

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

APR 23 2013

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A. Smith

**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,

**PAUL M. WEICH,
Bar No. 014089**

Applicant.

No. PDJ-2012-9107

**AMENDED
REPORT AND
RECOMMENDATION**

On March 29, 2013, the Hearing Panel ("Panel"), composed of Greta Williams, volunteer public member from Maricopa County, Donna Faye Williams, volunteer attorney member from Maricopa County, and the Presiding Disciplinary Judge ("PDJ"), held a one day hearing pursuant to Rule 65(b)(1), Ariz. R. Sup. Ct., to consider the reinstatement of Paul M. Weich to the active practice of law. Ms. Roberta L. Tepper appeared on behalf of the State Bar of Arizona ("State Bar") and Ms. Nancy A. Greenlee appeared on behalf of Mr. Weich. The Panel considered testimony, the admitted exhibits, the parties' Joint Prehearing Statement and evaluated the credibility of the witnesses.¹ While exclusion of the witnesses rule was stipulated to in the Joint Pre-Hearing statement, both parties withdrew their request for the application of the rule. Applicant moved to seal Ms. Joan E. Leshner's testimony. Hearing no objection from Ms. Tepper, the PDJ ordered sealing Ms. Leshner's testimony.

¹ The witnesses who testified were Joan E. Leshner, LCSW, Kraig J. Marton, Ralph Hughes (by telephone), Rabbi Andrew Straus (by telephone) and Paul Weich.

After both parties rested, the Panel considered the matter and returned recommending reinstatement without hearing closing arguments. The Panel now issues this "Report and Recommendation" pursuant to Rule 65(b)(3), Ariz. R. Sup. Ct., recommending Mr. Weich be reinstated to the active practice of law subject to the terms of reinstatement issued upon his earlier suspension.

I. PROCEDURAL HISTORY AND BACKGROUND

Mr. Weich was first suspended ("2007 Suspension") from practicing law for two years effective November 29, 2007. In 2010, Mr. Weich consented to a two year suspension ("2010 Suspension") effective December 29, 2009. The 2010 Suspension ordered two years of probation upon reinstatement, including the following:

1. "The probation period will commence upon the date of the Order of Reinstatement.
2. [Mr. Weich] shall contact the director of MAP within 30 days of the date of the Order of Reinstatement.
3. [Mr. Weich] shall submit to a MAP assessment as scheduled by the director of MAP.
4. The director of MAP shall develop "Term and Conditions of Probation" based on the assessment and terms shall be incorporated herein by reference.
5. [Mr. Weich] shall comply with any other terms and conditions deemed appropriate by the director of MAP, which shall be incorporated herein by reference.

6. [Mr. Weich] shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other rules of the Supreme Court of Arizona.
7. In the event that [Mr. Weich] fails to comply with any of the foregoing probation terms, and the State Bar receives information thereof, Bar Counsel shall file a Notice of Non-Compliance with the imposing entity pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The imposing entity may refer the matter to the [Presiding Disciplinary Judge] to conduct a hearing at the earliest practicable date, but in no event later than thirty days following receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend an appropriate action and response. If there is an allegation that [Mr. Weich] failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence."

Judgment and Order (June 17, 2010).

In January 2012, Mr. Weich consented to a voluntary contract with the State Bar's Member Assistance Program ("MAP"). Mr. Weich's MAP Mentor was Kraig Marton.

Pursuant to Rule 64(e)(1), Ariz. R. Sup. Ct., Mr Weich is required to submit to formal reinstatement proceedings under Rule 65, Ariz. R. Sup. Ct. On November 28, 2012, Mr. Weich, through counsel, filed his Application for Reinstatement Pursuant to Rule 65.

II. FINDINGS OF FACT

1. Mr. Weich was first admitted to the practice of law in Arizona on October 26, 1991. Joint Pre-Hr'g Statement 1 para. 1.
2. In SB-07-0156-D (2007), by Order of the Supreme Court of Arizona, dated October 30, 2007, Mr. Weich was suspended from the practice of law in Arizona for a period of two years effective November 29, 2007. Joint Pre-Hr'g Statement 1 para. 2.
3. Mr. Weich's suspension in SB-07-0156-D, was a result of Mr. Weich's violations of the Rules of Professional Conduct in three separate matters, and his failure to participate in the disciplinary proceedings, as specifically set forth below:
 - a. File No. 05-2252: Rule 42, ERs 1.2, 1.3, 1.4 and Rules 53(d) and (f), Ariz. R. Sup. Ct.
 - b. File No. 06-1153: Rule 42, ERs 1.1, 1.2, 1.3, 1.4, 1.5, and Rules 53(d) and (f), Ariz. R. Sup. Ct.
 - c. File No. 06-1716: Rules 53(d), (e) and (f), Ariz. R. Sup. Ct.Joint Pre-Hr'g Statement 2 para. 3.
4. In SB-10-0062-D (2010), by Order of the Supreme Court of Arizona, filed June 17, 2010, Mr. Weich was suspended from the active practice of law in Arizona for a period of two years effective December 29, 2009. Joint Pre-Hr'g Statement 2 para. 4.
5. In SB-10-0062-D, Mr. Weich failed to participate in the disciplinary proceedings until the matter went before the Disciplinary Commission for consideration of the Hearing Officer's recommendation of

disbarment. Subsequent to the matter being remanded by the Supreme Court, the State Bar and Mr. Weich entered into an Agreement for Discipline by Consent. Mr. Weich's suspension in this matter was a result of his admissions to violations of the Rules of Professional Conduct in two separate matters, as specifically set forth below:

- a. File No. 08-0073: Rule 42, ERs 1.3, 1.4, 1.15, 8.1, 8.4(c) and (d), and Rules 53(d) and (f), Ariz. R. Sup. Ct.
- b. File No. 08-1264: Rule 42, ERs 1.3, 1.4, 1.15, 8.1, 8.4(c) and (d), and Rules 53(d) and (f), Ariz. R. Sup. Ct.

Joint Pre-Hr'g Statement 2 para. 5.

6. Mr. Weich's disciplinary history also includes:

- a. Order of Restitution, dated May 28, 2008, in State Bar File No. 08-0411. Mr. Weich was ordered to pay restitution in the amount of \$1,500 to a former client, within thirty days from the receipt of the Order. Mr. Weich provided the client with a check for \$1,500 on July 25, 2008.
- b. Although not discipline, Mr. Weich received Diversion in State Bar File No.04-0567. His violation of one or more conditions of the terms of diversion resulted in the filing of a Notice of Non-Compliance and the setting of an Order to Show Cause hearing by the Probable Cause Panelist. Mr. Weich failed to respond or appear at the OSC hearing resulting in the issuance of an

Amended Notice of Non-Compliance entered by the Probable Cause Panelist on October 4, 2006.

Joint Pre-Hr'g Statement 2-3 para. 6.

7. Mr. Weich failed to file his Affidavit pursuant to Rule 72, Ariz. R. Sup. Ct., as required in the Supreme Court's Judgment and Order entered on October 30, 2007. Joint Pre-Hr'g Statement 3 para. 7.
8. Mr. Weich has not applied for reinstatement prior to this matter. Joint Pre-Hr'g Statement 3 para. 8.
9. During 2007 and 2008, for no compensation, Mr. Weich assisted attorney Richard Groves, an Arizona attorney. Mr. Weich's responsibilities included the preparation and mailing of demand letters for Mr. Groves. Joint Pre-Hr'g Statement 3 para. 9.
10. Between 2008 and 2011, for no compensation, Mr. Weich participated in meetings and assisted an import company, in which Mr. Weich has a small ownership interest. Joint Pre-Hr'g Statement 3 para. 10.
11. Between 2008 and 2012, for no compensation, Mr. Weich managed the office building jointly owned by Mr. Weich, his wife, Mr. Hughes and Ms. Hamel. Joint Pre-Hr'g Statement 3 para. 11.
12. Between 2007 and 2012, Mr. Weich served as an advisor to his family's business entities and received compensation for those services. Joint Pre-Hearing Statement 4 para. 12.
13. During the period of suspension, Mr. Weich has also been the primary caregiver to he and his wife's two children. Joint Pre-Hr'g Statement 4 para. 13.

14. Mr. Weich's residence has been the same prior to and during the period of suspension. Joint Pre-Hearing Statement 4 para. 14.
 15. Mr. Weich has not been a party to any criminal action during the period of suspension. Joint Pre-Hr'g Statement 4 para. 15.
 16. Mr. Weich was cited for a traffic violation that was adjudicated in the Arcadia Biltmore Justice Court before Judge Steve Sarkis in Case Number CT2009-085708. Joint Pre-Hr'g Statement 4 para. 16.
 17. Mr. Weich has been a named party to the following civil actions, only one of which was actually filed during the period of suspension.
 - a. *M-V Acceptance Ltd., et al., v. Weich*, Maricopa County Superior Court case CV2006-070616. The complaint in this case was filed in November 2006, prior to Mr. Weich's suspension. A notice of settlement was filed on December 18, 2007, and the case was dismissed with prejudice in January 2008.
 - b. *Smyth v. Arizona Escrow and Financial Corp., et al.* Maricopa County Superior Court case CV2007-051486. The complaint in this matter was filed in May 2007; however, the matter was not dismissed by the court until April 2008.
 - c. *Torrez v. Catholic Healthcare West*, Maricopa Count Superior Court case CV2009-027931. Mr. Weich was named as a Third-Party Defendant in this case, however, he was never served. The case was dismissed by the court in January 2010.
- Joint Pre-Hr'g Statement 4 para 17.

18. Mr. Weich has taken continuing legal education courses since being suspended. Joint Pre-Hr'g Statement 5 para. 18.
19. With the exception of the filing of an application to renew his Notary license, there has been no other procedure or inquiry concerning his standing as a member of any profession or organization or holder of any license or office which involved the reprimand, removal, suspension, revocation of license or discipline of Mr. Weich. Joint Pre-Hr'g Statement 5 para. 19.
20. There have been no charges of fraud made or claimed against Applicant during the period of rehabilitation, formal or informal. Joint Pre-Hr'g Statement 5 para. 20.
21. Mr. Weich's unethical conduct resulted from his disengagement from his law practice when under severe stress. Appl. for Reinstatement § 1M; Hr'g Test. of Paul Weich. Mr. Weich's primary stressors at the time of his unethical conduct were: grief over his father's unexpected death in an accident in 2001; managing his father's estate; winding down his father's business; conflict with his sister and mother over the estate, business, and other familial issues; and conflicts arising between the sister and mother. Appl. for Reinstatement § 1M; Hr'g Test. of Paul Weich.
22. Mr. Weich's underlying sanctioned behavior occurred with Mr. Weich's individual, as opposed to company, clients. Hr'g Test. of Paul Weich. Mr. Weich had well established procedures for his staff to address company client needs. *Id.* However, there were no such procedures

for the individual clients. *Id.* When Mr. Weich was unable to cope with external stress, he began to disengage from his clients, primarily impacting his individual clients. *Id.*

23. The State Bar investigations and prosecutions of his unethical conduct compounded his stress. *Id.* As indication of his stress response behavior, Mr. Weich testified that he approached counsel after defaulting in the 2007 proceedings, but before he received the order suspending him. *Id.* However, when he did receive the order, he could not bring himself to open the envelope. *Id.*
24. His lack of engagement was not restricted to his practice of law. Hr'g Test. of Ralph Hughes; Hr'g Test. of Rabbi Straus. Mr. Weich was not engaged in the active management of the office building jointly owned with Mr. Hughes and others. Hr'g Test. of Ralph Hughes. Mr. Hughes testified that Mr. Weich would not take on responsibility. *Id.* Generally, only Mr. Hughes and Ms. Hamel took on responsibility to manage the leasing operations of the building. *Id.*
25. While Mr. Weich did hold various volunteer positions within his temple, Rabbi Straus testified that Mr. Weich was "in a shell." Hr'g Test. of Rabbi Straus.
26. Following his 2007 Suspension, and though he did not engage in the practice of law, Mr. Weich continued to prepare each morning to go to work and left the house maintaining a charade because he was unable to cope with this new stressor. Hr'g Test. of Paul Weich.

27. Mr. Weich did notify his only then-active client that he was unable to continue in representation. State Bar Ex. 5. Hr'g Test. of Paul Weich.
28. Sometime around his 2007 Suspension, Mr. Weich sought professional counseling, but soon stopped seeing the counselor due to a lack of "good fit." Hr'g Test. of Paul Weich. Mr. Weich then met with another practitioner. *Id.*
29. At some point during his suspension, Mr. Weich sought a referral to a third counselor from Rabbi Straus, who referred Mr. Weich to Ms. Leshner. Hr'g Test. of Rabbi Straus.
30. At first, only Mr. Weich's wife met with Ms. Leshner for marriage counseling. Hr'g Test. of Paul Weich. However, Mr. Weich soon also began to see Ms. Leshner for marriage and individual counseling. Hr'g Test. of Paul Weich.
31. Mr. Weich also went through the process of teshuvah, a religious practice of taking responsibility of past actions, apologizing for harms caused and learning from those past actions. Hr'g Test. of Rabbi Straus; Hr'g Test. of Paul Weich.
32. Ms. Leshner's sealed testimony convincingly corroborates Mr. Weich's explanation of his weakness, as provided in his application and testimony. In fact, her explanation of the general and particular circumstances thoroughly resonated with the Panel. Further, Ms. Leshner described, in convincing detail, abstracted here, of the methods, tools and skills required for Mr. Weich to overcome his stated weakness of lack of engagement when stressed.

33. In response to the counseling sessions with Ms. Leshner, Rabbi Straus and Mr. Hughes testified, and we find as fact, that Mr. Weich became more engaged, took on more responsibility, and was more assertive in stressful situations. Hr'g Test. of Rabbi Straus; Hr'g Test. of Ralph Hughes.
34. As an example, Mr. Weich was in a meeting with a man of significant physical stature discussing a bounced check. Hr'g Test. of Ralph Hughes. This individual apparently was not willing to pay rent. *Id.* However, Mr. Weich took responsibility to have this individual moved out of the office building. *Id.*
35. Further, Mr. Weich took on responsibility for managing the day-to-day operations of the office building. *Id.* Mr. Hughes further testified that Mr. Weich has substantially changed in taking on responsibility. *Id.*
36. Rabbi Straus also convincingly testified that Mr. Weich was more engaged in his temple volunteer positions. Hr'g Test. of Rabbi Straus.
37. Mr. Weich has also learned to appropriately offload stress. He no longer becomes involved in familial disputes between his sister and mother. Hr'g Test. of Paul Weich. He has also arranged to have estate and family trust matters delegated to a trustee. *Id.* Ms. Leshner's sealed testimony convincingly corroborates Mr. Weich's testimony.
38. On September 19, 2011, Mr. Weich entered into a voluntary contract with the State Bar's Member Assistance Program. Joint Pre-Hr'g Statement 5 para. 21; State Bar Ex. 1; State Bar Ex. 3. A term of the

voluntary contract was that Mr. Weich meet with Mr. Marton, a Peer Monitor. Joint Pre-Hr'g Statement 5 para. 21; State Bar Ex. 1. Mr. Weich was responsible to ensure there was a monthly meeting unless excused by Mr. Marton. State Bar Ex. 1; Hr'g Test. of Kraig Marton. Mr. Weich and Mr. Marton first met in December 2011. State Bar Ex. 1. Mr. Weich and Mr. Marton did not meet from July 12, 2012 until January 2013. Joint Pre-Hr'g Statement 5 para. 21; State Bar Ex. 1. However, by this time, both Mr. Weich and Mr. Marton were unsure of the purpose and value of continued meetings because Mr. Weich was not practicing and Mr. Marton had very little to monitor. Hr'g Test. of Kraig Marton; Hr'g Test. of Paul Weich. Regardless of the missed months of meeting, Mr. Marton recommends Mr. Weich be reinstated with probation terms. State Bar Ex. 1; Hr'g Test. of Kraig Marton.

39. Mr. Weich is not under immediate financial pressure to resume the practice of law. Response to Final Panel Questions by Paul Weich. Mr. Weich receives income from the family trust that covers living expenses. *Id.*; Appl. for Reinstatement.

III. DISCUSSION

When a member seeking reinstatement has been suspended for more than six months, the suspended member must meet the requirements of Rule 65, Ariz. R. Sup. Ct. The suspended member bears the burden of proof to establish "rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice, and competence" by clear and convincing evidence. Ariz. R. Sup. Ct. Rule 65(b)(2).

The Supreme Court of Arizona has established two prongs for showing rehabilitation: 1) that the suspended member has identified the weaknesses leading to the offending behavior for which the member was sanctioned; and 2) whether the suspended member has overcome those weaknesses. *In re Arrotta*, 208 Ariz. 509, 513, 96 P.3d 213, 217 (2004). *Arrotta* also provides four factors relevant to evaluating an application for reinstatement.

A purpose of the initial sanction is to protect the public. *In re Pappas*, 159 Ariz. 516, 526, 768 P.2d 1161, 1171 (1988) (quoting *In re Kersting*, 151 Ariz. 171, 179, 726 P.2d 587, 595 (1986)). Reinstatement proceedings seek to maintain that protection. *Arrotta*, 208 Ariz. at 512, 96 P.3d at 216.

A. *Mr. Weich Has Identified The Weaknesses Leading To His Suspension as Required to Show Rehabilitation*

First, a member seeking reinstatement from a suspension, lasting for more than six months, must show, as part of rehabilitation, that he or she has identified the weaknesses leading to the sanctioned behavior. *Arrotta*, 208 Ariz. At 513, 96 P.3d at 217. The Panel is convinced that Mr. Weich has identified the weakness leading to his sanctioned behavior.

As articulated in his application and his testimony, Mr. Weich identified his weakness as a lack of engagement when stressed. He has identified that when stress occurred he would not return calls and would otherwise let responsibilities fall by the wayside. He further identifies this behavior as leading to the sanctions levied against him. We hold that Mr. Weich has identified a weakness leading to the sanctioned behavior. We further hold that his explanation is convincing and

more than adequately supported by Mr. Leshner's sealed testimony and other witness testimony.

B. Mr. Weich Has Demonstrated That He Has Overcome The Weaknesses Leading To His Suspension

Second, a member must show rehabilitation by demonstrating he or she has overcome the weaknesses leading to the behavior sanctioned. *Arrotta*, 208 Ariz. At 513, 96 P.3d at 217. The Panel is overwhelmingly convinced, that Mr. Weich has overcome the weakness leading to his sanctioned behavior.

Under seal, Ms. Leshner testified of the root causes of the sanctioned behavior and how those causes are effectively addressed. In the abstract, these methods, tools and skills address Mr. Weich's disengagement, his prior response to stress. Rabbi Straus, Mr. Hughes and Ms. Leshner all remarked the demonstrable contrast they each have individually observed between Mr. Weich's prior behavior and the behavior that he not only now purports to exhibit, but which all testify he has already demonstrated over the course of the last two years. Their testimony was more than merely credible. Each testified of increased maturity. Each was able to testify on point regarding their experience in observing Mr. Weich's sanctioned behavior and his current changed, matured and engaged behavior.

C. The Arrotta Factors Support Mr. Weich's Reinstatement to the Active Practice of Law.

The four *Arrotta* factors for evaluating application for reinstatement are: "the applicant's character and standing prior to the disbarment, the nature and character of the charge for which he was disbarred, his conduct subsequent to the disbarment, and the time that has elapsed between the disbarment and the

application for reinstatement.” *Arrotta*, 208 Ariz. At 512, 96 P.3d at 216 (quoting *In re Robbins*, 172 Ariz. 255, 256, 836 P.2d 965, 966 (1992)). However, these factors are not applied mechanically. *Id.* Given the numerous supporting findings of fact, the Panel is thoroughly convinced that Mr. Weich has met the standard required under *Arrotta*.

D. Mr. Weich Is Compliant with All Disciplinary Orders and Rules and Is Fit to Practice Law

Rule 65(b)(2), Ariz. R. Sup. Ct., requires that a member seeking reinstatement must show by clear and convincing evidence that he or she is in “complan[ce] with all applicable discipline orders and rules, fit[] to practice law, and competen[t]”. Here, Mr. Weich has demonstrated that has continued his legal education. He has further complied, substantially, with all discipline order and rules. While he did fail to file his Rule 72, Ariz. R. Sup. Ct., Affidavit, his failure was caused by the same behavior that resulted in his other sanctions. Yet, he did communicate with his one then-active client that he could no longer continue in representation. The weight and significance of facts support a conclusion that Mr. Weich is compliant, fit and competent to practice as required by Rule 65(b)(2), Ariz. R. Sup. Ct.

IV. CONCLUSION AND RECOMMENDATION

The Panel finds that Mr. Weich has met his burden of proof and established by clear and convincing evidence, his rehabilitation and compliance with all disciplinary orders and rules and fitness to practice pursuant to Rule 65, Ariz. R. Sup. Ct. We are also appreciative of the focused yet thorough presentation by Ms. Greenlee. She answered each concern of the panel members before any issue

could be raised. The Panel unanimously recommends that Mr. Weich be reinstated to the active practice of law subject a two year probation including the following minimal terms:

1. The probation period will commence upon the date of the Order of Reinstatement.
2. Mr. Weich shall contact the director of MAP within 30 days of the date of the Order of Reinstatement.
3. Mr. Weich shall submit to a MAP assessment as scheduled by the director of MAP.
4. The director of MAP shall develop "Term and Conditions of Probation" based on the assessment and terms shall be incorporated herein by reference.
5. Mr. Weich shall comply with any other terms and conditions deemed appropriate by the director of MAP, which shall be incorporated herein by reference.
6. Mr. Weich shall refrain from engaging in any conduct that would violate the Rules of Professional Conduct or other rules of the Supreme Court of Arizona.
7. In the event that Mr. Weich fails to comply with any of the foregoing probation terms, and the State Bar receives information thereof, Bar Counsel shall file a Notice of Non-Compliance with the imposing entity pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The imposing entity may refer the matter to the Presiding Disciplinary Judge to conduct a hearing at the earliest practicable date, but in no event later than

thirty days following receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend an appropriate action and response. If there is an allegation that Mr. Weich failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

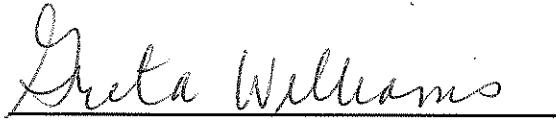
DATED this 23rd day of April, 2013.



**Hon. William S. O'Neil,
Presiding Disciplinary Judge**



**Donna Faye Williams
Volunteer Attorney Member**



**Greta Williams
Volunteer Public Member**

Original filed with the Disciplinary Clerk
this 23 day of April, 2013.

COPY of the foregoing mailed/emailed
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