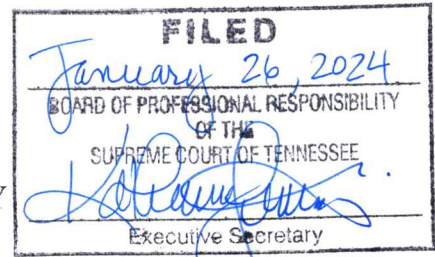


**IN DISCIPLINARY DISTRICT VI
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



IN RE: RANDY WAYNE HARDISON
Respondent, BPR #009479
An Attorney Licensed to
Practice Law in Tennessee
(Williamson County)

DOCKET NO. 2023-3358-6-AW-30.4(d)

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT
OF THE HEARING PANEL**

INTRODUCTION

This matter came on for hearing before a duly appointed Hearing Panel upon a Petition for Reinstatement filed on October 12, 2023, by Petitioner Randy Wayne Hardison, and upon a Response of the Board of Professional Responsibility to Petition for Reinstatement filed by the Board of Professional Responsibility (“Board”) on October 24, 2023.

The hearing on this matter commenced on December 18, 2023, before the Panel consisting of Richard Boehms, David R. Grimmett, and James L. Elkins, Chair. Present throughout the hearing were the panel members identified above, petitioner Randy Wayne Hardison and Disciplinary Counsel A. Russell Willis. Based upon the statements of counsel, Mr. Hardison has satisfied the conditions set forth in the Order of Enforcement (Docket No. M2019-00618-SC-BAR-BP) entered by the Tennessee Supreme Court on April 17, 2019, and the issues remaining before the Panel are whether Mr. Hardison can demonstrate (i) he has the moral qualifications, competency and learning in law required for admission to practice law in this state, and (ii) his resumption of the practice of law within the state would not be detrimental to the

integrity and standing of the bar or the administration of justice, or subversive to the public interest.

Upon the testimony of Petitioner, the testimony of his witnesses, the evidence presented, and upon the entire record in this cause, the Hearing Panel makes the following findings of fact and conclusions of law.

STANDARDS FOR REINSTATEMENT

Tenn. Sup. Ct. R. 9, § 1 makes clear that the license to practice law in this state is not a right but a privilege. “The license to practice law in this State is a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court.” See Tenn. Sup. Ct. R. 9, § 1.

To be reinstated to the active practice of law, a suspended attorney must comply with Tenn. Sup. Ct. R. 9, § 30.4(d)(1) which provides, in part,

The hearing panel shall schedule a hearing at which the petitioning attorney shall have the burden of demonstrating by clear and convincing evidence that the petitioning attorney has the moral qualifications, competency, and learning in law required for admission to practice law in this 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.

The clear and convincing standard is higher than a preponderance of the evidence and lower than beyond a reasonable doubt. 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, at 642 (Tenn. 2008), citing *O’Daniel v. Messier*, 905 S.W.2d 182 (Tenn. Ct. App. 1995).

The moral qualifications required for admission to practice law in this State, as set forth in Article VI, Section 6.01(a) of Rule 7 of the Rules of the Supreme Court of Tennessee state:

An applicant shall not be admitted if, in the judgment of the Board, there is reasonable doubt as to that applicant's honesty, respect for the rights of others, and adherence to and obedience to the Constitution and laws of the State and Nation as to justify the conclusion that such applicant is not likely to adhere to the duties and standards of conduct imposed on attorneys in this State. Any conduct which would constitute grounds for discipline if engaged in by an attorney in this State shall be considered by the Board in making its evaluation of the character of an applicant.

Tenn. Sup. Ct. R. 7, §6.01(a)

FINDINGS OF FACT

Petitioner, in addition to himself, presented the testimony of three (3) witnesses in support of his request for reinstatement. Testifying on behalf of Petitioner were Christopher Cantrell, attorney and Founder of Foundation Title & Escrow; Deanna Johnson, attorney and Chief Executive Officer of Foundation Title & Escrow; and James G. Dugger, broker and Vice-President of Crye-Leike Realty. The Board presented no witnesses but offered documentary evidence during cross-examination of the Petitioner and his witnesses. The proof presented established the following facts.

Mr. Hardison received his license to practice law in 1981 and focused his practice in the area of real property and closings in and around Williamson County. In 2019, Mr. Hardison was suspended by the Supreme Court for five (5) years retroactive to August 29, 2017, for misappropriating at least \$133,095.75 of client or third-party funds, failing to reconcile his trust account or otherwise establish and maintain reasonable internal protocols regarding his trust account, failing to properly supervise his staff and practicing law while administratively suspended. Upon discovering his real estate trust account was short, Mr. Hardison obtained a personal loan in the amount of \$133,095.77 and reimbursed his client. Shortly before his

suspension, Mr. Hardison closed his practice and title company and accepted a non-attorney position with Foundation Title & Escrow ("Foundation") in Franklin, Tennessee. Although Mr. Hardison did not disclose his disciplinary issue when he accepted employment with Foundation, Mr. Cantrell and Ms. Johnson each testified that they elected to retain Mr. Hardison because he had been an exemplary employee to date, had demonstrated he was trustworthy, and his real estate expertise was invaluable to the company. Mr. Cantrell and Ms. Johnson testified they spoke with Mr. Hardison regarding the basis for his suspension, and their respective concerns regarding the suspension were addressed by Mr. Hardison. When pressed on cross-examination by counsel for the Board regarding the misappropriation of approximately \$133,000.00, Mr. Hardison explained that his failure to reconcile his real estate closing escrow account for years and the amount of float in his account were primarily responsible for his inability to account for the shortage despite hiring an accountant to review his account. Mr. Hardison directly denied misappropriating or benefiting personally from the shortage in his trust account.

Since joining Foundation in 2017, Mr. Hardison assumed various roles and duties and currently serves as the Director of Commercial Services. As part of his duties, Mr. Hardison conducts real estate closings. Mr. Hardison, as well as Mr. Cantrell and Ms. Johnson, described his role at closings to be ministerial and completely non-legal. The loan package was prepared by the lender, and Mr. Hardison ensured that the documents were executed by the appropriate party at the closing. Mr. Hardison, as well as Mr. Cantrell and Ms. Johnson, confirmed that no legal advice was provided by Mr. Hardison at any closing, and if legal questions arose during a closing, the party was referred to the lender for clarification. Mr. Cantrell and Ms. Johnson made clear that Foundation, though it employed a number of attorneys, was not a law firm and did not engage in the practice of law.

Mr. Hardison has completed all of his Continuing Legal Education (CLE) requirements and has remained current with real property laws in the performance of his duties as Director of Commercial Services. Mr. Cantrell and Ms. Johnson averred that they considered Mr. Hardison the go-to person at Foundation for difficult issues involving closings and real property. In fact, one of Mr. Hardison's duties is to train employees at Foundation. In addition, Mr. Dugger, former client and long-time friend, testified that he regularly referred his real estate closings to Mr. Hardison prior to his suspension because of his legal knowledge and expertise in real property law. After the suspension, Mr. Dugger maintained his friendship with Mr. Hardison through weekly social contact. Mr. Dugger had general discussions with Mr. Hardison regarding his work as a real estate broker and encouraged Mr. Hardison to seek reinstatement of his law license so he could put his obvious real estate knowledge to his highest and best use. Mr. Dugger, Mr. Cantrell, and Ms. Johnson concurred with Mr. Hardison that he possessed the competency and learning in the law to be readmitted to the practice of law.

Mr. Hardison, as well as his three witnesses, detailed his conduct during the five (5) years he has been suspended. As noted previously, Mr. Hardison has been an exemplary employee at Foundation, has cultivated the trust of his employer, has taken a leadership role at his company, and has undertaken to use his experience and expertise to train colleagues at Foundation. In addition, Mr. Dugger detailed personal conversations in which Mr. Hardison expressed remorse for his professional misconduct and the damage he had caused to family and friends as well as the profession. Mr. Dugger, Mr. Cantrell, and Ms. Johnson also testified that they had observed a positive change in Mr. Hardison after his suspension, and none of the witnesses had any doubt that Mr. Hardison, if reinstated, would adhere to the rules of professional conduct and enhance the standing of the bar. Similarly, Mr. Hardison expressed and demonstrated remorse to the Panel at

the hearing and assured the Panel he had learned from his mistakes, had taken steps to address his lack of judgment, and would not repeat his misconduct.

CONCLUSIONS OF LAW

A license to practice law is a privilege, not a right. *Hughes v. Bd. Of Prof'l Responsibility*, 259 S.W. 3d 631, 641 (Tenn. 2008). "A person suspended from the practice of law is not entitled to have that privilege restored simply because that person has served the sentence imposed for a violation of the criminal laws." *Id.*, citations omitted. In order to be granted reinstatement to the practice of law in this state, the Petitioner has the burden of demonstrating by clear and convincing evidence that,

the petitioning attorney has the moral qualifications, competency, and learning in law required for admission to practice law in this 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, and that the petitioning attorney 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.

Tenn. Sup. Ct. R. 9, § 30.4(d)(1)

Each ground for reinstatement is separate and must be supported by adequate proof. An applicant for reinstatement may have significant proof on one prong but little or no proof on another, which means he does not carry his burden. *Hughes*, 259 S.W. 3d at 651 (Tenn. 2008); *Milligan v. Bd. of Prof'l Responsibility*, 301 S.W.3d 619, 630 (Tenn. 2009).

Moral Qualifications

Remorse and awareness of prior wrongdoing, among other factors, are 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). In determining whether an attorney

has adequately demonstrated good moral character, it is appropriate to consider the nature of the activity that the attorney engaged in during the period of suspension. *Milligan v. Bd. of Profl Responsibility of the Supreme Court of Tenn.*, 301 S.W.3d at 632. Conclusory statements from witnesses that the attorney has been rehabilitated and is remorseful are insufficient to meet the burden of proving the attorney possesses the moral character to resume the practice of law. *Murphy v. Bd. of Profl Responsibility*, 924 S.W.2d 643, 647 (Tenn. 1996) (conclusory statements of witnesses that the petitioning attorney had paid the price, was remorseful and had rehabilitated himself were not sufficient proof of the attorney's moral character). It is incumbent upon the attorney seeking reinstatement to the practice of law to present specific facts and circumstances arising since the attorney's convictions that demonstrate rehabilitation or remorse. *Murphy v. Bd. of Profl Responsibility*, 924 S.W.2d at 647.

The Panel observed Mr. Hardison and his witnesses as they testified and found their testimony credible and compelling. Mr. Hardison has accepted responsibility for his misconduct, is genuinely remorseful, and has taken the opportunity provided to him by Foundation to better himself as well as others around him. Considering the evidence presented as a whole, the Panel finds, by clear and convincing evidence, that Mr. Hardison possesses the moral qualifications to be admitted to the practice of law in Tennessee.

Competency and Learning in the Law

In order to gain reinstatement, Petitioner must prove by clear and convincing evidence that he possesses the legal competency to be admitted to the practice of law. R. 9 § 30 *supra*. It is insufficient to simply offer conclusory testimony that the attorney has done an excellent job of staying current in the law or that the attorney was a competent attorney before the disciplinary sanction was imposed. *Culp v. Bd. of Profl Responsibility for the Supreme Court of Tenn.*, 407

S.W.3d 201, 210 (Tenn. 2013). Further, clear and convincing evidence of learning in the law and competency requires more than simply completing the requisite hours of CLE required. *Culp v. Bd. of Prof'l Responsibility for the Supreme Court of Tenn.*, 407 S.W.3d 201, 210 (Tenn. 2013).

Since the entry of the Order of Enforcement suspending his license, Mr. Hardison demonstrated he has attended and completed sufficient continuing legal education classes to meet the general and ethical requirements set by the Continuing Legal Education Commission. In addition, Mr. Hardison detailed his expertise in real estate and real property, his review of published court opinions relevant to real estate, and his training of Foundation employees regarding real estate closings. In addition, the testimony of the witnesses supports Mr. Hardison's testimony that he possesses current expertise in real estate closings and real property and is learned in the law. The Panel finds, by clear and convincing evidence, that Mr. Hardison has the legal competency and learning in the law to be admitted to the practice of law in this state.

**Impact of Reinstatement on the Integrity and Standing of the Bar,
Administration of Justice and the Public Interest**

The license to practice law is a privilege, not a right. *Murphy v. Bd. of Prof'l Responsibility*, 924 S.W.2d 643, 647 (Tenn. 1996). The practice of law is a distinct privilege—the more serious the abuse of that privilege, the more onerous the burden of atonement. *Hughes v. Board of Professional Responsibility*, 259 S.W.3d 631, 651 (Tenn. 2008). This third criterion requires the Panel to consider not only the nature of the conduct that led to the attorney's disciplinary sanction but the impact, if any, that the attorney's reinstatement, in the context of the misconduct, will have on the integrity of and public trust in our system of jurisprudence. *Hughes v. Board of Prof. Responsibility*, 259 S.W.3d 631, 646 (Tenn. 2008). Unlike the many factors set out regarding moral qualification, this assessment is more subjective in nature and, on occasion,

maybe less dependent upon the proof in the record than the sense of professional responsibility and respect the Court, as the final regulatory authority, holds for the society the legal system serves. *Hughes v. Board of Prof. Responsibility*, 259 S.W.3d at 646.

Petitioner and his witnesses expressed their firm opinion that Mr. Hardison was an experienced and well-respected member of the bar prior to his suspension. Petitioner and his witnesses expressed their firm opinion that Mr. Hardison, having acknowledged his misconduct and expressed remorse, was a changed person and unlikely to engage in professional misconduct if he were reinstated to the active practice of law. The Panel had the opportunity to observe Mr. Hardison as he testified and came away with the clear impression that Mr. Hardison was truthful and sincere in his testimony. The Panel is mindful that any misappropriation of client funds, whether intentional or negligent, is a serious breach of professional ethics for any attorney and requires an onerous burden of atonement. Nevertheless, in considering the testimony as a whole and Mr. Hardison's demeanor before the Hearing Panel, it is the finding of the Panel that Mr. Hardison's reinstatement to the practice of law is unlikely to be detrimental to the integrity and standing of the bar, the administration of justice or to the public interest.

Accordingly, the Hearing Panel finds by clear and convincing evidence that Mr. Hardison has demonstrated his reinstatement to the practice of law would not be detrimental to the standing of the bar, the administration of justice, or the public interest.

JUDGMENT


Based on these findings of fact and conclusions of law, the Hearing Panel finds by clear and convincing evidence that Petitioner has met all of the requirements of Rule 9 of the Supreme Court for reinstatement to the practice of law in the state of Tennessee and recommends Mr. Hardison be reinstated to the active practice of law.

In accordance with Tenn. Sup. Ct. R. 9, § 31.3, the Board shall prepare and file an application for costs within fifteen (15) days of the entry of this judgment.

SO ORDERED, this 26th day of January 2024.


Elkins, James Lee, Panel Chair


Boehms, Richard H. *by JLE w/perm*

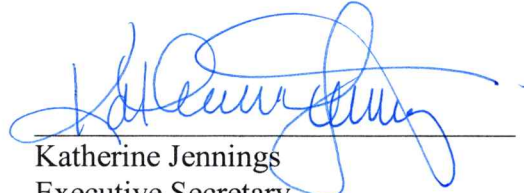

Grimmett, David R. *by JLE w/perm*

NOTICE

THIS JUDGMENT MAY BE APPEALED PURSUANT TO TENN. SUP. CT. R. 9, § 33 BY FILING A PETITION FOR REVIEW IN THE CIRCUIT OR CHANCERY COURT WITHIN SIXTY (60) DAYS OF THE ENTRY OF THE HEARING PANEL'S JUDGMENT.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Randy Wayne Hardison via email at randy@fteconnect.com, and hand-delivered to Russell Willis, Disciplinary Counsel, on this the 26th day of January 2024.


Katherine Jennings
Executive Secretary

NOTICE

This judgment may be appealed by filing a Petition for Review in the appropriate Circuit or Chancery Court in accordance with Tenn. Sup. Ct. R. 9, § 33.