

SUPREME COURT OF ARIZONA

In the Matter of the Application) Arizona Supreme Court
for Reinstatement of a Suspended) No. SB-15-0071-R
Member of the State Bar of)
Arizona) Office of the Presiding
) Disciplinary Judge
MATTHEW STEVEN SCHULTZ,) No. PDJ20159052
Attorney No. 22017)
)
Applicant.)
)
_____) **FILED 02/09/2016**

O R D E R

Applicant MATTHEW STEVEN SCHULTZ has established to the satisfaction of the Hearing Panel and this Court that his application for reinstatement should be granted. Pursuant to Rule 65 of the Rules of the Supreme Court,

IT IS ORDERED that MATTHEW STEVEN SCHULTZ is reinstated as an active member of the State Bar of Arizona effective the date of this order.

IT IS FURTHER ORDERED that upon the effective date of reinstatement MATTHEW STEVEN SCHULTZ shall be placed on probation for a period of one year, under the terms and conditions as listed below:

1. Within thirty days of reinstatement, Applicant shall contact the State Bar's Compliance Monitor to enter into a Member Assistance Program (MAP) contract with terms including, but not limited to, continued individual therapy with a licensed professional counselor twice monthly for the first six months, then once a month after six months, and continued group therapy on anger management as determined necessary by the counselor. Periodic hair follicle testing may be required, if determined necessary by the counselor. No formal MAP assessment is required. Applicant shall comply with all the terms of the MAP contract which shall be incorporated herein by reference. Applicant shall be responsible for any costs associated with MAP.

2. The State Bar shall report material violations of the terms of probation pursuant to Rule 60(a)(5)(C), Ariz. R. Sup. Ct., and a hearing may be held within thirty days to determine if the terms of probation have been violated and if an additional

sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

DATED this 9th day of February, 2016.

/s/

SCOTT BALES
Chief Justice

TO:

Nancy A Greenlee
David L Sandweiss
Amanda McQueen
Sandra Montoya
Maret Vessella
Don Lewis
Beth Stephenson
Mary Pieper
Netz Tuvera
Lexis Nexis

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

IN THE MATTER OF AN APPLICATION FOR
REINSTATEMENT OF A SUSPENDED MEMBER
OF THE STATE BAR OF ARIZONA,

**MATTHEW STEVEN SCHULTZ,
Bar No. 022017**

Applicant.

No. PDJ-2015-9052

REPORT AND RECOMMENDATION

FILED NOVEMBER 2, 2015

BACKGROUND AND PROCEDURAL HISTORY

Matthew Schultz was first admitted to the practice of law in Arizona on October 22, 2002. By Order of the Presiding Disciplinary Judge (PDJ) in PDJ-2013-9116, Mr. Schultz was suspended from the practice of law for 30 days for violating of ER 8.4(d) and Rule 41(g), Ariz. R. Sup. Ct. Mr. Schultz's suspension resulted from his representation of a client in a family law matter. Mr. Schultz wrote a letter to the court appointed custody evaluator that contained inflammatory comments attacking the mother, maternal grandparents, and judge. His comments were unprofessional, lacked objectiveness, and were prejudicial to the administration of justice.

Mr. Schultz was also suspended for one year in PDJ 2014-9061, for violating ERs 1.7 and 1.8(j). Mr. Schultz represented a client in a dissolution matter and while the dissolution case was pending, he began a sexual relationship with the client. The consensual sexual relationship did not predate the commencement of the attorney-client relationship. The 30 day suspension was concurrent with this one year suspension.

Mr. Schultz filed his Application for Reinstatement on June 8, 2015, under Rule 65, Ariz. R. Sup. Ct. An initial case management conference was held on July 1, 2015. A final case management conference was held on September 16, 2015. The parties Joint Prehearing Statement was filed on September 18, 2015. On September 21, 2015, Applicant filed an expedited Motion to Strike Exhibits and Motion in Limine. The State Bar objected. By Order filed by the PDJ on September 30, 2015, Exhibits 1, 3, 4 and 7 were stricken. Exhibits 2, 5, and 8 were sealed. See Order filed September 30, 2015.

On October 1, 2015, a Hearing Panel ("Panel") composed of public member Anne B. Donahoe, attorney member, Harlan J. Crossman, and the Honorable William J. O'Neil, Presiding Disciplinary Judge, held a one day hearing under Supreme Court Rule 65(b)(1). Mr. Schultz appeared with counsel, Nancy Greenlee and David L. Sandweiss appeared on behalf of the State Bar of Arizona ("State Bar"). The Panel carefully considered the Application for Reinstatement, witness testimony, including the testimony of Mr. Schultz,¹ and admitted exhibits.

The State Bar recommended Mr. Schultz be reinstated subject to terms and conditions of probation. The Panel agrees and issues its "Report and Recommendation," under Rule 65(b)(3), Ariz. R. Sup. Ct., recommending Mr. Schultz's Application for Reinstatement to the active practice of law be granted.

ANALYSIS UNDER RULES 64 and 65, ARIZ. R. SUP. CT.

Preliminary Discussion

¹ Consideration was given to the testimony of Hal M. Nevitt, LCSW, LISAC, CEAP, Dennis Ryan, MC, CPC, and Brad Reinhart, Esq.

An applicant petitioning for reinstatement to the practice of law must prove the requirements in Rules 64 and 65, Ariz. R. Sup. Ct. Rule 64(a) states the “general standard” for reinstatement:

... in order to be reinstated to the active practice of law, a suspended or disbarred 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.

Rule 65(b)(2), sets forth an applicant’s burden of proof for reinstatement. The lawyer must demonstrate by clear and convincing evidence the lawyer’s rehabilitation, compliance with all discipline orders and rules, fitness to practice, and competence.

The standard for readmission to the State Bar can, in a practical sense, be more difficult than the initial admission. A lawyer seeking readmission has the additional weight of their unethical behavior added to balancing scales. Not that the burden of proof changes, it is more severe when existing issues are established for which positive change must be demonstrated to establish rehabilitation and good moral character. Whether a person is an initial applicant or one applying for readmission, the more egregious the past, the greater becomes the practical weight one must overcome. “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)).

To prove rehabilitation, an applicant must first identify the weaknesses that caused the misconduct. *In re Johnson*, 231 Ariz. 556, 558-59, 298 P.3d 904, 906-07 (2013). The applicant must then demonstrate that he has overcome the

weaknesses. *Id.* at 559. The difficulty of this demonstration often turns on the seriousness of the underlying misconduct. *Id.* However, the Supreme Court cautions that the severity of misconduct does not itself preclude reinstatement. *Id.*

Neither the severity of the sanction nor the mere passage of time establishes rehabilitation. An applicant must demonstrate his rehabilitation and competency which requires proof he no longer poses a threat to the public. *Arrotta*, 208 Ariz. at 512, 96 P.3d at 216. Our duty in deciding whether reinstatement is appropriate is always to protect the public. *Id.* In carrying out this duty, we must “weigh those factors tending to show rehabilitation against those tending to show a lack thereof” to decide whether the applicant has met his burden of proof. *In re Hamm*, 211 Ariz. 458, 465, 123 P.3d 652, 659 (2005). The four factors we consider are (1) the applicant’s character and standing prior to disbarment, (2) the nature and character of the charges for which he was disciplined, (3) the applicant’s conduct subsequent to the imposition of discipline, and (4) the time which has elapsed between suspension and application for reinstatement. *Arrotta*, 208 Ariz. at 512, 96 P.3d at 216.

These factors aid the Panel in determining whether the applicant has met his burden of “affirmatively show[ing] that he has overcome those weaknesses that produced his earlier misconduct and if he has been rehabilitated.” *Id.* (internal quotations omitted) (citation omitted) (emphasis omitted). These considerations are not “appl[ied] ... mechanically,” but rather “the bottom line must always be whether the applicant has ‘affirmatively shown that he has overcome those weaknesses that produced his earlier misconduct,’ i.e., whether he has been rehabilitated.” *Id.*

(quoting *In re Robbins*, 172 Ariz. 255, 256, 836 P.2d 965, 966 (1992) (emphasis in original)).

Mr. Schultz has not applied for reinstatement prior to this matter. He resides in Phoenix, Arizona, and has lived at that same residence during the period of suspension. No civil law suits have been filed against him during the period of suspension and there have been no arrests or prosecutions. There has been no inquiry regarding his standing as a professional or holder of license or office involving discipline. No charges of fraud have been made against him during the period of suspension. [Joint Prehearing Statement.]

Weakness and Rehabilitation

Mr. Hal Nevitt, LCSW, LISAC, CEAP

Mr. Nevitt is licensed in Arizona for social work, substance abuse, and has national certification as an Employee Assistance Professional. He has over twenty years of experience providing therapy to individuals, couples, families, and adolescents. His clinical experience includes the assessment and treatment of substance abuse and clinical trauma among other areas. He was employed by the State Bar of Arizona for ten years.

Mr. Nevitt first saw Mr. Schultz in August 2014. He testified Mr. Schultz informed him he was soon to be suspended and Mr. Schultz wanted to explore counseling to determine an explanation for his multiple discipline issues. In the first session Mr. Schultz brought all of his disciplinary files in a binder. [Testimony of Mr. Nevitt.] Mr. Nevitt had him fill out an intake form. [Exhibit 5 (sealed).] Mr. Schultz reported he had previous psychiatric/chemical dependency treatment with Barbara Albrecht and Dr. Reiss. [Exhibit 5, SBA000056 (sealed).] Mr. Nevitt made no inquiry

regarding the chemical dependency. Instead, Mr. Nevitt swore he doesn't review such records but likes to formulate his own opinion. Mr. Schultz also reported to Mr. Nevitt under "Substance Abuse History: DRUG" that he was drinking alcohol regularly but not taking "drugs currently."

Mr. Nevitt testified because of this report, he only asked Mr. Schultz if he had taken drugs. He asked no other questions regarding this issue. Mr. Nevitt explained he made no other inquiries because in this first initial meeting he had no external evidence of a drug problem. [Testimony of Mr. Nevitt.] The Panel found such testimony nonsensical. On cross examination Mr. Nevitt was asked if it would have helped him determine a cause for the discipline problems of Mr. Schultz to know in 2010 he had inhaled "boxes and boxes" of nitrous oxide. Mr. Nevitt discounted it and only conceded it "would have been good to know." When asked if would have been good to know Mr. Schultz had been cutting on himself in 2010, Mr. Nevitt doubted it would have anything to do with his discipline issues. When asked if using ecstasy and cocaine by Mr. Schultz in 2010 caused any concern, Mr. Nevitt smiled and was nonchalant. [Testimony of Hal Nevitt, 10:10:45.] He later testified he did not speak with Mr. Schultz in any of the 17 other sessions about drinking or using drugs.

As Mr. Nevitt testified, he was a substance abuse counselor, we assumed he avoided such a discussion as he was primarily interested in testifying favorably for reinstatement and avoided addressing any troublesome issues. The Panel substantially discounted his testimony and found him not credible. In similar fashion, the cross examination of Mr. Nevitt regarding the prior disdain of women demonstrated by Mr. Schultz, seemed to not trouble Mr. Nevitt. [Cross-examination of Mr. Nevitt.]

Mr. Nevitt wrote an assessment of Mr. Schultz dated July 2015. [Sealed Exhibit 5, Bates 0057.] He testified he initially saw Mr. Nevitt weekly for 18 sessions. In their first therapy session, Mr. Schultz seem reluctant and undecided about his therapy goals but by the second session, Mr. Schultz engaged in self-reflection through reading assignments given by Mr. Nevitt.² Fortunately, Mr. Nevitt referred Mr. Schultz to Dennis Ryan for more focused treatment.

Dennis Ryan, MC, CPC

Mr. Ryan is an Arizona licensed professional counselor. He opened his own practice which focuses on men's issues and anger. He testified he counseled Mr. Schultz in October 2014, at the request of Mr. Nevitt. Mr. Ryan explained he sought to understand how Mr. Schultz was triggered and how to improve his responses to those triggers through calming, repetitive strategies. He found Mr. Schultz to be committed and diligent in his individual and group attendance. [Testimony of Mr. Ryan.]

Mr. Ryan stated Mr. Schultz is considered "high adrenalin" and stated people with that characteristic are often prone to anger and boundary issues. His individual and group sessions with assignments, provided Mr. Schultz with the tools to address his anger through meditation, breathing techniques, self-talk, and yoga. Mr. Schultz now demonstrates a mindfulness, is more empathetic towards others, is slow to react, and since treatment, has shown a marked improvement on the aggression test. He also demonstrated more objectiveness and expressed a commitment to group therapy. Mr. Ryan stated he found no indication of substance abuse. Mr. Ryan

² Assignments included daily journaling and to read *Boundaries* by Dr. Henry Cloud.

supports Mr. Schultz's reinstatement and opined that the misconduct was unlikely to reoccur. [Sealed Exhibit 8; testimony of Mr. Ryan.]

We found the testimony of Mr. Ryan to be reliable and focused. When cross examined, he was straight forward, thorough, and we found him truthful.

Mr. Schultz testified his weakness was his anger and overall attitude including a lack of respect for women and others. He stated his views were causing him problems in his personal and professional life, and he needed to change his approach to others. Mr. Schultz stated he has found great insight and made positive changes because of his individual and group therapy sessions over the last year. He stated he is no longer a workaholic and because of his focused treatment with Mr. Ryan, he now has the tools to appropriately handle confrontations.

Matthew Schultz

Mr. Schultz testified he believes he hit rock bottom with his suspensions and has learned from his prior mistakes. He enjoys being a lawyer and has a positive outlook on the future. He stated he had abused no substances in 2½ years when presenting to Mr. Nevitt for treatment; however, when Dr. Riess' 2010 records became an issue, he voluntarily took a hair follicle test. The journal assignments were also helpful to him as it allowed him to address childhood issues and to improve his communication skills in relationships. He stated he has simplified his life and set reasonable work hours. He spends more time with his daughter and they went on vacation together. Additionally, participation in the mens' anger management group at The Transformation Institute, as recommended by Mr. Ryan, has been invaluable to him. He stated he intends to continue with the mens' group even if he is reinstated at this time. [Hearing testimony of Mr. Schultz.]

Mr. Schultz was candid and straight forward. He did not believe he had a substance abuse problem because he thought he could function while under their influence. We find the counseling by Mr. Ryan has enabled him to identify his weakness that caused his disciplinary difficulties and he now has the tools to assure his unethical conduct is not repeated.

This Panel agrees with the State Bar's recommendation and is convinced that Mr. Schultz has provided clear and convincing evidence he has identified the weakness that enabled or caused his misconduct and demonstrated he has been rehabilitated.

When a suspended lawyer applies for readmission, "he must demonstrate more than that he has led a blameless and law-abiding life while" suspended. *Arrotta*, 208 Ariz. at 512, 96 P.3d at 216. The applicant must also offer "clear and convincing evidence showing the positive actions he has taken to overcome the weaknesses that led to his" suspension. *Arrotta*, 208 Ariz. at 512, 96 P.3d at 216. Similar to the applicant in *Arrotta*, Mr. Schultz took adequate steps after his suspension to establish rehabilitation.

Fitness to Practice

During the period of suspension, Mr. Schultz worked as an independent contractor for Brad Reinhart, Esq., managing his firm, including the firm's books and records. Mr. Schultz also performed the following paralegal duties for Mr. Reinhart: case management functions; assisting with hearing preparation; drafting legal documents, including pleadings and correspondence; and disclosure and discovery responsibilities. [Joint Prehearing Statement; testimony of Mr. Reinhart.] There

have been no allegations of the unauthorized practice of law during the period of suspension.

While suspended, Mr. Schultz's gross income through his employment with Mr. Reinhart totaled \$40,004.06. In addition, he received \$800.00 per month in rental income and \$19,749.22 in residual income from former clients. [Application, pp. 3-4.]

Mr. Schultz is current in his debts and provided a copy of his 2014 income taxes. [Application; unmarked attachments.]

Competence

Mr. Schultz has remained involved with the law by performing paralegal duties while suspended. He has taken the professionalism course and passed the MPRE Course during his period of suspension. [Joint Prehearing Statement; Exhibits 9, 10.]

Compliance

Mr. Schultz is compliant with all discipline orders and rules. He has paid the costs associated with his prior discipline matters and the fees associated with reinstatement. He owes no money to the client protection fund. [See Affidavits attached to Application.]

CONCLUSION AND RECOMMENDATIONS

The Panel finds Mr. Schultz has met his burden of proof, is rehabilitated and now fit to practice law. Clear and convincing evidence is that which may persuade that the truth of the contention is highly probable. *In the Matter of Neville*, 147 Ariz. 106, 111, 708 P.2d 1297, 1302 (1985).

The Panel therefore recommends Mr. Schultz be reinstated and placed on one (1) year of probation with the State Bar's Member Assistance Program (MAP) under the following terms and conditions:

Terms and Conditions of Probation

1. Within thirty (30) days of reinstatement, Mr. Schultz shall contact the State Bar's Compliance Monitor at (602) 340-7258, to develop terms and conditions of probation (MAP), including but not limited to: continued anger management treatment with a counselor and periodic hair follicle testing, if determined necessary by the counselor. Counseling sessions shall be one on one and shall occur initially twice per month. The frequency of counseling sessions may be reduced at some later time upon recommendation of the counselor. No formal MAP assessment is required.

2. Mr. Schultz shall comply with the terms and conditions of and shall pay costs associated with MAP.

3. Probation is effective the date of reinstatement and shall conclude one (1) year from that date.

4. The State Bar shall report material violations of the terms of probation under Rule 60(a)(5), Ariz. R. Sup. Ct., and a hearing may be held within thirty (30) days to determine if the terms of probation have been violated and if an additional sanction should be imposed. The burden of proof shall be on the State Bar to prove non-compliance by a preponderance of the evidence.

DATED this 2nd day of November, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING:

Anne B. Donahoe

Anne B. Donahoe, Volunteer Public Member

Harlan J. Crossman

Harlan J. Crossman, Volunteer Attorney Member

Copies of the foregoing mailed/emailed
this 2nd day of November, 2015 to:

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