

1 Applicant retake the Arizona Bar Exam pursuant to Rule 64(c), Ariz.R.Sup.Ct., be
2 waived.

3 The Commission further recommends Applicant pay costs of these proceedings
4 including any costs incurred by the Disciplinary Clerk's office.² Applicant has filed his
5 2009 tax returns with the Disciplinary Clerk under seal, therefore, the Commission finds
6 Applicant has met his burden of proof and is qualified for reinstatement to active bar
7 membership.
8

9 RESPECTFULLY SUBMITTED this 26 day of January 2011.

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11
12 Pamela M. Katzenberg
13 Pamela M. Katzenberg, Chair
Disciplinary Commission

14 Original filed with the Disciplinary Clerk
15 this 26 day of January 2011.

16 Copy of the foregoing mailed
17 this 26 day of January 2011, to:

18 Nancy A. Greenlee
19 Applicant's Counsel
821 East fern Drive North
Phoenix, AZ 85014

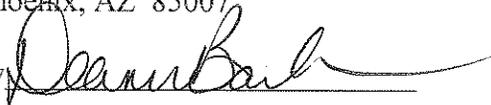
20 Jason B. Easterday
21 Bar Counsel
22 4201 N. 24th Street, Suite 200
Phoenix, AZ 85016-6288

23 Copy of the foregoing hand delivered
24 this 26 day of January 2011, to:

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27 _____
28 ² A copy of the Hearing Officer's Report is attached as Exhibit A.

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

by 

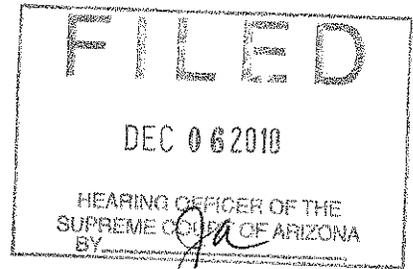
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EXHIBIT

A

**BEFORE A HEARING OFFICER OF
OF THE SUPREME COURT OF ARIZONA**



IN THE MATTER OF A SUSPENDED)
MEMBER OF THE STATE BAR)
OF ARIZONA,)
)
THOMAS KERNS MCKNIGHT.)
Bar No. 005665)
)
APPLICANT.)
_____)

No. 10-6005

HEARING OFFICER'S REPORT

Applicant Thomas Kerns McKnight ("McKnight") a suspended member of the State Bar of Arizona has filed an application to be readmitted to practice law in the state of Arizona ("the Application"). McKnight was summarily suspended in 1996 for nonpayment of bar dues. The State Bar of Arizona ("State Bar") supports the application. (TR 125:18)

PROCEDURAL HISTORY

McKnight filed a Motion for Reinstatement on June 17, 2010. Nancy Greenlee filed a Notice of Appearance as counsel for McKnight on August 5, 2010. She filed an Amendment to Respondent's Motion and Application for Reinstatement on September 3, 2010. The Hearing Officer was assigned on June 22, 2010. A hearing was held on October 15, 2010.

FINDINGS OF FACT

1. McKnight was admitted to practice law in the state of Arizona in 1978. (TR 39:11)
2. McKnight was suspended from practicing law in Arizona on May 15, 1996. The suspension was based on McKnight's failure to pay dues. (Application, paragraph B)
3. McKnight has been admitted to practice law in Ohio (1973), New York (1980), Virginia (1982), Maryland (2004) and the District of Columbia (2005). McKnight is in good standing in all of these jurisdictions. (Attachment D to the Application,

Certificates of Good Standing) McKnight also testified that he is current with all Continuing Legal Education requirements and with all membership dues in these jurisdictions. (TR 109:3)

4. In 37 years of practice in all of these jurisdictions including Arizona McKnight testified that he has never received a Bar complaint nor has he ever been sued by a client. (TR 105:17)
5. McKnight is applying to take the California Bar Examination. At the hearing he provided the Hearing Officer with a document from The Committee of Bar Examiners in California which indicates that as of July 15, 2010 the Committee has found that McKnight possesses "... the good moral character required for certification to practice law in California." (Exhibit 1 to the hearing)
6. Several witnesses testified at the hearing that in their opinion McKnight is competent and fit to practice law in Arizona. Tedson Meyers has known McKnight for 30 years. He is a retired attorney who specialized in communications law and satellites. He has been the assistant counsel in charge of governmental relations for the American Broadcasting Corporation, and assistant to the Chairman of the Federal Communications Commission, and assistant to the Director of the Peace Corps and a member of the District of Columbia City Council. (TR 7:7 through 8:3) He met McKnight after McKnight left the White House Office of Communications to represent the British Aerospace Company to launch the Orion satellite. Mr. Meyers developed a high opinion of McKnight's legal abilities as well as an equally high opinion of McKnight's personal character.(TR 8:20 through 10:20)

7. Bruce Downey has been an attorney since 1973, but has not practiced law since 1993. He testified at the hearing that he met McKnight in college in 1966 and they both attended Ohio State University Law School and served on the editorial board of the law review together. When McKnight was engaged in the Orion satellite enterprise Bruce Downey's law firm did legal work for McKnight. Mr. Downey has invested in McKnight's current company Wyndstorm. (TR 18:6 through 21:13) Mr. Downey asked McKnight to do legal work for him in the District of Columbia in the summer of 2008. This work ended in late 2008 or early 2009. He was completely satisfied with McKnight's work. He testified that without reservation McKnight is fit and competent to practice law and that McKnight has the highest moral character. (TR 21:21 through 24:4)
8. John Klusaritz is a 1981 graduate of Harvard Law School. He is a corporate lawyer involved in mergers and acquisitions with the Washington office of Foley and Lardner, a 1000 attorney international law firm. He testified that he started working with McKnight two in and one half to three years ago and he is still working with him. McKnight retained him to be outside counsel to McKnight's current business of Wyndstorm. He reports directly to McKnight who is the in-house counsel for Wyndstorm. Mr. Klusaritz stated that in his opinion McKnight is a quality lawyer, very well versed in a lot of legal areas (corporate acquisitions and mergers, SEC registration, stock options, vesting, contract law and finance) and has an excellent character. He ranks McKnight at the very top in integrity. (TR 27:10 through 34:10)
9. John Burlingame is in attorney with the Washington DC office of Squires, Sanders & Dempsey specializing in intellectual property law. He and McKnight are members of

the Washington Golf and Country Club. In their service on the membership committee of that club he and McKnight have been asked to consider legal issues including whether members of the Supreme Court of the United States may serve as honorary members of the Club and issues related to the Foreign Corrupt Practices Act. Mr. Burlingame has known McKnight for 10 years. He testified that McKnight is very bright and is fully qualified to practice law. He thinks that McKnight has the highest moral character. In spite of dealing with difficult issues McKnight is never angry and always presents his position in a gentlemanly way. (TR 47:18 through 54:6)

10. Michael Martin is an enrolled agent (accountant) licensed to practice in front of the Internal Revenue Service ("IRS"). He is not a Certified Public Accountant. He testified that he has represented McKnight in a matter concerning an IRS tax obligation. (TR 88:21 through 89:25) In the Amendment to Respondent's Motion and Application for Reinstatement ("Amendment") filed by counsel for McKnight on September 3, 2010, McKnight indicated that he owes the IRS \$280,574.74 in back taxes. The IRS has asserted a tax lien.
11. McKnight believes that discussions between his enrolled agent Mr. Martin and the IRS will result in the elimination of \$216,877.74 of this tax liability. (See Amendment, page 2) Mr. Martin testified that the tax obligation is a mistake. An entity that paid McKnight as a consultant in 1998 either issued two 1099 forms in error or posted one 1099 form twice at the IRS Service Center. Mr. Martin also stated that about two-thirds of the \$280,574.74 tax lien was interest and penalties. (TR 89:8 through 95:2)

12. Mr. Martin testified that he is advising McKnight to do nothing with the IRS at this time and to wait for the statute of limitations on the tax obligation to expire on April 15, 2011. If the IRS takes action before that date he would recommend that McKnight make an offer and compromise. He also indicated that McKnight could not get another 1099 from the vendor because that entity is no longer in business. (TR 89:22 through 91:11)
13. McKnight has not included his tax returns for the year 2009 with his application for reinstatement. McKnight has requested two extensions to file the returns for tax year 2009. Mr. Martin testified that the second extension was until October 15, 2010. The hearing in this matter was held on October 15, 2010. The Hearing Officer will be recommending that McKnight not be reinstated until he has supplied the Commission and the Court with tax returns filed for the year 2009.
14. McKnight testified that he graduated from Ohio State University Law School in 1972. He first worked for the FCC in the Chairman's Office on policy matters in telecommunications. Then for a year and a half under President Ford he worked in the White House Office of Telecommunications Policy. (TR 36:9 through 37:17) He took the Arizona Bar Examination twice, passing in 1978. He worked for Combined Communications Corp. in Arizona from March 1977 to December 1979. This company was acquired by Gannett Co. Inc. McKnight was the broadcast attorney for this entity and worked on contracting, leasing and entertainment contracts. (TR 37:24 through 39:11)
15. In December 1979, McKnight moved to Rochester New York where he did broadcast legal work for the company. He was admitted to the bar in New York in 1980. He

was in private practice in Virginia in the 1980s, after his admission to the bar there in 1982. In 1994 he was trying to finance the Orion satellite project. He joined Smith Barney as an investment banker. In 1996 he was invited to visit Columbia University in New York and to consider teaching business. (TR 55:22 through 56:13) He taught business at Columbia for six years from 1996 through 2001. After September 11, 2001, he wrote a book about business entitled "Will It Fly". (TR 68:23 through 69:1)

16. McKnight stated that in 1996 he was divorced. He had to pay for two college educations for his children. He could not keep up paying his bar dues in Arizona. In Ohio and New York he chose "associate status" which meant he did not have to pay dues but he was not actively practicing law in either state. He thought not paying dues in Arizona would be the same as resigning and would not lead to any type of suspension. He might have received a Notice of Suspension from Arizona in 1996, but he may have neglected to open the envelope containing this notice. (TR 56:21 through 60:15)

17. McKnight also testified that in 2001 he was remarried. In January 2003 he was again involved in mortgage banking, originating mortgage loans. In 2004 he became a member of the bar in the District of Columbia and in Maryland. Later his wife created Wyndstorm and in 2005 McKnight became general counsel for this company. Wyndstorm is a designer, builder and manager of social networks for corporations that want their own Facebook for their organization or club. (TR 69:7-25, 116:19)

18. In 2003 some of McKnight's colleagues established a law firm in Santa Ana California that would specialize in legal advice about debt reduction. In or about 2009 McKnight decided to establish a law firm called Thomas Kerns McKnight L.L.P. to

help individuals with debt reduction problems and bankruptcies. In the future this firm that opened on July 1, 2009 will be giving advice on immigration matters. (TR 72:21 through 74:11) This law firm is operating in 19 states including the District of Columbia, California, Colorado, Pennsylvania, Texas, Washington, Oregon, Michigan, Minnesota, Wisconsin, Illinois, Massachusetts, South Carolina, Florida, Ohio, New York, Louisiana, Maryland, and Virginia. (TR 119:5)

19. McKnight is not licensed to practice law in California. He testified that he is the manager of the five-lawyer Santa Ana California office of Thomas Kerns McKnight L.L.P. He stated that the California Bar has approved his management of this office even though he is not licensed. He does not have written documentation of this approval. (TR 74:18 through 84:25) He described his management of the firm in California as not involving any law practice. He determines if the attorneys and staff are paying attention, playing by the rules, are helpful and civil. (TR 120:7)

CONCLUSIONS OF LAW

McKnight has proven by clear and convincing evidence that he is fit to practice law and that he is competent. Bar counsel recommends that McKnight be reinstated. In 37 years of law practice McKnight has not been the subject of any discipline. He has supplied tax returns for recent years except for 2009. He has paid the fee for an application for reinstatement. He has not been arrested during the period of his summary suspension, nor has he had any civil action filed against him. No fraud action has been filed against McKnight. However, he has financial obligations at this time. In addition to the IRS tax lien described above, McKnight owes Virginia approximately \$4050. He is paying at the rate of \$450 per month. This will take him nine more months to satisfy this tax obligation. (TR 112:3)

He also owes the District of Columbia \$9000 in taxes. He is paying at the rate of \$1000 per month and will take nine more months to satisfy this obligation. (TR 113: 2-19) McKnight also owes money on two Visa card accounts (\$2500 each), one Mastercard account (\$10,000) and one Discover card account (\$700). He testified that the credit card account payments are current. (TR 114:10 through 116:13)

In spite of his tax and credit card obligations, the Hearing Officer recommends reinstatement because these obligations do not detract from the fact that McKnight is fit and competent to practice law. He is admitted to practice in five states and the District of Columbia. His more recent admissions were in Maryland on December 20, 2004 and in the District of Columbia on June 6, 2005. He has maintained his continuing legal education requirement in numerous jurisdictions. The witnesses who testified on his behalf strongly indicate that he is currently competent to practice and that he possesses not only excellent intelligence but fine moral character.

The Hearing Officer was concerned about McKnight's participation as a manager of the California law office bearing his name when he is not licensed to practice law in California. However, ER 7.5 (b) permits a law firm with offices in more than one jurisdiction to use the firm name in each jurisdiction as long as the firm clearly identifies which lawyers in an office are licensed to practice in the jurisdiction where that office is located. McKnight has testified that in every state where his firm has an office and he is not licensed to practice, it is clear which lawyers are licensed in that state and it is only those lawyers who give legal advice in that jurisdiction.

THE BAR EXAMINATION

McKnight filed Respondent's Motion for Waiver of Bar Exam Requirement and Protective Order Re Confidential Information on September 16, 2010 ("Motion to Waive Bar Exam"). The State Bar responded to the motion on September 24, 2010 and stated that based on the case law cited in the motion the State Bar did not object to the waiver of the bar examination requirement. The Hearing Officer recommends that the Court waive the requirement of the bar examination pursuant to precedents set in the following prior matters, *In re Trester*, SB-07-0019-R (2007), *In re Scott*, SB-03-0019 (2003), and *In re Murray*, SB-97-0063-R (1997) In *Trester* the court waived the bar examination requirement after Ms. Trester established that she had actively practiced law in Illinois for 15 years. She had been summarily suspended for nonpayment of membership dues in 1993.

McKnight has submitted Certificates of Good Standing for Ohio, New York, Virginia, Maryland and the District of Columbia. He has completed the required 12 hours of continuing legal education (including two hours of ethics) in Virginia for each of the following years: 1996 – 1998; 2004 - 2009. In the years when he did not complete legal education he was a full-time educator and exempt from the education requirements. Since 2004 McKnight has been actively engaged in the practice of law. (Motion to Waive Bar Exam, pages 2-3)

For the foregoing reasons, the Hearing Officer recommends that the bar examination requirement for reinstatement in Rule 64 (c) Ariz.R.Sup.Ct. be waived in McKnight's case.

RECOMMENDATION

The Hearing Officer recommends that McKnight be reinstated to the practice of law in Arizona after he establishes to the Court that he has fully complied with the requirements of Rule 65(a)(1) (A-N) by submitting a copy of his filed 2009 tax returns.

DATED this 6 day of December 2010.



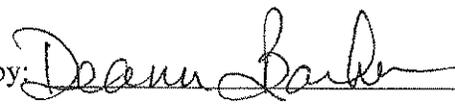
Honorable Jonathan H. Schwartz
Hearing Officer 6S

Original filed with the Disciplinary Clerk
this 6 day of December, 2010.

Copy of the foregoing mailed
this 7 day of December, 2010, to:

Nancy A. Greenlee
Applicant's Attorney
821 E. Fern Drive North
Phoenix, AZ 85014

Jason B. Easterday
Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 200
Phoenix, AZ 85016-6288

by: 

/jsa