

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: BRIAN KIRK KELSEY, BPR #022874

FILED

08/20/2025

Clerk of the
Appellate Courts

No. M2025-00701-SC-BAR-BP

ORDER

On November 22, 2022, Brian Kirk Kelsey pleaded guilty in *United States of America v. Brian Kelsey*, Case No. 3:21-cr-00264, (M.D. Tenn.) to one (1) count of Conspiracy to Defraud the United States, in violation of Title 18 U.S.C. §371, and one (1) count of Aiding and Abetting the Acceptance of Excessive Contributions, in violation of Title 52 U.S.C. §§30116(a)(1)(A), 30116(a)(7)(B)(i), 30116(f) and 30109(d)(1)(A)(i) and 18 U.S.C §2.

The Board of Professional Responsibility (“Board”) filed a Notice of Submission Pursuant to Tenn. Sup. Ct. R. 9, § 22.3, which provides, in relevant part:

- (a) Upon the filing with the Court of the Notice of Submission with attached adequate proof and copies demonstrating that an attorney who is a defendant in a criminal case involving a serious crime, as defined in Section 2, has entered a plea of nolo contendere or a plea of guilty . . . the Court shall enter an order immediately suspending the attorney. Such suspension shall take place regardless of the pendency of a motion for new trial or other action in the trial court and regardless of the pendency of an appeal. Such suspension shall remain in effect pending final disposition of a disciplinary proceeding to be commenced upon such finding of guilt.
- (b) An attorney suspended under the provisions of Subsection (a) will be reinstated immediately upon the filing of an affidavit or declaration under penalty of perjury with supporting documentation demonstrating that the underlying conviction of a serious crime has been reversed, but reinstatement will not terminate any formal proceeding then pending against the attorney, the disposition of which shall be determined by the hearing panel and the Board on the basis of the available evidence.

This Court entered an Order on December 8, 2022, (M2022-01698-SC-BAR-BP), pursuant to Tenn. Sup. Ct. R. 9, § 22.3(a) suspending Mr. Kelsey.

On March 11, 2025, Mr. Kelsey received a full and unconditional pardon from the President of the United States for “those offenses against the United States individually

enumerated and set before me for my consideration” in *United States v. Kelsey et. al.*, 3:21-cr-00264.

Thereafter, Mr. Kelsey filed a declaration in this Court, asking for immediate reinstatement pursuant to Tenn. Sup. Ct. R. 9, § 22.3(b), and arguing, based on the pardon, that his conviction has been reversed. *See* Tenn. Sup. Ct. R. 9, § 22.3(b) (“An attorney suspended under the provisions of Subsection (a) will be reinstated immediately upon the filing of an affidavit or declaration under penalty of perjury with supporting documentation demonstrating that the underlying conviction of a serious crime has been reversed, but reinstatement will not terminate any formal proceeding then pending against the attorney, the disposition of which shall be determined by the hearing panel and the Board on the basis of the available evidence.”)

The Board moved for permission to file a response to Mr. Kelsey’s declaration, and the Court granted the Board’s motion and also authorized Mr. Kelsey to file a reply to the Board’s response.

In its response, the Board argues generally that Mr. Kelsey has not demonstrated that his acceptance of the pardon in the particular facts and circumstances of this matter constitutes a reversal of his criminal conviction as required by Tenn. Sup. Ct. R. 9, section 22.3(b), and that the Court of Criminal Appeals has held that a pardon is not equivalent to an appellate reversal of a conviction. *See State v. Blanchard*, 100 S.W.3d 226, 228-231 (Tenn. Crim. App. 2002).

In his reply, Mr. Kelsey argues that the pardon entitles him to immediate reinstatement because Tenn. Sup. Ct. R. 9, section 22.3(b) does not require reversal by a court, that “reverse in Section 22.3(b) means simply “to undo or negate the effect of,” and that the pardon thus amounts to a reversal of his conviction because it has undone and negated the effect of it. He also asserts that the Commentary to Rule 19 of the ABA Model Rules of Lawyer Disciplinary Enforcement, on which Tenn. Sup. Ct. R. 9, section 22.3 is based, contemplates that a pardon is a ground for reinstatement from a suspension imposed upon conviction.

Upon due consideration of the record in this matter, including the papers filed by the parties, the Court concludes that Mr. Kelsey should be immediately reinstated from his December 8, 2022 Tenn. Sup. Ct. R. 9, section 22.3(a) suspension. Mr. Kelsey’s “reinstatement will not terminate any formal proceeding . . . pending against [him], the disposition of which shall be determined by the hearing panel and the Board on the basis of the available evidence.” Tenn. Sup. Ct. R. 9, section 22.3(b).

It is so ORDERED.

PER CURIAM