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DISCIPLINARY COMMISSION OF THE
SUPREME COURT OF ARIZONA

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

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3
4 IN THE MATTER OF AN APPLICATION) No 07-6018
5 FOR REINSTATEMENT OF A SUSPENDED)
6 MEMBER OF THE STATE BAR OF ARIZONA,)
7)
8 **KATHY M. O'QUINN,**) **DISCIPLINARY COMMISSION**
9 **Bar No. 021264**) **REPORT**
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APPLICANT)
_____)

1 This matter came before the Disciplinary Commission of the Supreme Court of
2 Arizona on July 12, 2008, pursuant to Rules 64 and 65, Ariz R Sup Ct , for review of the
3 Hearing Officer's Report filed May 30, 2008, recommending reinstatement, two years of
4 probation with the State Bar's Member Assistance Program (MAP), and costs

5 The State Bar does not oppose the reinstatement subject to terms of probation

6 **Decision**

7 Having found no facts clearly erroneous, the seven members¹ of the Commission
8 unanimously recommend adopting and incorporating by reference the Hearing Officer's
9 findings of fact, conclusions of law, and recommendation that Applicant Kathy M.
10 O'Quinn be reinstated to the practice of law, placed on two years of probation (MAP), and
11 pay all costs associated with these proceedings including any costs incurred by the
12 Disciplinary Clerk's Office² Probation is effective two years from the date the probation
13 contract is signed The specific terms of probation are as follows

14 _____
15 ¹ One lawyer member seat remains vacant Commissioner Horsley did not participate in these
16 proceedings

17 ² A copy of the Hearing Officer's Report is attached as Exhibit A

1 On September 9, 2006, Applicant was suspended for six-months and one-day and
2 two years of probation (MAP) upon reinstatement and restitution were ordered in File Nos
3 03-1645 et at for violating ERs 1 2(a), 1 3, 1 4(a) and (b), 1 15(a), 3 1, 3 2, 8 1(b), 8 4(d) and
4 Rules 43(a) and (d), Rule 44(b) and Rule 53(e) On May 22, 2007, a six-month concurrent
5 suspension with probation (MAP) upon reinstatement, with terms and conditions to be
6 determined upon reinstatement, were also imposed in File No 05-1111, for violating ERs
7 1 15, 8 1(b), 8 4(d) and Rules 43, 44, 53(d) and (f) In addition, on June 4, 2008, a six-
8 month retroactive suspension to April 27, 2007 was imposed in File No 06-1945,³ for
9 violating Rules 31(b), 53(c) and 72

10 The Hearing Officer found and the Commission agrees that Applicant has satisfied
11 the requirements of Rule 65 and those set forth in *Matter of Arrotta*, 208 Ariz 509, 512, 96
12 P 3d 213, 216 (2004), by clear and convincing evidence Applicant has demonstrated her
13 competence, fitness to practice and compliance with prior disciplinary orders Applicant has
14 paid all restitution and discipline costs and has participated in fee arbitration ⁴

15 RESPECTFULLY SUBMITTED this 7th day of August 2008
16

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19 _____
Daisy Flores, Chair
Disciplinary Commission
20

21 Original filed with the Disciplinary Clerk
22 this 7th day of August 2008

23 Copy of the foregoing mailed
24 this 7th day of August 2008, to

25 ³ The Hearing Officer inadvertently refers to this matter as File No 07-0060 See Report, p 5

26 ⁴ A Satisfaction of Judgment was provided in the *Wisnowski v O'Quinn* matter Arcadia/Biltmore Justice Court, No CC2006-185349 See Report, p 8

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Donna Lee Elm
Hearing Officer 6N
Federal Public Defender
850 West Adams Street, Suite 201
Phoenix, AZ 85007

Ralph W Adams
Respondent's Counsel
520 East Portland, Suite 200
Phoenix, AZ 85004

Robert B VanWyck
Chief Bar Counsel
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by 

/mps

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MAY 3 2008

HEARING OFFICER OF THE
SUPREME COURT OF ARIZONA
BY *R. Mc...*

**BEFORE A HEARING OFFICER
OF THE SUPREME COURT OF ARIZONA**

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

No 07-6018

5 **KATHY M. O'QUINN,**
6 **Bar No. 021264,**

**HEARING OFFICER'S REPORT
ON REINSTATEMENT**

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APPLICANT.

(Filed Under Seal)

Much of the workings of the disciplinary system center on failings, and the attorneys involved in it deal routinely with the darker side of the humanity of their fellow lawyers. It is, therefore, a truly great pleasure to preside over a hearing focusing instead on courage, an extraordinary struggle to overcome some terrible experiences and addiction, and the will to face the shame of professional and personal failure – to persevere and prevail.

PROCEDURAL HISTORY

Kathy O'Quinn ("Applicant") has applied to the Supreme Court to have her license to practice law reinstated to active status. She filed a substantial, and well-documented, Motion for Reinstatement to Active Status on November 20, 2007.

Applicant had been suspended from the practice of law under State Bar files nos. 06-0122, 03-1645, 04-0008, 04-1625, 04-1831, and 04-1988.¹ The

¹ Applicant's counsel candidly alluded to additional cases that had been resolved with dismissals or by means other than proceeding with discipline. [Transcript of Hearing dated March 11, 2008 ("TR") 6] These are not before this Hearing Officer, and have not been considered.

1 Supreme Court of Arizona ordered the six months and one day suspension on
2 September 26, 2006. It would have commenced October 27, 2006 and ended
3 approximately April 28, 2007. She made one appearance in court while
4 suspended, resulting in a disciplinary case, file no. 07-0060. A summary of those
5 disciplinary cases, parsed in factually chronological order, follows.²

6 Applicant's practice began deteriorating seriously in the summer of
7 2003. This coincided with the tragic and disturbing death of her sister (burned to
8 death), the break-up with her violent, terrorizing husband, the consequent alcohol
9 addiction she developed when trying to cope with those two upsetting matters, and
10 a growing solo practice of law.

11 The Edmondses (file #04-0008) had retained Applicant on a product
12 liability matter. About a year into that case, in the summer of 2003, Applicant
13 missed a response date for the defense motion to dismiss the case, and it was
14 granted with prejudice. Moreover, the defendants were subsequently successful in
15 their applications for their attorneys' fees. By early fall of 2003, the State Bar was
16 also notified of problems in the trust account. When the Bar reviewed her account
17 records, it found a number of irregularities. This started prompt intervention by the
18 Bar (file #03-1645), but only regarding her trust account, and not the other growing
19 impairments in her practice.

20 As the fall of 2003 wore on, Applicant increasingly shirked her
21 responsibilities for her clients. By December, new clients Brennen and Bradley

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23 ² This is meant only as a generalized overview for background
24 purposes. For greater detail about the cases leading to her suspension, refer to the
25 Hearing Officer's Report in those cases (which is, incidentally, in the attachments
to the Application)

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1 (file #04-1988) reported difficulty contacting her, and she never informed the
2 Edmondses of the dismissal. Nonetheless, she attended a Trust Account Ethics
3 Enhancement Program ("TAEEP"), and developed a trust account probation
4 contract which she was able to comply with initially.

5 ...

6 Her unresponsiveness to clients continued during the spring of 2004.
7 Moreover, as her practice collapsed for lack of attention, applicant began to
8 misrepresent progress to her clients. Unfortunately, Ms. O'Quinn continued to
9 take cases that she was too impaired to handle. The Stewart's bankruptcy was
10 dismissed for deficiencies not being corrected; when she refiled the petition for
11 them, she failed to follow through again, resulting in a second dismissal. At the
12 same time, the Bar received a judicial referral for failing to appear in court, which
13 eventually led to a couple Order to Show Cause ("OSC") hearings, contempt
14 findings, and a warrant for her arrest (file #04-1831) – all of which Applicant was
15 unable to address or handle.

16 Hence in the fall of 2004, Applicant began receiving sanctions from
17 the disciplinary system. She was informally reprimanded for the Edmondses' case,
18 and placed on probation with terms requiring a practice monitor, restitution to the
19 Edmondses, and reimbursement of costs. Although she managed to comply with
20 her probation quite well initially, she was not equally successful in maintaining her
21 practice. Over the fall and winter, she continued to fail to make court appearances,
22 file necessary pleadings and documents, and respond to Bar inquiries and Court
23 orders. Within a few months, she was unable to attend to the disciplinary
24 probation as well.

25 By the spring, trust account problems surfaced as well. With a second
26

1 round of OSC hearings by a second referring judge, as well as utter failure on
2 probation, on April 11, 2005, Applicant's probation was revoked.³ She continued
3 to fail to comply with bar investigations into trust accounts again. At this point,
4 Applicant was doing almost nothing for her practice, clients, and license.

5
6 By the spring of 2006, the newer cases and the two probation
7 violation cases were consolidated. On September 27, 2006, the Supreme Court
8 suspended Applicant for six months and a day,⁴ starting October 27, 2006. Soon
9 after she was suspended from the practice of law, Applicant made an abbreviated
10 appearance in court on behalf of a client, simply to alert the Court that her clients
11 would not be there; however, she failed to advise the Court that she had been
12 suspended from practice. The ensuing disciplinary case (file #07-0060) for
13 unauthorized practice of law ("UPL") was filed. 061495

14 In May of 2007, the Supreme Court entered judgment suspending
15 Applicant another six months for the second round of disciplinary cases, but
16 making that concurrent with the existing term of probation. She continued in a
17 voluntary suspension *after* her mandated period of suspension had concluded in the
18 end of April of 2007. She had started an involved recovery program which she

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³ This case, then, was joined with the later ones as it was filed as a
21 violation of the terms of her probation at the same time that most of the balance of
22 the cases were being initially filed.

23 ⁴ The Court also ordered that, as a condition of reinstatement, Applicant
24 must continue her participation in MAP and remain compliant with the terms of
25 her December 19, 2005 contract. She was also ordered to pay \$600.00 restitution
to the Edmondses.

1 continued to nurture, while teaching and doing legal research for lawyers. She
2 further continued with her practice/sobriety monitor, and her regular therapeutic
3 contact with the MAP director. [TR 119]

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5 violation cases were consolidated. On September 27, 2006, the Supreme Court
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16 end of April of 2007. She had started an involved recovery program which she
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19 contact with the MAP director. [TR 119]

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23 ⁵ The Court also ordered that, as a condition of reinstatement, Applicant
24 must continue her participation in MAP and remain compliant with the terms of
25 her December 19, 2005 contract. She was also ordered to pay \$600.00 restitution
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1 After that, the UPL case was settled with an agreed-upon sanction of
2 probation, back-dated so that it has been completed as of the hearing. The Hearing
3 Officer for that case recommended acceptance of the Tender of Admissions and
4 Consent to Discipline by Agreement. Reportedly, in February of 2008, the
5 Disciplinary Commission took up that case, adopting the findings and
6 recommendation of the Hearing Officer. [TR 9] The parties await the Supreme
7 Court's decision on it – but the agreed-upon suspension of 6 months, coextensive
8 with the suspension ordered on April 27, 2007, if accepted by the Court, would
9 have run its course by late October of 2007. Without the benefit of the Supreme
10 Court's ruling, this Hearing Officer will make her recommendations conditionally,
11 based upon the presumption that the Supreme Court will concur with the
12 recommended sanction in the UPL case.

13 On November 20, 2007, Applicant filed the instant motion seeking
14 reinstatement to active status. The State Bar filed nothing in opposition. This
15 Hearing Officer held a telephonic pre-hearing conference with the parties.
16 Thereafter, the evidentiary hearing on the motion was conducted on March 11,
17 2008. Applicant called as witnesses Nancy Wesolek (AA sponsor), Hal Nevitt
18 (MAP Director), the Honorable Jeanne Garcia (practice/sobriety monitor), and Dr.
19 Barsz (addiction recovery physician), then testified herself. After Applicant rested,
20 the State Bar presented no evidence, Counsel for the Bar verbalized “no reason not
21 to” reinstate Applicant, asking for a number of therapeutic and monitoring terms
22 as a condition of probation. [TR 123]. This Hearing Officer concurred,
23 announcing her intention to recommend reinstatement with such terms. [TR 124].

24 Due to privacy concerns regarding her medical issues, the Hearing
25 Officer placed under seal the Application and its exhibits, sealed the Reinstatement

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1 Hearing and its transcript, and files this report under seal.

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LAW OF REINSTATEMENT

4 Applicant bears the burden of proving, by clear and convincing
5 evidence, that she has satisfied all the requirements for reinstatement. Ariz. R.S.
6 Ct. Rule 65(b)(2). There are a number of requirements to apply for reinstatement,
7 as outlined in Ariz. R. S. Ct. Rule 65(a)(1). That, however, represents a minimum
8 to be qualified to *apply* for reinstatement, and will not necessarily suffice to show
9 the high degree of rehabilitation that the Court expects before it will, once again,
10 entrust a lawyer with a professional license. See In re Arrotta, 208 Ariz. 509, 512,
11 96 P.3d 213, 216 (2004) (the Court “must ‘endeavor to make certain that [we do]
12 not again put into the hands of an unworthy petitioner that almost unlimited
13 opportunity to inflict wrongs upon society possessed by a practicing lawyer ’”).

14 The Court warned that the “bottom line” is that an applicant must
15 establish that he has “affirmatively shown that he has overcome those weaknesses
16 that produced his earlier misconduct.” In re Robbins, 172 Ariz. 255, 256, 836
17 P.2d 965, 966 (1992). Moreover, “neither the fact that applicant has been
18 sufficiently sanctioned, nor the mere passage of time, is enough to warrant
19 reinstatement.” Id. Furthermore, “Merely showing that [an individual] is now
20 living and doing those things he ... should have done throughout life, although
21 necessary to prove rehabilitation, is not sufficient to meet the applicant’s burden.”
22 Arrotta, 208 Ariz. at 515, 96 P.3d at 219 (quoting In re J.J.T., 761 So.2d 1094,
23 1096 (Fla.2000)).

24 In determining whether a disbarred attorney seeking reinstatement has
25 been rehabilitated, is competent, and poses no further threat to members of the

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1 public, the Supreme Court's primary responsibility remains at all times the
2 protection of the public. Arrotta.

3
4 **FACTS OF COMPETENCE, REHABILITATION, AND FITNESS**

5 **Rule 65 Requirements**

6 Applicant satisfied all the requirements of Rule 65. The Motion for
7 Reinstatement thoroughly documented this. Some follow-up questions during the
8 hearing revealed that certain matters (which had remained questionable in the
9 Motion) had been concluded.

10 ...

11 Of particular note, she paid all restitution and disciplinary costs,
12 participated in Bar arbitration "aggressively," and negotiated other Bar Complaint
13 issues with her clients to their satisfaction. [TR 102] Moreover, some of the items
14 in her Application that had been unresolved when it had been filed, have since
15 been taken care of. In particular, the Wisnowski case against her, the matter had
16 settled for \$35,000. She has been faithfully paying \$500 per month towards that.
17 The last payment is due a few weeks after the hearing, then the entire judgment
18 will be satisfied. [TR 117] As to the Null case against Applicant, it also proceeded
19 with arbitration and was resolved. [TR 117-18]

20 **Competency as a Lawyer**

21 There is no reason to think that Applicant is, or was, incompetent in
22 her practice. She apparently provided such proficient and professional services
23 that it was growing rapidly. It faltered not because of incompetence, but due to her
24 emotional state and alcohol addiction. Moreover, she maintained her competency
25 through her teaching paralegals. [TR 103] In addition, she took a 7-day course as

1 CLE to maintain her edge. [TR 104] Given that competency has not been an
2 issue, resolution of the alcohol issue should render practice should remain fully
3 competent again.

4 **Rehabilitation**

5 Instead, the most significant issue for reinstatement of Ms. O'Quinn is
6 whether she has adequately demonstrated rehabilitation to satisfy the high burden
7 described in Arrotta. She used the hearing to establish, above and beyond the
8 minimal evidence, exemplary rehabilitation. Moreover, she demonstrated her
9 rehabilitation by clear and convincing evidence. Aside from the evidence set forth
10 in her application, she produced four witnesses who testified at her reinstatement
11 hearing.

12
13 Nancy Wesolek testified that she was Applicant's Alcoholics
14 Anonymous ("AA") sponsor who has herself had eighteen years of sobriety. She
15 developed a relationship of trust with Applicant, where Applicant would discuss
16 with her not only successes, but failures and temptations. [TR 15-16] She has
17 maintained a long-term relationship with Applicant since 2005. She described
18 Applicant's participation in AA as "spot on," and has really impressed her sponsor.
19 [TR 23] Applicant was calling her daily, going to meetings daily, She confirmed
20 that Applicant "walked through" all 12 steps of the AA program. [TR 23, 31]
21 Throughout her sponsoring Ms. O'Quinn, Applicant has done everything she
22 needed to do [TR 24] Moreover, Applicant continues to attend meetings, and has
23 become a mentor to other young women starting to deal with their addiction. Even
24 though she did not have to continue with the alcohol treatment groups (in addition
25 to her very active AA participation), Applicant still attended for the support it gave

1 her as well as the support she could give others. She opined that Ms O'Quinn
2 could continue in her sobriety as long as she continues with the AA program; she
3 noted that it is becoming ingrained as a part of Applicant's life, so will become
4 habitual. [TR 26-27] She has seen Ms. O'Quinn be presented with choices where
5 she could drink and yet turned it down, reflecting a strong character. [TR 27-28]
6 She believes Applicant has well-defined boundaries that will well serve her
7 sobriety. She concluded by stating that she thinks Ms. O'Quinn "merits a new
8 opportunity." [TR 28] She believed that Applicant "turned to alcohol" because it
9 is a disease she has, and there were stressors occurring which caused her to turn to
10 alcohol for relief, namely the death of her sister, the violent husband, and financial
11 difficulties. [TR 34] Ms. O'Quinn divorced her husband, and he has remarried,
12 so she could not return to him; moreover, she does not want any relationship now.
13 [TR 35-36] Ms. O'Quinn has learned to live within her means. She has a
14 substantial support system now in place to help her deal with her stressors. [TR
15 39] Finally, Applicant has a deep, abiding faith in her god which sustains her. [TR
16 40-41]

17 Applicant also called Hal Nevitt, the State Bar's Member Assistance
18 Program ("MAP") director. He testified that he first started working with Ms.
19 O'Quinn in July of 2005 when Applicant was in a hospital alcoholism program.
20 He established a therapeutic relationship with her. [TR 46-47] Her treatment
21 program was to maintain sobriety, submit to random urinalysis, and meet regularly
22 with a MAP member and quarterly with the witness. [TR 47] She has had regular
23 contact with him, using him as a resource far more than was required by her
24 contract. [TR 50] Ms. O'Quinn's testing has been consistently negative, she
25 finished the hospital's aftercare program but remains an active participant,

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1 embraced recovery, is deeply involved in AA, and remained sober. [TR 47] She
2 has, thus complied with her MAP contract. [TR 47-48] He opined that relapse
3 was unlikely, as she had none of the worrisome denial or attitude of resistance to
4 treatment. [TR 49-50]

5 Applicant then called Dr. Barsz, MD, who had treated her alcohol
6 addiction in a private recovery practice. This was before her hospitalization when
7 MAP became involved. Ms. O'Quinn had sought out help voluntarily, but had not
8 been successful in this first foray into recovery. She was relapsing, in part due to
9 continuing "family issues and family traumas." [TR 56] Eventually when she
10 ended those, she was able to gain sobriety and maintain it for over two years. [TR
11 56] Once she was able to forego alcohol use, she was no longer seeing Dr. Barsz
12 regularly. [TR 57] Attendance at AA, accepting responsibility for recovery, and
13 securing a good sponsor all help a person remain sober, and Ms. O'Quinn has done
14 all those. [TR 57-58] He therefore opined she could remain sober. [TR 59] He
15 further opined that she was fit to practice law. [TR 61]

16 ...

17 The Honorable Jeanne Garcia, Applicant's sobriety monitor for the
18 State Bar, testified in that capacity, and not in the capacity of a judge. She stated
19 that she had started a monitor relationship with Ms. O'Quinn when she became
20 involved in MAP. She had monthly face-to-face, and weekly telephonic, meetings
21 with applicant. [TR 81] She has been compliant with her contract and has
22 participated well. [TR 81] When they started, Applicant was in the throes of her
23 divorce, closing her practice, and trouble dealing with an unruly teenaged son.
24 [TR 82] However, she used the monitor to discuss her issues and finally started
25 making positive headway toward correcting them.

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1 Finally, Ms. O'Quinn took the stand, testifying in narrative form.
2 She testified about her exemplary academic career and how she eventually started
3 her own solo law practice in the Phoenix area. [TR 73-76] She also spoke of
4 horrible experiences at the hands of a violent, controlling, terrorizing husband.
5 [TR 76, 78-79, 88-89] Her general law practice was thriving.

6 Additionally, and most importantly, she talked about her relationship
7 with alcohol. Alcohol had never posed a problem for Ms. O'Quinn before; she
8 could take it or leave it, often only ordering a single beer and not finishing it. [TR
9 76] Between the constant threats from her ex-husband, the trouble her teenaged
10 boy had become [TR 92, 108-11], and the stress of her growing practice, Ms.
11 O'Quinn found she needed help coping with the tension that was building within
12 her. She described herself as feeling like she was "going bananas." So, a
13 colleague suggested, "why don't you have a Jack and coke to calm yourself
14 down?" [TR 77] This seemingly innocent invitation led to more and more "Jack
15 and cokes," resulting in less control over the stress life and practice – hence more
16 alcohol use, Ms. O'Quinn soon became addicted to the substance. As she
17 described it. "this illness ... it's in delay, dormant, sprung up with a vengeance."
18 [TR 77]

19 She also testified about another very disturbing event that occurred
20 around the same time. Her sister, who she had been very close to, was burned to
21 death in a house fire. [TR 79, 88] Being the lawyer in the family, Ms. O'Quinn
22 was called upon to go home and try to set all her sister's affairs in order, at a time
23 when she should have been attending to her own profound horror and grief. [TR
24 88]

25 Her law practice had continued to grow. By 2005, it was extremely
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1 busy. However, between her lack of business experience and her alcoholism, her
2 practice began to deteriorate. Aside from sometimes missing deadlines and court
3 appearances, she had a trust practice violation that put her under the Bar's
4 supervision. [TR 90-93] Immobilized with grief, stress, and fear, Ms. O'Quinn
5 drank and neglected the mounting correspondence from the State Bar. [TR 93]

6 By spring of 2005, she realized she needed treatment to stop drinking.
7 [TR 89] She started to see Dr. Barsz who prescribed Naltrexone for her addiction.
8 But the drug made her ill and, rather than making sobriety a goal, she stopped
9 taking it so that she could continue her practice. [TR 93] She also continued to
10 drink while attending an outpatient treatment program one night per week. [TR
11 93] By June of 2005, she desperately wanted residential treatment to get her to
12 stop drinking. She truly felt she would soon die if she did not stop drinking; she
13 was at the point where she could no longer stand or walk. [TR 94-96] The last
14 drink she ever had was on June 28, 2005. [TR 99] Finally in early July, she
15 entered the Valley Hope program in Chandler. [TR 95] She met Hal Nevitt who
16 helped her a lot [TR 97-98], but still struggled substantially once she was in out-
17 patient after-care. [TR 96-97] After all, she had client responsibilities, numerous
18 different treatment commitments, and she started teaching. [TR 97] However, the
19 State Bar's MAP went to work cleaning up the shambles of her practice and
20 provided support, therapy, and genuine assistance. On December 5, 2005, she
21 signed a voluntary contract with MAP. [TR 98] In her own words, she has
22 "gladly" complied with MAP ever since; she has been "absolutely" compliant, as
23 she saw that as necessary to recover. [TR 99]

24 After her first year of sobriety she joined a group at Crossroads
25 meeting during rush hour, volunteering to chair one meeting a week. [TR 99] She

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1 learned that the more involved she was in treatment, the better her chances of
2 remaining sober. So she threw herself into recovery, sometimes chairing meetings
3 almost every day. [TR 99-100] Even when she felt bad and did not want to
4 participate, her support system encouraged her, and she continued in sobriety. [TR
5 100] Not only did she have her own sponsors, but she began to be a role model for
6 other young women, sponsoring them (her "sponsees"). [TR 101]

7 Fortuitously, Ms O'Quinn was offered employment at Lamson
8 Business College where she taught paralegals business law and practices, among
9 other subjects. [TR 101, 103] She also teaches undergraduate and graduate
10 courses at Ottawa University. [TR 103] In addition, she has worked as a paralegal
11 for a Cave Creek firm. [TR 104]

12 Applicant also discussed how she addresses her financial
13 circumstances. She owed a lot of clients money from her malpractice when under
14 the influence. As part of her Twelve Step program, step #8, she had to make
15 amends to anyone she had wronged. She did so, repaying all obligations for her
16 former clients [TR 105] It came out to about \$20,000, and those were her first
17 debts she repaid. [TR 105] She lived very modestly to accomplish this.

18 When asked if she would continue doing the things she had to do to
19 get into recovery from alcoholism, she responded with a firm, clear voice: "Most
20 definitely." She was asked for how long. Again, there was conviction in her voice
21 when she answered, "Until death, until I die sober." [TR 102] Applicant intends
22 to ...

23 continue with voluntary use of the MAP program; she explained, "MAP is like an
24 extended family." [TR 119]

25 What has made the difference for her is, first and foremost, her
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1 recovery program through AA. Furthermore, she no longer has a husband who
2 does not respect her boundaries; in fact, he has remarried and now leaves her
3 completely alone. [TR 111] She came to understand why she had picked an abuser
4 like him, and how to avoid repeating that sort of counter-dependent relationship
5 again. [TR 112-13] In addition, her son is grown and has left home to join the
6 military service; this has been a struggle for her, but she is coping. [TR 108-11]
7 Her home life is peaceful. She is not maintaining her sobriety simply to secure her
8 license, but to live a better, healthier life. The AA Program has become who she
9 is. [TR 106-107] Her primary goal, once reinstated, is to continue teaching rather
10 than return to practice full-time. In fact, she has been offered full-time faculty
11 positions [TR 113-14]

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RECOMMENDATION OF REINSTATEMENT

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The following recommendation is premised on the presumption that the Supreme Court will accept the recommended, stipulated sanction in File #07-0060.

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In light of the clear and convincing evidence that Applicant remains competent to practice law professionally and well, that she has rehabilitated her alcoholism and is very likely to continue in recovery and sobriety, and that she is presently fit to practice law, this Hearing Officer concludes that Applicant should be reinstated to practice. The Hearing Officer recommends to the Disciplinary Commission and Supreme Court reinstatement with probation (MAP) for a period of two (2) years, with terms including:

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1 I. Terms of Participation (As set forth in the MAP contract)

2 Member shall fulfill the following minimum requirements.

3 A. Member shall advise MAP, the Monitor, and the director of membership
4 records of the Bar, in writing of any change in her address of record or
5 employment status.

6 B. Member shall completely abstain from using alcohol, other drugs, or any
7 other mood-altering or mind-altering chemicals except on prescription from
8 a physician; provided, however said prescription has been fully disclosed to
9 Michel A. Sucher, M D or his designee.

10 1. All medications except over-the-counter medications must be prescribed
11 by a primary care physician (PCP) or a PCP-referred provider All
12 medications must be documented in Member's medical record.

13 2. If a controlled substance is prescribed, dispensed or administered to
14 Member, Dr Michel A. Sucher or his designee must be notified in
15 advance and, in the case of an emergency, within forty-eight (48) hours
16 of such medication use.

17 3. Member shall maintain a medication log of all medications taken and
18 shall make the log available to Dr. Michel A. Sucher or his designee
19 upon request. The log shall contain, at a minimum, the name and dosage
20 of medication used, date taken or administered, name of prescribing or
21 administering physician and the reason medication was given.

22 4. Member shall abstain from ingesting the following substances:
23 a. Alcohol or foodstuffs or beverages or toiletries containing alcohol;
24 b. Foodstuffs containing poppy seeds;
25 c. Foodstuffs containing hemp products,
26 d. Herbal or health preparations containing derivatives of
27 controlled substances.

28 5. Member is fully responsible for any and all ingested materials and
29 their contents.

30 C. Member shall participate in random biological fluid testing and shall be
31 responsible for payment of all charges in connection with such testing. Such
32 charges will include, but not necessarily be limited to, payment to the
33 collection lab for services in connection with performing the test, as well as

1 reimbursement of fees billed to MAP by Dr. Sucher, or other physician
2 designated by MAP, for medical review of the biological fluid screenings.

- 3 1. Member will be required to contact an automated telephone system
4 providing a digit or digits for each day. If Member's assigned digit is
5 given, Member shall provide a specimen at an approved collection site by
6 1:00 PM that day. If Member is unable to provide a specimen by the
7 designated time and day, an explanation shall be faxed by Member to Dr.
8 Sucher at his private and confidential facsimile machine no later than
9 1.00 pm that day, that number is (480) 990-3114. A collection site list
10 and the telephone number shall be provided to Member following
11 execution of this agreement.
- 12 2. Additional biological fluid specimens (including hair testing) may be
13 requested by Dr. Sucher or his designee at any time. Member must
14 provide a telephone or pager number to Dr. Sucher or his designee where
15 she can be reached at any time.
- 16 3. Member shall cooperate with collection personnel at all times.

17 D. Member shall participate in Alcoholics Anonymous or similar self-help
18 program approved by MAP, including but not limited to

- 19 1. Member shall attend a minimum of two (2) meetings per week for the
20 duration of her agreement and shall provide a signature of the person in
21 charge of the meeting to document such attendance. Member's sponsor
22 may sign, if the sponsor is in attendance.
- 23 2. Member shall obtain an Alcoholics Anonymous sponsor.
- 24 3. Member shall participate in random drug and alcohol screening.
- 25 4. Member shall be assigned and shall maintain regular contact with a
26 Monitor
27 and shall submit to the Monitor, no later than the tenth of each month, a
28 copy of
29 the previous month's record of attendance as set forth in Item I D.I.
30 above.
- 31 5. Member shall furnish the Monitor with the name, address and
32 phone number of Member's Alcoholics Anonymous sponsor and
33 immediately notify the Monitor of any change.

- 1 E. Member shall make and attend appointments with Chuck Fenigstein,
2 LISAC, CADAC for ongoing psychiatric care at such intervals as are
3 recommended by Mr. Fenigstein or any successor treatment professional, as
4 outlined below.
- 5 F. Member shall participate in a prescriptive treatment program and/or continue
6 on her medications as/if prescribed by her doctor or any successor treatment
7 professional, as outlined below.
- 8 G. Member shall authorize and direct Chuck Fenigstein, LISAC, CADAC, or
9 any successor treatment professional, as outlined below, to provide a written
10 progress report to the MAP every ninety (90) days verifying that Member
11 has met with him and is following his recommendations The first progress
12 report shall be due ninety (90) days after Member signs this agreement.
- 13 H. If, during the term of this agreement, Member elects to change her treating
14 counselor from Mr. Fenigstein or Mr. Fenigstein is unable to continue in his
15 capacity as outlined in this agreement, Member shall immediately notify the
16 MAP in writing of such proposed change and shall within seven (7) days
17 provide the name of a proposed successor counselor of substantially similar
18 credentials. MAP shall approve such substitution of counselor and may
19 consult with Michel A Sucher, MD, MAP Medical Director, or his designee
20 in evaluating such substitution If a successor counselor is not designated
21 and approved within fourteen (14) days, treatment shall be handled under the
22 direction of Dr Sucher or his designee until a successor counselor is
23 designated and approved. Member shall be responsible for all cost associated
24 with any interim treatment provided under the direction of Dr Sucher or his
25 designee.
- 26 I. Member shall be assigned and shall maintain regular contact with a Monitor.
27 Member shall NOT be required to pay for support and monitoring activities
28 provided by the Monitor.
- 29 J. Member shall meet with the Monitor at such date, time and place as set by
30 the Monitor at least once each month and maintain weekly telephone contact
31 with the Monitor. These contacts are for the purpose of reviewing Member's

1 progress and compliance with this agreement. Missing two (2) meetings in a
2 six-month period will constitute a breach of this agreement.

3
4 K Member shall, at the MAP Director's discretion, schedule and hold an exit
5 interview within 30 days of the date this agreement is scheduled to expire.
6 There shall be no charge to Member for this interview. However, Member
7 will not be considered to have successfully completed this agreement until
8 she has met this requirement.

9
10 L. Member shall, within twenty (20) days of her signing this agreement, or
11 within twenty (20) days of the date said authorization is mailed to Member,
12 provide MAP with properly executed written authorizations as may be
13 necessary to verify Member's compliance with the terms and conditions of
14 this agreement, including, but not limited to:

- 15 1. Member shall execute all necessary releases for communication between
16 MAP, Michel Sucher, M.D, Chuck Fenigstein, LISAC, CADAC and the
17 Monitor.
- 18 2. Member shall authorize MAP to receive a copy of all initial and
19 subsequent evaluation reports and records relevant to Member's
20 treatment plan and treatment.
- 21 3. Member shall authorize Member's personal physician, treatment
22 counselor, therapist or other appropriate parties or institutions to discuss
23 with MAP the Member's evaluation, medical history, treatment plan
(including all prescription and over-the-counter drugs and medications),
and Member's participation and compliance with the recommended
treatment plan.
- 24 4. Member shall authorize MAP, Michel Sucher, M.D. or his designee,
25 Chuck Fenigstein LISAC, CADAC and/or the Monitor to provide a copy
26 of any and all records and test results of the Member to and discuss them
27 with such other persons, agencies or institutions as deemed necessary for
28 implementing and monitoring compliance with a treatment program
29 and/or the agreement.

30 M Member acknowledges that the Monitor is acting in a voluntary capacity,
without compensation, pursuant to the Monitoring Guidelines of MAP.
Accordingly, Member hereby agrees

- 1 1. To release the Monitor from any and all civil liability of any nature
2 or kind whatsoever for any acts or omissions made or done in good
3 faith and without malicious intent in the carrying out of his/her
4 duties and responsibilities as established under MAP or this
5 agreement, or both; and further agrees.
6 2. To indemnify and hold harmless the Monitor for any and all legal
fees, suit costs, other expenses, or acts and judgments incurred or
arising out of serving as a Monitor on behalf of Member.

7 II Costs

- 8 A. Member is solely responsible for any and all expenses, costs and fees
9 incurred in carrying out the provisions of this agreement including, but not
10 limited to, evaluation, detoxification, hospitalization, in-pattern or out-
11 patient treatment, counseling or therapy, urine, blood serum or other testing,
preparation and distribution of reports and records, etc.
- 12 B. Member shall pay \$50 per month to MAP for services rendered in
13 monitoring Member's compliance with the terms of this agreement.
- 14 C. Member specifically authorizes MAP to consult with MAP Medical
15 Director Michel A Sucher or his designee regarding implementation and
16 compliance with the agreement. Such consultations shall be at MAP's
17 expense, except Member will be responsible for any charges related to
18 treatment or evaluation provided to Member by Dr. Sucher and costs
19 associated with participation in the biological fluids system as indicated in
item I.C. of this agreement.
- 20 D. Once Member signs this agreement, unless a payment plan or other
21 arrangements have been authorized, Member's failure to pay for MAP
22 services, services provided by Dr Sucher in full within thirty (30) days of the
23 date of any subsequent billing shall constitute a material breach of this
agreement.

24 III. Material Breach

25 Failure to fully comply with any of the terms of this agreement constitutes a
26 material breach of the agreement. Member hereby agrees that all material breaches

1 shall be reported to MAP and, at MAP's discretion, the agreement may be
2 terminated.

3 IV. Modification of Agreement and Required Consultation/Assessment/Evaluation
4 Member agrees that during the duration of this agreement, the terms may be
5 modified if MAP or the Monitor determines that Member has additional problems
6 Much were not identified when the agreement was executed. The length of
7 participation under this agreement may be extended, if appropriate, by mutual
8 agreement of the parties. MAP may require Member to consult with other
9 programs and submit to assessments, audits, or evaluations.

8 V. Severability Clause

9 If any provision of this agreement or the application of any such provision to any
10 person or circumstance is held unlawful or invalid, the remainder of this agreement
11 and the application of such provision other than to the extent it is held unlawful or
12 invalid, will not be held unlawful, invalidated or affected thereby, and shall remain
13 in full force and effect.

13 VI Entire Agreement

14 This writing contains the entire understanding of the parties hereto with regard to
15 participation in MAP. This agreement shall not be revised or modified except as
16 provided herein.

17
18 DATED this 30th day of May, 2008.

19
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21 Donna Lee Elm / NM
22 Donna Lee Elm
23 Hearing Officer 6N
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1 Original filed with the Disciplinary Clerk
this 30th day of May, 2008.

2
3 Copy of the foregoing mailed
4 this 2nd day of June 2008, to:

5 Ralph W Adams
6 Applicant's Counsel
7 *The Law Office of Ralph Adams*
8 520 East Portland, Suite 200
9 Phoenix, AZ 85004-0001

10 Robert Van Wyck
11 Bar Counsel
12 State Bar of Arizona
13 4201 North 24th Street, Suite 200
14 Phoenix, AZ 85016-6288

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by: Neeta Manelkar