

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

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BOARD OF PROFESSIONAL
RESPONSIBILITY
fw EXEC. VP

IN RE: MICHAEL D. KELLUM DOCKET NO. R-199-1-AJ
Attorney Licensed
to Practice Law in Tennessee
(Washington County, BPR No. 14920)

REPORT AND RECOMMENDATION OF THE HEARING PANEL

This matter came on for hearing before a duly appointed Hearing Panel on December 5, 2013, upon a Petition for Reinstatement filed on June 6, 2013, by the Petitioner, Michael D. Kellum, and upon an Answer to Petition for Reinstatement filed by the Board of Professional Responsibility ("Board"). Present were Stephen Douglas Drinnon, Panel Chair; Frank Andrew Johnstone, Panel Member; Fred Braxton Terry, Panel Member; Michael D. Kellum, Petitioner; Robert J. Jessee, Counsel for the Petitioner, and Alan D. Johnson, Disciplinary Counsel. The Panel makes these findings and conclusions.

FINDINGS OF FACT

Disciplinary History

On May 18, 2006, a Petition for Discipline was filed against Mr. Kellum consisting of nine (9) complaints. The majority of the complaints alleged that Mr. Kellum was retained to handle various cases and failed to follow through with representation. He failed to adequately communicate with his clients and did not properly deposit retainers and court costs into his trust account. On March 23, 2012, a Supplemental Petition for Discipline was filed against Mr.

Kellum consisting of two (2) complaints. In both complaints, Mr. Kellum was retained by clients and shortly thereafter he was temporarily suspended on May 1, 2006. He neglected the cases and did not communicate with his clients. He did not withdraw from representation after he was suspended and did not refund the fees paid to him.

Mr. Kellum failed to answer the Petition for Discipline and the Hearing Panel granted a Motion for Default Judgment. Mr. Kellum did not appear at the final hearing, and the Hearing Panel entered an order disbaring him from the practice of law. Mr. Kellum, through counsel, filed a Motion to Reconsider which was granted on the basis of Mr. Kellum's exigent circumstances. Mr. Kellum was then placed on Disability Inactive Status by Order entered January 4, 2008. He was removed from Disability Inactive Status on December 19, 2011.

On April 10, 2012, Mr. Kellum entered a Conditional Guilty Plea in which he admitted violations of Rules of Professional Conduct 1.3 (diligence), 1.4 (communication) and 1.16 (declining and terminating representation). On May 25, 2012, the Supreme Court entered an Order of Enforcement suspending Mr. Kellum from the practice of law for thirty-three (33) months with credit for twenty-two (22) months served. He was also ordered to pay restitution.

Petition for Reinstatement

The parties filed a Joint Stipulation of Facts, and introduced exhibits consisting of Mr. Kellum's disciplinary history, proof of restitution, proof of compliance with Continuing Legal Education, letters of support from General Sessions Judge James A. Nidiffer, Circuit Court Judge Thomas J. Seeley, and letters from Dr. Susan Traub attesting to Mr. Kellum's fitness. Mr. Kellum testified at the hearing, and presented the testimony of three witnesses, Jim Heaton, Tom Palmer and Chris Leach.

Mr. Kellum testified that he has been gainfully employed during the past three (3) years and two (2) months, and was promoted to a management position eight (8) months after he began work. His supervisor, Chris Leach, corroborated Mr. Kellum's testimony. He further testified that Mr. Kellum demonstrates leadership skills, has a strong work ethic and that he is a top performer.

Mr. Kellum testified that the medical condition which contributed to his suspension from the practice of law is now under control. Letters from his physician, Dr. Susan Traub, confirm that Mr. Kellum is psychologically prepared to begin the practice of law.

Jim Heaton and Tom Palmer testified in support of Mr. Kellum. Both witnesses vouched for Mr. Kellum's character and stated that they would not hesitate to retain him as their lawyer.

Mr. Kellum testified that he has kept up with the development of statutes and case law, primarily in the areas of law that he intends to pursue, criminal defense and domestic relations. Once he is reinstated, he intends to continue his current employment and limit his practice until such time as he can develop a suitable case load that will sustain him financially. Tom Palmer testified that he has an office available for Mr. Kellum to use, and that he will not charge Mr. Kellum rent until such time as Mr. Kellum is able to develop a financially viable practice.

Mr. Kellum testified that he has been active in his church and Jim Heaton supported his testimony. Mr. Heaton described Mr. Kellum as hard working church volunteer who participates in various church activities, as well as acting as a substitute teacher for Mr. Heaton's Sunday School class.

CONCLUSIONS OF LAW

Upon testimony of Petitioner, argument of counsel, evidence presented, and upon the entire record in this cause, the Hearing Panel finds that Mr. Kellum has met his burden of

proving, by clear and convincing evidence, that he “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.”


IT IS THEREFORE ORDERED AS FOLLOWS:

1. The Hearing Panel recommends that the Petitioner’s Petition for Reinstatement filed pursuant to Tenn. Sup. Ct. R. 9, § 19, be granted.
2. The Hearing Panel hereby adopts and incorporates into this Report and Recommendation, the Panel Ruling that was transcribed on December 5, 2013, and attached herewith.


FOR THE PANEL:



Steven Douglas Drinnon, Hearing Panel Chair

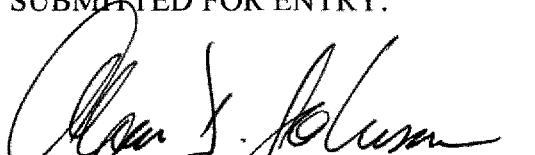


Frank Andrew Johnstone, Panel Member



Fred Braxton Ferry, Panel Member

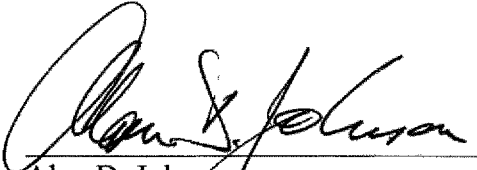
SUBMITTED FOR ENTRY:



Alan D. Johnson, BPR No. 10505
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Certificate of Service

I certify that a copy of the foregoing has been sent to Respondent, Michael D. Kellum, through his attorney, Robert J. Jesse, Esq., by First Class U.S. Mail to Jesse & Jesse, 412 East Unika Avenue, P. O. Box 997, Johnson City, Tennessee 37065-0097, this the 2nd day of January, 2012.



Alan D. Johnson

FINDINGS OF FACT

December 5, 2013

IN DISCIPLINARY DISTRICT 1
OF THE
BOARD OF PROFESSIONAL RESONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

In Re:)
)
MICHAEL D. KELLUM)
)
Attorney Licensed to)
Practice Law in Tennessee)
(Washington County, Tennessee) R-199-I-AJ

APPEARANCES:

FOR THE PETITIONER:

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BOARD OF PROFESSIONAL
RESPONSIBILITY

FOR BOARD OF
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APPEARANCES (Continued)

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2 THE COURT: Regarding the matter of
3 Michael Kellum's petition for
4 reinstatement of his law license, the
5 Petitioner, Mr. Kellum, had the burden of
6 proving, by clear and convincing evidence
7 that he has the moral qualifications,
8 competency in learning in law required for
9 admission to practice law in the state of
10 Tennessee and that the resumption of the
11 practice of law within the state will not
12 be detrimental to the integrity and
13 standing of the bar or the administration
14 of justice or subversive to the public
15 interest. And that is Rule 9, Section
16 19.3, and that was Mr. Kellum's burden.

17 The panel finds that petitioner has
18 met his burden and by clear and convincing
19 evidence he has proven, with regard to the
20 moral qualifications requirement, he was
21 required to, pursuant to Section 601 Rule
22 7 of the Supreme Court to produce proof of
23 specific facts and circumstances which
24 have arisen since, I guess, his suspension
25 that demonstrate his rehabilitation. And

1 the panel finds that petitioner has proven
2 such by clear and convincing evidence. He
3 has not only shown remorse; he has made
4 restitution to all of his clients. He has
5 restored aspects of his life that were the
6 triggers to the initial suspension.

7 He has not only actually maintained
8 employment in support of his family but
9 has actually advanced in that employment
10 and is one of, pursuant to the testimony
11 that was provided, one of the best
12 employees that that employer has. And
13 from a lawyer's perspective, you know, it
14 was a humbling situation that he was
15 placed in, and he not only dealt with that
16 situation but excelled in it.

17 And so the panel finds that by clear
18 and convincing evidence he has established
19 he has the moral qualifications to return
20 to the practice of law.

21 Regarding petitioner's competency,
22 the panel also finds that he has
23 established by clear and convincing
24 evidence that he has the competency and
25 learning in law required for the admission

1 to practice law. Again, he has maintained
2 all of his continuing legal education
3 requirements. The testimony and the
4 information and documentation provided
5 establishes that petitioner has 83 hours
6 of continuing legal education. He has
7 also testified and there was no
8 contradictory proof that he has, even over
9 and above that, established he's
10 familiarized himself with the areas of law
11 that he would like to practice. There has
12 been testimony, I think, from all three
13 witnesses other than Mr. Kellum that they
14 wouldn't have any qualms whatsoever about
15 hiring him to represent them in matters as
16 well.

17 So again, the hearing panel finds
18 that petitioner proved by clear and
19 convincing evidence that he has the
20 competency and learning in law required
21 for admission to practice law in this
22 state.

23 With regard to the third requirement,
24 the question becomes -- or the third
25 requirement is by clear and convincing

1 evidence he had the burden of proving that
2 the resumption of his practice within the
3 state will not be detrimental to the
4 integrity and standing of the bar in the
5 administration of justice or subversive to
6 the public interest. With respect to that
7 requirement, the panel also finds that
8 petitioner has proven, by clear and
9 convincing evidence, that his
10 reinstatement to practice will not be
11 detrimental to the integrity and standing
12 of the bar and the administration of
13 justice or subversive to the public
14 interest.

15 The petitioner has submitted
16 significant proof, written as well as
17 testimony, that he is a, not only a hard
18 worker, but he is a professional. He is
19 honest, he is trustworthy, and he is an
20 exceptionally hard worker to advance in
21 the period of time he advanced in as well
22 as the fact that he has been very active
23 in his church, teaching and even
24 volunteering for a ministry at his church
25 regarding the homeless folks that come in.

1 So it is the finding that petitioner has
2 met his burden with respect to
3 reinstatement of his law license and it is
4 the recommendation of the panel that his
5 law license be reinstated.

6 That being said, I don't know -- I
7 would request, the panel requests that
8 somebody draft proposed findings to be
9 submitted.

10 MR. JOHNSON: I didn't hear that
11 last --

12 THE COURT: The panel, I would
13 request somebody draft proposed findings
14 for us.

15 MR. JOHNSON: I was going to
16 suggest perhaps that we do similar to the
17 prior hearing panel and transcribe the
18 ruling that you dictated along with an
19 order adopting that as your Findings of
20 Fact.

21 THE COURT: That's good. Thank
22 you. Mr. Kellum, good luck.

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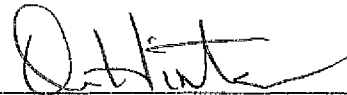
STATE OF TENNESSEE:

COUNTY OF KNOX:

I, Deborah M. Hinton, Licensed Court Reporter, TCR #313, do hereby certify that I reported in machine shorthand the above testimony, and that the foregoing pages were personally transcribed and constitute a true and accurate record of the proceedings.

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

This 16th day of December, 2013.


Deborah M. Hinton, TCR #313
Licensed Court Reporter