

TO:

John F Serafine

Bradley F Perry

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Lexis Nexis

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

IN THE MATTER OF A SUSPENDED MEMBER
OF THE STATE BAR OF ARIZONA,

**JOHN F. SERAFINE,
Bar No. 020923**

Applicant.

PDJ-2015-9051

**REPORT AND
RECOMMENDATION**

FILED OCTOBER 20, 2015

On September 21, 2015, the Hearing Panel ("Panel"), composed of Howard M. Weiske, volunteer public member, Harlan Crossman, voluntary attorney member, and William J. O'Neil, Presiding Disciplinary Judge ("PDJ"), held a one day hearing under Rule 65(b)(1), Ariz. R. Sup. Ct., to consider the reinstatement of John F. Serafine to the active practice of law. State Bar Counsel, Bradley F. Perry, appeared on behalf of the State Bar of Arizona ("State Bar") and John F. Serafine appeared with counsel, Ralph W. Adams, *Adams and Clark, PC*. The Panel considered Mr. Serafine's application, Mr. Serafine's testimony,¹ the stipulated exhibits, and the parties' Joint Prehearing Statement.

The State Bar is not opposed to Mr. Serafine's reinstatement and has stated no concerns regarding his return to the practice of law. The Panel now issues its "Report and Recommendation," under Rule 65(b)(3), Ariz. R. Sup. Ct., recommending Mr. Serafine be reinstated to the active practice of law.

I. PROCEDURAL HISTORY

Mr. Serafine was summarily suspended from the practice of law in Arizona, effective June 8, 2010, because of his failure to submit his 2010 Annual Member Fee.

¹ The Panel also considered the testimony of Pastor Glenn Luttrell.

Such a “summary” suspension, is not a disciplinary action. See Rule 60, Ariz. R. Sup. Ct. However, under Rule 64(f)(1)(B), an applicant under summary suspension, who has not reapplied within two years of the effective date of summary suspension, must follow the procedure for reinstatement in Rule 65, Ariz. R. Sup. Ct.

Mr. Serafine filed his Application for Reinstatement under Rule 65(a)(1) on June 5, 2015. On June 24, 2015, an initial case management conference was held, followed by a final reinstatement case management conference on September 15, 2014. A Protective Order was filed sealing hearing Exhibit 26.

II. FINDINGS OF FACT

1. Mr. Serafine was first admitted to the practice of law in Arizona on May 24, 2001. [Joint Prehearing Statement.]

2. By letter dated June 18, 2010, Mr. Serafine was given notice of his summary suspension by the State Bar. He was informed The Board of Governors of the State Bar of Arizona ratified his name for summary suspension on June 8, 2010. [Joint Prehearing Statement; Exhibit 1.]

3. Mr. Serafine’s summary suspension resulted from his failure to comply with Rule 32(c)(7) Membership Fees, as he did not submit his 2010 Annual Member Fee. [Joint Prehearing Statement; Exhibit 1.]

4. Mr. Serafine has no disciplinary history. [Joint Prehearing Statement.]

5. Mr. Serafine has not applied for reinstatement prior to this matter. [Joint Prehearing Statement.]

6. Mr. Serafine left the practice of law to pursue a screenwriting career. During the following time periods, Mr. Serafine has held the following employment positions:

- a. September 2011 to January 2012 - Screenplay Judge for the BlueCat screenplay competition. [Exhibit 11.]
- b. October 2014 to January 2015 – manual labor for Jeanette Impson, 1233 E. Palo Verde Dr., Phoenix, Arizona.
- c. May 2014 to January 2015 and January 2015 to February 2015 – participant in medical studies at the National Institute of Health, Phoenix Indian Center. [Joint Prehearing Statement; Exhibits 12-15, 26.]

7. Mr. Serafine’s job responsibilities involved no legal requirements. [Joint Prehearing Statement.]

8. Mr. Serafine maintained four residences during the period of suspension:

- a. From June 2010, to 2013, Mr. Serafine resided at 3525 E. Bell Road, Phoenix, Arizona, 85032; Mr. Serafine rented this residence.
- b. From January 2014 to August 2014, Mr. Serafine resided at 1236 W. 12th Avenue, Phoenix, Arizona 85007; Mr. Serafine rented this residence.
- c. From August 2014 to January 2015, Mr. Serafine resided at 1203 W. Polk Street, Phoenix, Arizona 85007; Mr. Serafine rented this residence.

d. From February 2015 to present, Mr. Serafine resided at 1233 E. Palo Verde Drive, Phoenix, Arizona 85014; Mr. Serafine rented this residence. [Joint Prehearing Statement.]

9. Mr. Serafine has not been a party to any criminal action during the period of suspension. [Joint Prehearing Statement.]

10. Mr. Serafine has been a party to the following civil actions during the period of suspension.

a. February 13, 2015, *John F. Serafine v. Steven Ron Kirkwood*, Downtown Justice Court, Phoenix, case number, CC2015-027103; a dog bite case. [Joint Prehearing Statement and Exhibit 16.]

b. July 2015 to present, *Midland Funding LLC v. John Serafine*, Superior Court of Arizona in Maricopa County, CV2015092699; a collection of debt case. [Joint Prehearing Statement and Exhibits 5-9.]

11. Mr. Serafine has completed 31.75 hours of continuing legal education courses since being suspended. [Joint Prehearing Statement; Exhibit 18.] He has also taken the course, Essential Distinctions in Arizona Law. [Exhibit 18, Bates A&C000156.] He also completed the Arizona law course on May 26, 2015, as verified by the Attorney Admissions staff.

12. There has been no procedure or inquiry concerning Mr. Serafine'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 Mr. Serafine. [Joint Prehearing Statement.]

13. There have been no formal or informal charges of fraud made or claimed against Mr. Serafine during the period of rehabilitation. [Joint Prehearing Statement.]

III. ANALYSIS OF RULES 45, 64 and 65(B)(2), ARIZ. R. SUP. CT.

There are two methods for seeking reinstatement to the Bar after a summary suspension. Both sets of requirements are set forth in Rule 64(f)(1), Ariz. R. Sup. Ct. An applicant applying for reinstatement within two years must submit a form approved by the Court, to the Board, indicating proof of the cure of the grounds upon which the summary suspension order was entered, payment of fees and costs, and proof of completion of CLE hours during the period of suspension. Upon verification of such compliance, the board "shall enter an order of reinstatement." However, with limited exception, if an applicant, such as Mr. Serafine, files no application within two years from the effective date of suspension, the more stringent and difficult requirements of Rule 65 also apply.

Supreme Court Rule 64(a), sets forth the "General Standard" which must be met to be reinstated to the active practice of law by a lawyer disciplined by suspension for over six months or disbarred. An applicant must "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." In addition, Rule 65(b)(2), mandates the applicant prove "by clear and convincing evidence the lawyer's rehabilitation, compliance with all applicable discipline orders and rules, fitness to practice, and competence." The same reinstatement standards apply for a lawyer under summary suspension for over two years.

The Supreme Court of Arizona has stated it considers the following factors in matters of reinstatement which resulted in discipline: 1) the applicant's character and standing prior to disbarment (or suspension), 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. *In re Arrotta*, 208 Ariz. 509, 96 P.3d 213 (2004).

To establish rehabilitation, the applicant must first demonstrate acceptance of responsibility for any ethical misconduct that led to suspension. Here, there is no ethical misconduct or character issues alleged. Second, the applicant must convince a hearing panel that the weakness that led to the misconduct has been identified. Again, in this matter no such proof is required, as there is no misconduct or character concern raised.

In a discipline matter, the State Bar investigates allegations of ethical misconduct. The Attorney Discipline Probable Cause Committee looks at the evidence, sifts through it and has the privilege of determining if there is probable cause to charge a violation of the ethical rules. In formal reinstatement matters, the applicant must make extensive disclosures. The State Bar must review and may inquire into those disclosures. The undergirding principle in discipline or reinstatement matters is the same; the protection of the public. "We examine past misconduct to see what it reveals about an applicant's present moral character." *In re Hamm*, 211 Ariz. 458, 462, 123 P.3d 652, 657 (2005). It is not a subversion of those principles, however, to view a non-disciplined lawyer (one under Rule 45 suspension by the Board) differently than one disciplined under Rule 60 by the court,

a hearing panel, or the presiding disciplinary judge. Each case is examined independently.

The standard for readmission to the Bar can, in a practical sense, be more difficult than initial admission, and with good cause. An attorney disciplined under Rule 60 seeking readmission has the weight of any unethical behavior added to the balancing scales. Not that the burden of proof changes for discipline matters. It is, however, more difficult in matters involving discipline, as there may exist issues for which positive change must be demonstrated to establish one's rehabilitation and good moral character. Whether an attorney is an initial applicant or one applying for readmission, the Supreme Court has held the more egregious the past, the greater becomes the practical weight one must overcome. *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)).

An applicant under summary suspension is not required to find an ethical weakness where one does not exist. In cases such as the one before us, there is no mandate to identify a weakness. Choosing a different career path is not a weakness and in this reinstatement matter, proof of "rehabilitation" is not required. An applicant under summary suspension should not be forced to put form over substance by attempting to identify a weakness that caused the summary suspension.

Still, under Rule 64, every applicant must prove by clear and convincing evidence the applicant "possesses the moral qualifications and knowledge of the law required for admission to practice law in this state in the first instance." For an applicant summarily suspended by the Board of Governors, rather than suspended by the Presiding Disciplinary Judge, the Hearing Panel or the Court, such

reinstatement standards may seem misplaced. They are not. Administrative suspension may result from many causes. A career change or dissatisfaction with the practice of law may prompt an individual to choose not to retain the license to practice law, as was the circumstance with Mr. Serafine. Alternatively, by example, health issues, financial strain, or debilitating life circumstances may lead to an administrative suspension. More threatening concerns may also be the underlying cause of an administrative suspension, by example, unreported unethical actions, addictions or other criminal behaviors.

If a weakness or shortcoming is identified, and in Mr. Serafine's case it was not, the applicant must demonstrate the overcoming of the shortcoming by clear and convincing evidence. The difficulty of such a demonstration would turn on the seriousness of the short fall of those general standards outlined in the rules.

Mr. Serafine testified he practiced law in Arizona until 2010 and has never been the subject of discipline. His work as an attorney is outlined in his resume. [Exhibit 20.] He testified he reluctantly let his Arizona law license lapse as he sought a different career in screen writing after he resigned from an assistant prosecutor position with the City of Chandler and the job market was unexpectedly difficult to re-enter into due to the economy. He had received excellent job reviews. [Exhibit 21.] He anticipated no difficulty in obtaining another job as an attorney. Notwithstanding, once he determined to become a screen writer, he did not see himself practicing law again. He acknowledged he did not investigate other membership options available to him, but was having financial difficulties that would likely have precluded any other options.

Mr. Serafine's suspension in Arizona resulted from a failure to pay his annual membership dues, an administrative matter not related to any ethical misconduct. He was encouraged to write and pursued a screen writing career. At the same time, he continued to apply for attorney positions, but had no success. While he would have preferred not to have been administratively suspended, his commitment to screen writing was full time and coupled with the difficulty he found in obtaining employment as a lawyer, he let his law license lapse. In hindsight, he should have inquired about inactive membership status.

Mr. Serafine had good reason to initially be encouraged in his attempted career choice as a screenwriter. He learned of the laws regarding registering and copyrighting your work. His screen play Pernicious finished in the top 15% for awards and received serious looks by producers. Mr. Serafine received a read request from the prestigious Osborn Agency. Another screenplay received a read request from a top Hollywood agency. Mr. Serafine offered three of his screenplays for the hearing panel to review his work. [Exhibit 25.]

However, he remained without income, lived alternatively with his parents, his brother in law and sister and ultimately stayed in a shelter. He applied for multiple jobs, but without success. [Exhibit 22.] At the shelter, he met Glen Luttrell, the CEO of two shelters on Buckeye Road and multiple other non-profit agencies that aid the homeless. His work ethic and integrity soon drew him to the attention of Mr. Luttrell, who requested his assistance in the operation of these shelters. Mr. Serafine soon become invaluable to Mr. Luttrell.

While at the shelter, one of the members brought Mr. Serafine job search ads and later an add regarding a medical study. As Mr. Serafine needed income, he

joined the medical study and thereafter, participated in other medical studies. He later learned he could take continuing legal education at ASU and renewed his legal knowledge, especially in technology. He registered a trade name and has offered his writing abilities to assist others without charge. [Exhibit 17.] He testified he never represented he was licensed and has only written letters for others. If reinstated, he wants to offer legal research to other attorney at a lower than standard rate, as he has learned to live on little. He would advertise in the Arizona Attorney to assist in marketing this business.

Fitness to Practice

Mr. Serafine offered three letters and an email attesting to his good character. Mr. Glenn Luttrell testified of his excellent character and trustworthiness. Jeanetta Impson, CDR, is the Senior Clinical Nurse Specialist at Indian Health Service, National Institute of Health. She is of the opinion Mr. Serafine operates with integrity, is honest and motivational. She has observed Mr. Serafine is community minded and cited examples of that positive character quality. Joan Nethercutt, RN, is a Research Nurse at the same institute. She has known Mr. Serafine for over a year and seen his personal honesty and cooperation and investment in another. Jack Chapman is the Dining Room Supervisor at St. Vincent de Paul/Chris Becker Dining Room that helps feed the homeless. He stated his appreciation for the consistent efforts Mr. Serafine has made to aid those in need. Glenn Luttrell wrote and testified on behalf of Mr. Serafine. He is the CEO and Minister of various non-profit organizations aiding the homeless. He confirmed the personal contributions of Mr. Serafine to helping those in need. [Exhibit 19.]

Mr. Luttrell testified Mr. Serafine came to his shelter in 2014, and quickly won his confidence and the confidence of the members. The shelter Mr. Luttrell heads also provides food boxes and training for those in need. He swore Mr. Serafine took on the responsibilities of that organization and gained the trust of Mr. Luttrell through his good character, demeanor, and his performance. Additionally, Father Tom Doyle has known Mr. Serafine for many years and has found him a person of high character and trustworthiness. Although he was unavailable to testify when called during the hearing, Mr. Serafine's Counsel made an avowal to the Panel that Father Doyle would have testified consistent with the above mentioned statements. The State Bar did not object.

Mr. Serafine has debts, which he disclosed, and is current in his repayment plan. [Hearing Testimony of Mr. Serafine; Exhibit 24.] While he is in litigation regarding a prior Chase Bank bill assigned to Midland, described above, he testified he will repay if ordered by the Court, but disputes the bill. [Exhibit 23, 24.] During his suspension, he has not earned sufficient funds to file a tax return.

Compliance with Prior Disciplinary Orders and Rules

Mr. Serafine has paid his reinstatement application fee. He owes no monies to the client protection fund and no fees were assessed in his suspension. [Exhibit 3.] There have been no allegations of the unauthorized practice of law while suspended.

Competence

There were no competence issues giving rise to Mr. Serafine's summary suspension for failure to pay his annual dues. During the period of suspension, Mr. Serafine has completed 31.75 hours of continuing legal education courses. [Joint

Prehearing Statement; Exhibit 18.] He has also taken the course, Essential Distinctions in Arizona Law [Exhibit 18, Bates A&C000156.] and completed the Arizona law course on March 26, 2015.

The Panel finds him competent to return to the active practice of law. We recommend waiver of any CLE that might otherwise be required as a condition of reinstatement.

IV. CONCLUSION AND RECOMMENDATION

The Panel finds Mr. Serafine has met his burden of proof. He has proven by clear and convincing evidence no rehabilitation is needed, he is fit to practice, and has the requisite moral character and competence. He has satisfied the criteria in *Arotta* to the degree required in reinstatements from administrative suspensions. The Panel therefore, recommends his reinstatement.

DATED this 20th day of October, 2015.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

CONCURRING:

Harlan Crossman

Harlan Crossman, Volunteer Attorney Member

Howard M. Weiske

Howard M. Weiske, Volunteer Public Member

COPY of the foregoing mailed/emailed
this 20th day of October, 2015, to:

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