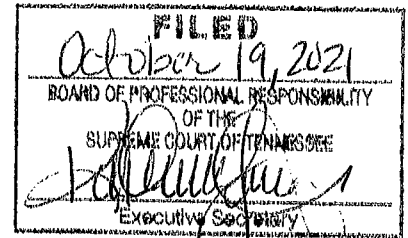


IN DISCIPLINARY DISTRICT II
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE



IN RE: Mark Steven Graham,
BPR No. 11505

DOCKET NO. 2021-3178-2-AJ-30.4d

FINDINGS AND JUDGMENT

This matter came on for a hearing on October 8, 2021, upon the Petition for Reinstatement filed June 10, 2021, by Petitioner Mark Steven Graham. Mr. Graham was represented by Wade Davies at the hearing, and Alan Johnson, Disciplinary Counsel, represented the Board of Professional Responsibility. The parties were afforded the opportunity to call and cross-examine witnesses, introduce documentary evidence and argue their positions at the hearing. For the reasons that follow, the Hearing Panel finds that Mr. Graham has met his burden of showing clear and convincing evidence that he meets the requirements for reinstatement set forth in Tennessee Supreme Court Rule 9 § 30.4(d).

Mr. Graham is seeking reinstatement following the Tennessee Supreme Court's Order of February 11, 2021, suspending him from the practice of law for three years retroactive to the date of his temporary suspension on March 11, 2020, with one year to be served as an active suspension and the remaining time to be served on probation. The suspension was the result of a conditional guilty plea.

The case that resulted in Mr. Graham's suspension began as a fee dispute. Mr. Graham was retained by a company in India to handle intellectual property litigation.

Mr. Graham has extensive experience in this area. The client was significantly behind on payments for legal fees owed to Mr. Graham. As a result of a miscommunication between the client and Mr. Graham, some payments intended for an expert that were tendered to Mr. Graham were applied as payments for Mr. Graham's services. An agreement was reached in which the client sent funds to Mr. Graham to cover some of his invoices and all of the amounts owed to the expert. Upon receipt of the funds, Mr. Graham did not pay all of the fees owed to the expert as promised.

The suspension arose from one complaint of ethical misconduct. Mr. Graham entered a Conditional Guilty Plea admitting that he violated Rules of Professional Conduct 1.15(a), (b) and (d);(safekeeping property and funds) and 8.4(a), and (c) (misconduct).

The Order of Enforcement entered by the Tennessee Supreme Court on February 11, 2021, provided that (1) Mr. Graham shall obtain an evaluation with the Tennessee Lawyers Assistance Program and follow any and all recommendations and grant TLAP permission to communicate with the Board, (2) Mr. Graham shall engage a practice monitor, (3) Mr. Graham must meet CLE requirements, pay registration fees, privilege taxes and costs of the Board matter. Further, Mr. Graham was ordered to pay the expert fees in question. In its Answer to the Petition for Reinstatement, the Board admitted that Mr. Graham had fulfilled these obligations. Further, at the hearing, Mr. Graham introduced Exhibits 1-5 that established his compliance. Therefore, at the hearing, the primary issue was whether Mr. Graham satisfied the

moral and competency and learning in the law, requirements for readmission, and that the resumption of the practice of law will not be detrimental to the administration of justice or subversive to the public interest.

STANDARDS FOR REINSTATEMENT

Tenn. Sup. Ct. R. 9, § 30.4(d) (1) states "[t]he hearing panel shall schedule a hearing at which the petitioning attorney shall have the burden of demonstrating by clear and convincing evidence that the attorney has the moral qualifications, competency and learning in law required for admission to practice law in this state and that 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." The Supreme Court has defined clear and convincing as: "[w]hile [the clear and convincing standard] is more exacting than the preponderance of the evidence standard, it does not require such certainty as the beyond a reasonable doubt standard. Clear and convincing evidence eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence. It should produce in the fact-finder's mind a firm belief or conviction with regard to the truth of the allegations sought to be established." *Hughes v. Board of Professional Responsibility*, 259 S.W.3d 631, 642 (Tenn. 2008), citing *O'Daniel v. Messier*, 905 S.W.2d 182 (Tenn. Ct. App. 1995).

At the hearing, the Petitioner called the following witnesses:

1. Hon. Kelly Thomas. Judge Thomas is Mr. Graham's peer sponsor with TLAP.
2. Dale Amburn. Mr. Amburn is a partner with the firm London & Amburn in Knoxville. Mr. Amburn has agreed to serve as a practice monitor for Mr. Graham.
3. Morris Kizer. Mr. Kizer has practiced law for many years and has with Mr. Graham both as co-counsel and by referring intellectual property matters to Mr. Graham.
4. John Thallemer. Mr. Thallemer is in-house counsel to one of the companies in the underlying litigation and was the original complainant in this matter. Mr. Thallemer testified in support of reinstatement.
5. Mark Graham.

The Hearing Panel finds that Mr. Graham has met his burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in law required for admission to practice law in this worked state, that 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. Tenn. Sup. Ct. R. 9, § 30.4(d)(1). The Hearing Panel finds that the testimony of Mr. Graham and of the witnesses who testified establish Mr. Graham's qualifications.

The Hearing Panel finds it significant that Mr. Graham has a strong support system in place for his return to practice, including a strong and supportive peer monitor and an outstanding proposed practice monitor.

It is also significant that the original complainant expressed support for Mr. Graham's reinstatement and opined that he would recommend Mr. Graham as an attorney.

Further, Mr. Graham expressed understanding of his situation and genuine remorse for his conduct. "Remorse and awareness of prior wrongdoing are also regularly cited as marks of good moral character, and various jurisdictions have recognized these as appropriate factors to consider in gauging moral character." *Milligan v. Bd. of Prof'l Responsibility of the Supreme Court of Tenn.*, 301 S.W.3d 619,631 (Tenn. 2009). Mr. Graham demonstrated an understanding of how to practice and to prevent a similar situation from arising.

Based on personal knowledge, the witnesses who testified also made it clear that Mr. Graham possesses exemplary skill and learning in intellectual property matters.

Mr. Graham also demonstrated that he went to great lengths, including personal financial hardship, to ensure that the expert fee was paid in this case.

JUDGMENT

The Petition for reinstatement is hereby GRANTED. The Hearing Panel finds that Mr. Graham should be reinstated subject to the following conditions:

1. During the period of probation, Mr. Graham, at his cost, shall engage a Practice Monitor who shall be selected and approved in accordance with Tenn. Sup. Ct. R 9, § 12.9(c). The Practice Monitor shall submit monthly reports to the Board addressing the following areas: compliance with the conditions of discipline, probation or reinstatement in addition to his compliance with trust account rules, accounting procedures, and office management procedures. The Practice Monitor shall monitor the practice from such a time as Mr. Graham is reinstated and shall remain throughout the entirety of Mr. Graham's probation;
2. Mr. Graham shall comply with his TLAP monitoring agreement and follow any and all recommendations of TLAP. He shall also continue to give TLAP authority to communicate with the Board regarding the monitoring agreement.

ENTERED THIS 19 DAY OF OCTOBER, 2021.


HANSON R. TIPTON, CHAIR

 / WITH PERMISSION
BY HRT
ROBERT SCOTT CARPENTER

 / WITH PERMISSION
BY HRT
JOSHUA D. HEDRICK

NOTICE

Either party dissatisfied with the Hearing Panel's decision may appeal as provided in Tenn. Sup. Ct. R. 9, § 33.