

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

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BOARD OF PROFESSIONAL
RESPONSIBILITY
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**IN RE: ALISA LASHELLE SIMMONS (TATE),
BPR # 022580, An Attorney Licensed
to Practice Law in Tennessee
(Shelby County)**

NO. 2016-2599-9-AJ-30.4d

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came to be heard on July 11, 2017, before Timothy Paul Kellum, Hearing Panel Chair, Karen Martin Campbell, Hearing Panel Member, and Thomas Patrick Cassidy, Hearing Panel Member. The Petitioner, Alisa Lashelle Simmons was present and represented by David A. Gold. Alan D. Johnson represented the Board of Professional Responsibility.

Ms. Simmons testified on her on behalf and called the following witnesses: Pastor Dianne Marshall Young of The Healing Center Full Gospel Baptist Church, Mr. Ashley Danley, a friend and former client of the Petitioner, Stuart B. Breakstone, Esq., an attorney in Shelby County, and Robert D. Flynn, Esq., an attorney in Shelby County. In addition, Ms. Simmons introduced five (5) exhibits.

FINDINGS OF FACT

Ms. Simmons received her license to practice law in 2003. Before graduating from law school, Ms. Simmons worked as a secretary for William E. Norcross, a Shelby County lawyer. After she passed the bar, Ms. Simmons went to work for Mr. Norcross as an associate. While employed by Mr. Norcross, Ms. Simmons devoted a substantial amount of time to her work,

typically working as much as ten (10) hours a day and sometimes seven (7) days a week. In 2008, Ms. Simmons left Mr. Norcross and began working as a solo practitioner with a focus on business and family law.

On October 21, 2010, Ms. Simmons was temporarily suspended from the practice of law pursuant to Rule 9, Section 4.3, for failing to respond a complaint filed against her with the Board. On November 7, 2011, Ms. Simmons was suspended from the practice of law for one (1) year, pursuant to Rule 9, Section 4.2, based upon her conditional guilty plea to a petition for discipline that alleged she abandoned one client and failed to return an unearned fee. The suspension was retroactive to her temporary suspension entered on October 21, 2010.

The Order of Enforcement required Ms. Simmons to maintain compliance with her Tennessee Lawyers Assistance Program (TLAP) monitoring agreement, provide restitution to her former client, Markenia Sims, in the amount of \$1,376.50 and pay Board costs of \$718.34. Ms. Simmons was also required to comply in all respects with Supreme Court Rule 9, Section 18, regarding the obligations and responsibilities of suspended attorneys.

On May 22, 2016, Ms. Simmons filed her Petition for Reinstatement to the practice of law. At the hearing of the Petition, Ms. Simmons testified that she had completed sufficient Continuing Legal Education (CLE) hours to satisfy her CLE requirements through calendar year 2016; paid all of her outstanding court and Board of Professional Responsibility costs; and was current with her registration fees and privilege tax obligations. Ms. Simmons also introduced an exhibit demonstrating that she had paid restitution to her former client on April 4, 2012.

Ms. Simmons testified that events in her personal life that led to her suspension caused her to fall into a deep depression; however, she did not offer that as an excuse. Ms. Simmons testified that over a short period of time, she lost many close family members and their deaths led to her period of depression. She had been the primary care giver to some of these family members and their deaths took an emotional toll on her. She testified that at that time she did not have a support system and was unable to cope with her grief and depression.

Ms. Simmons testified that she successfully completed the three (3) year Monitoring Agreement with TLAP that expired in 2014. During the three years she was involved with TLAP, Ms. Simmons was subject to random drug screens and received counseling that assisted in her recovery. The Board and Ms. Simmons stipulated that Ms. Simmons successfully completed her TLAP contract.

Ms. Simmons testified she also received counseling in addition to her work with TLAP, and the help she has received contributed significantly to her recovery. She testified that she is no longer suffering from the debilitating effects of depression, and now has an extended support group to call on if she finds herself falling into depression, or suffering any other set-backs. She testified under cross examination that should she feel herself overwhelmed and stressed by her practice, she would immediately call on those around her who can support her.

Ms. Simmons testified regarding her legal training, experience and education, and expressed her opinion that she was competent in the current state of law. Ms. Simmons further testified that she intended to practice law in Madison County while being monitored and mentored by one of three attorneys in the Madison County area whose names would be submitted to the Board of Professional Responsibility for approval if reinstated. Ms. Simmons

testified that during her suspension, she had regained control of her life, got married in 2012, and is raising step-children in a family where the biological mother of the children is not present. Ms. Simmons testified that she performs community service work with her church. Ms. Simmons testified that she has worked very hard on improving herself so that she could assist others.

Ms. Simmons expressed sincere remorse for her actions and was upset with herself for letting down her client. She testified that she knows she mishandled the situation, but was simply unable to function appropriately at the time due to her breakdown.

Pastor Dianne Marshall Young of The Healing Center Full Gospel Baptist Church in Memphis testified that she has known Ms. Simmons from about 2011. Ms. Simmons became active in the two sides of the church, the spiritual side and the counseling side. She was a participant in both. Pastor Young testified that between 2011 and 2017, she and her husband had communicated and had direct contact with Ms. Simmons around 100 times. Pastor Young's husband is a qualified mental health counselor, and had weekly counseling sessions with Ms. Simmons for approximately two (2) years.

Ms. Simmons also discussed with Pastor Young her suspension and her issues with depression. When asked on cross-examination whether she was aware that Ms. Simmons had abandoned a client, she testified that she was not. However, she added that it does change her opinion of Ms. Simmons based on her personal knowledge of Ms. Simmons' mental health condition when she first met her, which she described as in a "very dark place."

Pastor Young testified it is her opinion that the depression that had negatively affected Ms. Simmons is gone now, and Ms. Simmons is in a "better place" now than she was at the time of her suspension. While Pastor Young could not opine on Ms. Simmons' fitness to practice law,

she firmly believed and testified that Ms. Simmons was and is an “honest person” and expressed great remorse for her actions. Pastor Young testified that she believed Ms. Simmons has good moral character and provided specific instances that led her to believe that. Having been very involved in the life of Ms. Simmons for the past seven (7) years, Pastor Young testified that if Ms. Simmons were reinstated to the practice of law, she would have no hesitation in referring her friends, family and clients to Ms. Simmons for legal services. She did not believe that Ms. Simmons’ resumption to the practice of law would be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest.

Mr. Ashley Danley, a friend and former client of Ms. Simmons, testified their friendship began about ten (10) years ago when they met on a social media site. Mr. Danley testified regarding Ms. Simmons’ fitness to practice law, moral character and regarding his opinion about her resumption to the practice of law. They have remained friends the entire ten (10) years having both suffered health issues, although at times the contact was more frequent than others. Prior to her suspension, Ms. Simmons represented Mr. Danley in two (2) matters in juvenile court in Shelby County. He was pleased with the quality of her representation both times even though the outcome was not as favorable as he had hoped. He testified that he believes Ms. Simmons is a very honest person with the moral qualifications to practice law.

In a specific instance of honest conduct, Mr. Danley testified that during the second case, Ms. Simmons corrected a clerical mistake in the calculation of child support he was required to pay that would have been to his benefit. He testified that Ms. Simmons brought the error to the attention of the court and opposing counsel “because it was the right thing to do.”

Mr. Danley had serious health issues, including kidney transplant surgery. Ms. Simmons, while suspended from the practice of law, was there for him and served as a friend, supporter and confidant during his illness. Likewise, Mr. Danley testified that he was available to Ms. Simmons during her depression as someone she could lean on.

Mr. Danley testified that during the period that Ms. Simmons was suffering from depression, he had little contact with her. Since that time, they have had much more contact and they remain in contact with each other now. If reinstated to the practice of law, Mr. Danley would use Ms. Simmons as his attorney and recommend her to his friends and family in need of legal services. Mr. Danley testified that he believed that Ms. Simmons' reinstatement to the practice of law would not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest.

Attorney Stuart B. Breakstone, testified that he has been licensed to practice law in Tennessee since 1991. In his opinion, Ms. Simmons was very experienced and possessed the skills necessary to practice law at the time he practiced beside her. Mr. Breakstone testified that he and Ms. Simmons represented co-defendants in a civil matter along with her employer William Norcross. The case was a very complicated business matter, and Mr. Breakstone testified that during the case he had an opportunity to read memoranda she had prepared and found them to be of high caliber. Mr. Breakstone testified that Mr. Norcross was not an easy person to work for, and was known as a perfectionist. He was one of the smartest people he had ever known. He testified that if Ms. Simmons was able to meet the meticulous high legal standards of Mr. Norcross, which she did, then her legal skills and fitness to practice law were very good.

He believed Ms. Simmons was at that time, an honest person. He testified that he believed Ms. Simmons was remorseful for her action. If reinstated to the practice of law, Mr. Breakstone did not believe that Ms. Simmons' reinstatement would be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest. If reinstated to the practice of law, he would refer clients to Ms. Simmons if they had a case that he did not accept.

Attorney Robert D. Flynn, of HF Law Group, formerly with Spicer, Rudstrom and Flynn, after disclosure of a prior working relationship with a panel member, gave his opinion that he could still be unbiased despite that prior relationship. Mr. Flynn testified that he knew Ms. Simmons when she worked for Mr. Norcross. Mr. Flynn has been licensed to practice law since 1975. He and Mr. Norcross had a case or cases together that led to his close working relationship with Ms. Simmons. Like Mr. Breakstone, he said that Mr. Norcross was a brilliant lawyer and one of the smartest people he had ever known. Ms. Simmons worked with Mr. Flynn on very complicated business litigation that showed Ms. Simmons great depth and understanding of the law, even on extremely complicated business law matters. He believed she was an honest person and at that time had the fitness to practice law. He has had almost no contact with Ms. Simmons since her suspension other than being told about this hearing. Nevertheless, he believed that unless Ms. Simmons had changed significantly, he believed that her resumption to the practice of law would not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest.

CONCLUSIONS OF LAW
STANDARDS FOR REINSTATEMENT

Tenn. Sup. Ct. R. 9, § 30.4(d) (1) states “[t]he hearing panel shall schedule a hearing at which the petitioning attorney shall have the burden of demonstrating by clear and convincing evidence that the attorney 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.” The 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 the 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 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, 642 (Tenn. 2008), citing *O’Daniel v. Messier*, 905 S.W. 2d 182 (Tenn. Ct. App. 1995).

Tenn. Sup. Ct. R. 9, § 3.1 states in part, “[t]he license to practice law in this State is a continuing proclamation by the Supreme 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. . .” The license to practice law in this state is not a right, but a privilege. See Tenn. Sup. Ct. R. 9, § 1.

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:

(a) 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 Tennessee and the United States 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.

1. Moral Qualifications

Ms. Simmons must prove by clear and convincing evidence that she has the moral qualifications to be reinstated to the practice of law. "Remorse and awareness of prior wrongdoing are also 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). Ms. Simmons will need to show this Panel, through more than conclusory statements from witnesses, that she has been rehabilitated:

However, in *Murphy v. Bd. of Prof'l Responsibility*, 924 S.W. 2d 643, 647 (Tenn. 1996), this Court stated that the mere conclusory statements of witnesses that the petitioning attorney had "paid the price," was remorseful for his actions, and had rehabilitated himself were not sufficient proof of the attorney's moral character. We indicated that the attorney seeking reinstatement must also produce proof of "specific facts and circumstances which have arisen since [the attorney's] convictions that demonstrate either rehabilitation or remorse." *Milligan*, at 633.

The Supreme Court has also stated that "[i]n determining whether an attorney has adequately demonstrated good moral character, courts also look to the nature of activity that the attorney has engaged in during the period of suspension." *Id.* at 632.

2. Competency and Learning in the Law

Ms. Simmons must show by clear and convincing evidence that she has the legal competency required for reinstatement. Pursuant to section 30.4 (d) (7) of Supreme Court Rule

9, "the hearing panel or reviewing court may impose conditions on the petitioning attorney's reinstatement, including, without limitation, ... the assignment of a practice monitor for the purposes and pursuant to the procedures set forth in Section 12.9."

3. Integrity and Standing of the Bar / Public Interest

Ms. Simmons must establish that her reinstatement will not be detrimental to the integrity and standing of the bar or the administration of justice, or subversive to the public interest. See Tenn. S. Ct. Rule 9, Section 30.4 (d) (1). The Tennessee Supreme Court has opined that this third prerequisite to reinstatement, assessing whether reinstatement is detrimental to the integrity of the profession, must be viewed in light of the impact reinstatement will have on the public trust:

While the first two criteria for reinstatement--moral qualifications and competency in the law--focus primarily on Hughes' conduct since his criminal convictions and disbarment, this third criterion requires us to consider not only the nature of the conduct that led to his disbarment but the impact, if any, that his reinstatement, in the context of his wrongs, will have on the integrity of and public trust in our system of jurisprudence. *Hughes v. Board of Professional Responsibility*, 259 S.W. 3d 631, 646 (Tenn. 2008)

The Supreme Court has long held that an attorney's duty to uphold the honor of the profession is paramount:

It is the duty of an attorney to uphold the honor of the profession of law; to be honest, to be of good conduct in the discharge of his duties to the Court, the public and his clients. Attorneys are trusted by the community with the care of their lives, liberty and property with no other security than personal honor and integrity.

The trust and confidence which must necessarily be reposed in an attorney requires him to maintain a high standard of moral character and a due appreciation of his duty to his profession, the courts and the public. He is charged with the duty of good faith and honorable dealing on all occasions. *Schoolfield v. Tennessee Bar Association*, 209 Tenn. 304, 353 S.W. 2d 401, 404 (Tenn. 1961)

CONCLUSION

The Hearing Panel finds that Ms. Simmons has demonstrated by clear and convincing evidence that she 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.

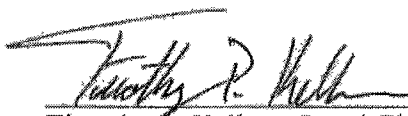
Ms. Simmons has suggested that she should have a practice monitor and the Board concurs with that suggestion. Accordingly, pursuant to Tenn. Sup. Ct. R. 9, Section 30.4 (d) (7), the Hearing Panel finds that Ms. Simmons' reinstatement to the practice of law should be conditioned upon the assignment of a practice monitor for one (1) year. Pursuant to Tenn. Sup. Ct. R. 9, Section 12.9, Ms. Simmons shall, within fifteen days of the entry of the Supreme Court Order of Reinstatement, provide to the Board a list of three proposed practice monitors, all of whom shall be attorneys licensed to practice law in this State and whose licenses are in good standing with the Board, and none of whom shall be engaged in the practice of law with the respondent or petitioning attorney, whether in a law firm of any form or structure or in an association of attorneys of any kind or form. Ms. Simmons shall be responsible for and shall pay a reasonable fee to the practice monitor.

Ms. Simmons shall meet with the practice monitor, face to face, at least two times per month for six (6) months. After the first six (6) months of her reinstatement, Ms. Simmons shall meet with her practice monitor, face to face, once a month for the six (6) months. The practice monitor shall report monthly to the Board of Professional Responsibility providing detailed written reports about Ms. Simmons' office management procedures such as scheduling,

maintenance of case deadlines, proper accounting procedures, compliance with trust account rules, and the use of written communication and Ms. Simmons' management of her personal wellbeing as it impacts her practice.

Costs in the matter are taxed to Petitioner, Alisa Simmons (Tate) for which execution may issue, if necessary.

IT IS SO ORDERED.



Timothy P. Kellum, Panel Chair



Karen M. Campbell, Panel Member



Thomas P. Cassidy, Panel Member

DATE: July 28, 2017

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.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been sent to Petitioner, Alisa Lashelle Simmons, 169 Little Brook Lane, Jackson, TN 38305, and her counsel, David A. Gold, 25 Martin Luther King Jr. Avenue, Memphis, TN 38103, by U.S. First Class Mail, and hand-delivered to Alan D. Johnson, Disciplinary Counsel, on this the 28th day of July, 2017.



Rita Webb
Executive Secretary

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