

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

2015 OCT 23 PM 2:44  
BOARD OF PROFESSIONAL  
RESPONSIBILITY  
*M. Mc Knight*  
EXEC. SEC.

**IN RE:            RICHARD J. MCAFEE,**  
**Petitioner**

**DOCKET NO. 2015-2445-3-AJ(30.4d)**

**DATE:            October 19, 2015**

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**ORDER GRANTING REINSTATEMENT**

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The Petitioner, Richard J. McAfee, filed a Petition for Reinstatement of his license to practice law in the state of Tennessee on April 22, 2015. The Board of Professional Responsibility (BPR) appointed a panel to hear this matter on May 27, 2015 composed of Stephen T. Greer (Chairman), Rosemarie L. Hill, and Lynne D. Swafford. The Panel entered a Scheduling Order and a Notice of Hearing setting this case for October 6, 2015 beginning at 11:00 a.m. in the Circuit Court of the Hamilton County Courthouse in Chattanooga, Tennessee. The Board's Pre-Trial Brief, Exhibit List and Witness List were filed on September 25, 2015, and the Petitioner's Hearing Brief, Exhibit List and Witness List were filed on September 28, 2015. The hearing was held, and this Order reflects the Panel's holding from that hearing. The Panel read and studied the Petition for Reinstatement, the Petitioner's Hearing Brief, including Exhibit and Witness list and the BPR's Pre-trial Brief including Exhibit and Witness list.

In the briefing, both sides agreed that the Petitioner had the burden of demonstrating, by clear and convincing evidence, that he has the moral qualifications and competency and learning in law required for admission to practice law in Tennessee, and that the resumption of his practice would not be detrimental to the integrity and standing of the bar or to the administration of justice, nor would it be subversive to the public interest. Tenn.Sup.Ct.R. 9, §30.4(d)(1). The Tennessee Supreme Court has defined "clear and convincing" as "while [the clear and convincing standard] is more exacting than the preponderance of the evidence standard, it does not require such certainty as 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 believe or conviction with regard to the truth of the allegations sought to be established." Shears v. Board of Professional Responsibility, 259 SW3d 631, 642(Tenn. 2008), citing O'Daniel v. Messier, 905 SW 2<sup>nd</sup> 182(10 Ct. App. 1995).

The BPR did not, through its briefing, or at the hearing, object to the reinstatement of Mr. McAfee's license, but pointed out the burden of proof and the standards for reinstatement.

At the hearing, the Petitioner presented a number of witnesses, many of whom have known him his entire legal career. All of them essentially stated that the actions that caused the voluntary loss of his law license were an aberration, that he conducted himself morally and ethically both before and after the events giving rise to the loss of his license, and that they trusted him implicitly and explicitly. The witness testimony in summary:

**Mr. McAfee** – Mr. McAfee provided his professional and personal history. He explained that in 2006, he began to improperly move money from his firm's accounts into his own personal accounts. He explained the financial situation that he was in at the time, which included children, alimony and support payments, the inability to sell a home as quickly as he had hoped, school tuitions, and other debts. Mr. McAfee stated he was the managing partner of his firm, Baker, Donelson, Bearman, Caldwell & Berkowitz PC (Baker, Donelson) when he misappropriated monies from firm accounts. He stated that when he was confronted in 2006 by his partners about the misappropriations, he explained that he had intended to pay the monies back through end of the year bonuses.

Everyone who testified, including Mr. McAfee, stated that McAfee accepted total responsibility for what he had done, explained the circumstances, but made no effort to justify it or make excuses for his actions. All witnesses, including Mr. McAfee, stated that his behavior was unacceptable, an aberration, and that he was extremely remorseful about the situation. Many witnesses, including Mr. McAfee, stated he told them he did not know how he could make his mistakes up to his partners, his family, and everyone else he had let down.

Mr. McAfee had left Baker Donelson for a short time to be the General Counsel at Life Care Centers, a large client of Baker Donelson. He returned to the firm and the errors in judgment and misappropriation of monies occurred in 2006. After the discovery, Mr. McAfee surrendered his position with the firm and signed a promissory note to repay the roughly \$297,000 in misappropriated funds. That note had been paid in full prior to this hearing.

He also voluntarily reported to the BPR and relinquished his license. Mr. McAfee has maintained all of his CLE credits throughout the years of the loss of his license. He was offered a job at Life Care in the real estate and development areas immediately after his resignation from the firm. Mr. McAfee and all of the other witnesses who had knowledge stated that Mr. McAfee never practiced law during the time he did not have his license, but rather carefully avoided doing same. He was, however, liaison with many of the attorneys hired by Life Care, particularly in the corporate transactions, leasehold and real estate areas.

All of the witnesses besides Mr. McAfee stated he was an excellent lawyer, a problem solver, that he never asked them to do anything that was unethical or even questionable, either before or after the loss of his license. They all stated that he had the moral qualifications to be reinstated to the practice of law in Tennessee, that he was competent and learned in the law, that he had the integrity and standing to return to the practice of law, and that his resumption of the practice of law would not be detrimental to the integrity or standing of the Bar or the administration of justice, nor would it be subversive to the public interest.

**Sam Elliott** – Mr. Elliott went to the University of Tennessee School of Law with Mr. McAfee in the early 1980s. He also had been hired by Mr. McAfee to represent Life Care in a large case that lasted more than two years and worked closely with him during that time. There was no cross examination of Mr. Elliott. Mr. Elliott believed that the event from 2006 was inexplicable and an aberration. He was unaware of any behavior by Mr. McAfee similar to this misappropriation, either before or after 2006.

**Russell W. (Rusty) Gray** – Mr. Gray has been at Baker Donelson since approximately 1995, and is currently the managing partner of that firm. He worked closely with Mr. McAfee and considered him a mentor from whom he learned many excellent qualities about practicing law. He stated in detail that Mr. McAfee accepted full responsibility for his 2006 acts, and never tried to explain them away. There was no cross examination of Mr. Gray.

**Joel W. Huffstetler** – By telephone – Mr. Huffstetler is Mr. McAfee’s minister and states that Mr. McAfee talked to him in 2006 when this happened. He expressed great remorse and did not know how to “make things right and regain the trust of everyone.” Mr. Huffstetler also discussed Mr. McAfee’s current church activities including all of those with his family. He was very supportive of Mr. McAfee’s reinstatement of his law license. There was no cross examination of Mr. Huffstetler.

**Ken C. Beckman** – Mr. Beckman has been at Baker Donelson since the late 1980s. He graduated law school in 1984. He primarily does corporate work, has known Mr. McAfee since 1993, and states that Mr. McAfee tried more of Mr. Beckman’s corporate cases than any other lawyer. He thought Mr. McAfee was one of the best lawyers with whom he had ever worked, and recalled that he was nothing but apologetic during the 2006 incident and never tried to explain it away. Mr. Beckman has done work for Life Care for 10-15 years and stated that Mr. McAfee was very careful, after he relinquished his law license, to not practice law. Mr. Beckman also attended some CLE seminars along with Mr. McAfee, and is aware that he kept his CLE up to date. Mr. Beckman agreed that everything that happened in 2006 was inexplicable and an aberration. He was unaware of any such behavior before or after.

**Robert Divine** – Mr. Divine was a lawyer for ten years with Miller and Martin in Chattanooga, and then moved to the Baker Donelson firm. Mr. Divine was appointed as Chief Counsel for the USCIS, part of the Department of Homeland Security, for a number of years and then returned to the private practice of law at Baker Donelson. He explained that although he was not present at the firm when the 2006 events happened, Mr. McAfee voluntarily told him about them. He believes Mr. McAfee is one of the smartest lawyers he knows, and everything leads him, Mr. Divine, to believe that the 2006 actions were completely out of character for Mr. McAfee.

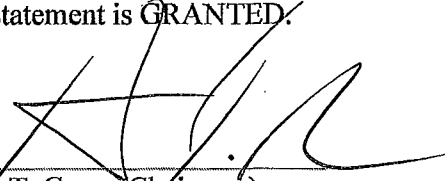
**Jeff Billings** – Mr. Billings is currently an in-house counsel at Blue Cross/Blue Shield. In 1987 he was with the firm of Caldwell, Heggie in Chattanooga, left that firm in 1996 for a private firm, and then in 2003 moved to Life Care, and returned to private practice in 2012. He was at Life Care in 2006, and had personal and professional relationships with Rick McAfee. He stated that Mr. McAfee called him after he was confronted by his partners to let him know what had happened. Mr. Billings stated this was not the Rick McAfee that he knew, he had no idea how this could have happened, but he knew Mr. McAfee was sincere in his apology and determined to try to “make things right.”

**Roger Dickson** – Mr. Dickson is a well-known and well-respected attorney who has practiced law in Chattanooga for 42 years. He also spent five years as the Federal Magistrate in Chattanooga. Mr. Dickson currently practices at Miller and Martin. He never practiced with Mr. McAfee but knows him well and has worked with him as a client through Life Care work. Mr. Dickson agreed, as did all the witnesses, that he could not explain how this could have happened, that it was a complete surprise to him, and that it was not a part of “who Rick McAfee is.” Mr. Dickson expressed no qualms about Mr. McAfee being reinstated to the practice of law in Tennessee.

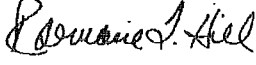
**In summary**, this panel finds, based on the law, the proof including the briefing and all of the testimony at the hearing, that there was clear and convincing evidence that Mr. McAfee’s Petition to be Reinstated to the Practice of Law in Tennessee should be granted. In addition, there was clear and convincing evidence that Mr. McAfee met his burden of demonstrating that he has the moral qualifications for reinstatement to the practice of law, that he has the competency and learning in the law, and that his resumption of practice would not be detrimental to the integrity and standing of the Bar, the administration of justice, or subversive to the public interest.

It is hereby ORDERED the Mr. McAfee's Petition for Reinstatement is GRANTED.


10/20/15  
Date

  
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Stephen T. Greer (Chairman)

10/19/15  
Date

  
\_\_\_\_\_  
Rosemarie L. Hill

10/20/15  
Date

  
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Lynne D. Swafford