bar's investigation fee and reinstatement application fee. Applicant's Ex. 7.

9. Ms. Woodrick does not owe any funds to the State Bar of Arizona's Client Protection Fund. Applicant's Ex. 8.

10. Ms. Woodrick has not applied for reinstatement with the State Bar of Arizona prior to this matter. Joint Pre-Hearing Statement.

11. Ms. Woodrick applied for recertification in Michigan on May 11, 2011; she passed the July 2011 Michigan bar exam; she underwent the requisite character and fitness process in Michigan, and; she was notified that she was re-certified by the Michigan Supreme Court Board of Law Examiners on March 12, 2012. Joint Pre-Hearing Statement; Applicant's Ex. 3-4.

12. Effective March 12, 2012, Ms. Woodrick was reinstated to active status as a lawyer in Michigan. Joint Pre-Hearing Statement; Applicant's Ex. 5.

13. Ms. Woodrick worked as Claims Counsel for Scottsdale Insurance Company at the time of her February 2002, Arizona summary suspension. Joint Pre-Hearing Statement; Applicant's Hr'g Test.

14. Ms. Woodrick was unemployed from March 2002 through August 2007. Joint Pre-Hearing Statement; Applicant's Hr'g Test.

15. From August 2007 through February 2009, Ms. Woodrick held short term positions as a letter carrier and as a sales representative. Joint Pre-Hearing Statement; Applicant's Hr'g Test.

16. Since February 2009, Ms. Woodrick has been employed as a Mitigation Specialist with the Maricopa County Office of the Legal Defender (OLD). Joint Pre-Hearing Statement; Hr'g Test.

17. Ms. Woodrick's current job responsibilities primarily involve meeting with O.L.D. clients to collect information through interviews, conduct investigative searches and to obtain various agency records. Joint Pre-Hearing Statement; Hr'g Test.

18. Ms. Woodrick has maintained the same residence since 2001, and is current on her housing and mortgage obligations. Joint Pre-Hearing Statement; Hr'g Test.

19. Ms. Woodrick has not been a party to any criminal action during the period of suspension. Joint Pre-Hearing Statement.

20. Ms. Woodrick has been a party to civil actions during the period of suspension, all related to Discover Card collections related to the same debt. Joint Pre-Hearing Statement.

a. *Discover Bank v. Woodrick*: Dreamy Draw Justice Court, CC2008-061385. Complaint filed: March 21, 2008 – Action Dismissed with Prejudice: September 26, 2008. [Applicant's Exhibit 9]

b. *Discover Bank v. Woodrick*: Northeast Phoenix Precinct Justice Court, TJ2004-090068. Transcript Judgment filed: July 15, 2004. Applicant's Ex. 12.

c. *Discover Bank v. Woodrick*: Dreamy Draw Justice Court, 0708CV-0401812. Complaint filed: March 12, 2004 – Judgment entered: May 10, 2004. Applicant's Ex. 13-14]

21. A lien was placed on Ms. Woodrick's property by Discover Financial Services following the May 10, 2004 a default judgment. On September 26, 2008 Ms. Woodrick reached a settlement with Discover Card which resolved the May 10, 2004 default judgment. Ms. Woodrick requested that the lien be released by Discover Financial Services and received written confirmation that Discover would move to remove the lien. Joint Pre-Hearing Statement; Applicant's Ex. 10, Bates 23.

22. Ms. Woodrick has remained current since 2009 regarding the knowledge and skills necessary to fulfill her current professional responsibilities and obligations, and has attended training offered by the Legal Defender. Joint Pre-Hearing Statement; Applicant's Ex. 15.

23. Ms. Woodrick was the subject of the requisite character and fitness investigation by the State Bar of Michigan subsequent to Ms. Woodrick's passing of the July 2011 Michigan Bar Exam. Joint Pre-Hearing Statement.

24. There have been no charges of fraud made or claimed against Ms. Woodrick during the period of rehabilitation, formal or informal. Joint Pre-Hearing Statement.

25. At the conclusion of the evidentiary hearing the State Bar recommended that Ms. Woodrick be denied reinstatement.

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

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. Rule 65(b)(2). Because Ms. Woodrick was also suspended in Michigan, she was required to cure her suspension in Michigan for non-payment of bar dues.

The Supreme Court of Arizona has also held that the following factors also are considered in matters of 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. Additionally, to establish rehabilitation, an applicant must identify and affirmatively show that they have overcome the weaknesses which produced the earlier misconduct. *Matter of Arrotta*, 208 Ariz. 609, 96 P.3d 213 (2004).

Rehabilitation

Much of Ms. Woodrick's evidence regarding her rehabilitation from her mental illnesses and chemical dependency is sealed. Ms. Woodrick has acknowledged her weaknesses and testified regarding her efforts to overcome those weaknesses.

Elizabeth Kohlhepp, M.D.

Elizabeth A. Kohlhepp, M.D., testified that she is a psychiatrist who has treated Ms. Woodrick since February 1, 2007 and has met with her 55 times. She prepared a report in this matter regarding her diagnosis and treatment of Ms. Woodrick, which is sealed. Dr. Kohlhepp stated that she also referred Ms. Woodrick to addictions counselor, Mary Zumoff. Dr. Kohlhepp further stated that Ms. Woodrick's mental illnesses have responded well to treatment (medication and psychotherapy) and she has demonstrated a sustained period of recovery from her substance abuse (approximately six years). Ms. Woodrick has been subject to random drug testing, attends AA meetings, has a sponsor and attends numerous self-help group therapy sessions. Dr. Kohlhepp stated that Ms. Woodrick has significant coping and support systems in place and has the ability to handle any future stress related to the practice of law. Dr. Kohlhepp opined that Ms. Woodrick is sufficiently treated, stabilized, and fit to practice law. Applicant's sealed Ex. 18 and 19.

Hal Nevitt, LCSW/LISAC/CEAP

Mr. Nevitt, former Director of the State Bar's Member Assistance Program testified that Ms. Woodrick presented to him in August 2010 for an evaluation. Ms. Woods also voluntarily entered into a one year contract with MAP in August 2011. He received reports from her support monitor and Dr. Kohlhepp. She was compliant with the contract, did not relapse and was a "model MAP participant." He recommends continued MAP service if Ms. Woodrick is reinstated for monitoring purposes and accountability. Mr. Nevitt further testified that it is significant Ms. Woodrick also sponsors other in recovery. Applicant's sealed Ex. 16, 30.

Ms. Woodrick testified that the weaknesses that caused her summary suspension were related to her substance abuse and undiagnosed mental illnesses. She has since overcome those weaknesses, established a meaningful and sustained period of recovery (six years) and it is unlikely those weaknesses will occur. Ms. Woodrick has a extensive network of friends, family and mental health professionals to aide her if needed.

The Panel determined that Ms. Woodrick has met her burden and demonstrated rehabilitation from her mental illnesses and substance abuse.

Compliance with Disciplinary Rules and Orders

Ms. Woodrick is compliant with all prior disciplinary orders and rules imposed as a result of her summary suspension. There were no allegations involving the unauthorized practice of law during the period of suspension. Ms. Woodrick does not owe any funds to the Client Protection Fund.

Competence

Ms. Woodrick has obtained 30 hours of continuing legal education ("CLE") during the 2008 – 2009 CLE year period; 48 hours during the July 2009 – June 2010 year period; 57.5 hours in the July 2012 to June 2010 year period; 33.25 hours in the 2011-2012 year period; and 13.75 hours during July 2012-June 2013 year period. [Applicant's Exhibit 15]; however, obtaining continuing legal education and keeping current in one's knowledge of the law or working in law related areas while suspended, by itself, does not offset the mandate of Rule 64(c).

The mandate imposed by Rule 64(c) rests on the preposition that an attorney, separated from the practice of law for an extended period may have lost their competency to practice law. Here, Ms. Woodrick has been suspended for an

extended period of time, almost ten years and testified at hearing, that she was not opposed to taking the Arizona bar examination if required, but would prefer not to.

We recognize that the Supreme Court has waived the requirement for taking the examination in the past. However that has always required extraordinary circumstances. Here the argument is that Ms. Woodrick is extraordinary. While we agree that each individual is unique and we recognize Ms. Woodrick has worked diligently on her rehabilitation efforts, these do not equate with extraordinary circumstances.

There is nothing extraordinary about an attorney who is licensed in two jurisdictions from being required to meet the requirements of each jurisdiction. If there is a "credit" that has previously been granted to applicants whether it be a credit for a payment of a fee in one jurisdiction counting towards a required fee in another or, as here, a credit for passing an examination in one state granting a waiver of the examination in another state upon reinstatement; we are unaware of it and have not been pointed to any such example.

Although Ms. Woodrick has recently passed the bar examination in Michigan, Michigan does not utilize the Uniform Bar Examination that Arizona utilizes. Simply put, meeting reinstatement conditions in one jurisdiction does not automatically satisfy the requirements of another jurisdiction. Should the Supreme Court waive the requirement, the Panel recommends at minimum, Ms. Woodrick should be required to pass the Multi State Professional Responsibility Examination and take the course on Arizona law required for Admission on Motion.

Fitness to Practice

Attorneys Leslie Rakstraw, Lisa Bolinger, Scott Cohen and Michele Lawson testified regarding Applicant's outstanding abilities, work ethic, competency and fitness to practice. Mr. Cohen also testified regarding Ms. Woodrick's successful mentoring of his niece. However, because of the additional requirement set forth in Rule 64(c) regarding the passing of the bar examination, the Panel determined that Applicant has failed to establish her fitness to practice as they are inherently entwined.

III. DISCUSSION OF DECISION

The Panel is impressed with Ms. Woodrick efforts regarding rehabilitation and trust she will continue on that path. She has demonstrated rehabilitation through a sustained period of recovery and a strong commitment to recovery. However, Ms. Woodrick has failed to demonstrate her competence and fitness to practice, as she is required to fulfill the mandate set forth in Rule 64(c). While Ms. Woodrick may be an extraordinary candidate, her situation is not extraordinary or unique and it is not unlikely that this issue regarding requirements between jurisdictions will arise again.

IV. CONCLUSION

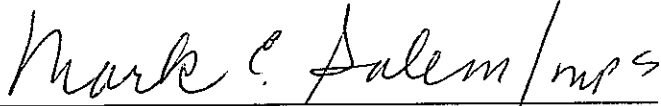
To be clear, had Ms. Woodrick passed the Arizona examination, the Panel would recommend re-admittance. However, she has not. Therefore, the Panel finds Ms. Woodrick has failed to meet her burden of proof. Ms. Woodrick has failed to establish her competency and fitness to practice for the reasons set forth above as required pursuant to Rule 65. Therefore, the Panel unanimously recommends

that the Application for Reinstatement be denied.

DATED this 11 day of March, 2013.


THE HONORABLE WILLIAM J. O'NEIL
PRESIDING DISCIPLINARY JUDGE

CONCURRING


Mark E. Salem, Volunteer Public Member


Scott I. Palumbo, Volunteer Attorney Member

Original filed with the Disciplinary Clerk
this 11 day of March, 2013.

COPY of the foregoing mailed/emailed this
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