

1 membership dues. Rule 64(f), Ariz.R.Sup.Ct., provides that a member's application to
2 terminate a summary suspension shall be filed within two years from the date of the
3 suspension and be accompanied by 1) proof of cure of the grounds upon which the
4 suspension was entered and 2) payment equal to the amount of fees, costs etc and 3) proof of
5 completion of any hours of CLE had Applicant remained an active member.

6 Applicant did not file an affidavit of compliance after his suspension pursuant to
7 Rule 72, as he had not practiced law in Arizona and had no clients, adverse parties or
8 counsel. The Hearing Officer found that Applicant's failure to do so was not an impediment
9 to reinstatement. *See* Hearing Officer's Report, ¶ 19.

10 Applicant is admitted to practice law in Vermont (1995) and New Hampshire (1996)
11 and is in good standing in both jurisdictions. Applicant was admitted in Arizona on March
12 22, 2003, but has not lived or practiced law in Arizona. During the suspension period,
13 Applicant worked as an attorney for law firms in Vermont and as a senior public policy
14 research coordinator and in-house counsel for the Texas Institute for Applied Environmental
15 Research in Stephenville, Texas. Applicant was not required to be admitted to the practice
16 of law in Texas for his position.

17
18 Applicant did not foresee living or practicing law in Arizona in the future and for
19 financial reasons, did not pay his Arizona bar membership dues. Applicant admits he should
20 have resigned from the bar and regrets his poor judgment that led to his lapse in
21 membership. Applicant now looks forward to being a member in good standing in Arizona.

22 Conclusion

23
24 The Hearing Officer found that Applicant has proven by clear and convincing
25 evidence his competence, fitness to practice law, and requirements regarding rehabilitation
26

1 pursuant to Rule 65, Ariz.R.Sup.Ct. The Commission agrees and adopts the Hearing
2 Officer's recommendation for reinstatement and further recommends the payment of costs
3 of these proceedings.

4 RESPECTFULLY SUBMITTED this 29th day of June 2010.

5 Pamela M. Katzenberg/mps
6 Pamela M. Katzenberg, Chair
7 Disciplinary Commission

8 Original filed with the Disciplinary Clerk
9 this 29th day of June 2010.

10 Copy of the foregoing mailed
11 this 29th day of June 2010, to:

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20 and

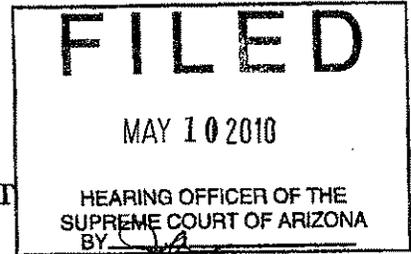
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EXHIBIT
A



BEFORE A HEARING OFFICER
OF THE ARIZONA SUPREME COURT

No. 09-6007

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

HEARING OFFICER'S REPORT

JAMES R. VERGURA)
Bar No. 019621)

APPLICANT.)

INTRODUCTION

This matter was heard by Hearing Officer 7V, Stanley Lerner, on March 29, 2010, in Room 104 of the Arizona Supreme Court building, 1501 West Washington, Phoenix, Arizona. The applicant, James R. Vergura, appeared personally and represented himself. The State Bar of Arizona appeared through Matthew E. McGregor, Esq., Staff Bar Counsel. The Hearing Officer requested Findings of Facts and Conclusions of Law from the parties. The Applicant filed his Findings of Facts and Conclusions of Law, the State Bar made objections that were resolved between the parties by a stipulation as to the Facts and Conclusions which form the basis of this Report. On the basis of the application and the evidence presented by the parties, the hearing officer makes the following findings of fact, conclusions of law, and recommendation based on the stipulations of the parties.

PROCEDURAL HISTORY

1. On May 20, 2005, the Board of Governors of the State Bar of Arizona summarily suspended the Applicant for failing to pay membership dues.

2. The Applicant filed his Application for Reinstatement on December 20, 2009. Although his suspension was for non-disciplinary reasons, he did not apply within the two year timeframe of Arizona Supreme Court Rule 64(f), which triggered the full Rule 65 reinstatement process.

3. A hearing on the reinstatement was conducted on March 29, 2010.

STANDARD/BURDEN OF PROOF

4. The Applicant has the burden of proof by clear and convincing evidence, to demonstrate the lawyer's compliance with all applicable disciplinary orders and rules, rehabilitation, fitness to practice and competence.

5. The emphasis on rehabilitation depends upon the facts and circumstances of each case. In *Re Arrotta* (SB-04-0015-R). In a non-disciplinary suspension, the focus of the inquiry is on the lawyer's current fitness to practice and competence.

COMPETENCE AND REHABILITATION

6. In 1995, the Applicant graduated with honors from Vermont Law School.

7. In 1995, the Applicant passed the Vermont bar exam and was admitted to practice law in Vermont later that same year.

8. In 1996, the Applicant passed the New Hampshire bar exam and was admitted to practice law in New Hampshire later that same year.

9. The Applicant has family in Arizona and at one time decided that he might want to live and work in Arizona. Thus, in 1998 the Applicant took and passed the Arizona bar exam. Because the Applicant was living and working in Vermont, however, he did not immediately seek admission to practice law in Arizona.

10. Shortly after the Applicant was notified that he had passed the Arizona bar exam, he traveled from Vermont to Phoenix to interview for legal employment. The Applicant's efforts to obtain legal work in Arizona were, however, not fruitful.

11. In February 2000, the Applicant accepted a job at the Texas Institute for Applied Environmental Research. Thus, the Applicant and his family moved from Vermont to Stephenville, Texas.

12. After working for several years at the Texas Institute for Applied Environmental Research, the Applicant and his wife decided they would like to eventually return to the northeast United States.

13. After working for several years in Texas, the Applicant had still not taken the steps necessary to become a member of the State Bar of Arizona. In 2003, the Applicant realized that if he did not get sworn in, and become admitted to practice law in Arizona, he would lose the opportunity to become a member of the State Bar of Arizona.

14. Not wanting to waste the time, effort, and money that he had spent passing the Arizona bar exam, the Applicant was sworn in by a local judge in Texas, and thus officially became a member of the State Bar of Arizona on March 14, 2003. The Applicant paid his bar membership dues at that time.

15. In 2005, the next time the State Bar of Arizona membership dues became payable, the Applicant and his wife had decided to move from Texas and return to their home state of Vermont. At that time, the Applicant did not see himself living or practicing law in Arizona at any time in the foreseeable future.

16. In 2005, the Applicant, who was also paying membership dues to the state bars of Vermont and New Hampshire, felt it made little sense to incur the expense of maintaining bar

memberships in three separate jurisdictions. Accordingly, the Applicant believed that if he could cut his expenses by letting a bar membership lapse, the most logical choice would be Arizona, a jurisdiction in which the Applicant did not plan to practice.

17. As a result of the circumstances described above—i.e, the Applicant's belief that he would not practice law in Arizona and his desire to cut expenses—the Applicant decided to sever his ties with the State Bar of Arizona. Instead of resigning from the State Bar of Arizona while he was in good standing, the Applicant let his membership lapse for nonpayment of dues, and was summarily suspended on May 20, 2005.

18. At no time after passing the Arizona bar exam in 1998 did the Applicant ever live in Arizona or engage in the practice of law in Arizona. Specifically, the Applicant never opened and/or maintained an office in Arizona; he never represented clients in Arizona; and he never made an appearance in an Arizona court, either through a pleading, personally, or via a Notice of Appearance.

19. After being summarily suspended, the Applicant did not file an affidavit of compliance pursuant to Arizona Supreme Court Rule 72. However, because the Applicant never engaged in the practice of law in Arizona, and had no clients, adverse parties, or other counsel to notify that he had been summarily suspended, the failure to do so in this matter is not an impediment to the Applicant's reinstatement.

20. Since becoming a member of the State Bars of Vermont and New Hampshire in 1995 and 1996 respectively, the Applicant has always been a member in good standing in these jurisdictions, and has never had a disciplinary complaint of any kind filed against him.

21. After the Applicant's summary suspension from the State Bar of Arizona in 2005, the Applicant engaged in the practice of law in Vermont at two different law firms. At all times, the applicant was a member in good standing of the Vermont bar.

22. In April 2009, the Applicant returned to Texas to work again at the Texas Institute for Applied Environmental Research (TIAER). During this employment, the Applicant engaged in the practice of law as a senior public policy research coordinator and in-house counsel for TIAER. Although the Applicant was not admitted to practice law in Texas, he was not required to be admitted, as Texas has no rule of law preventing an out-of-state attorney from representing a Texas corporation or other entity as in-house counsel. The Texas Board of Law Examiners approves this practice through its "Policy Statement on Practice Requirements."

23. The Applicant took full responsibility for his failure to make payment of State Bar dues. The Applicant sincerely regretted his poor judgment that led to his decision to let his State Bar membership lapse and looks forward to once again being a member in good standing of the State Bar of Arizona.

**CONCLUSIONS OF LAW
AND RECOMMENDATIONS**

24. The evidence presented in this case on behalf of the Applicant, both by way of testimony and documents, is truthful, credible, and supportive of reinstatement. The Applicant proved by clear and convincing evidence that the factors related to reinstatement set forth in Arizona Supreme Court Rule 65 have been satisfied.

25. The record establishes that the Applicant has provided clear and convincing evidence of his competence and fitness to practice law. To the degree applicable, the Applicant has met the requirements regarding rehabilitation. The testimony offered during the March 29, 2010 hearing, and evidence in the underlying record demonstrates that the applicant will be an

exemplary member of the State Bar of Arizona. The sincerity of the Applicant is demonstrated by his personal appearance at the Hearing in Arizona.

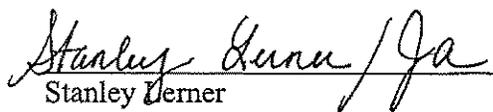
26. Pursuant to Arizona Supreme Court Rule 65 governing reinstatement of suspended attorneys, the Applicant has shown by clear and convincing evidence, to the degree applicable, that he has met all requirements regarding the standards of rehabilitation.

27. The applicant has further shown by clear and convincing evidence his competence, fitness to practice law, and compliance with all other factors related to reinstatement set forth in Rule 65.

28. Based on the application and the evidence presented at the hearing on March 29, 2010, the State Bar of Arizona believes the Applicant has carried his burden to show current competency and fitness to practice law, and has met all other factors related to reinstatement set forth in Arizona Supreme Court Rule 65. Accordingly, the State Bar of Arizona recommends that the Applicant be reinstated to the practice of law in the State of Arizona.

29. Based on the application and the evidence presented at the hearing on March 29, 2010, the Hearing Officer believes the Applicant has carried his burden to show current competency and fitness to practice law, and has met all other factors related to reinstatement set forth in Arizona Supreme Court Rule 65. Accordingly, the Hearing Officer hereby recommends that the Applicant be reinstated to the practice of law in the State of Arizona.

Dated this 10th day of May, 2010.


Stanley Derner
Hearing Office 7V

Original filed with the Disciplinary Clerk

this 10 day of May, 2010.

Copies of the foregoing mailed

this 10 day of May, 2010.

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By: Deann Barber