

**BEFORE THE DISCIPLINARY COMMISSION
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF AN APPLICATION)	No. 10-6003
FOR REINSTATEMENT OF A RESIGNED)	
OF THE STATE BAR OF ARIZONA,)	
)	
WALLACE DEA MONTAGUE, JR.,)	
Bar No. 003088)	DISCIPLINARY COMMISSION
)	REPORT
APPLICANT.)	
_____)	

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on September 11, 2010, pursuant to Rule 58, Ariz.R.Sup.Ct., for consideration of the Hearing Officer’s Report filed July 28, 2010, recommending reinstatement. The Commission requested oral argument. Applicant and counsel for the State Bar were present. The State Bar does not oppose the reinstatement.

Decision

Having found no facts clearly erroneous, the seven members¹ of the Disciplinary Commission unanimously accept the Hearing Officer’s findings of fact, conclusion of law, and recommendation that Applicant Wallace Dea Montague, Jr., be reinstated to the practice of law. The Commission further recommends the payment of costs of these reinstatement proceedings including any costs incurred by the Disciplinary Clerk’s office.²

¹ Commissioners Houle and Horsley did not participate in these proceedings.

² A copy of the Hearing Officer’s Report is attached as Exhibit A.

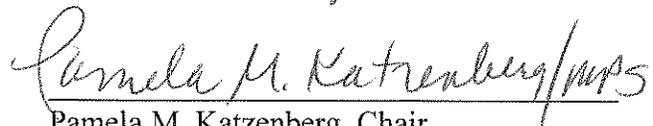
Background

Applicant was admitted to practice law in Arizona on September 23, 1972. Applicant resigned effective March 31, 2005, to serve for three years as Mission President for the Church of Jesus Christ of Latter-Day Saints. Applicant did not receive compensation for his three years of service and was unable to pay bar dues and obtain Mandatory Continuing Legal Education (“MCLE”) during this period. Since completing his term as Mission President, Applicant has been employed as a Manager for *Medical Billing Management* a licensed collection agency and a Manager/shareholder for *Emergency Medical Solutions Limited*, which employs emergency room physicians. Applicant has completed 18 hours of MCLE for 2009/2010.

Pursuant to Rule 32(c)(11)(C), members who resign in good standing are eligible for reinstatement in the same manner as members who are summarily suspended. Rule 64(f) also applies as Applicant’s Application for reinstatement was not filed within two years so he must submit to full reinstatement proceedings as set forth in Rule 65. In addition, Applicant must demonstrate all elements required by Rule 65(b)(2) which include rehabilitation, compliance with all discipline orders and rules, fitness to practice and competency.

The Hearing Officer found and the Commission agrees that Applicant has proven by clear and convincing evidence that he has to the degree applicable met all requirements regarding reinstatement including competence and fitness to practice pursuant to Rule 65.

RESPECTFULLY SUBMITTED this 23rd day of September, 2010.


Pamela M. Katzenberg, Chair
Disciplinary Commission

Original filed with the Disciplinary Clerk
this 23rd day of September, 2010.

Copy of the foregoing mailed
this 24 day of September, 2010, to:

Wallace Dea Montague, Jr.
Applicant
2260 E. University Drive
Mesa, AZ 85213-8336

Edward Parker
Bar Counsel
State Bar of Arizona
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Phoenix, AZ 85016-6288

Copy of the foregoing hand delivered
this 24 day of September, 2010, to:

Hon. Jonathan H. Schwartz
Hearing Officer 6S
1501 W. Washington, Suite 104
Phoenix, AZ 85007

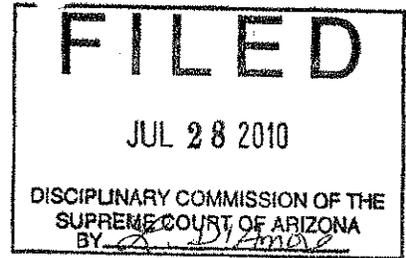
by: Loretta Diaz

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EXHIBIT

A

BEFORE A HEARING OFFICER OF
THE SUPREME COURT OF ARIZONA



IN THE MATTER OF A RESIGNED)
MEMBER OF THE STATE BAR)
OF ARIZONA)
)
WALLACE DEA MONTAGUE, Jr.)
Bar No. 003088)
)
)
Respondent.)
)
)
_____)

No. 10-6003

HEARING OFFICER'S REPORT

Applicant Wallace Dea Montague Jr. ("Montague"), a former member of the State Bar of Arizona who previously resigned in good standing, has filed an application to be readmitted to practice law in the State of Arizona ("the Application"). The State Bar of Arizona ("State Bar") supports the application. (TR 28:16)

Based on the Application and the evidence presented at the hearing, the Hearing Officer recommends that Montague be reinstated as an active member of the State Bar of Arizona.

PROCEDURAL HISTORY

Montague filed a Petition for Reinstatement on March 19, 2010. The Hearing Officer was assigned on March 26, 2010. A hearing was held on June 18, 2010.

FINDINGS OF FACT

1. Montague was admitted to practice law in the state of Arizona in 1972. (TR 8:5)
2. Montague practiced law from 1972 to 2005. In his first dozen years of practice he was a generalist who gravitated toward family law, custody matters and adoptions. In

about 1982 he began representing people in litigation against insurance companies.
(TR 8:8 through 9:17)

3. In 2005 Montague resigned from practice to serve as Mission President for the Church of Jesus Christ of Latter-Day Saints for three years. (TR 11:8-11 and Exhibit 1, letter February 8, 2005 from the LDS Church calling Montague and his wife to serve as Mission President, beginning July 1, 2005)
4. Montague was appointed President of the Mission. Montague and his wife were required to move to Colorado. Montague was in charge of 150 missionaries each year. (TR 12:19 through 13:7)
5. Montague was not paid an income while on his mission. He could not afford to pay bar dues. He did not have time to perform continuing legal education. (TR 11:13 through 12:5, 19:9 through 20:2)
6. Montague chose to give up practicing law. (TR 11:13 through 12:5)
7. Before leaving to go on the mission, Montague spent most of three months researching 356 clients who his associates had represented. (See Exhibit 1, 5-page spreadsheet of 356 clients and their addresses, phone numbers, personal representatives and their status, prepared by Montague from his research) (TR 14:23 through 15:2) Most of this work was writing wills for these clients. (TR 13:8 through 14:16) Montague had practiced at times with Wayne Arnett and Mr. Patten. These attorneys while associated with Montague wrote wills for these clients. Montague wrote very few of these wills; but he became the “repository” of the wills. (TR 13:12 through 14:16)

8. Montague wrote a letter notifying these clients of his decision to leave law practice and of his arrangement that attorney Kent MacKinlay (“MacKinlay”) would safeguard the clients’ documents. (Exhibit 1, Template of letter June 1, 2005 from Montague to clients notifying them of his decision to leave practice and of Mr. MacKinlay’s availability to help them) MacKinlay would answer any client questions, follow client directions regarding the wills and handle probate proceedings.
9. The mission which formally began on February 8, 2005 ended on June 6, 2008. (Exhibit 1, letter June 6, 2008 from LDS Church to Montague informing him that his mission had ended)
10. Mark Bradshaw (“Bradshaw’), an attorney who has known Montague for nearly 40 years testified at the hearing that Montague arranged with Bradshaw to handle Montague’s clients upon Montague’s resignation from the State Bar in 2005. (TR 5:17 through 6:6) MacKinlay was the attorney in Bradshaw’s law firm who was assigned by Bradshaw to handle Montague’s clients. (TR 14:17-22)
11. Bradshaw had been co-counsel with Montague on a case before 2005. Bradshaw described Montague as “... a picture of decorum, and professional, ethical standard was beyond reproach. He’s always been a mentor to me and I’ve always looked to him for the standard by which I should aspire in my practice.” (TR 6:11-13)
12. Montague has no prior disciplinary offenses. (TR 10:6-10)
13. Montague has filed tax returns for the years he has not been in practice. (TR 15:17 through 16:14)
14. Montague has paid the fee for an application for reinstatement. (TR 23:4-10)
15. Montague has not been arrested during the period of resignation. (TR 25:23)

16. Montague has not had a civil action filed against him during the period of resignation. (TR 25:22)
17. Montague has had no fraud action filed against him during the period of resignation. (See Application)
18. Montague has no financial obligations or claims at the time of the filing of the application. (TR 25:16-20)
19. Montague has completed 18 hours of continuing legal education for 2009/2010, at least three of which are in ethics ("MCLE"). (TR 17:22 through 18:25 and Exhibit 1, 10 Certificates of Attendance for Arizona MCLE)
20. Montague has indicated his address, name and age. (TR 25:13)
21. Montague is not required to list misconduct or names of complaining witnesses because he has had no prior discipline and when he resigned he was in good standing with the Bar. (TR 24:20-24)

CONCLUSIONS OF LAW

Montague has proven by clear and convincing evidence that he is fit to practice law and that he is competent. State Bar counsel recommends that Montague be reinstated. Montague has an exemplary reputation in 33 years of law practice from 1972 to 2005. (TR 11:4) Montague has taken MCLE courses in the last year that concentrate on technology in law practice and on ethics.

FITNESS TO PRACTICE - MCLE

Bar Counsel referred the Hearing Officer to a report written by Hearing Officer Daniel Beeks *In re Magness* No. 09-6006, May 7, 2010. Mr. Beeks gives an excellent

summary in *Magness* of why an applicant for reinstatement who previously resigned in good standing need not complete MCLE for every year the applicant had not practiced law. Rule 32(c)(11)(C), Ariz. R. Sup. Ct. states that a member who resigned in good standing may upon application for reinstatement proceed in the same manner as a member who was summarily suspended, under the procedures of Rule 64(f). Rule 64(f)(1) directs that if the application for reinstatement is not filed within two years of the resignation, the full reinstatement procedures of Rule 65 apply. As Hearing Officer Beaks concluded in *Magness*:

Unlike reinstatements made within two years of an administrative suspension, Rule 65 requires a hearing in which the applicant must establish by clear and convincing evidence of competence and fitness to practice. Rule 65 does not contain any requirement for a specific number of continuing legal education hours. The applicant is just required to establish competence by clear and convincing evidence. (Hearing Officer's Report, Daniel P. Beaks, 5/7/2010, page 10 line 19 through page 11 line 2)

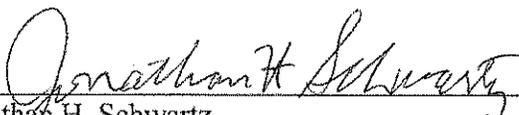
Montague has carried this burden at the hearing. He established through testimony he had no record of discipline before resigning from practice in 2005. His reason for resigning was to serve his community and his church. His three years of service was not compensated so that he had a financial reason for not paying bar dues and completing MCLE. He has shown that he had an excellent reputation as an attorney through the testimony of Mr. Bradshaw. The great care Montague took to research and notify 356 people (whose wills were written by Mr. Patten and Mr. Arnett) of his decision to resign and that Mr. Bradshaw's office would assist these clients, demonstrates Montague's fitness to practice law. Even though Montague did not write most of these wills, he had become the repository of the documents and he felt duty bound to take care of these clients.

A review of the MCLE Montague took between April 27, 2010 and May 10, 2010 also shows that he has prepared himself well to resume practicing. Some of the course topics were, "Advising Clients in the Digital Age", "The Use of the 25% Rule in Valuing Intellectual Property", "Attorney Disqualification: Conflicts of Interest and Other Bases", "Procedural and Forensic Protocols in Electronic Discovery", "Internet Legal Issues", and "Computer Forensics: What Every Lawyer Should Know". Montague made a concerted effort to study in areas that included the use of computers in law practice. He was ensuring that he would be up-to-date on new developments since 2005. (TR 20:3 through 21:20) Bar Counsel concluded that the courses Montague took were a sufficient showing of his fitness to practice law. (TR 19:2-4) The Hearing Officer agrees with this conclusion.

RECOMMENDATION

The Hearing Officer concludes that Montague has satisfied all the elements in Rule 65 (a) (1) (A-N). Montague has proven by clear and convincing evidence that he is fit to practice law and that he is competent. Rule 65 (b) (2) Therefore the Hearing Officer recommends pursuant to Rule 65 (b) (3) that Montague be reinstated to active membership.

DATED this 28th day of July 2010



Jonathan H. Schwartz
Hearing Officer 6S

Original filed with the Disciplinary Clerk
this 28th day of July, 2010.

Copy of the foregoing mailed
this 28th day of July, 2010, to:

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by L. DiAmore