

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
DISCIPLINE OF LYNN R. SHOEN,
Petitioner,

Nevada State Bar Disciplinary Board,
Respondent.

Case No. _____

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Clerk of Supreme Court

**PETITION FOR A WRIT OF MANDAMUS DIRECTING THE STATE
BAR DISCIPLINARY BOARD TO VACATE ITS ORDER STRIKING
SHOEN'S PETITION FOR REINSTATEMENT**

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Attorneys for Lynn R. Shoen

LYNN R. SHOEN (“SHOEN”), by and through her attorney, Phillip S. Aurbach, Esq. of the law firm of MARQUIS AURBACH COFFING submits this Petition for a Writ of Mandamus directing the State Bar Attorney Disciplinary Board to vacate its Order Striking SHOEN’S Petition for Reinstatement since the Disciplinary Board did not properly apply SCR Rule 116.

This Petition is based upon the papers and pleadings on file herein, the appendix of exhibits, and the following memorandum of points and authorities.

Dated this 26th day of July, 2019.

MARQUIS AURBACH COFFING

By: /s/ Phillip S. Aurbach

Phillip S. Aurbach, Esq.

Nevada Bar No. 1501

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Attorneys for Lynn R. Shoen

MEMORANDUM OF POINTS AND AUTHORITIES

I.

REQUIRED CONTENTS AND INTRODUCTION

1. **NRAP Rule 21(3) requires the following information:**
 - a. **Whether this matter falls within NRAP 17(a)** (Supreme Court Matters) or 17(b) (Appellate Court Matters). This is a matter of attorney discipline, thus it is a Supreme Court Matter pursuant to NRAP 17(a)(4).
 - b. **The relief sought is**
 - i. Writ of Mandamus directing the State Bar Attorney Disciplinary Board to vacate its Order Striking SHOEN'S Petition for Reinstatement since the Disciplinary Board did not properly apply SCR Rule 116.
 - c. **The issues presented** are whether the Nevada Bar Disciplinary Board properly applied SCR Rule 116 since the Board only considered whether the \$25,100 in restitution had been paid and did not consider the rest of SCR 116 which allows SHOEN to be reinstated **nevertheless** if there are other good and sufficient reasons.
 - d. **The Facts necessary to understand the issues presented.** The facts are set forth below.

e. **The reasons why the writ should issue including points and authorities.** The reasons and authorities are presented below, but one reason is that SHOEN has no direct appeal from the Disciplinary Board's Order striking her Petition for Reinstatement. A Writ of Mandamus may issue to compel performance of an act which the law enjoins as a duty i.e., the Board had a duty to consider all of SCR Rule 116, but failed in this duty.

2. Introduction

- a. On April 22, 2016 as part of a State Bar Disciplinary Proceeding, this Court entered an Order Approving Conditional Guilty Plea Agreement (**Exhibit 1**, App. 1-4) that:
- i. Temporarily suspended SHOEN from practicing law for 4 years 6 months from April 24, 2014 (through April 23, 2019) and
 - ii. Required SHOEN to:

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1--Take 6 CLE classes each year until reinstatement;		✓ Completed
2--Take and pass the MPRE exam within 6 months of applying for reinstatement;		✓ Completed
3--Pay restitution to her clients regarding misappropriated trust funds—all of which were fully paid prior to the Conditional Guilty Plea;		✓ Completed prior to the conditional plea

4--Pay \$25,100.00 to her clients for which there were pending fee disputes i.e., withdraw her defenses to the fee dispute claims and pay them in full. This payment was “a condition precedent to the submittal of an application for reinstatement;”		Not completed due to insufficient funds
5--Pay the costs of the State Bar disciplinary proceedings;		Not completed due to insufficient funds
6--Pay \$3,500 the cost of the Bar opposing her current Petition for reinstatement.		✓ Completed

<p>7—Upon reinstatement. SHOEN cannot maintain her own practice; must work under the supervision of another attorney with at least 15 years of experience and may never be a signatory to or have access to any trust account, client or third-party funds of any kind, regardless of their characterization such as a “flat-fee.”</p>	<p>SHOEN has obtained employment with Craig Mueller of MUELLER & ASSOCIATES, INC. who has agreed to:</p> <ul style="list-style-type: none">a—meet the requirements of supervision and require no trust account access, as well asb—set aside \$1,500 from each of SHOEN’s paychecks to pay the fee dispute clients in full as well as the previous disciplinary costs. (See Petition for Reinstatement (Exhibit 2, App. 5-23).
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II.
STATEMENT OF FACTS AND PROCEDURAL POSTURE

1. On April 22, 2016 this Court entered an Order Approving Conditional Guilty Plea Agreement attached hereto as **Exhibit 1**. App. 1-4. The Order approved a 4 year and six (6) month suspension retroactive to April 24, 2014¹. SHOEN was required to:

- a. take 6 CLE classes per year (which she did);
- b. pass the MPRE examination within six (6) months of applying for reinstatement (which she did).
- c. pay \$25,100 to be paid in full by monthly payments within one year of the date of this Court's Order (which she was financially unable to meet);
- d. repay the costs incurred by the Nevada State Bar (which was also financially unable to accomplish).

2. It is undisputed that SHOEN had paid 100% of the misappropriated trust funds that began the disciplinary proceedings which ultimately resulted in this Court's April 22, 2016 Order approving the Conditional Guilty Plea Agreement.

3. It is also undisputed that SHOEN passed the MPRE with a score of 90 in March of 2019 and had taken the requisite number of CLE courses.

¹ This 4 year 6 month period was a critical part of the negotiations so Ms. Shoen would not need to retake the Bar Examination.

4. It is also undisputed that within one year of this Court's Order SHOEN was not able to pay restitution of the \$25,100 in fee disputes (which she agreed not to contest as part of her negotiated plea agreement) because she did not have the funds to make these payments.

5. SHOEN was not able to and she did not pay the costs of the Bar proceedings because she did not have the funds to pay.

6. Although not exactly undisputed, SHOEN'S income was decimated after the suspension of her license, her parents had died, and she and her daughter, Jacqueline Shoen, born March 28, 2006, had substantial health issues. These financial issues were detailed in her Petition for Reinstatement on April 23, 2019 attached hereto as **Exhibit 2**. App. 5-23.

7. The Nevada Bar moved to strike SHOEN's Petition and the Southern Nevada Disciplinary Board granted the Bar's Motion to Strike (*See Exhibit 3*, App. 24-95) because the Chair of the Disciplinary Committee incorrectly concluded that the Committee:

“does not have the authority to hear an application of reinstatement until the restitution is paid”

8. The Bar did not take into account:
- a. SHOEN'S lack of income,
 - b. Her present employment,

- c. Her good conduct for the last 4 ½ years,
- d. Her passage of the MPRE with a score of 90 and the fact that she had taken the requisite number of CLE courses,
- e. The offer by her present employer to hire her at a substantial increase in salary as well as his willingness to put aside funds from her paycheck for these obligations,
- f. SHOEN’S Opposition Points and Authorities attached hereto as **Exhibit 4** (App. 96-203) where this Court has previously allowed attorneys to be reinstated PRIOR TO payment of restitution.

III.

CONCLUSION

For the foregoing reasons, the Court should Order that

1—A writ of Mandamus issue directing the Disciplinary Committee to vacate its Order Striking Shoen’s Petition for Reinstatement

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2--Order that Shoen's Petition for Reinstatement filed on April 23, 2019 should be allowed to proceed in as directed in this Order.

Dated this 26th day of July, 2019.

MARQUIS AURBACH COFFING

By: /s/ Phillip S. Aurbach

Phillip S. Aurbach, Esq.

Nevada Bar No. 1501

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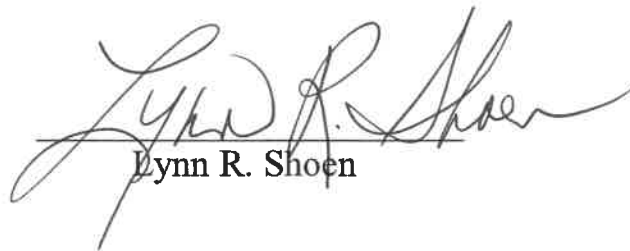
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DECLARATION AND VERIFICATION OF LYNN SHOEN

I, Lynn R. Shoen, have read the Petition for Writ of Mandamus. I know the contents thereof. The Petition is true of my own knowledge, except as to those matters stated on information and belief, and that as to such matters I believe them to be true..

I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045 and 28 U.S.C. § 1746), that the foregoing is true and correct.

Dated this 26 day of July, 2019.


Lynn R. Shoen

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITION FOR A WRIT OF MANDAMUS
DIRECTING THE STATE BAR DISCIPLINARY BOARD TO VACATE
ITS ORDER STRIKING SHOEN'S PETITION FOR REINSTATEMENT**

was filed electronically with the Nevada Supreme Court on the 26th day of July, 2019. I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

NEVADA BAR COUNSEL
STATE BAR OF NEVADA
3100 W. Charleston Blvd, Suite 100
Las Vegas, NV 89102
Fax: 702-385-2878

/s/ Javie-Anne Bauer

An employee of Marquis Aurbach Coffing