

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

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BOARD OF PROFESSIONAL
RESPONSIBILITY

RW
EXGO. SECY

IN RE: Joseph Brent Nolan
BPR #15237, Respondent,
An Attorney Licensed to
Practice Law in Tennessee
(Knox County)

Docket No. 2017-2733-2-WM-30.4D

OPINION

This cause came on for hearing before Oliver D. Adams, Panel Chair; David A. Draper, Panel Member; and Clinton J. Woodfin, Panel Member (the "Panel") for a hearing on Joseph Brent Nolan's ("Petitioner") Petition for Reinstatement ("Petition") on September 19, 2017, at 10:00 a.m. in Chancery Court Room, Part I, Knoxville, Tennessee. Counsel for Petitioner was Gregory Brown. William C. Moody represented the Board of Professional Responsibility (the "Board").

At the opening of the hearing, Petitioner and Board stipulated that Petitioner had satisfied all conditions for reinstatement set forth in the Order Imposing Discipline, including the payment of costs incurred by the Board in the prosecution of the disciplinary proceedings and any court costs assessed against Petitioner in any appeal from such proceedings.

In Petitioner's proof, Petitioner testified on his own behalf, in addition to calling witnesses Steve Ogle, Dan Gass, Wayne Wyckoff, Blan Benton, Chris Hayes, and Kreis Selvidge. The Board presented no witnesses and introduced no proof. At the close of Petitioner's proof, the Board conceded that the Petitioner had carried his burden of proof in demonstrating the factors that will be discussed below.

PROCEDURAL HISTORY

Petitioner was suspended for one (1) year from the practice of law by Order of the Supreme Court entered on November 26, 2014, Docket No. M2014-02282-SC-BAR-BP.

Petitioner was suspended for six (6) months from the practice of law by Order of the Supreme Court entered on June 26, 2015, Docket No. 2015-01149-SC-BAR-BP.

Petitioner was suspended for one (1) year from the practice of law by Order of the Supreme Court entered June 17, 2016, Docket No. M2016-01211-SC-BAR-BP.

HEARING

The time period of the suspensions referenced above have passed. Petitioner has paid all outstanding costs owed to the Court. Petitioner is in compliance with all CLE obligations. Petitioner is in compliance with all registrations fees and IOLTA statements. Petitioner is in compliance with all professional privilege tax obligations.

The Petition is ripe for hearing. Petitioner's standard of proof is clear and convincing evidence and for the reasons set forth herein, the Panel finds by clear and convincing evidence that the discipline imposed on Petitioner has served the purpose of such discipline; that Petitioner has the moral qualifications, competency, and learning in law required for the admission to practice in Tennessee and that Petitioner's resumption of the practice of law in Tennessee will not be detrimental to the integrity and standing of the bar or the administration of justice or be subversive to the public interest. Accordingly, Petitioner is fit to resume the practice of law and is and shall be reinstated to the practice of law, subject to the conditions set forth herein.

Pursuant to Tennessee Supreme Court Rule 9, Section 34.4(d)(1), Petitioner had the burden of providing by clear and convincing evidence that Petitioner had the moral qualifications, competency, and learning in law required for the admission to practice law in the State of Tennessee, that his resumption of the practice of law within the State of Tennessee would not be detrimental to the integrity and standing of the bar or the administration of justice or be subversive to the public interest, and that Petitioner had satisfied all conditions set forth in the order imposing discipline.

Petitioner, testifying on his own behalf, stated that he made restitution required by the orders of the Supreme Court by way of a loan he was able to secure, by performing non-legal work, and by entering into a promissory note to satisfy one outstanding obligation, which promissory note is in good standing. Petitioner also testified that he made restitution to other clients whose funds had been misused without regard to whether said clients had made a BPR Complaint. Petitioner relied on friends and family during his time of suspension, including an accountant, Russ Miller. Petitioner worked for Russ Miller performing bookkeeping functions and related tasks associated with Mr. Miller's CPA practice. Mr. Miller proved to be a source of inspiration for Petitioner and, obviously, played a positive role in Petitioner's efforts to rehabilitate his life and the hope of resuming the practice of law. Petitioner testified to his own remorse for his actions and through the testimony developed through the other witnesses, did not try to hide from or in any way deflect responsibility for the actions that led to his suspension from the practice of law. Petitioner testified that his suspension from the practice of law placed a hardship on his family and marriage, but that during his time of suspension he worked hard to be a good father and husband and to make up for the lack of financial contribution to the family through other means.

Attorney Dan Gass testified on behalf of Petitioner; specifically with respect to the obligation Petitioner owed to Mr. Gass' client Blue Cross Blue Shield. That obligation was satisfied pursuant to a promissory note that Petitioner executed as maker for the benefit of Blue Cross Blue Shield. Mr. Gass testified that Petitioner has honored the terms of the promissory note. Mr. Gass testified that his experience with Petitioner as an attorney was good and that Petitioner was an above board attorney who had a good reputation in the community and knew nothing negative about Petitioner, other than the events that were the subject of the suspension. Specifically, Mr. Gass testified that Petitioner was the type of attorney with whom you did not have to document informal agreements in the nature of extensions on discovery or similar matters. Mr. Gass testified that Petitioner was forthcoming with him about the mistakes that he made and his remorse for the same. Mr. Gass believed that the acts and omissions that led to Petitioner's suspension are not consistent with the person that he knew Petitioner to be. Lastly, Mr. Gass testified that he would recommend Petitioner to be reinstated as an attorney and had no reservations regarding Petitioner's reinstatement.

Steve Ogle, an attorney and Clerk & Master for the Blount County Chancery Court, also testified on Petitioner's behalf. Mr. Ogle has known Petitioner since they were in law school and they have been friends since that time. Mr. Ogle has hired Petitioner to represent him on more than one occasion and was complimentary of the job that Petitioner did with respect to that representation. Mr. Ogle testified that Petitioner was open about the mistakes that he made resulting in his suspension and that he felt Petitioner had showed remorse for the same. Based on Mr. Ogle's personal relationship and professional relationship with the Petitioner, which spans twenty-five (25) years, Mr. Ogle is confident that Petitioner has the moral qualifications, competency, and learning in law to practice and his reinstatement would not be detrimental to the integrity and standing of the bar or the administration of justice or subversive to the public interest. Mr. Ogle also stated unequivocally that he would hire Petitioner again were he to be reinstated to represent him.

Attorney Chris Hayes also testified on behalf of Petitioner. He has known Petitioner professionally and personally for over twenty-five (25) years. Mr. Hayes testified that he would occasionally call Petitioner with legal questions and found that Petitioner was knowledgeable in the law, well researched, and above average in his learning of the law. Mr. Hayes complimented Petitioner on his ability to recognize when he did not know something. Mr. Hayes testified that Petitioner was open and honest about the events that led to his suspension and did not try to shirk responsibility for the same. Mr. Hayes testified that Petitioner was a good example for his children and his family. Mr. Hayes testified that he had no reservations about Petitioner being reinstated to the practice of law or about his honesty and integrity and that he is confident that Petitioner has the moral qualifications, competency, and learning in law for the admission to practice. Finally, Mr. Hayes testified that Petitioner's reinstatement would not be detrimental to the integrity and standing of the bar or the administration of justice or be subversive to the public interest.

Attorney Wayne Wykoff testified on behalf of Petitioner. Mr. Wykoff has known Petitioner since they were in law school. Mr. Wykoff was complimentary about Petitioner's study habits, knowledge in law school, and his work ethic with which he was familiar based on practicing next to Petitioner for approximately seven (7) years. Mr. Wykoff testified that

Petitioner was honest, hardworking, and knowledgeable. Mr. Wykoff testified that Petitioner never shirked responsibility for his suspension. Mr. Wykoff testified that the events that led to Petitioner's discipline are not typical of Petitioner. Mr. Wykoff testified that he would hire Petitioner if he had a personal injury case and has no reservations about Petitioner being reinstated.

The Panel places weight on the testimony of the foregoing witnesses who are all practicing lawyers in Tennessee. The practice of law is largely self-governing and the opinion of local lawyers who know Petitioner professionally and personally must be accorded heavy weight.

Petitioner also had two (2) lay witnesses testify on his behalf. Blain Benton has known Petitioner for five (5) to six (6) years through their joint membership at Beaver Brook Country Club. Mr. Benton appointed Petitioner to the club's finance committee several years ago and is very proud of the work that Petitioner has done for the club. Mr. Benton testified that Petitioner is devoted to his children and has always been very involved in the community and has supported local high school sports teams through activities such as fundraisers. Mr. Benton stated that Petitioner was highly respected in his community and would recommend him to be his attorney or someone else's attorney without hesitation. Mr. Benton testified that despite his knowledge of the events that led to Petitioner's suspension, he is confident that Petitioner has the moral qualifications, competency, and learning in law for the admission to practice and that Petitioner's reinstatement would not be detrimental to the integrity and standing of the bar or the administration of justice or be subversive to the public interest.

Kreis Selvidge also testified on behalf of Petitioner, Mr. Selvidge was Petitioner's next door neighbor for approximately fifteen (15) years. During that time, Mr. Selvidge and Petitioner had become good friends. Mr. Selvidge hired Petitioner to perform some legal work for him in the past and said that he did a good job. After Petitioner was suspended, Mr. Selvidge asked Petitioner if he could help with a legal matter and Petitioner stated that he could not. Mr. Selvidge testified that Petitioner had always expressed remorse for the actions that led to his suspension and never tried to shirk responsibility for the same. Mr. Selvidge testified that Petitioner worked hard to make restitution. Mr. Selvidge testified that he has always known Petitioner to be honest and has no reservations about Petitioner being reinstated to being an attorney.

Based on the proof introduced at trial, the Panel makes the following findings of fact. The Panel finds by clear and convincing evidence that Petitioner is remorseful and has accepted full responsibility for the actions and events that resulted in his discipline. The Panel finds by clear and convincing evidence that the discipline imposed upon Petitioner has served the purpose of such discipline. The Panel finds by clear and convincing evidence that Petitioner has the moral qualifications, competency, and learning in law required for admission to practice law in the State of Tennessee. The Panel finds by clear and convincing evidence that Petitioner's resumption of the practice of law in Tennessee will not be detrimental to the integrity and standing of the bar or the administration of justice or be subversive to the public interest.

Based on the findings of fact, the Panel concludes as a matter of law that Petitioner is fit to resume the practice of law, provided that terms of reinstatement set forth below are strictly observed.

ORDER

Based on the Findings of Fact and Conclusions of Law set forth above,

It is hereby ORDERED, ADJUDGED and DECREED as follows:

Petitioner is reinstated to the practice of law as an attorney in good standing in the State of Tennessee, subject to the following conditions:


1. Petitioner, at his cost, shall engage the services of a practice monitor who shall be selected and approved in accordance with Tennessee Supreme Court Rule 9, Section 12.9(c). The practice monitor shall meet with Petitioner monthly and assess Petitioner's compliance with trust account rules and accounting procedures and provide a monthly written report of Petitioner's progress to Disciplinary Counsel for the Board. The practice monitor shall monitor Petitioner for eighteen (18) months.

2. Prior to the end of 2017, Petitioner shall attend (or provide evidence to the Board of attendance) the Tennessee Law Institute annual review seminar and provide proof of attendance to Disciplinary Counsel for the Board, or attend a similar year end annual review seminar similar to the TLI and provide evidence of attendance to the Board of the same.

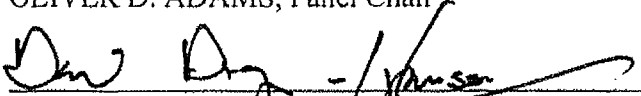
3. Petitioner shall take four (4) hours of CLE that is specifically related to law firm trust accounting principles and/or small firm or solo practitioners, with an emphasis on proper trust accounting.

4. The Panel notes that at the end of the hearing, the Board requested that Petitioner contact the Tennessee Lawyers Assistance Program for an evaluation and, if recommended, enter into a monitoring assessment and comply with its terms. Additionally in Petitioner's and the Board's proposed finding of fact and conclusions of law, both agree on the TLAP requirement. While the Panel is especially appreciative of TLAP's services to the legal community, there was no proof introduced at the hearing of any substance abuse or other impairment circumstances that would cause the Panel to order Petitioner's consultation with TLAP. Without the introduction of any such proof, the panel cannot conclude such referral is proper condition for Petitioner's reinstatement.

SO ORDERED this 6 day of November, 2017.



OLIVER D. ADAMS, Panel Chair



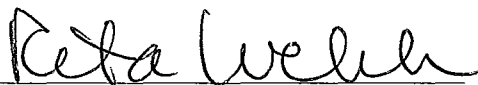
DAVID A. DRAPER, Panel Member



CLINTON J. WOODFIN, Panel Member

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Petitioner, Joseph Brent Nolan, 347 Hickory Stone Lane, Powell, TN 37849-3093, and to his counsel, Gregory Brown, 900 South Gay Street, Suite 195, Knoxville, TN 37902, by U.S. First Class Mail, and hand-delivered to William C. Moody, Disciplinary Counsel, on this the 6th day of November, 2017.



Rita Webb
Executive Secretary

NOTICE

This judgment may be appealed pursuant to Tenn. Sup. Ct. R. 9, § 33 (2014) by filing a Petition for Review in the Circuit or Chancery court within sixty (60) days of the date of entry of the hearing panel's judgment.