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**IN THE SUPREME COURT
STATE OF ARIZONA**

In The Matter Of:

PETITION TO AMEND
RULE 64(f)(1)(B)

Arizona Rules of the Supreme Court

Supreme Court No. R-18-_____

Petition to Amend Rule 64(f)(1)(B)

Pursuant to Rule 28, Ariz.R.S.Ct., Ralph Adams respectfully petitions this Court to adopt amendments to Rule 64(f)(1)(B), Arizona Rules of the Supreme Court, governing reinstatement procedures for attorneys summarily suspended from the practice of law for more than two years, as proposed below.

I. Background and Purpose of the Proposed Rule Amendments

Attorneys who receive a discipline suspension of more than six months are required to demonstrate “rehabilitation” in addition to fitness and competence. Prior to the most recent amendment to Rule 64(f)(1)(B) on January 1, 2017, the burden of proof was unclear for attorneys summarily suspended by the Board of

Governors for more than two years based solely on failure to pay annual dues and/or failure to comply with mandatory continuing education (“MCLE”) requirements. The January 1, 2017, amendment (“amendment”) was an attempt to clarify that applicants suspended only for dues/MCLE issues were not required to demonstrate rehabilitation. However, the amendment also states: “If the State Bar finds there is no need for rehabilitation and there appear to be no discipline or disability issues, the applicant need only prove compliance with all rules, fitness to practice and competence under Rule 65(b)(2).”

This portion of the amendment is problematic for several reasons. First, it does not provide any authority or guidance for the State Bar in making “findings.” Second, the amendment does not provide any avenue for applicants to challenge the “findings” made by the State Bar thus depriving them of due process. Third, assuming the State Bar makes a “finding” that the applicant is required to demonstrate rehabilitation, the finding would not be provided to the applicant in advance of filing the application or with sufficient advance notice for the applicant to provide evidence of rehabilitation at the reinstatement hearing.

The Rules of the Supreme Court do not contain any provision for the State Bar to make “findings” regarding an application for reinstatement. Rules 64 and 65, Ariz.R.S.Ct. govern eligibility and proceedings for reinstatements. Applicants suspended for more than two years for dues/MCLE issues are required to file an

application, serve that application on the State Bar and attend a hearing at which a hearing panel will make findings and render a decision. After the application is filed, the State Bar performs an investigation. The hearing must be held within 150 days of filing the application [Rule 65(b)(1)(A)]. The State Bar is the applicant's opposing party. At the conclusion of the hearing the State Bar is required to take a position regarding the application [Rule 65(b)(1)(C)].

As currently written, Rule 64(f)(1), Ariz.R.S.Ct. allows the State Bar to make a finding that an applicant must demonstrate rehabilitation. However, the rule does not specify when notice of that finding must be provided to the applicant nor does the rule provide for appeal. Problematically, the State Bar cannot begin an investigation until the application is filed and the hearing must take place within 150 days of filing. Not only is timing of the notice critical given the short time to prepare for a hearing, but so is the type of "rehabilitation" determined by the State Bar. Springing a requirement to demonstrate rehabilitation upon an applicant at the final moment of the proceeding is obviously problematic. Just as important is the fact that due process mandates the right to be heard. Allowing the State Bar to make "findings" for which there is no requirement to provide notice and no avenue of appeal clearly denies applicants due process.

The January 1, 2017, amendment was a solution in search of a problem. Applicants for reinstatement under rule 64 have always had to

demonstrate “fitness” to practice. If the State Bar believes it necessary to challenge an application, it may still do so during the hearing without the problems associated with findings regarding rehabilitation issues.

In the January 8, 2016, Petition to Amend Rules 48(e), 58(d), 63(b), 64(f)(1) and 65, Rules of the Supreme Court, which resulted in the current language of Rule 64(f)(1), The Chair of the Attorney Regulation Advisory Committee stated:

The proposed modification to Rule 64 enables the reinstatement of such a prior member provided the State Bar expressly finds there is no need for rehabilitation and there appear to be no discipline or disability issues. In such instance the applicant would only be required to prove compliance with all rules regarding fitness to practice and competence.

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The Attorney Regulation Advisory Committee correctly recognized the need to streamline the proceedings for applicants where there is no need to demonstrate rehabilitation (as would be required in a disciplinary suspension of over six months). However, the adopted language denies applicants due process and provides an unprecedented and unsupportable requirement that the State Bar make findings.

For the reasons stated above, Petitioner respectfully requests that the language of 64(f)(1), Ariz.R.S.Ct. be modified as presented below.

II. Contents of the Proposed Rule Amendment

(f) Reinstatement After Summary Suspension by the Board of Governors; Resignation in Lieu of Reinstatement.

B. After Two (2) Years. If an application is not filed within two years from the effective date of suspension, the reinstatement procedure set forth in Rule 65 of these rules shall apply. If the ~~State Bar finds there is no need for~~ suspension is based solely on failure to pay annual dues and/or failure to maintain required MCLE, the applicant need not demonstrate rehabilitation, and there appear to be no discipline or disability issues, the applicant need only prove compliance with all rules, fitness to practice and competence under Rule 65(b)(2). Notwithstanding this provision, a suspended member may apply for reinstatement under the provisions of paragraph (f)(1)(A) as set forth above by submitting proof that the suspended member:


- (i) is admitted to practice in another jurisdiction;
- (ii) has actively practiced in that jurisdiction during the entirety of the summary suspension period;
- (iii) has not had a disciplinary sanction imposed and has been a member in good standing in that jurisdiction during the entirety of the summary suspension period; and
- (iv) has complied with all other application requirements set forth in paragraph (f)(1)(A) above.

Upon verification of compliance, the board shall enter an order of reinstatement.

III. Effective Date of the Proposed Amendments

Petitioner respectfully requests that the Court adopt this rule change immediately to ensure that no applicants are adversely affected by the current rule.

RESPECTFULLY SUBMITTED this 2nd day of January, 2018.



Ralph Adams
Petitioner