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**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,

**JEFFREY S. SIIRTOLA,
Bar No. 011717**

Applicant.

No. PDJ-2012-9032

REPORT and RECOMMENDATION

Procedural Background

On June 25, 2012, the Hearing Panel ("Panel") composed of Mark Salem, a public member from Maricopa County, Professor Penny Willrich, a retired judge and attorney member from Maricopa County, and George A. Riemer, Acting Presiding Disciplinary Judge ("PDJ"), held a two hour and forty minute hearing on Jeffrey S. Siirtola's application for reinstatement, pursuant to Rule 65(b)1., Ariz.R.Sup.Ct. James D. Lee appeared on behalf of the State Bar of Arizona ("State Bar") and Brick P. Storts, III, appeared on behalf of Mr. Siirtola. The rule on exclusion of witnesses was not invoked. Mr. Siirtola was the only witness at the hearing.

The Panel received the testimony of Mr. Siirtola (hereinafter Applicant) and admitted various exhibits into the record of the proceeding.¹ At the conclusion of the hearing, the State Bar stated that it does not support Applicant's reinstatement at this time, but that if the Panel recommended his reinstatement, it should be subject

¹ The exhibits admitted as evidence consist of the following documents: (1) Application for Reinstatement; (2) Supplement to Application; (3) Second Supplement to Application; (4) Applicant's Exhibits A through H; (5) Transcript of Applicant's Deposition; (6) Transcript of Deposition of Dr. B. Robert Crago; (7) Joint Prehearing Statement; and (8) Applicant's Prehearing Memorandum.

to probation, including various terms thereof. The Panel now issues this "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 denied and that Applicant be required to pay the costs and expenses associated with this reinstatement proceeding.

I. FINDINGS OF FACT

1. By judgment and order dated October 26, 2011, the Presiding Disciplinary Judge suspended Applicant from the active practice of law for six months and one day.² The suspension was effective on December 9, 2011.

2. Applicant filed an application for reinstatement to the active practice of law in Arizona on April 12, 2012. While Applicant's six month and one day suspension ended on June 9, 2012, as a matter of calendar days, he cannot begin to practice law again until the Supreme Court approves his reinstatement. Rule 65(b)4., Ariz.R. Sup.Ct.

3. Applicant filed a supplement to his application on April 24, 2012, and a second supplement to his application on June 5, 2012.

4. Applicant has paid the costs and expenses of the disciplinary proceeding that led to his suspension. Joint Prehearing Statement, page 5, paragraph 13.

5. One claim had been filed against Applicant with the State Bar's Client Protection Fund. The claim was denied. The Client Protection Fund has paid no

² Applicant consented to his suspension, having admitted to violating Rules of Professional Conduct (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).

money to former clients of Applicant. Affidavit of Karen Weigand, Client Protection Fund Administrator.

6. Applicant has no disciplinary complaints pending investigation by the State Bar as of the date of the hearing in this matter. Applicant's Exhibit H.

7. Applicant has paid all application and investigation fees associated with his application for reinstatement. Affidavit of Sandra E. Montoya, Lawyer Regulation Records Manager, State Bar of Arizona.

8. Applicant has completed sufficient continuing legal education courses to comply with the mandatory continuing legal education requirements for the period July 1, 2011, through June 30, 2012. Joint Prehearing Statement, page 5, paragraph 14.

9. The State Bar did not oppose Applicant's application for reinstatement on the basis of noncompliance with the terms of his 2011 suspension order.

10. Prior to his suspension as set forth in paragraph 1. above, Applicant has had prior discipline. The prior discipline consists of:

- a. A censure (now called a reprimand) in 1999 for violation of Rules of Professional Conduct (ERs) 1.2, 1.3, 1.4, 8.1(b), and Rules 51(h) and 51(i), Ariz.R.Sup.Ct.
- b. Probation imposed in 2000 for violation of Rules of Professional Conduct (ERs) 1.3 and 1.4.

- c. An informal reprimand (now called an admonition) and probation in 2003 for violation of Rules of Professional Conduct (ERs) 1.2, 1.3, 1.4, and 3.2.
- d. An informal reprimand (now called an admonition) and the extension of Applicant's probation in 2005 for violation of Rule of Professional Conduct (ER) 1.3.
- e. An informal reprimand (now called an admonition) and probation in 2006 for violation of Rule of Professional Conduct (ER) 1.7.
- f. An informal reprimand (now called an admonition) and probation in 2008 for violation of Rules of Professional Conduct (ERs) 1.1, 1.3, and 1.4.

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

Preliminary Discussion

A lawyer seeking reinstatement to the practice of law under Arizona Supreme Court Rule 65 must prove by clear and convincing evidence the lawyer's rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice, and competence. Rule 65(b)2., Ariz.R.Sup.Ct. An applicant must also establish by clear and convincing evidence that he has identified the weaknesses that caused his misconduct and demonstrated that he has overcome these weaknesses. *In re Arrotta*, 208 Ariz. 509, 513, 96 P.3d 213, 217 (2004). *Arrotta* cautions that neither the severity of the original sanction nor the mere passage of time establishes rehabilitation or an applicant's fitness to practice. An applicant

must demonstrate, by clear and convincing evidence, that he has been rehabilitated, that he is competent, and that he poses no further threat to members of the public. *Arrotta, supra*, 208 Ariz. at 512 (quoting *In re Robbins*, 172 Ariz. at 256, 836 P.2d at 966 (1992)). “. . . our primary responsibility remains at all times the protection of the public.” *Arrotta, supra*, 208 Ariz. at 512. The Panel must “weigh those factors tending to show rehabilitation against those tending to show a lack thereof” to decide whether Applicant has met his burden of proof. *In re Hamm*, 211 Ariz. 458, at 465, 123 P.3d 652, at 659 (2005).

As noted in *Arrotta*, 208 Ariz. at 512, the Arizona Supreme Court considers the following four factors in determining if the lawyer should be reinstated:

- 1) Applicant’s character and standing prior to disbarment (suspension in this matter);
- 2) The nature and character of the charges for which he was disciplined;
- 3) 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.

Testimony and Admitted Evidence

Applicant presented himself at the hearing on June 25, 2012, as very sincere and earnest in his desire to be reinstated to the active practice of law.

Applicant claims to have finally seen the need to change his approach to the practice of law as a result of a serious personal injury in 2010 and as a result of his suspension from the practice of law in 2011. His serious personal injury led to extensive surgery and rehabilitative efforts to regain the ability to walk and drive a car. His rehabilitation included extensive therapy through the services of Dr. B.

Robert Crago, Ph.D. Applicant indicated his prior law practice model was based on a high volume of cases that was more suited to a metropolitan area where the lawyer would have short commute times to the courts. His private practice required many hours of travel time even for short hearings. He came to realize during his sessions with Dr. Crago that he needed to reduce the number of cases he handled at any given time to half his prior case load (no more than 40 cases instead of 75-80) and to limit the geographic scope of his practice to two counties instead of six or seven.

Applicant also testified that he was a recovering alcoholic who had not relapsed for over twenty years and continued to be sober notwithstanding his injury and suspension. He believes the substantial efforts he has made to recover from his personal injury has given him the skills he needs to once again practice law and to do so in compliance with the rules of professional conduct. He has learned how to relieve the stressors in his life. Combined with the voluntary reduction of his case load, Applicant believes these steps will ensure he will not repeat the misconduct he previously had engaged in. He agrees that he should be required to continue to receive treatment from Dr. Crago to the point the doctor believes he no longer needs to see him.

Applicant indicated the he owed a company approximately \$20,000 for phone book advertising and the Internal Revenue Service approximately \$13,000 for past due taxes. He is trying to negotiate a reduction of each claim and to enter into a repayment plan with each creditor to repay that reduced debt.

Applicant submitted a number of letters of recommendation supporting his application for reinstatement.

Licensed Professional Counselor Martha Nordin supports Applicant's reinstatement. She has worked extensively with Applicant in the past as a witness for his clients. She indicated that Applicant is the only lawyer in her experience who has mandated that his clients get a substance abuse assessment and evaluation and agree to comply with the treatment recommendation before he would represent them. She indicated that Applicant won a great number of his cases and was well thought of in their community. She believes he is competent, intelligent, and capable in his field.

Lawyer Thomas E. Higgins has known Applicant for almost twenty years and has not only worked with him, but attended numerous family functions with him over the years. Higgins stated that Applicant's "flaw is that he often takes on too many cases, not out of greed or any other improper reason, but because he actually wants to help people. The problems in the past revolve around these actions. I have seen remarkable change in the last six months in how he looks at, and deals with, problems and his past actions. I have represented several attorneys in the past and can say without a doubt [Applicant] has fully integrated the problems he has had and has taken positive steps to avoid a repeat of the past."

Lawyer Jeanne Benda Whitney has known Applicant professionally for over twelve years. She indicates Applicant has always been generous with his time to answer questions she had about practical steps to take to address her clients' needs. She also indicates that Applicant has allowed her to use his office facilities from time to time. She has discussed with him how to incorporate some of the best practice ideas into his future practice of law.

Lawyer Ronald Zack indicates he has known Applicant since 2006 when he worked as a deputy county attorney. He was opposing counsel in various cases. "From my experience as a prosecutor, I can say that [Applicant], in addition to being a formidable opponent, was a respectful and professional practitioner. And I believe his clients received the best possible representation from a knowledgeable, hard-working and compassionate advocate." Zack indicated that Applicant assisted him when he went into private practice. "Although I understand that no one is indispensable, I sincerely believe that the community needs [Applicant]. He provided high quality representation to a great number of people who otherwise would not have been as well represented."

Justice of the Peace Keith David Barth indicates he has known Applicant for over twenty years first while working as a sheriff's deputy, then as a marshal, and now as a justice of the peace. "I have been involved in many criminal cases with [Applicant] as a police officer and Justice of the Peace. [Applicant] has shown a great degree of knowledge and stability when dealing with sensitive and complex cases. He makes time for those in need and is available to those who ask." "I am aware of [Applicant's] accident which occurred approximately a year and a half ago. I know it has created many challenges in his life. [Applicant] has proven to me that he has tackled those challenges and is now ready to return to practicing law."

Lawyer Gregory L. Droeger indicates he had the pleasure of working with Applicant when he was a deputy county attorney. "I have the utmost respect for his ethics, and have always believed him to be a good attorney." "It is my understanding that he has overcome serious physical obstacles and is now in a

position to once again practice law. I wholeheartedly recommend that he be readmitted to practice.”

Lawyer Paul S. Banales indicates Applicant appeared before him when he was a full-time pro tem judge. “He was always prompt, very professional and well-prepared.” “I always found [Applicant] to be very polite, respectful and quite capable of more than adequately representing his client.”

Dr. B. Robert Crago, Ph.D., submitted a letter on Applicant’s behalf dated April 2, 2012. In that letter Dr. Crago indicates that “Applicant now has insight that much of the previous difficulty was due to the fact that he was overextended (carrying 60 to 75 clients defending alcohol, substance abuse, and other criminal charges; working and traveling between six or seven different counties; and coping with more recent physical limitations in the last two years).” “A specific solution/plan to his difficulties is to limit his practice to no more than 40 clients and to only work in two counties.” “Recent psychotherapy has focused on pain and stress management techniques including cognitive behavioral therapy, training in breathing/meditation/mindfulness techniques for pain reduction/stress management without the use of pain medications, and other lifestyle changes.”

The State Bar deposed Dr. Crago and the parties stipulated to the Panel’s consideration of the doctor’s testimony. Dr. Crago indicated that he first met with Applicant on January 30, 2012. Crago Deposition, page 8, lines 10-11. Dr. Crago indicated that the nature of the services he provided to Applicant was “a combination of therapy and stress management. It was a mixture of what we call cognitive therapy, which means taking a look at people’s thinking and making sure that their thinking isn’t causing them problems and teach them perhaps how to

change their thinking. I combined that with some biofeedback of different types to help him learn to control his arousal, to learn to handle the physical aspects of stress." Crago Deposition, page 10, line 21 to page 11, line 4.

Bar counsel Lee asked Dr. Crago about his opinion as to whether Applicant was rehabilitated from what lead him to his misconduct that resulted in his suspension. Dr. Crago stated his opinion as follows, "From everything that he's told me and how he's responded in therapy I believe he is ready." Crago Deposition, page 12, lines 12-13. Dr. Crago reaffirmed this opinion in questioning by Applicant's counsel, Mr. Storts. Crago Deposition, page 42, lines 6-16.

To the date of the hearing in this matter, Dr. Crago had had approximately 20 sessions with Applicant. Crago Deposition, page 12, line 21 to page 13, line 2. His last session with Applicant was June 4, 2012. Crago Deposition, page 13, line 10.

Dr. Crago indicated that Applicant had told him he got into "this mess" as a result of being overscheduled, having too many clients, traveling too much, just basically being overextended. Crago Deposition, page 14, lines 3-14. Dr. Crago felt Applicant had experienced life-changing events as a result of his personal injury and his suspension for the practice of law. Crago Deposition, page 14, lines 9-14.

Dr. Crago diagnosed Applicant has having an adjustment disorder with mixed features, anxiety and depression. "And the diagnostic criteria for that is there's been an incident that would be stressful for, you know, of course, his physical problems and his legal problems – or occupational problems, I guess you'd call it, are clearly stresses. And what we look at is how well did they adjust. And obviously he wasn't adjusting well. That's why he got suspended, I assume. And, as we call it,

adjustment disorder." Crago Deposition, page 23, lines 10-21. Dr. Crago felt Applicant was suffering from reactive depression. "And again I think his was a mixture of anxiety and depression, but it was reactive to his circumstances." Crago Deposition, page 26, lines 1-3.

Bar counsel Lee asked Dr. Crago what he believed led Applicant to engage in ethical misconduct. Dr. Crago stated, "Well, again, from what he told me, you know, he just got himself in a bad place between physical problems and the pain and that led to complications, being overextended, having too many clients in too many places, traveling a lot. He also felt that, part of it, he deals with a tough clientele, drug and alcohol. And, you know, just a combination of those things led him to doing things he shouldn't have done." Crago Deposition, page 29, lines 14-22.

Applicant has also participated in a number neurofeedback therapy sessions with Dr. Tina Buck, Ph.D. Crago Deposition, page 39, line 23 to page 40, line 21.

Bar counsel Lee took Applicant's deposition and it is a part of the record in this proceeding. Applicant testified that among the weaknesses that lead to his misconduct were (1) the size of his practice in terms of caseload; (2) scheduling conflicts on the basis of geography and representing many clients at the same time in several different courts in several different counties; and (3) his limited mobility as a result of his accident. Applicant Deposition, page 22, line 18 to page 23, line 22.

Applicant was also asked about the steps he had taken to rehabilitate himself from the weaknesses he identified. He indicated he had undergone extensive physical therapy so that he could be mobile again. He also learned new techniques

or skills for managing pain without medication, such as biofeedback sessions and learning techniques for alleviating pain through meditation. Applicant Deposition, page 24, lines 10-17. He also indicated that he had engaged in psychotherapy with Dr. Crago and had talked to other lawyers about best practices in their law offices, which he intended to adopt, together with any recommendations that the State Bar's Law Office Management Assistance Program would have, before he restarted his practice. Applicant Deposition, page 24, line 23 to page 25, line 3.

When asked about volunteer activity during his suspension, Applicant indicated that he had taken clothes to St. Vincent DePaul's thrift store and donated some canned goods and food to the Good Neighbor Alliance. Applicant Deposition, page 29, lines 7-18. Applicant indicated he has actively participated in his program of sobriety for many years. Applicant Deposition, page 57, lines 10-12. Applicant indicated he served as a sobriety mentor for other people in their programs of sobriety. Applicant Deposition, page 58, line 24 to page 59, line 2. Applicant indicated he was working on an application to provide mentor type services to prisoners at a state prison. Applicant Deposition, page 59, lines 4-19.

Applicant stated that among the prescription medications he takes daily is a prescription antidepressant. Applicant Deposition, page 34, lines 15-24.

Applicant explained that the cause of his repetitive ethics violations over the years was being overextended. Applicant Deposition, page 45, lines 3-8. He believes the solution, or at least part of the solution, is to limit the number of clients he would represent. Applicant Deposition, page 45, lines 11-15.

Concerning his prior opportunities to address the problems he had through the services of the law office management assistance program, Applicant explained

that, "I listened to what some people had to say, but I didn't have the time to do what was being suggested to me, and I was, as I have mentioned several times, overextended in my practice." Applicant Deposition, page 46, line 21 to page 47, line 1.

Applicant indicated he was willing to continue to work with Dr. Crago as a condition of his reinstatement. Applicant Deposition, page 48, line 21 to page 49, line 20.

Applicant's testimony during the hearing in this proceeding on June 25, 2012, was generally consistent with his deposition testimony. Applicant stated that he did not see the problem (his overextension) until an outside mental health professional (Dr. Crago) fully brought it to his attention.³ Audio transcript, beginning at 2:46:43 pm. He does not know why he didn't recognize the need to reduce the size of his practice before his treatment by Dr. Crago. Applicant finally came to the realization he needed to change as a result of his accident and suspension. He decided he needed to take care of himself first and then he could take care of his clients. He believes he is ready to again practice law in an ethical and professional manner as a result of the steps he has taken to recover from his accident and to deal with the underlying problem that caused his misconduct – overextension. Audio transcript, beginning at 3:11:22 pm.

Analysis

In re Arrotta, supra, is the roadmap for an applicant to follow in seeking reinstatement to the active practice of law. Applicant has not met his burden of

³ The time stamp of the audio recording of the reinstatement hearing on June 25, 2012, is not accurate. It appears to be off by three hours, i.e., the compact disk shows the hearing starting at 12:56:03 pm and ending at 3:40:40 pm. It should show it started at 9:56:03 am and ended at 12:40:40 pm. References to specific testimony refer to times between 12:56:03 pm and 3:40:40 pm on the compact disk.

proof to show, by clear and convincing evidence, that he has been rehabilitated and poses no further threat to the public if reinstated to the active practice of law.

Lack of Clearing and Convincing Evidence of Rehabilitation

The Supreme Court in *In re Arrotta* stated that four factors are to be considered in evaluating an application for reinstatement:

1. The applicant's character and standing prior to, in this case, his suspension.

Applicant's track record of complying with the rules of professional conduct before he was suspended for six months and a day was marginal. Between 1999 and his suspension in 2011 he had been disciplined six other times. A number of the sanctions were for the same misconduct, specifically, failing to act with reasonable diligence and promptness in representing a client (ER 1.3) and failing to maintain proper communication with clients (ER 1.4). Applicant was repeatedly afforded the opportunity to learn from his mistakes by way of terms of probation, but he continued to violate the same rules.

2. The nature and character of the charge for which he was, in this case, suspended.

The agreement for discipline by consent which led to Applicant's suspension involved his agreeing to having violated a broad range of rules of professional conduct (ERs): (1) routinely filing motions that were frivolous in violation of ER 3.1; (2) routinely filing standard motions in violation of the rule against engaging in conduct that is prejudicial to the administration of justice (ER 8.4(d)); (3) violating ER 3.1 and ER 3.4(e) by making a frivolous argument in his closing argument in a case; (4) violating ER 3.2 by failing to appear in person at a sentencing hearing and

by failing to ensure the timely filing of his appellate briefs; (5) violating ER 1.3 and ER 8.4(d) in connection with his failing to attend a hearing in another case; (6) violating ER 3.3(a)(1) by knowingly making several false statements of fact and/or law in another case; (7) failing to make the proper disclosure to two clients regarding their possible entitlement to a refund of a paid fee in violation of ER 1.5(d)(3) and violating ER 1.15(d) by failing to provide the clients a full and prompt accounting of his time and charges. The misconduct described in items (1), (2), (3), and (4) occurred *before* Applicant was seriously injured in an accident on May 5, 2010.

3. The Applicant's conduct subsequent to, in this case, his suspension.

Applicant's post-suspension activities are described and discussed elsewhere in this report.

4. The time that has elapsed between, in this case, Applicant's suspension and his application for reinstatement.

Applicant's suspension was effective December 9, 2011. He filed his application for reinstatement on April 12, 2012.

Applicant has the burden to show, by clear and convincing evidence, that he has overcome the weaknesses that produced his earlier misconduct – that he has been rehabilitated.

Evidence of rehabilitation includes accepting responsibility for past misdeeds; testimony from those in the community with knowledge of Applicant's behavior during the period of suspension; testimony from mental health professionals; participation in community or charitable organizations; and the receipt of

specialized instruction, education or counseling. *In re Arrotta*, 208 Ariz. at 515-6, 96 P.3d at 219-20.

While Applicant stated he accepts responsibility for his past acts of professional misconduct, the Panel believes he does not fully comprehend the weaknesses that lead to that misconduct. Applicant appears to believe his misconduct was caused by being overextended. That overextension should have been obvious to Applicant long before his seventh disciplinary sanction (his suspension). He had many opportunities to remedy the claimed overextension by reducing his case load and taking other appropriate steps to manage his practice. He did not do so and continued to violate the rules of professional conduct. It does not ring true to the Panel that Applicant had an epiphany when in counseling with Dr. Crago post suspension that the answer to his inability to comply with the rules of professional conduct was to cut the number of clients he had in half. Further, Applicant suggested in his testimony before the Panel that he would not delegate any future client communications to others. This left the Panel with the impression that Applicant was attempting to remedy a history of lack of diligence and communication by going to the other extreme of trying to do everything himself.

Applicant admitted to denying he needed to change. Dr. Crago alluded to people with substance abuse problems having this mindset. Yet Applicant claims he has been sober and not to have used alcohol or non-prescription drugs for over twenty years.

Applicant claims he had two significant wake up calls that have forced him to change. First, his serious accident in May 2010 rendered him almost totally non-ambulatory for a long time. He has made significant efforts to restore his mobility

and recover his health since that time and the Panel commends him for those efforts. Second, Applicant was suspended from practice. Neither of these two events constituent "weaknesses that produced" Applicant's misconduct. His accident undoubtedly affected his ability to maintain his practice, but the accident did not cause Applicant to violate the rules of professional rules (and could not have affected his conduct prior to the date of the accident). The suspension was a result of Applicant's misconduct, not its cause.

The Panel does not believe Applicant has met his burden to identify the true weaknesses that lead to his extensive misconduct. Without identifying and addressing those weaknesses, the activities Applicant has engaged in since his suspension do not demonstrate to the Panel that he has rehabilitated himself from the weaknesses that produced his misconduct. The Panel believes Applicant is on the right track in working with a psychologist to identify his weaknesses and to then address them and that with the passage of additional time he can submit the type of evidence of rehabilitation that meets his burden, but clear and convincing evidence of his rehabilitation has not been submitted to this Panel.

The character references Applicant has provided attest to his commitment to his clients and his skill as a lawyer, but do not address, with the exception of the letter from Mr. Higgins, their personal knowledge of how Applicant has addressed, post-suspension, the weaknesses that led to his suspension. Mr. Higgins stated that, "I have seen remarkable change in the last six months in how he looks at, and deals with, problems and his past actions." Unfortunately, Mr. Higgins did not elaborate on what those remarkable changes have been. His representation is too conclusory for the Panel to give it much weight.

While commendable, Applicant's charitable contributions of clothes and food to various community organizations during his suspension does not demonstrate that that activity has helped Applicant address the weaknesses that lead to his suspension. Applicant's ongoing activities in connection with his program of sobriety show his commitment to maintain his sobriety, but his prior ethical lapses do not appear to be attributable to the recurrence of any substance abuse problem.

Applicant would be expected to take the requisite number of hours of continuing legal education instruction required to maintain his competence in the law and his license. The State Bar has not raised an issue of Applicant's lack of competence in the law in this proceeding.

Applicant's two large outstanding debts are of concern to the Panel, but he is attempting to reach an agreement with each creditor on the final amount owed and to repay those debts over time. The Panel does not base its recommendation on financial irresponsibility.

That Applicant has not been involved in any professional misconduct or law violations (parking tickets excepted) since his suspension is unremarkable. As noted in *Arrotta*, the passing of time without further incident is not clear and convincing evidence of rehabilitation. "Merely showing that [an individual] is now living and doing those things he . . . should have done throughout life, although necessary to prove rehabilitation," is not sufficient to meet Applicant's burden. *In re J.J.T.*, 761 So. 2d 1094, 1096 (Fla. 2000)", *Arrotta, supra*, 208 Ariz. at 515.

Conclusion and Recommendation

While Applicant appears to be very sincere and earnest in his request to again be allowed to actively practice law, the Panel concludes he has not presented

clear and convincing evidence that he has identified and overcome the weaknesses that lead to his prior professional misconduct. Applicant has had multiple opportunities over many years to identify and overcome the weaknesses that led to his misconduct. While his accident was very unfortunate and the Panel is impressed with his rehabilitative efforts in that regard, Applicant's misconduct occurred both before and after the accident. The Panel is not convinced that the public is protected if Applicant is reinstated to the active practice of law at this time. Applicant has been disciplined seven times. He has not proven he is truly rehabilitated from the weaknesses that caused his misconduct such that the Panel is persuaded he should be allowed to represent new clients without fear they will fall prey to the many types of misconduct Applicant has engaged in in the past.

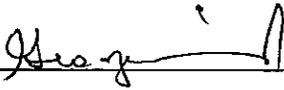
Clear and convincing evidence is that which may persuade that the truth of the contention (in this case, Applicant's rehabilitation and fitness to practice law) is highly probable. *In the Matter of Neville*, 147 Ariz. 106, 111, 708 P.2d 1297, 1302 (1985). The evidence Applicant has presented does not persuade the Panel that the truth of his rehabilitation and fitness to practice law is highly probable. The Panel recommends Applicant carefully restudy the requirements for proving his rehabilitation as set forth in *In re Arrotta*, 208 Ariz. 509, 96 P.3d 213 (2004) so that, when seeking reinstatement in the future, he will meet the required burden of proof.

The Panel recommends Applicant's application for reinstatement to the active practice of law be denied. Rule 65(a)5., Ariz.R.Sup.Ct., provides that, "No application for reinstatement shall be filed within one (1) year following the denial of a request for reinstatement." Assuming Applicant's best efforts in satisfying the requirements set forth in *In re Arrotta* over that period of time, he should be in a

better position to prove, by clear and convincing evidence, that he has truly identified the weaknesses that caused his misconduct and has overcome them when he next applies for reinstatement.

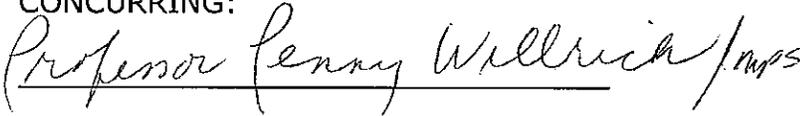
The Panel also recommends that Applicant be required to pay the costs and expenses of this reinstatement proceeding.

DATED this 10th day of July, 2012.



George A. Riemer
Acting Presiding Disciplinary Judge

CONCURRING:



Professor Penny Willrich, Volunteer Attorney Member



Mark Salem, Volunteer Public Member

Original filed with the Disciplinary Clerk
this 10th day of July, 2012.

Copy of the foregoing mailed this
10th day of July, 2012, to:

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