

IN DISCIPLINARY DISTRICT V
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FILED

2016 OCT 18 PM 5:09

BOARD OF PROFESSIONAL
RESPONSIBILITY

Law
EXEC. SECT.

IN RE: DONALD WALTER FISHER, BPR # 14714 NO. 2016-2572-5-WM(30.4d)
An Attorney Licensed
to Practice Law in Tennessee
(Davidson County)

FINDINGS, DECISION AND JUDGMENT OF THE HEARING PANEL
ON THE PETITION FOR REINSTATEMENT

This matter came for hearing on September 28, 2016, before a Hearing Panel on the Petition for Reinstatement filed on behalf of Mr. Fisher on March 16, 2016. Disciplinary Counsel for the Board of Professional Responsibility for the State of Tennessee filed an oppositional response to the Petition, which requires the proceedings to proceed in accordance with Rule 9, Subsection 30.4(d) of the Rules of the Supreme Court. That Rule requires an appointed hearing panel to consider the appropriateness of Mr. Fisher's Petition for Reinstatement, and render a decision either dismissing the Petition, or "if the petitioning attorney is found fit to resume the practice of law, the decision of the Hearing Panel shall reinstate the petitioning attorney." (Rule 9, Subsection 30.4(d)(3)).

The instant Hearing Panel ("The Panel") consisted of Mr. Daniel C. Todd, Esq, Mr. Stanley A. Kweller, Esq, and Mr. Rich McGee, Esq, Chairman of the Panel. The Panel had before it the Pre-Trial Briefs filed on behalf of each party to the action as well as the record as a

whole. All parties were present at the hearing and represented by Counsel, and the Panel took testimony and reviewed the submitted evidence for consideration.

The standards for reinstatement are agreed to by the parties and have been accurately reproduced by Disciplinary Counsel for the Board in the Board's filed Pre-Trial Brief. The appropriate standard for reinstatement is listed in Rule 9, Subsection 30.4(d)(1), which reflects that any petitioning attorney must prove:

by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice in this state, and the resumption of the practice of law within the state will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest, and that Mr. Fisher has satisfied all conditions set forth in the order imposing discipline, including the payment of costs incurred by the Board in the prosecution of the preceding disciplinary proceeding and any court costs assessed against the attorney in any appeal from such proceeding.

(Rule 9, Subsection 30.4(d)(1)).

Following presentations by both parties, and a brief recess for deliberation by the Panel, The Panel returned for additional discussion. The Panel read in open hearing the following section of the Pre-Trial Brief filed on behalf of Mr. Fisher, which included this language:

Initially, Mr. Fisher did not know his colleagues had placed his name on cases entered into litigation, as he made it his practice not to litigate any cases. Upon being made aware of this circumstance, he took immediate steps to notify the clients and opposing counsel of his suspension. He did not know of any insurance adjusters because he had not been engaged in handling these matters. As soon as this deficiency, part of his initial offense, was made known to him, he took affirmative steps to correct this problem and requested a continuance from the Board to allow sufficient time to come into compliance. He has since sent the letters, had the appropriate orders entered, produced proof of compliance to the Board and supplemented his Affidavit in this matter.

(Pre-Trial Brief of Mr. Fisher, at 2-3).

Following the reading of that section of the Pre-Trial Brief, the Panel inquired of Disciplinary Counsel whether the Board agreed with that statement. Disciplinary Counsel affirmed the accuracy of that statement from the Pre-Trial Brief on behalf of the Board.

FINDINGS, DECISION AND JUDGMENT

Upon the evidence, testimony and arguments presented, further deliberations, and review of the record as a whole, the Panel makes the following findings, judgment, and decision. (*See* Rule 9, Subsection 30.4(d)(4)). The Panel makes its decision, finding, and judgment that the Petition for Reinstatement ought to be **GRANTED**. The Panel finds that Mr. Fisher is fit to resume the practice of law, and finds that Mr. Fisher **should be reinstated** to the practice of law.

The Panel finds that Mr. Fisher has proven by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice in this state, and the resumption of the practice of law within the state will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest, and that Mr. Fisher has satisfied all conditions set forth in the order imposing discipline, including the payment of costs incurred by the Board in the prosecution of the preceding disciplinary proceeding and any court costs assessed against Mr. Fisher in any appeal from such proceeding.

The Panel heard from Mr. Fisher regarding his remorse and regret regarding the circumstances which led to his suspension, heard of his volunteer efforts and participation in the Tennessee Lawyer's Assistance Program ("TLAP"), and his efforts in related organizations which are designed to assist in his recovery efforts. Mr. Fisher testified that he always reduces his contractual fee such that his fee never exceeds the payout to his client, which he did

voluntarily to treat his clients with respect and courtesy. The Panel finds that Mr. Fisher is concerned about his clients and has taken steps during his suspension to see that they are well represented. The Panel finds that Mr. Fisher retains the moral qualifications to practice law.

The Panel heard from Mr. Fisher that he has attended the requisite continuing legal education classes for one actively engaged in the practice of law. No oppositional evidence regarding Mr. Fisher's competency or learning in the law reached the Panel. The Panel finds that Mr. Fisher has the competency and learning to practice law.

The Panel heard from Mr. Fisher regarding his integrity and standing in the Bar. This requirement involved Mr. Fisher's appropriately removing himself from cases as is required of suspended attorneys under the Rules and Ordered in the Order of Enforcement, as well as whether the requisite notice to affected parties had been given. (*See* Order of Enforcement; Rule 9, Section 28.2 and 28.7). Although the Board has raised the concern of Mr. Fisher's name remaining on certain cases following his filing of the Affidavit of Compliance, the Board has conceded that Mr. Fisher has now complied with all aspects of the Order of Enforcement – as reflected in the above-referenced discussion regarding the Pre-Trial Brief. The Panel makes the specific finding that Mr. Fisher complied with all the notice requirements listed in the Rules and in the Order of Enforcement from the Supreme Court, as reflected in the Pre-Trial Brief filed by Mr. Fisher, and as reflected in Mr. Fisher's filed Supplemental Affidavit of Compliance. As a result, the Panel finds that Mr. Fisher has proven that he retains the requisite integrity and standing in the Bar such that his readmission would not be detrimental to the standing of the Bar or the administration of justice or subversive to the public interest.

Finally, the Board concedes that Mr. Fisher has complied with his obligations regarding fees. As a result, the Panel finds that Mr. Fisher has made all payment of costs incurred by the Board in the prosecution of the preceding disciplinary proceeding and any court costs assessed against Mr. Fisher.

The Panel finds Mr. Fisher is compliant with the Order of Enforcement, the requirements of a suspended attorney under Sections 28 and 30 of Rule 9, and is otherwise qualified to be reinstated to the practice of law. Mr. Fisher has proven by clear and convincing evidence that he has the moral qualifications, competency and learning in the law, and integrity to practice law. Mr. Fisher's re-admission will not be subversive to the public interest or the administration of justice or detrimental to the standing of the Bar.

The Panel finds that Board should appoint a practice monitor to review Mr. Fisher's law practice. A separate practice monitor shall be in place for any city in which Mr. Fisher has a law practice. Those monitor(s) shall be in place for one year from the date of entry of any forthcoming Supreme Court Order of Reinstatement for Mr. Fisher.

The Panel additionally finds that Mr. Fisher should enter into a Tennessee Lawyer's Assistance Program ("TLAP") contract for the duration of one year from the date of entry of any forthcoming Supreme Court Order of Reinstatement for Mr. Fisher. The Tennessee Board of Professional Responsibility shall be a reporting agency to the TLAP contract with Mr. Fisher. The Panel is aware that Mr. Fisher is already under contract with TLAP, but specifically finds that Mr. Fisher should enter into a new contract with TLAP under the above-listed specifications for the duration of one year.

IT IS SO ORDERED.

Richard McGee
Mr. Richard McGee, Panel Chair

Stanley Kweller w/ pen
Mr. Stanley A. Kweller, Panel Member

Daniel Todd w/ pen
Mr. Daniel C. Todd, Panel Member

PREPARED AND APPROVED FOR ENTRY:

Adam Hill
Mr. Adam R. Hill, #27302
102 Woodmont Blvd, Ste 200
Nashville, TN 37205
(615) 345-0280

Karl Warden w/ pen 10/5/16 by APH
Mr. Karl Warden, #14540
1504 17th Avenue South
Nashville, TN 37212

Paul R. White w/ pen 10/5/16 by APH
Mr. Paul R. White, #5464
Suite 360M Washington Square
222 Second Avenue North
Nashville, TN 37201-1646