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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,

**HEATH ORAN DOOLEY,
Bar No. 014399**

Applicant.

PDJ 2012-9044

REPORT AND RECOMENDATION

On July 19, 2012, the Hearing Panel ("Panel"), composed of Bennie R. Click, a public member from Coconino County, George A. Riemer, 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. James Lee appeared on behalf of the State Bar of Arizona ("State Bar") and the Applicant appeared *pro per*. The Panel considered testimony, the admitted exhibits, the parties' Joint Prehearing Statement, Applicant's Prehearing Memorandum, and evaluated the credibility of the witnesses.¹ The witness rule was invoked. At the conclusion of witness testimony, due to time constraints of one of the Panel members, the PDJ requested closing arguments be submitted in writing within ten days and the hearing was concluded. The State Bar submitted its recommendation against reinstating Applicant to the active practice of law in its Post-Hearing Memorandum of August 27, 2012.

¹ The Panel received testimony from Dorothea L. Dooley (Applicant's mother), Dr. Jack Potts, M.D., and Heath Oran Dooley.

The Panel now issues the following "Report and Recommendation," pursuant to Rule 65(b)(3), Ariz.R.Sup.Ct., recommending that reinstatement be denied.

I. PROCEDURAL HISTORY

Applicant Heath Dooley was suspended by the Supreme Court of Arizona on May 22, 2007 (effective June 21, 2007) as a result of a Tender of Admissions and Agreement for Discipline by Consent. Applicant filed his Application for Reinstatement on May 14, 2012. On May 30, 2012, an initial case management conference was held. On July 5, 2012, a final reinstatement case management conference was held. In both conferences Mr. Dooley appeared *pro per*, and was strongly advised by the PDJ to retain counsel. The hearing was conducted on July 19, 2012. Because one of the panel members was time constrained after all witness testimony was presented, the PDJ ordered closing arguments to be submitted in writing. On July 20, 2012 the PDJ issued an Order Confirming Closing Brief Schedule.

On July 20, 2012, the State Bar moved to reopen the hearing for the sole purpose of offering certain exhibits into evidence. The motion to reopen the proceedings for that purpose was granted by the PDJ on July 23, 2012. Mr. Dooley was granted until July 30, 2012 to file any written objection to the admission of the exhibits offered by the State Bar. On July 30, 2012 Mr. Dooley filed an objection to certain exhibits, primarily arguing the exhibits were outside the scope and time period of the permissible inquiry for the reinstatement proceedings.

Mr. Dooley requested that the hearing be reopened and that the Panel reconvene if his objections were overruled so that he might give rebuttal testimony. Mr. Dooley also requested that the State Bar be required to disclose its

recommendation regarding his reinstatement before Mr. Dooley submitted his closing brief. On August 7, 2012 the PDJ overruled Mr. Dooley's objections and denied the request for rebuttal testimony. The PDJ ruled on August 21, 2012 that Mr. Dooley had waived his initial closing brief by missing the deadline, and notifying the State Bar that its ten day time period for filing closing arguments began on August 20, 2012.

On August 27, 2012 the State Bar filed its Post-Hearing Memorandum, including its recommendation that Mr. Dooley not be reinstated to the active practice of law. On September 4, 2012 Mr. Dooley timely filed his response.

II. BACKGROUND

The State Bar initially pursued complaints against Mr. Dooley regarding his representation of five separate clients in 2006. Each count alleged similar ethical violations including failure to diligently represent and adequately communicate with clients. These actions occurred in late 2004 and 2005, followed by failure to cooperate with the Bar which continued into 2006.

The initial Complaint against Mr. Dooley was filed on March 28, 2006 and an Amended Complaint was filed July 25, 2006. The State Bar and Mr. Dooley submitted a Tender of Admissions and Agreement for Discipline by Consent on October 10, 2006, in which Mr. Dooley conditionally admitted that his conduct violated various ethics rules detailed in each count below. The Hearing Officer noted aggravating factors of a pattern of misconduct, multiple offenses, and bad faith obstruction of the disciplinary proceeding. Mitigating factors were absence of prior disciplinary history, no selfish or dishonest motive, and personal or emotional

problems. Applicant accepted a six month suspension and two years probation on reinstatement, which was finalized by Supreme Court Order on May 22, 2007.

The underlying misconduct in Count One occurred in 2004 and 2005 when Mr. Dooley failed to consistently respond or adequately communicate with his client Helene Vrandenburgh regarding her slip and fall case against Wal-Mart. He also failed to protect this client's interests upon termination of his representation. While Mr. Dooley initially responded to the State Bar's charging letter in August of 2005, he requested an extension of time to respond due to health reasons. After being granted that extension, he failed to respond. Mr. Dooley's conduct in regard to this count violated ERs 1.4, 1.16(d), 8.1(b), and 8.4(d).

In Count Two, Mr. Dooley did not respond to his clients George and Sharon Snyder, whom he was representing in a medical malpractice claim in late 2004 and 2005. Mr. Dooley initially filed a complaint in the case, but then missed discovery deadlines which resulted in the court dismissing two defendants. He did not inform his clients of his failure to meet discovery deadlines or of the subsequent dismissal of their case. He did not respond to their numerous phone calls and then withdrew from the case without notification to them. Mr. Dooley did not submit an accounting of his costs or a refund of unused monies. In addition he did not respond to a charging letter from the State Bar dated October 13, 2005 regarding this matter. Mr. Dooley was found to have violated ERs 1.3, 1.4, 1.16(d), 3.2, 8.1(b), and 8.4(d), in this matter.

The charges in Count Three were dismissed by the State Bar in exchange for the Tender of Admissions.

In Count Four, Mr. Dooley failed to communicate with his client Mary Kohler during 2005 while representing her in an appeal from a Registrar of Contractors' ruling in her suit against a construction company. Although Mr. Dooley accepted a \$5,000 advance payment for his services, he did not respond to his client's attempts to contact him. He then withdrew from her case without consulting her. Mr. Dooley also failed to inform his client that the request for a continuance in her matter had been denied. He again failed to respond to a charging letter from the State Bar sent February 16, 2006. Mr. Dooley was found to have violated ERs 1.2, 1.3, 1.4, 1.16(d) and 8.3(b), in this matter.

In Count Five, Mr. Dooley did not respond to inquiries from his client Robert Burg regarding a personal injury case. Mr. Dooley missed discovery deadlines and withdrew from the case without consulting or notifying his client. Mr. Burg discovered the absence of Mr. Dooley only when he went to Mr. Dooley's office and found that it was abandoned. Mr. Dooley did not respond to the State Bar charging letter sent on or about December 21, 2005. Mr. Dooley was found to have violated ERs 1.3, 1.4, 1.16(d), 3.2 and 8.1(b), in this matter.

III. PREFATORY FINDINGS OF FACT

1. Mr. Dooley was first admitted to the practice of law in Arizona on January 12, 1993. [Application for Reinstatement, Tab A]

2. By Supreme Court order filed on May 22, 2007 in File No. SB-07-0051-D, Mr. Dooley was suspended from the practice of law for a period of six (6) months. The effective date of the suspension was June 21, 2007. [Joint Prehearing Statement]

3. Mr. Dooley did not file an affidavit pursuant to Rule 72(e), Ariz. R. Sup. Ct., based upon a conversation he had with a State Bar attorney other than counsel assigned to this matter. That attorney advised him that he was not required to comply with Rule 72 because at the time he was suspended he had no clients, opposing counsel or courts to inform that he had been suspended from the practice of law. [Joint Prehearing Statement]

4. Mr. Dooley's suspension was a result of his violation of Rule 42, Ariz. R. Sup. Ct., ERs 1.2, 1.3, 1.4, 1.8(a), 1.16(d), 3.2, 8.1(b) and 8.4(d) over Counts One, Two, Four and Five; Count Three having been dismissed by the State Bar. [Stipulated Exhibit 16]

5. The factual basis for Mr. Dooley's suspension was set forth in the Tender of Admissions and Agreement for Discipline by Consent; Joint Memorandum in Support of Tender of Admissions and Agreement for Discipline by Consent; Hearing Officer Report; Disciplinary Commission Report, Amended Disciplinary Commission Report and Arizona Supreme Court Judgment and Order. [Stipulated Exhibits 16, 17, 18, 19 and 20]

6. Mr. Dooley became eligible for reinstatement on or about December 21, 2007. On May 14, 2012, Mr. Dooley filed his Application for Reinstatement with the Disciplinary Clerk. [Joint Prehearing Statement]

7. Pursuant to the Supreme Court's Order in SB-07-0051-D, filed on May 22, 2007, the State Bar was granted judgment against Mr. Dooley for the costs and expenses of the disciplinary proceedings in that matter in the amount of \$735.36. On July 21, 2011, Applicant satisfied the judgment including interest. [Joint Prehearing Statement]

8. Mr. Dooley was ordered to pay restitution in the amount of \$511.90 to client Mary Kohler on May 22, 2007, and did so on March 1, 2012. He stated that the delay in payment was due to a lack of available funds, difficulty in locating Ms. Kohler's address, and difficulty associated with the hand-delivery of the payment by a delivery service to Ms. Kohler's residence in a locked and secure building. Following four attempts at hand-delivery, Applicant mailed the payment to Ms. Kohler by certified mail, return receipt requested. [Applicant's Exhibits M-P].

9. On July 20, 2011 Applicant paid \$7,326.52 to the Client Protection Fund (the "Fund") to reimburse the Fund for its payment of \$5,289.99 to George and Sharon Snyder along with accrued interest thereon. [Joint Prehearing Statement and SB's Exhibit 6]

10. Mr. Dooley has paid the filing fee and advanced the State Bar's investigation fee associated with his Reinstatement Application, a total of \$1,100.00, as required by Rule 65(a)(3)(A). [Joint Prehearing Statement and SB's Exhibit 9]

11. Mr. Dooley alleged that there had been no civil or criminal charges filed against him during the period of his suspension. [Application]

12. During his suspension, Mr. Dooley has been employed in various jobs, including restaurant owner, independent mortgage processing contractor, and temporary paralegal (the latter for a period of four months in 2011). His adjusted gross income for the years 2007 through 2011 was \$5,407.00, \$6,000.00, \$6,000.00, \$70,711.07, and \$16,800.00, respectively. In 2010, Mr. Dooley reported marketing and business expenses which reduced his taxable income to

\$8,440.99. [Application for Reinstatement, Joint Prehearing Statement, and Hearing Testimony]

13. Mr. Dooley personally has a number of outstanding debts, including a federal tax lien of \$43,720.08, an arbitration judgment in California in the amount of \$30,031.21 which has been domesticated to Arizona, and several smaller judgments and seriously past due accounts. Mr. Dooley is also personally liable in conjunction with Dooley's Sports Grill, LLC, a limited liability company of which he is the managing member, for a default judgment in Texas in the amount of \$19,772.43. Dooley's Sports Grill, LLC is also subject to multiple liens of the Texas Workforce Commission for unpaid wages, administrative penalties, and filing and recording fees, and the State Comptroller for unpaid sales taxes. [State Bar Prehearing Memorandum, Stipulated Exhibit 21, State Bar Exhibits 35-41, 43, 45, 46]

14. During June of 2012, Mr. Dooley completed a total of 15.25 hours of continuing legal education, which includes four hours of ethics credit. In the Spring of 2011 Mr. Dooley also completed a 20-hour SAFE Act Comprehensive Mortgage Loan Origination Course through Champions School of Real Estate, and in December of 2011 an 8-hour SAFE Act Mortgage Loan Originator License Renewal Course with the same organization. [Joint Prehearing Statement and Applicant's Exhibits A-B]

15. Mr. Dooley has been the subject of one procedure or inquiry regarding his standing as a member of a profession and on January 17, 2012, was ordered by the Texas Department of Savings and Mortgage Lending to cease and desist from working with a person not licensed to act as a residential mortgage loan originator.

Mr. Dooley was administratively sanctioned \$3,500.00 for allegedly engaging in unlicensed activity. [Joint Prehearing Statement, Applicant's Exhibit U]

16. Mr. Dooley failed to disclose this order and sanction in his Application for Reinstatement. In the Joint Prehearing Statement it is stipulated that Mr. Dooley states he was not aware of the allegations at the time he filed his Application for Reinstatement. Mr. Dooley missed the appeal deadline with the Department, and has been denied further appeal of the administrative sanction. [Joint Prehearing Statement, Applicant's Exhibit U]

17. Mr. Dooley was a party to a civil action in Arizona that sought to domesticate a judgment obtained against him in California. This civil proceeding was not disclosed on Mr. Dooley's Application for Reinstatement. He asserts that he was not given notice of the underlying arbitration proceeding that led to the California judgment against him. [Joint Prehearing Statement, SB Exhibit 36 and Stipulated 1H, and Hearing Testimony]

18. Dr. Jack Potts submitted an Independent Psychiatric Examination of Mr. Dooley dated June 9, 2012, in which he opined that within a reasonable degree of psychiatric certainty that Mr. Dooley does not suffer from a psychiatric disorder and is psychologically fit to return to the practice of law. Dr. Potts further stated that because Mr. Dooley would be on probation upon reinstatement and that there was no preceding history of State Bar complaints (prior to those that involved his suspension); he believes the public would be adequately protected if Mr. Dooley is reinstated. [Applicant's Exhibit C]

19. No charge of fraud has been made or claimed against Mr. Dooley during the period of his suspension. [Joint Prehearing Statement]

20. Prior to his suspension from the practice of Law in Arizona, Mr. Dooley had not been subject to disciplinary sanctions.

21. Prior to this application for reinstatement, he had not applied for reinstatement to the active practice of law.

IV. ANALYSIS UNDER RULE 64 and 65, ARIZ.R.SUP.CT.

Every applicant for readmission to the State Bar must file a full and complete application for readmission as required by the pertinent rules of the Supreme Court. The requirements of those applications vary widely depending upon whether the suspension is categorized as six months or less versus a suspension of more than six months or if the application for reinstatement was not filed within one hundred eight (180) days after expiration of the period of suspension. An applicant who has timely filed an application having been suspended for six months or less requires primarily an avowal that the lawyer has fully complied with the requirements of the suspension judgment and order and has paid all required fees, costs and expenses. Rule 64(e)(2) Ariz.R.Sup.Ct..

However, an applicant suspended more than six months or who does not timely file the application within 180 days after expiration of the period of suspension faces the more daunting informational requirements listed under Supreme Court Rule 65(a). Full and complete disclosure is required. "The required information shall include, but is not limited to" the extensive informational list within that rule. Rule 65(a)(1) Ariz.R.Sup.Ct. Failure to properly meet the requirements of the application can be fatal as the lawyer requesting reinstatement has the burden by clear and convincing evidence of showing compliance with all applicable discipline rules, including the Rule 65(a) requirements. Rule 65(b)(2).

The standard of evaluation of a timely filed application following a suspension of six months or less is set forth in Ariz.R.Sup.Ct. 64(e)(2). An applicant applying for reinstatement in that instance need only submit a full and complete application to the Disciplinary Clerk and serve it upon the State Bar. The applicant need not prove rehabilitation. However, if an application is not filed within one hundred and eighty days after the expiration of the period of suspension, the more stringent reinstatement procedures of Rule 65 apply. Supreme Court Rule 65(b)(2) requires the lawyer seeking reinstatement to prove by clear and convincing evidence his "rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice, and competence."

Further, the applicant must meet the general standard set forth in Ariz.R.Sup.Ct. 64(a), requiring an applicant to "show by clear and convincing evidence that the lawyer has been rehabilitated and/or overcome his or her disability, and possesses the moral qualifications and knowledge of the law required for admission to practice law in this state in the first instance."

Rehabilitation and Moral Qualification

Mr. Dooley was eligible for reinstatement on or about December 21, 2007. However he did not apply for reinstatement until May 14, 2012. As a result, although Mr. Dooley's suspension was for six months, the more stringent reinstatement procedures in Rule 65 apply to him.

The standard for readmission to the Bar can, in a practical sense, be more difficult than initial admission and with good cause. An individual seeking readmission has the weight of their unethical behavior added to the balancing of

the scales. There is a resultant greater burden of proving rehabilitation and good moral character. Regardless of whether a person is an initial applicant or one applying for readmission, the more egregious the past misconduct, the greater becomes the practical burden of proof. "Moreover, the more serious the misconduct that led to disbarment, the more difficult is the applicant's task in showing rehabilitation." *In re Arrotta*, 208 Ariz. 509, 512, 96 P.3d 213, 216 (2004) (citing *In re Robbins*, 172 Ariz. 255, 256, 836 P.2d 965, 966 (1992)). It is in that sense not unlike a sliding fee scale, in that the more egregious the misconduct, the more that must be laid on the evidentiary table to demonstrate rehabilitation and good moral character.

The general standard for readmission is set forth within Supreme Court Rule 64(a). In order to be reinstated to the active practice of law, a lawyer must show by clear and convincing evidence that the lawyer has been rehabilitated and possesses the moral qualifications and knowledge of the law required for admission to practice law in this state in the first instance. Rehabilitation ordinarily requires proof of three things. First, the applicant must demonstrate acceptance of responsibility for the behavior that led to suspension. Second, the applicant must convince the Panel that he has clearly identified the specific weaknesses that led to his misconduct. And third, the applicant must offer convincing proof of how he has overcome his weaknesses and that the applicant will continue to do so in the future. *In re Arrotta*, 208 Ariz. 513, 96 P.3d 217 (2004). The Panel then must "weigh those factors tending to show rehabilitation against those tending to show a lack thereof," in their determination of whether the applicant has met his burden. *In re Hamm*, 211 Ariz. 458, 465, 123 P.3d 652, 659 (2005).

Identifying the underlying source of the applicant's weaknesses and the active steps taken by an applicant to overcome them is fundamental to the inquiry. Not knowing the weaknesses renders meaningless the steps taken. Knowing the weaknesses without knowing and applying the steps to overcome them leaves the applicant with nothing more than a hope and a wish that past issues do not recur. It is the effective active steps taken to overcome correctly identified weaknesses that convinces the Panel that the applicant will not succumb to past concerns. In addition, although professional treatment and testimony is not required for readmission to the Bar, *Arrotta* makes clear that an applicant who proceeds without evidence of obtaining such assistance must carry his burden of proof in some other way. *Arrotta*, at 218.

If rehabilitation is proven by clear and convincing evidence, the Panel weighs whether the applicant has demonstrated good moral character. The Panel determines: 1) the seriousness of the conduct that resulted in the suspension, for the purposes of both rehabilitation and good character; 2) the lapse of time since the misconduct; 3) the past conduct to see what it reveals about an applicant's present moral character; 4) that good moral character is more than the absence of bad moral character; and, 5) whether exemplary moral character has been demonstrated. *In re Application of Lazcano*, 223 Ariz. 280, 281, 220 P.3d 896, 897 (2010)

Fitness to Practice and Competence

Dr. Potts testified and provided an affidavit that he believes that Mr. Dooley does not suffer from a psychiatric disorder, and opines "without reservation" that he is fit to practice law. Mr. Dooley also provided letters from two lawyers for

whose firm he worked as a paralegal in a temporary capacity in 2011 who attest to his high-quality work and that he did not display the performance deficiencies that resulted in his disciplinary suspension.

In the five years since Mr. Dooley left the practice of law, his work in the legal field has been limited to those 4 months as a temporary paralegal. He also completed over 15 hours of CLE, but argues he has substantial unsubstantiated self-study. CLE alone does not establish competence. To assess competence the Panel also considers Mr. Dooley's actions in relation to his own legal matters over the period, which he chose primarily to ignore. In two matters, his Reinstatement Application and his Texas Mortgage Loan Originator License application, strict attention to detail was warranted, and yet he failed or refused to note his past disciplinary suspension, the outstanding debts and judgments against him, and the Cease and Desist Order entered against him by the Texas Department of Savings and Mortgage Lending. Each of the applications required specific attestation that it was true, correct and complete.

Steps Taken During Suspension

The critical factor in considering the lapse of time since Mr. Dooley's suspension is what he did with that time, and his ability to show "the positive actions he has taken to overcome the weaknesses" that resulted in his suspension. *Arrotta*, at 515. Dr. Potts testified that the positive actions taken by Applicant were to close his law practice, move away from what he claimed was a problematic wife, and eventually to respond to the State Bar. Mr. Dooley testified that he would avail himself of systems in place to support people when they are experiencing

psychological stressors in the future if he encounters them. We analyze his position in more detail later in the discussion section that follows.

Testimony of Dorothea Dooley (Applicant's Mother)

Mrs. Dorothea Dooley, age 90, testified as the mother of Mr. Dooley. Mrs. Dooley was unable to accurately testify about many facts regarding herself and her son. The inaccuracies were confirmed by Mr. Dooley on examination by the State Bar. Mrs. Dooley appeared to be suffering from memory problems, although she stated that she has not been diagnosed with any memory related illness.

Testimony of Dr. Jack Potts

Dr. Potts described his qualifications as a board certified psychiatrist with added qualifications in forensics, and noted that he was a lay member of the Disciplinary Commission, and a Commissioner, for many years. Dr. Potts stated that he generally works only for the court and generally does not work directly for an applicant to preserve his independence. In this case, however, he accepted the employment offered by Mr. Dooley and performed the evaluation for Mr. Dooley. Dr. Pott's testimony was largely discounted by the Panel. It suggested Mr. Dooley merely hit a "speed bump" in dealing with various stressors, that those stressors had been "spontaneously" eliminated, and that Mr. Dooley is now "fit for duty". The record in fact shows that Mr. Dooley engaged in serious professional misconduct, left Arizona to get away from his problems, disregarded obligations that would adversely affect his reinstatement to the practice of law because he never intended to practice law again, and only recently had a change of heart because he came to realize that the reinstatement of his law license was the only asset he had that could realistically solve his on-going financial problems.

Dr. Potts and Mr. Dooley met on three occasions, totaling between 2 and 3 hours. Mr. Dooley also spent 1.5 to 2 hours in testing by Dr. Potts, who administered a clinical mental status examination and the Minnesota Multiphasic Personality Inventory (MMPI). Dr. Potts noted that he had yet to receive the results of this test but was not restricted in rendering opinions regarding Mr. Dooley despite its absence. He stated that Mr. Dooley informed him of the need for the evaluation and reason for his suspension. In rendering his opinion he relied on Mr. Dooley, spoke to Mr. Dooley's bishop, and reviewed the State Bar documents in the underlying disciplinary matter.

Dr. Potts stated that based upon his interview with Mr. Dooley he believes that there were significant psychosocial stressors affecting Mr. Dooley in 2005. Mr. Dooley experienced difficulties in his law practice, was the sole caretaker of his mother (who had physical difficulties), and entered a disastrous marriage with a woman he had known for only a short period of time. All of these events occurred within a six month period. These created a "perfect storm" that contributed to what Dr. Potts believes was a self-resolving depressive disorder caused by these stressors. He noted that psychological stressors are both external and internal influences on a person, and that each person will react differently to them. He testified Mr. Dooley's reaction was to become depressed and withdrawn.

Dr. Potts found no evidence in Mr. Dooley's history that he suffers from a psychiatric disorder; rather Dr. Potts views this instance of his becoming depressed as a "speed bump." Dr. Potts noted that his outward behavior – not returning calls, having a number of complaints in a short period of time, denial, postponing, not initially responding to the Bar – was part of pattern of a self-resolving depressive

disorder. Dr. Potts stated that because Mr. Dooley will have various support groups available to him if reinstated, which include probation, the State Bar of Arizona Member Assistance Program (MAP), a lawyer support group, and the LDS Church there is no risk of his unethical behavior on a going-forward basis.

Dr. Potts stated that realizing there is a community of support available and reaching out for help is important, and that when Mr. Dooley was depressed he lost the insight to know that he could reach out for support. He testified he believes Mr. Dooley has learned to cope and that with the support of his church, MAP, and other programs he can prevail should he again find himself overwhelmed. Dr. Potts believes that the past confluence of events in one period of time was "idiosyncratic." In his view Mr. Dooley does not require ongoing psychiatric help because he does not suffer from substance abuse and has no need for ongoing medication. Dr. Potts did note that medication would have been helpful for him in 2005 when he was feeling overwhelmed and depressed.

Dr. Potts defining what Mr. Dooley does not require did not aid the Panel in understanding what Mr. Dooley did require to avoid future breaches of ethics. That Mr. Dooley's condition was peculiar or unique to him offered no insight into what truly caused his unethical responses, nor did it offer any tangible evidence of his overcoming his past behavior with meaningful action.

Dr. Potts' ultimate opinion is that Mr. Dooley is psychiatrically fit for the practice of law. He also opined that based on Mr. Dooley's history and this being a single episode with no history of psychiatric problems or substance abuse, Mr. Dooley has a very good prognosis for not experiencing further disciplinary problems. The Panel believes Dr. Potts' opinion ignored the reality of what occurred

and offered no convincing explanation for why it did occur or why it won't occur in the future.

On cross examination, Dr. Potts stated that the depressive disorder Mr. Dooley experienced was caused by the stressors he encountered, and that the disorder resolved spontaneously. This spontaneous resolution appears to have been based on Mr. Dooley leaving Arizona, getting divorced, and eventually dealing with the State Bar. The Panel believes Mr. Dooley ran away from his problems by moving to Texas rather than dealing with them responsibly.

Dr. Potts stated that in time Mr. Dooley simply emerged from his depression. His treatment in effect was getting physically away and thereby out of his problems. Dr. Potts recalled that Mr. Dooley did not seek therapeutic assistance during the period 2005-2006 because the stressors caused him to become depressed and withdrawn.

Dr. Potts further stated that he believes Mr. Dooley now recognizes the weaknesses that caused his problem; that is, that he didn't have the insight to realize he was responding poorly to his situation. But the Panel found this to be the fruit not the root of the issue. Left unexplained by Dr. Potts was how he could opine that the presently non-existent support available through probation and MAP, coupled with his major stressors removed, has given Mr. Dooley the ability to recognize when he needs help and serves to "activate" the insight to get support. He cited as an example of this recognition and activation ability that Mr. Dooley is talking about working for a law firm where there would be support from staff and role models and mentors.

Dr. Potts acknowledged he was aware of the sizeable debts facing Mr. Dooley. Yet he did not state them in his report. Dr. Potts indicated that he was aware (although not stated in his report) that he faces liens and judgments totaling approximately \$100,000, some of which is a federal tax lien. According to Dr. Potts, the underlying debts do not make a difference in this situation. He discounted substantially the debts as a stressor, explaining that because Mr. Dooley did not deny them, was upfront with Dr. Potts about them, and is dealing with them in a "forthright manner," therefore they are not a factor. When asked if he believed that the debts reflected an inability or lack of desire to comply with the law, Dr. Potts declined to opine. Dr. Potts was further asked if he was aware of the fact Mr. Dooley hadn't made payments on these debts, and responded that he was not, however he understood that Mr. Dooley did not have the means to do so. Dr. Potts was aware of one bankruptcy filing in 2005. When asked if finding out about four other bankruptcy filings in 2009 and 2010 altered his recommendation, Dr. Potts stated that it did not.

Dr. Potts also stated that Mr. Dooley's four divorces only reflect poor judgment skills regarding women, and not the practice of law, but never explained why such recurrent theme might not become a stressor again. The discounting of a stressing factor previously identified by the doctor, but now declared as a nonfactor, was puzzling and simply not credible. Dr. Potts was asked whether it is uncommon in his experience to have such short annulments and marriages, and whether or not he had concerns given the presence of many divorces, financial issues, unethical behavior, and failing to appreciate the 180 days deadline for automatic reinstatement. Dr. Potts replied that the 180 days did not matter

because Mr. Dooley wasn't interested in practicing law at the time, and that under the totality of the circumstances Mr. Dooley has a personality flaw, but in his opinion it did not relate to the practice of law.

Dr. Potts testified he was also aware that Mr. Dooley provided a false or incorrect answer on a mortgage license application, and that he had performed limited work in the legal field and participated in limited CLEs in the past five years. Dr. Potts opined that such willingness by Mr. Dooley to be untruthful on the application for reinstatement likely did not alter his conclusion that Mr. Dooley has a very good prognosis for not experiencing further disciplinary problems and is psychiatrically fit for the practice of law.

Dr. Potts was asked by the Panel if the lack of a psychiatric disorder indicates moral fitness to practice, and responded that it does not. He was also asked about the fact that some of Mr. Dooley's stressors were self-imposed, and how he discerned whether the stressors caused the depression. Dr. Potts responded that Mr. Dooley's history was the most important diagnostic tool. For instance, Mr. Dooley had been married before and didn't have problems, and had not been before the Bar in twelve or thirteen years of practice. Dr. Potts felt that in this case Mr. Dooley experienced other extrinsic stressors. Dr. Potts also noted that Applicant should have probation in order to have the support groups he needs in place should he be reinstated to practice.

Importantly Dr. Potts frequently emphasized and noted that Mr. Dooley's suspension did not rise to the level of disbarment or suspension for six months and a day. He argued an inherent unfairness which apparently impacted his opinion

arguing that the only reason Mr. Dooley has to go through the full reinstatement process is because of the lapse of time.

When asked what specific steps Mr. Dooley had taken to overcome his weaknesses, Dr. Potts responded that he had closed his law practice, moved to Texas, got assistance for his mother, finally dealt with the State Bar, and that other matters resolved themselves (such as his divorce). He opined that Mr. Dooley was not simply lucky. Instead he opined that the self-discovered tools of Mr. Dooley are being on probation, being active in his church, understanding that MAP is there and knowing when to seek support. Dr. Potts noted again that Mr. Dooley would have had an automatic reinstatement and was in the more extensive process only because he didn't apply for reinstatement within the six-month window. Dr. Potts indicated that he feels that certain issues don't rise to the level of *Arrotta*. The Panel was not persuaded by Dr. Potts' testimony and gave it little weight.

Testimony of Heath Dooley (Applicant)

Mr. Dooley began by reviewing the events that led up to the discipline. He discussed his history at *Parker Stanbury*, the Phoenix office of a California firm handling clients on a prepaid legal plan. Mr. Dooley felt the firm didn't appreciate its attorneys, so he and a majority of the other attorneys unionized. As a result, the firm closed its Phoenix office in March of 2004, rather than deal with the union.

At that time Mr. Dooley and three other attorneys from that office went into practice together and marketed a legal services plan. Mr. Dooley was responsible for providing the funds, and the others were independent contractors working for him. After about one year the firm began to struggle financially. In what seemed

a reversal of roles from *Parker Stanbury* he apparently failed to provide adequate legal research materials or support and five support staff left the firm within a six week period, some of whom were fired. Mr. Dooley states that the loss of support staff is when he began having problems managing his caseload.

In July of 2005 he married a woman he met on a dating website that he had known for only 9 days. He believes that she sought him out because she needed legal assistance with child custody suits pertaining to her four children. He testified that he did not exercise good judgment in regard to this marriage, and learned that his wife had been an exotic dancer. Problems arose soon after the marriage as his wife was arrested on an outstanding warrant of which Mr. Dooley was not aware. He alleged his wife viewed him as responsible for her arrest and became very angry with him and wanted revenge. She tried to take the house he owned prior to their marriage. Both obtained restraining orders against the other. Ultimately Mr. Dooley was arrested three times in a period of three or four months, once for violating the restraining order and twice for false charges of domestic violence. He believes his wife did this to prevent him from withdrawing from representing her in her child custody matters. It was at this point that he began to miss deadlines in his law practice.

In Count One, the Vrandenburgh complaint, Mr. Dooley was engaged to pursue a personal injury slip and fall claim against Walmart. He filed a complaint for his client and Walmart made a token offer of \$2,500. He presented the offer to Mrs. Vrandenburgh however she felt it was insufficient. Mr. Dooley described this client as one who called every several days to get an update, so he informed his paralegal to give "his standard response" and tell the client that there was no new

information, but if she wanted to accept the settlement offer she could do so. Mr. Dooley testified he believes that his client got annoyed with him because he would not talk with her directly. His client ultimately came to him and asked him to withdraw, so he filed a notice of withdrawal and turned the case file over to her. This was August 18, 2005 and he had no further contact with her. He acknowledged he did the wrong thing by relying on his paralegal to communicate with the client on the status of the case.

Mr. Dooley states that he feels very badly about what happened in Count Two, regarding the Snyders, whom he feels are "good and sincere people." This was a medical malpractice case that occurred at the time Mr. Dooley started having severe problems with his office staff and wife. As a result he believes he missed discovery deadlines and that one or more defendants were dismissed because of his failures.

Count Four regarding client Mary Kohler was a construction defect case in which he had filed a complaint on behalf of Mrs. Kohler against the contractor. Mr. Dooley felt that his client had a very legitimate claim, however he stated that he "thinks he may have missed some kind of discovery deadline," and "does not remember off hand if a defendant was dismissed." However he noted that his client feels that he adversely affected her case and he feels badly about that.

Count Five involved a personal injury matter regarding Mr. Burg. Mr. Dooley feels that Mr. Burg mischaracterized his advice to truthfully respond if he did not know something in his deposition. During the deposition Mr. Burg instead claimed not to recall anything, and it went very badly. Mr. Dooley stated that he got frustrated with his client and asked him not to conduct himself in that manner in

the deposition. After the deposition Mr. Dooley told his client that he did not think there was going to be any kind of offer of settlement. Mr. Dooley had no further contact with this client, and withdrew from this case at the same time he withdrew from the other cases.

Mr. Dooley stated that the complaints share a similar pattern. He decided that because he was not adequately representing his clients due to his personal problems, the best thing he could do was withdraw from the cases. He feels his problem was that he didn't communicate first with his clients about the withdrawal. He stated that he was embarrassed to tell them of his problems.

In August of 2005 he decided to begin to close his office, which he did in approximately September or October, of that year. By this time the Vrandenburgh complaint had been lodged with the State Bar. He stated that he believes he did respond to this complaint. But as the additional complaints came in, he "went into his shell and was in denial." Mr. Dooley stated that he was too busy trying to stay out of jail and survive. He was trying to placate his wife at the time, as she said she would dismiss charges against him if he helped her with her child custody cases. When the final charge against him was dismissed in July of 2006, Mr. Dooley states that he saw the opportunity to get away from his wife, so he began looking for a home in Texas. He states that he wanted to get away from the trouble with the State Bar and the trouble with his wife. He moved to Texas in August of 2006 and in April of 2007 his divorce was final.

In the meantime the State Bar "caught up with him" and he "finally had the presence of mind to resolve the charges" against him. He entered into a Tender of Admissions and accepted responsibility for his wrongdoing related to these four

clients. He accepted his six month suspension and states that was not concerned about the suspension or the timing implications because he never intended to practice law again.

In January of 2008 Mr. Dooley testified he began constructing a restaurant in Texas, and it opened in May of that year when the economy began to decline. Mr. Dooley stated that the restaurant struggled for almost two years, and he could not meet his bills. There were a number of bills in arrears when he finally closed the restaurant in April of 2010.

Mr. Dooley emphasized the letter from Mr. Demars as he had known of the problems with Mr. Dooley's wife. Mr. Dooley pointed out that his wife had suggested taking out a life insurance policy on him, and that he had concerns for his own safety. Mr. Dooley also swore that he found his signature stamp from his law office and a duplicate driver's license of his concealed among his wife's things, which contributed to his concerns.

The Panel interjected a question regarding the name and disposition of Mr. Dooley's restaurant, to which he replied that the name was Dooley's Sports Grill LLC and that it had been administratively dissolved by the state of Texas sometime in 2010.

Mr. Dooley also wished to reference Applicant's Exhibit E, a letter from his sister. He read aloud phrases from the letter including, "Heath is his own worst enemy," and "believes every sob story," and went on to note that Mr. Dooley's ex-wife was a financial predator who took advantage of Mr. Dooley.

After the Tender of Admissions, the Supreme Court issued a Judgment and Order on May 22, 2007 suspending Mr. Dooley for six months and ordering restitution of unearned fees. Mr. Dooley stated that "by that time the money had disappeared from the trust account," and that he believes his ex-wife was responsible for taking it. His testimony that he did not know whether his wife was a signatory to his trust account was not plausible. It was significant to the Panel that Mr. Dooley did not know what had happened to the money in his trust account or care enough to find out. Mr. Dooley stated that he knew the Snyders had been paid by the State Bar's Client Protection Fund, and that he had lost the other person's address to whom he owed restitution. Mr. Dooley stated that he phoned the State Bar's Ethics hotline to inquire what to do, and they told him to hire a private investigator to find the client and prove that he had done what he could. Because he did not have the funds to hire a private investigator, he did nothing. In February of 2012 Mr. Dooley re-contacted the State Bar and was able to obtain the client's address.

Mr. Dooley stated he tried to have a process server deliver the check four times however the security at Mrs. Kohler's building prevented delivery. Mr. Dooley then mailed the check to his client along with an apology letter. He noted that Mrs. Kohler provided a letter in his support stating that while it took Mr. Dooley five years to make restitution, he nevertheless did reimburse her and apologized, so she recommended he be reinstated to the practice of law.

As to establishing rehabilitation, Mr. Dooley states that he has identified the weaknesses that led to his problems and believes he has taken positive, assertive steps to overcome those weaknesses. With regard to competence, he states that

he took 15.25 hrs of legal CLE. He also notes that in April of 2010 he took a 20 hour SAFE Act course which included 4 hrs of ethics, and in December of 2011 he took 8 hours of continuing education for the same license, including 2 hrs of ethics. Mr. Dooley states that as a paralegal for 4 months he also completed approximately 40 hours of self-study. Mr. Dooley stated that he is sincerely remorseful about what happened; for his failure to conduct himself properly in 2005 and 2006 and through the bar proceedings. He "has recognized the error of his ways and intends to do what he needs to do to move forward," and to prove to the satisfaction of the Panel that he should be reinstated with the Bar. If reinstated, he hopes to get a job with a firm in whatever area possible.

On cross examination Mr. Dooley said that he has appealed his tax lien in the amount of approximately \$48,000 by returning the forms to the IRS in June of 2012. Despite the fact that the lien covered tax years 2002 through 2006, Mr. Dooley swore he did not become aware of the tax lien until notified in June of 2012 when he was in Phoenix. He believes that he did not receive notice before because of his relocation to Texas. Notice was received at his temporary Phoenix address, which he had filed with the Texas post office for forwarding during his period of absence. He believes the forwarding notice was picked up by the IRS.

When asked about Exhibit 45 [2010 Texas tax lien against Dooley's Sports Grill LLC], Applicant objected that the lien was not against him personally. He noted that there were many instances of creditors attempting to collect monies from Dooley's Sports Grill at the time. When asked, he stated that his role there was as a member of the LLC and manager of daily operations. He explained that although he was supposed to withhold sales taxes and pay those monies to the state once a

month, if he didn't have the money when the taxes were actually due he didn't pay them.

Regarding State Bar exhibit 33 [relating to an arbitration award in favor of R.W. Lynch], Mr. Dooley objected because "it purports to be an arbitration issue that occurred before the period of suspension." Mr. Dooley stated that he had no recollection of receiving it around that date or time, and saw it only through the reinstatement proceedings. At some point in time the judgment was domesticated in Texas. Mr. Dooley stated that at the time the situation arose he had no knowledge of it, as he did not receive notice of the arbitration hearing and was not aware of it at the time the award was obtained.

Bar Counsel then asked if Applicant recognized State Bar Exhibits 34 and 35 [also relating to an arbitration award in favor of R.W. Lynch], which Mr. Dooley swore he did not. He testified he only became aware of these judgments in the course of the reinstatement proceedings. Mr. Dooley states that he took no action in California to have the judgment set aside because he didn't have the means to address the \$30,031. To date he has not paid any of the judgment amount.

As to State Bar Exhibit 36 [domestication of the Lynch arbitration award in Maricopa County] Mr. Dooley swore he does not recognize the exhibit and has not seen it before. Through the reinstatement application process he is aware that Lynch domesticated its judgment against him in Maricopa County. He was also aware that Lynch sought to domestic the judgment in Texas. He believes the domestication was illegal because he was not notified of the hearing in the case. Mr. Dooley complained he resided in Texas when the notice was served on his old office address in Tempe, which had been closed the prior year. Mr. Dooley asserts

that the company cannot legally domesticate the judgment without notice to him of the underlying hearing.

As to State Bar Exhibit 37 [default judgment against Dooley's Sports Grill LLC in favor of Consolidated Companies] Mr. Dooley is uncertain if he saw this document in Texas, which is a default judgment for \$13,393 plus interest, costs and fees. He was aware the action had been filed, however he did not have the means to defend against it, so did not. He felt there was no point in defending himself pro se, given that he did not have money to pay a judgment. There were others also seeking money from him. He looked at the options he had at that point. He assumed Consolidated Companies would obtain a judgment against him because he did not answer the complaint. However, he did not review court records to see if the judgment was awarded and has not paid anything related to this judgment. He states that he is not aware of any others to whom he owes money.

State Bar Exhibit 38 is a small claims complaint against Mr. Dooley that was filed against him personally by a contractor hired to build a bar in his restaurant. Mr. Dooley answered this complaint, and defended himself in small claims court, but did not prevail.

V. DISCUSSION

As Mr. Dooley pointed out during these reinstatement proceedings, his agreement for suspension from the Bar was for a six month period, indicating that the issues underlying his discipline were not severe enough to require a full reinstatement process. This is not relevant. Mr. Dooley did not timely file the petition. Instead, he waited nearly five years from the time of his suspension to seek reinstatement. Through his own choices Mr. Dooley imposed upon himself the

full reinstatement process, and must now meet those standards. Mr. Dooley is not entitled to an extended absence from the profession and a less than full exploration of his competence and fitness to practice law upon his return.

First, we note that Mr. Dooley's application was woefully incomplete and a motion to dismiss by the State Bar may have been appropriate based on those deficiencies. Ignoring his debts, judgments and liens clearly does not meet the required standards for his application. Further, the Panel finds Mr. Dooley intentionally sought to ignore them. As a result, the Panel recommends his application be denied as it was incomplete.

Notwithstanding the deficiencies in his application, and as noted above, to prove rehabilitation Mr. Dooley must accept responsibility for his past actions, identify the weaknesses that caused them, and provide convincing proof he has overcome them. As prescribed by *Hamm*, the Panel must weigh the factors that show rehabilitation against those that indicate otherwise.

As held by the PDJ on multiple occasions during this case, any previous circumstance on the part of an applicant for readmission in Mr. Dooley's situation is available for scrutiny. It must be, as the standard to be met is qualification to be admitted to the Bar in the first instance. Rule 64(a), Ariz.R.Sup.Ct. Yet throughout his testimony and pleadings, Mr. Dooley continued to object to the State Bar or Panel considering actions of his that occurred prior to his suspension. Mr. Dooley specifically objects to the consideration of his debts and the judgments against him, and noted in his final pleading that he is offended by the State Bar's assertion of concern that the debts could cause him to misuse client funds. We point out that the State Bar also expressed concerns that Applicant has failed to address or pay

these debts and judgments for years, reflecting an inability to comply or conscious decision not to comply with the law. It is this aspect the Panel finds most troubling.

Mr. Dooley points out that some of the judgments were entered against him or his LLC without notice to him, and therefore lacked due process. However, the failure to notify in many instances resulted from Mr. Dooley's failure to update his address where required. And even for a sizeable claim of which Mr. Dooley was aware, he testified that he did not answer or defend the claim as he lacked the resources to satisfy the judgment. He has also failed to make payments on the numerous judgments and liens, or to establish contact with the creditor to work out a payment plan or even note that he is unable to pay. Mr. Dooley's treatment of these legal obligations has the appearance of the same avoidance and denial behavior exhibited in regard to his clients six years ago. Remarkably, this behavior is occurring at the present time, well after he states that he has been rehabilitated.

Mr. Dooley's burden also extends to providing convincing proof of the positive actions he has taken to overcome his weaknesses. Here, both he and Dr. Potts state that these consisted of closing his law practice, moving to Texas, and settling with the State Bar. However, Mr. Dooley in closing his law practice and consenting to suspension from the Bar left important things undone. Mr. Dooley was ordered to pay restitution and return unearned fees and unused monies to the State Bar and two clients, which repayments did not occur until 2011 and 2012. In fact, Mr. Dooley's testimony is that he still does not know the status of his client trust account or how it fared when he left for Texas, only supposing that his now ex-wife removed money from the account. This is not credible. If true it is equally

troubling. Rehabilitation and competence require Mr. Dooley take more interest in such critically important matters.

Dr. Potts and Mr. Dooley each note that his weakness was not to recognize when he was overwhelmed and seek support, and that the active steps he took to overcome his weakness were closing his law practice, moving to Texas, and ultimately settling with the State Bar. The Panel notes that these actions occurred in 2007 or before. Since that time Mr. Dooley has failed to make restitution for four to five years as directed in his Agreement for Discipline by Consent, and utterly failed to address other significant issues. While in Texas as managing partner he intentionally used monies earmarked for state tax payments for other purposes. This is wholly at odds with his description of himself in his closing brief as an upstanding business man when he owned his restaurant. We cannot help but note that despite his protestations that he was only a manager and not owner,² that he testified that when assets were sold he kept those monies rather than distribute them or apply them to outstanding tax liens, and that he had to know of their existence as manager.

The Panel cannot fail to note that Mr. Dooley is once again faced with mounting stressors; his current marriage is experiencing problems, and he faces a mountain of debts that remain unaddressed. It is less than meaningful that Dr. Potts has opined that Mr. Dooley is psychologically fit to practice. Psychological or psychiatric fitness ("fit for duty") does not prove rehabilitation, good moral character, or competence to practice law. That Dr. Potts' opinion may have been influenced by the perception of unfairness in Mr. Dooley being required to seek

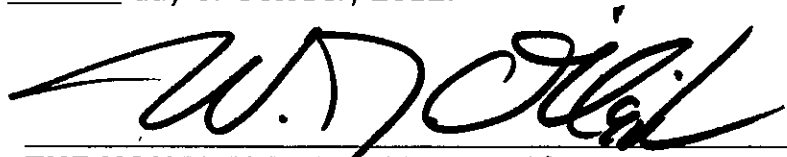
² Mr. Dooley co-owned the restaurant with his mother.

reinstatement when he was only suspended from practice for six months is noted, but the solution if one feels the rules are in error is to change them, not to minimize or ignore them.

VI. CONCLUSION AND RECOMMENDATION

The Panel finds the application of Mr. Dooley incomplete. He intentionally left multiple unfavorable documents out of his application. Such failure is reason enough to recommend the Court not grant his application and the Panel so recommends. Notwithstanding that incomplete application the Panel also finds that Mr. Dooley has not met his burden of proof to establish his rehabilitation, fitness to practice, and competence by clear and convincing evidence. We therefore recommend his application for reinstatement to the active practice of law be denied.

DATED this 9th day of October, 2012.


THE HONORABLE WILLIAM J. O'NEIL
PRESIDING DISCIPLINARY JUDGE

CONCURRING:


George A. Riemer, Volunteer Attorney Member


Bennie R. Click, Volunteer Public Member

Original filed with the Disciplinary Clerk
this 9th day of October, 2012.

COPY of the foregoing mailed/emailed
this 9th day of October, 2012, to:

James D. Lee
Senior Bar Counsel
STATE BAR OF ARIZONA
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6288

Heath O. Dooley
Respondent
1580 County Road 2800
Mineola, TX 75773

by 