

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

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

Jeffrey S. Siirtola
Bar No. 011717

Applicant.

No. PDJ-2013-9060

**NOTICE OF UNSEALING
REPORT & RECOMMENDATION
FILED ON NOVEMBER 12, 2013**

FILED: JANUARY 13, 2014

NOTICE IS HEREBY GIVEN that pursuant to the Arizona Supreme Court's Order filed on January 7, 2014, reinstating Jeffrey Siirtola as an active member of the State Bar of Arizona effective the date of the Order. The Arizona Supreme Court ordered that the Office of the Presiding Disciplinary Judge **unseal** the Report and Recommendation of the hearing panel filed on November 12, 2013.

The Report and Recommendation of the hearing panel is now unsealed and shall be part of the record.

DATED this 13th day of January, 2014.

Laura L. Hopkins

Laura L. Hopkins, Disciplinary Clerk
Office of the Presiding Disciplinary Clerk

Original filed with the Disciplinary Clerk
this 13th day of January, 2014.

COPY of the foregoing mailed/emailed
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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,

JEFFREY S. SIIRTOLA,
Bar No. 011717

Applicant.

PDJ-2013-9060

REPORT AND RECOMMENDATION
(Filed Under Seal)

FILED NOVEMBER 12, 2013

On October 15, 2013, the Hearing Panel ("Panel") composed of public member, Lana Mitchell, attorney member, Teri M. Rowe, 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. James D. Lee appeared on behalf of the State Bar of Arizona ("State Bar") and J. Scott Rhodes appeared on behalf of Mr. Siirtola. The witness exclusionary Rule was invoked. A Protective Order was filed on July 18, 2013, sealing application exhibits 16-18 and 21-23. A subsequent order was filed October 8, 2013, closing the hearing to the public and sealing the record of the hearing, except for the testimony of Rafael Malanga, Esq., due to the confidential and private nature of the personal and medical information involved. The Panel considered the testimony, the admitted exhibits, the parties' Joint Prehearing

Statement, and evaluated the testimony and credibility of the witnesses including Mr. Siirtola.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, recommending that Applicant's application for reinstatement to the active practice of law be approved, subject to the terms of probation set forth in the Conclusion and Recommendation Section of this report.

Background

Mr. Siirtola was admitted to practice law in Arizona on October 24, 1987. Pursuant to an Agreement for Disciplinary Consent, Mr. Siirtola was suspended for six months and one day effective December 9, 2011, for violating ERs 1.3, 1.5(d)(3), 1.15(d), 3.1, 3.2, 3.3(a)(1), 3.4(e), and 8.4(d). No probation or restitution was ordered. [Stip. Ex. 1, Bates 0001-0035]

This is Mr. Siirtola's second application for reinstatement. On July 12, 2012, a Hearing Panel for Mr. Siirtola's first application found that he had failed to meet his burden, as required by *In re Arrotta*, 208 Ariz. 509, 513, 96 P.2d 213, 217 (2004), of proving by clear and convincing evidence that he had identified the weaknesses that had caused his misconduct. However, the Hearing Panel also expressed its belief that Mr. Siirtola was "on the right track in working with a psychologist to identify his weaknesses and then to address them and that with the passage of time he can [sic] submit the type of evidence of rehabilitation that meets his burden." [Stip. Ex. 7, Bates 0083] By order dated September 9, 2012, the Arizona Supreme Court accepted the Hearing Panel's recommendation to deny the first application,

¹ Consideration was given to the video testimony of B. Robert Crago, Ph.D., Dr. Erin M. Nelson, Ph.D., and Rafael Malanga, Esq.

but allowed Mr. Siirtola to reapply for reinstatement in six months rather than the usual period of one year set by Rule 65(a)(4), Ariz. R. Sup. Ct. [Stip. Ex. Bates 0087-0088] Mr. Siirtola filed his current application for reinstatement on July 10, 2013.

I. FINDINGS OF FACT

1. In his current application, Mr. Siirtola updated each of the requirements for reinstatement, and in particular, expanded his evidence of rehabilitation. [Application for Reinstatement]

2. Pursuant to Rule 65(a)(1) and (a)(3) Mr. Siirtola has paid the application filing fee and investigations fees for his application. Further, Mr. Siirtola owes no money to the Client Protection Fund. [Application for Reinstatement, Ex. 10-11]

3. Pursuant to the original Agreement for Discipline by Consent, Mr. Siirtola was ordered to participate in the State Bar's Fee Arbitration Program with two of his former clients, Tress King and Brandi Bell, who were complainants in the underlying disciplinary matter. Mr. Siirtola participated in fee arbitration and paid in full the amounts agreed to in relation to both former clients. [Application for Reinstatement, Exs. 13-14] Mr. Siirtola was not ordered to pay any restitution and therefore owes no other restitution.

4. During the period of suspension, Mr. Siirtola worked:

- a) September 2012 to present as a paralegal doing contract work for attorney Rafael Malanga, Malanga Law Office, Bisbee, Arizona.
- b) From August 2012 through April 2013, one to two days a week as a paralegal drafting divorce pleadings, writing letters, creating billing

invoices and serving pleadings for attorney Jeanne Brenda Whitney, Whitney Law Office, Sierra Vista, Arizona.

- c) From September 2012 to present, six to eight hours a week doing document review, research and writing related to DUI cases for attorney Thomas E. Higgins, Thomas E. Higgins, P.L.L.C. Tucson, Arizona.
- d) For one day in 2012, contract work for attorney Matthew C. Davidson, Law Offices of Matthew C. Davidson, Ltd, Nogales, Arizona.
- e) For three to four weeks in July 2012, contract research for Ronald Zack, Ronald Zack PLC, Tucson, Arizona.

[Joint Pre-Hearing Statement; Application for Reinstatement]

5. Mr. Siirtola has maintained two (2) residences during the period of suspension. Mr. Siirtola currently resides in Bisbee, Arizona and rents from Mr. and Mrs. Malanga, also of Bisbee, Arizona. [Application for Reinstatement]

6. Mr. Siirtola has not been a party to any criminal actions during the period of suspension. [Application for Reinstatement]

7. Mr. Siirtola has not been a party to any civil matters during the period of suspension, except for two traffic tickets. [Application for Reinstatement]

8. Mr. Siirtola has not been the subject of any allegation of fraud during the period of rehabilitation. [Application for Reinstatement]

9. Mr. Siirtola made no application for license requiring proof of good character during the period of his suspension. [Application for Reinstatement]

10. Mr. Siirtola is the subject of a fee dispute with former client Harvie Gallagher. The Bar charge that resulted from the dispute was dismissed on June 20, 2012. Mr. Siirtola is currently involved in fee arbitration, although no date for the arbitration has been set at the time of application for reinstatement or the hearing on the application for reinstatement. [Application for Reinstatement]

11. Mr. Siirtola provided a statement approximating his earned income during the period of suspension. He provided a copy of his federal and state tax returns for 2011 and a copy of his application for an extension of time to file his 2012 federal and state tax returns. Both documents were sealed pursuant to a Protective Order filed July 18, 2013. [Application for Reinstatement, Exs. 16-17]

12. Mr. Siirtola has a significant amount of debt listed in his Application for Reinstatement, including several accounts that are subject to claim negotiation or arbitration. However, Mr. Siirtola's credit report, provided as Exhibit 18 (under seal) to his Application for Reinstatement does not reflect any adverse accounts. [Application for Reinstatement, Ex. 18]

13. Mr. Siirtola was extensively involved in community service during the period of rehabilitation and remains extensively involved in the community. His community service efforts include:

- a) Volunteering at the Pima County Public Defender Department two days a week conducting legal research and writing and spearheading a project to identify clients with closed cases that may be eligible for early release from probation.

- b) Mr. Siirtola has conducted, as part of a group, approximately 37 AA and NA meetings at the Douglas Complex of the Arizona Department of Corrections since July 2012.
- c) Mr. Siirtola organized and led a CLE Seminar titled "Cooperation with Professionals" concerning the benefits of referrals to Alcoholics Anonymous.
- d) Mr. Siirtola volunteers at and donates to the Dorothy Day Soup Kitchen since November 2012.
- e) Mr. Siirtola donates regularly to the Matthew Talbot Retreats, Group No. 128 and Habitat for Humanity.

14. As to rehabilitation, Mr. Siirtola presented extensive evidence related to his identification of the weaknesses that led to his misconduct and the rehabilitative efforts he has made during the period of suspension, particularly the period since his first application for reinstatement was denied.

15. At the conclusion of the evidentiary hearing, the State Bar recommended that Mr. Siirtola be reinstated with probation and conditions.

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), Ariz. R. Sup. Ct.

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. *Matter of Arrotta*, 208 Ariz. 609, 96 P.3d 213 (2004). Additionally, an applicant for reinstatement must show rehabilitation by clear and convincing evidence as well as having overcome his or her disability. *In re Johnson*, 298 P.3d 904 (2013). While an applicant need not pull back the "multiple layers of causation or psychoanalysis," the "applicant must clearly and convincingly prove rehabilitation by specifically identifying the causal weakness leading to each count and explaining how the weakness has been overcome." *Id.*

Rehabilitation

Mr. Siirtola presented evidence of consistent and sustained efforts to identify the weaknesses that led to his misconduct and his commitment to overcome those weaknesses. Mr. Siirtola identified, through extensive work with Dr. Crago, that his primary weaknesses stem from a lifetime of being plagued by feelings of anxiety, self-deprecation and self-doubt. These feelings initially led Mr. Siirtola to develop a problem with alcohol dependency that he overcame through the regimented program of AA. To date, Mr. Siirtola reports that he has been sober for over 20 years and that he maintained his sobriety throughout the events that led up to his suspension from the practice of law and through his rehabilitative efforts to regain his license to practice law.

Unfortunately, Mr. Siirtola developed other unhealthy habits to manage these primary weaknesses, and those habits were to deflect his deep-seated fear of failure and immersing himself in a practice of law that was not sustainable or manageable. Mr. Siirtola suffered extensive injuries from an accident while hiking

in Morocco that caused "a wave that was building in his practice to crash in on it." [Opening Statement of counsel for Mr. Siirtola, October 15, 2013.] The accident required surgeries, left Mr. Siirtola in significant pain and held the potential of not being able to walk again. Because he had spread his legal practice over a number of rural counties and had taken on more cases than he could handle, these injuries revealed that the straw had already broken the proverbial camel's back. Mr. Siirtola became unable to meet his ethical obligations to his clients and the courts. His rigid practice of denial and digging his heels in did nothing to help his problems and ultimately led to his suspension. Mr. Siirtola presented evidence that demonstrated his prior rigid stance and lack of ability to engage in meaningful self-reflection directly contributed to his suspension. That self-reflection also demonstrates that he has acquired the tools and developed the proper habits necessary to overcome his weaknesses and manage the practice of law once again.

Dr. B. Robert Crago, Ph.D.

After Mr. Siirtola's first application for reinstatement was denied he continued his active treatment with Dr. Crago, Ph.D. Through his treatment with Dr. Crago, Mr. Siirtola has developed the ability to engage in meaningful reflection and has developed productive strategies to manage stress and anxiety. The testimony of Dr. Crago evidences Mr. Siirtola has made great efforts to effectuate personal change and growth to preclude the missteps that led to his suspension from re-occurring. Dr. Crago testified that he has worked extensively with Mr. Siirtola to first identify the behaviors that enabled Mr. Siirtola to overextend his legal practice and to fail to appropriately deal with problems as they arose in that practice. Dr. Crago testified that Mr. Siirtola has not only identified his weaknesses, but that

through continued behavioral therapy and biofeedback sessions he has developed a specific set of tools to correct those weaknesses and manage them in a manner that will allow him to avoid repeating the mistakes of his past. Dr. Crago recommended that Mr. Siirtola limit his practice to no more than 40 clients and limit the geographic area of his work to two counties as he initially returns to the practice of law. He further recommended that Mr. Siirtola continue with the treatment plan he has been following with Dr. Crago.

Dr. Erin M. Nelson, Ph.D.

Dr. Erin Nelson, Ph.D., a clinical and forensic psychologist, testified about her evaluation of Mr. Siirtola and her findings based on that assessment. She testified Mr. Siirtola had some fear and insecurities that led to a personality structure that was rigid and structured. This allowed Mr. Siirtola to "move forward with blinders on." In a positive sense that empowered him to confront obstacles, such as overcoming alcoholism. However, such a coping style of rigid and avoidant behaviors became over-used and eventually hindered Mr. Siirtola in managing his law practice rather than overcome the difficulties that resulted when his practice became more than he could handle, particularly after he became severely injured.

Dr. Nelson's testimony and the accompanying report [Ex. 20, under seal] both reflect that Mr. Siirtola has made great efforts to effectuate personal change and growth to prevent the missteps that led to his suspension from re-occurring. She testified he does recognize what his weaknesses are, and testified to the "significant and concerted effort" made by Mr. Siirtola to overcome and manage those weaknesses. [Testimony of Dr. Nelson, October 15, 2013.] In particular, she explained how the ability to engage in meaningful self-reflection and self-awareness

has allowed him to manage his weaknesses. It is her recommendation that upon reinstatement he continue with treatment with Dr. Crago. She recommends he limit his practice to a narrower geographical area and limit the number of cases he is responsible for at any one time. Her opinion is that although a practice monitor may not be necessary that from a treatment perspective, it would be a way to ensure that Mr. Siirtola has the support to successfully return to an ethical practice of law.

Rafael Malanga

Mr. Malanga is an attorney practicing as a sole practitioner in criminal law in the Bisbee, Arizona area. Mr. Malanga, via his testimony and a letter admitted as stipulated Exhibit 32, indicates that he contacted Mr. Siirtola when he learned Mr. Siirtola was not practicing law and had been suspended. Mr. Malanga hired Mr. Siirtola as an independent consultant on several DUI cases and continued to utilize him as a paralegal throughout Mr. Siirtola's suspension. Mr. Malanga testified regarding the positive character of Mr. Siirtola. He testified that he informally mentored Mr. Siirtola in the managing of a practice. He is willing to be a practice monitor for Mr. Siirtola if asked.

Mr. Malanga is of the opinion that Mr. Siirtola understands the "folly of things that occurred" leading to his suspension. Mr. Malanga mentored him through discussions regarding ethical ways of handling various practice related obstacles and challenges that attorneys encounter. Mr. Malanga was witness to the time and effort Mr. Siirtola committed to his rehabilitation and the positive changes he has seen in Mr. Siirtola. He believes that Mr. Siirtola should be allowed to return to the practice of law.

The Panel finds that Mr. Siirtola has presented clear and convincing evidence of that he has identified his weaknesses and that he has engaged in and continues to engage in meaningful rehabilitation. Mr. Siirtola has demonstrated that he has the drive and ability to continue with active treatment to ensure he manages the reintegration to the practice of law without repeating the misconduct that led to his suspension.

Compliance with Disciplinary Rules and Orders

Mr. Siirtola is fully compliant with all past disciplinary orders imposed as a result of his original suspension. There were no allegations involving the unauthorized practice of law during the period of suspension. Mr. Siirtola does not owe any funds to the Client Protection Fund. On October 18, 2013, the State Bar filed its Statements of Costs and Expenses incurred as a result of the application for reinstatement. The Statement of Costs reflects a balance owed to Mr. Siirtola and that he owes no further costs at the time of this filing.

Competence

Mr. Siirtola demonstrated a continued effort to maintain his lawyering skills by obtaining employment as a paralegal with a number of attorneys during the period of his suspension. Further, part of his community service was with the Pima County Public Defender Department, where he also was able to engage in the basic skills of legal research and writing as a volunteer. During his period of rehabilitation Mr. Siirtola completed 47.75 hours of Continuing Legal Education of which 12.5 hours were for ethics. In addition, Mr. Siirtola completed a course on time management at Cochise College. [Application for Reinstatement, Ex. 26]

Fitness to Practice

Mr. Siirtola provided a statement approximating his earned income during the period of suspension. He provided a copy of his federal and state tax returns for 2011 and a copy of his application for an extension of time to file his 2012 federal and state tax returns. Both documents were sealed pursuant to a Protective Order filed July 18, 2013. [Application for Reinstatement, Exs. 16-17] While Mr. Siirtola has significant debt listed in his Application for Reinstatement, they include several accounts that are subject to claim negotiation or arbitration. As stated above, his credit report, does not reflect any adverse accounts. [Application for Reinstatement, Ex. 18] Although there appears to be a fee dispute with a former client pending arbitration and two other accounts subject to claim negotiation and arbitration, Mr. Siirtola appears to be appropriately managing his financial obligations in a manner that does not impact his fitness to practice law.

Mr. Siirtola was not subject of any civil or criminal matters outside of two traffic citations during the period of rehabilitation. In addition, he was not subject to any allegations of fraud.

III. DISCUSSION OF DECISION

The Panel agrees that Mr. Siirtola presented clear and convincing evidence of rehabilitation and has demonstrated a sustained period of recovery and a strong commitment to recovery. The evidence presented demonstrated that Mr. Siirtola did not merely meet the requirements for reinstatement, but that he has fully invested himself in the process of rehabilitation and of demonstrating his fitness and competence to practice law.

There is inherent and important value in his community service. At the same time, community service offers the added benefit of relationship building and the forging of human bonds that contribute to our sensibility and accountability to one another. His significant efforts to aid his community admirably underscore his successful efforts to address his long time feelings of anxiety, self-deprecation and self-doubt.

IV. CONCLUSION AND RECOMMENDATION

The Panel concurs with the State Bar and recommends reinstatement with probation and conditions. Mr. Siirtola shall also pay costs of these proceedings pursuant to Rule 65, Ariz. R. Sup. Ct. Probation is effective the date of the Order of Reinstatement and shall conclude two years from that date. The recommended terms and conditions of probation are as follows:

Terms and Conditions of Probation

The Panel recommends Applicant be reinstated to the active practice of law subject to probation for two years. The Panel recommends the following terms of probation:

1. Within 30 days of reinstatement, Mr. Siirtola shall contact the director of MAP at (602) 340-7334 or (800) 681-3057 and submit to a MAP assessment. Mr. Siirtola shall thereafter, enter into a MAP contract based on recommendations made by the MAP Director or designee and shall comply with the recommendations. The terms and conditions of probation shall be incorporated herein by reference. Mr. Siirtola is responsible for any costs associated with MAP.

2. As part of the MAP contract, Mr. Siirtola shall continue counseling with Dr. Crago, or in the event counseling with Dr. Crago cannot be continued, Mr.

Siirtola shall continue counseling with another professional that can continue to provide the type and degree of counseling recommended by Dr. Crago, for the duration of the probation period. The frequency of visits shall be determined by Dr. Crago. This continued counseling shall be at Mr. Siirtola's expense.

3. Within 30 days of the effective date of the Order of Reinstatement, Mr. Siirtola shall contact the director of the State Bar's Law Office Management Program (LOMAP) to schedule a meeting to discuss his plans for reentering the active practice of law. Based on the director's assessment of his plans, He will promptly enter into a LOMAP contract and shall comply with the terms and conditions set forth in the contract to include, but not limited to, the following:

4. Mr. Siirtola shall obtain a practice monitor at his expense, whose service shall be subject to approval by the State Bar. The terms and conditions of his LOMAP contract may include restrictions on his areas of practice, type of practice, and his handling of client funds. Mr. Siirtola shall further agree to direct his practice monitor to file with the director quarterly reports as to his compliance or noncompliance with the terms and conditions of his LOMAP contract. Mr. Siirtola shall agree that his interaction with and reports by his practice monitor and/or LOMAP shall not be confidential and that his practice monitor and/or LOMAP may freely report Mr. Siirtola's compliance or noncompliance with his LOMAP contract to the Presiding Disciplinary Judge. All interaction with and requirements imposed by LOMAP shall be at Mr. Siirtola's expense.

5. Mr. Siirtola shall comply with any fee arbitration award imposed by the fee arbitrator in the pending matter with client Harvie Gallagher.

6. 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 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 12th day of November, 2013.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING

Lana Mitchell

Lana Mitchell, Volunteer Public Member

Teri M. Rowe

Teri M. Rowe, Volunteer Attorney Member

Original filed with the Disciplinary Clerk
this 12th day of November, 2013.

COPY of the foregoing mailed/emailed this
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