

reinstated to the practice of law and placed on two years of probation (MAP, LOMAP and
1 TAEPP), and pay costs of these proceedings including costs incurred by the Disciplinary
2 Clerk's office.³ The period of probation shall be effective the date of reinstatement and
3 shall conclude two years thereafter. The terms of probation are as follows:

4 **Terms of Probation**

5 1. Within 30 days from the date of the Order of Reinstatement, Applicant
6 shall contact the director of MAP and submit to a MAP assessment. At the discretion of
7 the director of MAP, Applicant's current voluntary participation in MAP may be relied
8 upon in lieu of a new assessment. The director of MAP shall develop "Terms and
9 Conditions of Probation" and the terms shall be incorporated herein by reference. The
10 MAP terms shall include terms for random testing. Applicant shall be responsible for any
11 costs associated with MAP.
12

13 2. Within 30 days from the date of the Order of Reinstatement, Applicant
14 shall contact the director of LOMAP and submit to a LOMAP examination of his office
15 procedures. The director of LOMAP shall develop "Terms and Conditions" of Probation"
16 which shall be incorporated herein by reference. Applicant shall be responsible for any
17 costs associated with LOMAP.
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19 3. Applicant shall pay restitution to client Reid in the amount of \$175.00 and
20 to client Williams in the amount of \$809.00 within 90 days of the Order of Reinstatement.
21 If Applicant is unable to locate client Reid or Williams, Applicant shall notify the director
22 of LOMAP and follow his directives in how to resolve the outstanding restitution, which
23 may include instructions to pay the restitution monies to the Client Protection Fund. *See*
24 *Stipulation filed October 28, 2009.*
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³ A copy of the Hearing Officer's Report is attached as Exhibit A.

1 In the underlying discipline matter, Applicant failed to comply with the rules
2 governing the treatment of client trust account funds. Applicant further accepted fees from
3 clients and performed little or no work, virtually abandoning those clients. Applicant's most
4 serious misconduct involved his felony conviction for possessing a firearm during the
5 commission of a felony drug offense and for DUI.

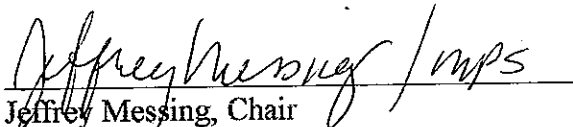
6 Applicant admits he had an alcohol and drug problem and has since rehabilitated
7 himself through in-patient treatment, counseling, and random drug testing. Applicant has
8 been sober since August 1, 2005, continues to be active in AA facilitating group meetings
9 and is currently the treasurer of the Nogales AA group.

10 Applicant has also participated in a voluntary therapeutic contract with MAP which
11 includes random testing, monitoring and a peer monitor. Hal Nevitt opines that Applicant is
12 in a full state of remission (criteria is at least one year of recovery) and there have been no
13 positive test results. Applicant Contacted Hal Nevitt in December 2008, per terms imposed
14 in the final Judgment and Order and signed the voluntary MAP contract on December 30,
15 2008.

16 Applicant was discharged 15 months early from probation in his criminal matter
17 having paid all fines, fees and completed his community service. Applicant has also made
18 restitution to the Client Protection Fund in the amount of \$6,400.85, and restitution to clients
19 except for \$175.00 to client Reid in File No. 05-1463 and \$809.00 to client Williams in File
20 No. 05-1997, whom Applicant are unable to locate. See Affidavit of Karen Weigand,
21 Administrator of the Client Protection Fund, hearing transcript pp. 28-34, and Applicant's
22 Hearing Exhibits 3 and 4.
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1 The Hearing Officer found and the Disciplinary Commission agrees that Applicant
2 has met his burden of proof pursuant to Rule 65(b)(2). He is currently competent to practice
3 law, sufficient time has passed to establish reinstatement, and he understands the basis for
4 his suspension and his responsibilities in connection to rehabilitation. The Commission
5 therefore, adopts the Hearing Officer's recommendation for reinstatement and probation.

6 RESPECTFULLY SUBMITTED this 29th day of October 2009.

7
8 
9 Jeffrey Messing, Chair
Disciplinary Commission

10 Original filed with the Disciplinary Clerk
11 this 29th day of October 2009.

12 Copy of the foregoing mailed
13 this ___ day of _____ 2009, to:

14 Lowell E. Rothschild
15 Hearing Officer 7Z
16 Mesch, Clark & Rothschild, P.C.
259 North meyer
Tucson, AZ 85701-1090

17 Jose M. Lerma
18 Applicant's Counsel
19 33 N. Tucson Blvd.
Tucson, AZ 85716

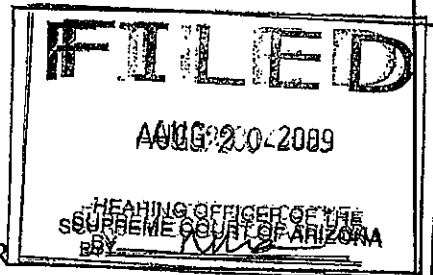
20 Amy K. Rehm
21 Senior Bar Counsel
22 State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

23 by _____

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EXHIBIT
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BEFORE A HEARING OFFICER
OF THE ARIZONA SUPREME COURT

In the Matter of a Suspended Member of
the State Bar of Arizona:

Supreme Court No. 09-6003
HEARING OFFICER'S REPORT

JAMES F. MILLER
Bar No. 017381
Applicant.

INTRODUCTION

The Applicant, JAMES F. MILLER ("Applicant") was suspended as a member of the State Bar of Arizona for a period of three years on January 9, 2008. The Applicant filed his *Motion for Reinstatement to Arizona State Bar* on April 7, 2009. A hearing on the *Motion* was commenced on June 10, 2009 before Lowell E. Rothschild, Hearing Officer, all in accordance with the Supreme Court Rule 65(a). The Applicant was represented by Jose M. Lerma and the State Bar of Arizona was represented by Amy Rehm, Senior Bar Counsel.

PROCEDURAL HISTORY

The State Bar of Arizona and the Application each agreed that the record presented before the Hearing Officer was complete, and the Hearing Officer had sufficient evidence to allow him to make a recommendation. During the hearing, the Applicant presented:

1. Received payments of restitution;
2. Minute entries of the Cochise County Superior Court terminating probation and restoring civil rights;
3. Correspondence addressed to the Hearing Officer by individuals supporting the reinstatement of the Applicant; and

1 4. Witnesses presented on behalf of the Applicant, together with ten additional
2 exhibits.

3 It should be noted that the State Bar of Arizona presented no witnesses. None of the
4 complainants on the original suspension appeared, although all received notice.

5 On June 19, 2009, the State Bar's counsel, on behalf of the State Bar of Arizona, filed
6 the *State Bar's Proposed Terms of Probation* in which she advised the Hearing Officer that:

7 "the State Bar believes that Application has met his burden pursuant to
8 the rules and case law, and should be reinstated."

9 In addition to this pleading, the State Bar suggested various terms of probation in the
10 event of a reinstatement.

11 The Applicant having filed his *Motion for Reinstatement to Arizona State Bar* as
12 required to comply with Rule 64(a) general standards. The standard requires Applicant to
13 show by clear and convincing evidence that he has been rehabilitated and possesses the
14 moral qualifications and knowledge of the law required for admission to practice law in this
15 state in the first instance.

16 In *In Re Arrotta*, 208 Ariz. 509, 96 P.3d 213 (2004) discusses further criteria upon
17 which reinstatement should be based:

- 18 (1) The Applicant's character and standing prior to the disbarment;
- 19 (2) The nature and character of the charge to which he was disbarred;
- 20 (3) The conduct subsequent to the disbarment; and
- 21 (4) The time that has elapsed between the disbarment and the application for
 reinstatement.

22 COMPETENCE AND REHABILITATION

23 Based on the testimony of the Applicant and the various witnesses, and the support
24 letters from various parties, there is clear and convincing evidence that demonstrates:

- 25 (1) That the Applicant is currently competent to practice law.
- 26 (2) That sufficient time has passed that the Applicant has been out of practice to
 have been rehabilitated;

- 1 (3) That the Applicant understands the basis for his suspension and his
2 responsibilities in connection with his rehabilitation.

3 It is the finding of the Hearing Officer that the Applicant recognizes his weaknesses
4 and the conduct that caused him to be suspended. He recognizes the conduct outlined by the
5 Probation Officers and Rehabilitation Professionals and has made a commitment that the
6 conduct will not be allowed to occur again.

7 It is clear that the Applicant does not attempt to shift blame or fault to others,
8 but acknowledges his conduct as being his responsibility and testified that he understands
9 what caused his suspension and has taken the steps to implement the rehabilitation process.
10 The Applicant has expressed an insight as to his problems and the need to avoid said
11 conduct. The testimony provided by third party witnesses indicate that he has the ability to
12 fulfill these commitments.

13 CONCLUSION

14 The Applicant has proved by clear and convincing evidence through testimony,
15 exhibits, and reports by Rehabilitation Professionals that the factors set forth in Rule 65(a)
16 have been satisfied.

17 RECOMMENDATIONS

18 It is hereby recommended as follows:

- 19 (1) The Applicant's application for reinstatement be granted;
- 20 (2) That the Applicant be placed on two years probation upon reinstatement, with
21 additional terms and conditions of said probation as follows:
- 22 A. MAP: Applicant shall contact the director of the State Bar's Member
23 Assistance Program (MAP) within thirty days of the date of the order of
24 reinstatement. Respondent shall submit to a MAP assessment. The
25 MAP assessment conducted by the director of MAP regarding
26 Applicant's current voluntary MAP may be relied upon in lieu of a new
assessment at the discretion of the director. The director of MAP shall
develop "Terms and Conditions of Probation" and the terms shall be
incorporated herein by reference. The MAP terms shall include terms
for random testing. Application shall be responsible for any costs

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associated with MAP.

- B. LOMAP: Applicant shall contact the director of the State Bar's Law Office Management Program (LOMAP) within thirty days of the date of the order of reinstatement. Applicant shall submit to a LOMAP examination of his office procedures. The director of LOMAP shall develop "Terms and Conditions of Probation" which shall be incorporated herein by reference. Applicant shall be responsible for any costs associated with LOMAP.
- C. TAEEP: Applicant shall attend a half-day Trust Account Ethics Enhancement Program (TAEEP). Applicant must contact the State Bar's Program Coordinator at (602) 340-7242 within twenty days from the date of the order of reinstatement to schedule his appearance. Applicant shall be responsible for the cost of attending the program.
- D. In the event Applicant fails to comply with any of the foregoing probation terms, and information thereof is received by the State Bar of Arizona, Bar Counsel shall file a *Notice of Noncompliance* with the imposing entity pursuant to Rule 60(a)(5), Ariz.R.Sup.Ct. The imposing entity may refer the matter to a hearing officer to conduct a hearing at the earliest practicable date, but in no event later than thirty days after receipt of notice, to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Applicant failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by preponderance of the evidence.
- E. Applicant's term of probation shall begin to run effective on the date of his reinstatement and shall terminate two years thereafter.

(3) That the costs of this hearing be assessed as an additional condition of reinstatement.

Dated: August 19th, 2009.



Lowell E. Rothschild, Hearing Officer

1 Original of the Hearing Officer's Report was mailed
and emailed on August 19, 2009 to:

2
3 Neeta Manelkar, Disciplinary Clerk's Office
4 Supreme Court of Arizona
1501 W. Washington, #402
5 Phoenix, AZ 85007-3231
NManelkar@courts.az.gov

6 A copy was mailed on August 19, 2009 to:

7 Jose M. Lerma
8 33 N. Tucson Blvd.
9 Tucson, AZ 85716

10 Amy Rehm, Bar Counsel
11 4201 N. 24th Street, Suite 200
12 Phoenix, AZ 85016-6288

13 Lawyer Regulations Records Manager
14 State Bar of Arizona
15 4201 N. 24th Street, Suite 200
16 Phoenix, AZ 85016-6288

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