

MAY 03 2012

FILED

**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,

**BRET MAIDMAN,
Bar No. 011604**

Applicant.

PDJ-2011-9078

[File No. 11-9078]

REPORT and RECOMMENDATION

On April 3, 2012, the Hearing Panel ("Panel") composed of Mark Salem, a public member from Maricopa County, Scott I. Palumbo, an attorney member from Maricopa County, 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. Shauna R. Miller appeared on behalf of the State Bar of Arizona ("State Bar") and James J. Belanger appeared on behalf of the Applicant. At hearing, the witness exclusionary rule was invoked. The Panel considered the testimony, the stipulated admitted exhibits, the parties' Joint Prehearing Statement, and evaluated the credibility of the witness. The State Bar recommends reinstatement. The Panel now issues the following "Report and Recommendation," pursuant to Rule 65(b)(3), Ariz.R.Sup.Ct, recommending reinstatement.

Background

Applicant was admitted to practice law in Arizona on October 24, 1987. He was summarily suspended in Arizona for failure to comply with Rule 45, Mandatory Continuing Legal Education ("MCLE") requirements effective May 30, 2008. His Application for Reinstatement was filed on November 8, 2011. The parties' file a

Joint Pre-Hearing Statement on March 6, 2012 and a final prehearing conference was held on March 20, 2012. Applicant filed his exhibits on March 28, 2012 and the reinstatement hearing was held on April 3, 2012.

Pursuant to Rule 64(f)(2)(B), Ariz.R.Sup.Ct., because Applicant has been suspended for over two years, he must submit to formal reinstatement proceedings pursuant to Rule 65. Rule 65(b)(2) requires that the lawyer seeking reinstatement has the burden of demonstrating by clear and convincing evidence the lawyer's rehabilitation, compliance with all disciplinary orders and rules, fitness to practice, and competence.

I. FINDINGS OF FACT

1. Applicant was first admitted to the practice of law in Arizona on October 24, 1987.
2. By Order of the Board of Governors dated May 30, 2008 Applicant was summarily suspended from the practice of law in Arizona.
3. Applicant's suspension was a result of his failure to take mandatory continuing legal education ("MCLE") classes.
4. Applicant closed his solo practice in January 2008.
5. Applicant has no disciplinary history.
6. Applicant has not previously applied for reinstatement.
7. Applicant was not employed and has not had any earnings from the commencement of the summary suspension in 2008 until approximately September 2011. Applicant testified that during the period of suspension he lived off a pension fund and capitol account. Since September 2011, he has worked as a transcriber for a law firm and also in a retail setting.

8. Applicant has submitted his 2008, 2009, and 2010 tax returns. [Applicant's Exhibit 1 filed April 3, 2012].

9. Applicant has had two residences since this matter began: 219 E. Broadmor Drive, Tempe, AZ 85282 and 13440 N. 44th St., Apt. 2082, Phoenix, AZ 85032. The first was Applicant's residence for several years; the second is an apartment he is renting.

10. Applicant has not been a party to any criminal action during the period of his suspension.

11. During the period of suspension, Applicant has been cited on four occasions for traffic violations (speeding tickets). In 2008, Applicant stated he did not pay a ticket and his license was suspended. It has since been reinstated.

12. Applicant was named as a defendant in a professional malpractice lawsuit filed in Maricopa County Superior Court case *Taylor v. Maidman et al.*, CV2010-051360. The case was active during Applicant's period of suspension, but has since settled.

13. Applicant did not report the professional malpractice litigation matter in his application for reinstatement. Although this is technically correct, the failure was inadvertent. The matter was handled and settled by *Lewis and Roca LLP*, Applicant's former law firm, with virtually no involvement by Applicant.

14. Applicant does not owe any amount to the Client Protection Fund.

15. Since January 1, 2012, Applicant has completed 76 hours of MCLE.

16. There has been no procedure or inquiry concerning Applicant's 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 the Applicant.

17. There have been no charges of fraud made or claimed against Applicant during the period of rehabilitation, formal or informal.

18. The Accuprint data summary supplied by the State Bar incorrectly shows that in 2002, Applicant worked for the firm of *Leonard, Collins & Kelly*. This is inaccurate as Applicant was still a partner at *Lewis and Roca* at that time.

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

Pursuant to Rule 64(f)(2)(B), Ariz.R.Sup.Ct., because Applicant has been suspended for over two years, he must submit to formal reinstatement proceedings pursuant to Rule 65. Rule 65(b)(2) requires that the lawyer seeking reinstatement has the burden of demonstrating by clear and convincing evidence the lawyer's rehabilitation, compliance with all disciplinary orders and rules, fitness to practice, and competence. Applicant bears the burden of proof that he has met the criteria for reinstatement.

Additionally, in *Matter of Arrotta*, 208 Ariz. 609, 96 P.3d 213 (2004), the court held that the following four factors are to be considered for 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.

Arrotta further held that to establish rehabilitation, an applicant must identify and affirmatively show that they have overcome the weaknesses which produced the earlier misconduct.

Rehabilitation

Applicant testified he was a partner at *Lewis and Roca* for approximately 19 years until August 2006 and practiced in the area of bankruptcy, appeals and finance. Thereafter, he worked for another firm until February 2007, and then began a solo law practice which closed in January 2008. As a sole practitioner, Applicant stated he did not have any administrative support and being a sole practitioner was very demanding. His daughter then experienced some mental health issues and in order to focus on her needs, temporarily stepped away from the practice of law. Applicant stated in hindsight, he should have transferred to inactive membership status but at the time, he was not sure how long he would need to attend to his daughter. Applicant stated that his daughter is doing much better and those issues are behind them.

Applicant testified that he has been active in numerous *pro bono* matters including: representing numerous debtors in bankruptcy court; representing a group of refugees in *Reno v. Flores*; representing a widower in respect to the victim rights legislation; participated in moot court; member of the debtor credit committee for three years; appointed to bankruptcy committee in 2006 which rewrote the bankruptcy rules; and member of the editorial board of *Maricopa Lawyer*.

Applicant stated that in January 2008, he voluntarily removed himself from the active practice of law. He found it very difficult, time consuming and expensive to practice law as a sole practitioner. He also did not have any administrative help and his daughter began having personal and emotional issues. Applicant further stated he came to the conclusion that could not focus on the practice of law and

effectively attend to her needs, so he withdrew from the practice of law. Applicant acknowledges that he should have planned ahead and transferred to inactive status but he did not know long the break would be. Applicant stated he received correspondence from the State Bar indicating that he had until 2010 to reinstate to active status without submitting to formal reinstatement proceedings. However, he was not prepared to reinstate at that time due to the amount of hours required to cure the outstanding MCLE deficiencies and cure the outstanding bar dues.

Compliance with Disciplinary Rules and Orders

Applicant is compliant with all prior disciplinary orders and rules. There were no allegations involving the unauthorized practice of law during the period of suspension. The State Bar's Statement of Costs and Expenses in this reinstatement matter is pending.

Fitness to Practice and Competence

Pursuant to Rule 45, Mandatory Continuing Legal Education ("MCLE"), a lawyer on active status is required to take 15 hours of MCLE per year to demonstrate their continued competence to practice law.

Applicant testified he has handled bankruptcy cases for 19 years at *Lewis and Roca*; was the President of the Arizona Chapter of the Management Turn Around Association and worked with the majority of the commercial bankruptcy attorneys in Phoenix.

Applicant advises he has stayed current with the law by reading law journals, viewing bankruptcy website and by keeping abreast of current changes to the bankruptcy law. Applicant stated he completed 76 hours of CLE, 15 hours specifically in the area of ethics. [Applicant's Exhibit 1] Applicant stated he

maintained his expertise in the area of bankruptcy. He has written and spoken about the Bankruptcy Abuse Act of 2005 prior to his suspension, and is familiar with changes and subsequent cases that have been developed since that time.

Applicant further stated that if reinstated, he may practice in the area of consumer bankruptcy but would not return to solo practice as it was more than he anticipated from a business perspective.

Discussion

The Panel finds that Applicant experienced some life issue that caused him to lose focus. He proactively stepped away from the practice to address his family's needs. Now that Applicant's daughter has stabilized and preparing for college, he is eager to return to the practice of law and is fully competent and fit to do so. He has cured his MCLE deficiencies and is now focused on the practice of law.

Conclusion

The Panel finds that Applicant 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. Therefore, the Panel unanimously recommends that Applicant be reinstated to active practice of law.

DATED this 3 day of May, 2012.

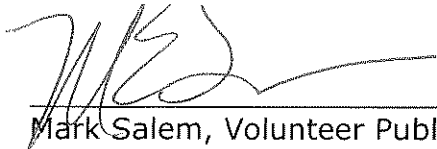
A large, bold, handwritten signature in black ink, appearing to read "W. J. O'NEIL", is written over a horizontal line.

**THE HONORABLE WILLIAM J. O'NEIL
PRESIDING DISCIPLINARY JUDGE**

CONCURRING:



Scott I. Palumbo, Volunteer Attorney Member



Mark Salem, Volunteer Public Member

Original filed with the Disciplinary Clerk
this 3rd day of May, 2012.

COPY of the foregoing mailed this
3rd day of May, 2012, to:

Shauna R. Miller
Senior Bar Counsel
STATE BAR OF ARIZONA
4201 N. 24th Street, Suite 200
Phoenix, AZ 85016-6288

James J. Belanger
Applicant's Counsel
Coppersmith Schermer & Brockelman, P.L.C.
2800 N. Central Avenue, Suite 1200
Phoenix, AZ 85004

