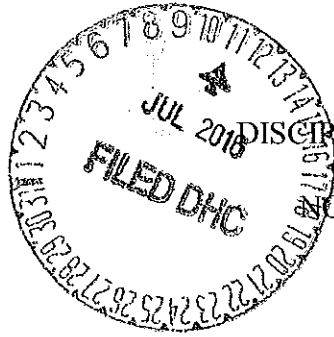




IN RE REINSTATEMENT PETITION OF)
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RICHARD S. POE)

Margaret M. Hunt
Margaret Hunt, President
North Carolina State Bar

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
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IN RE REINSTATEMENT PETITION OF)

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REPORT OF THE HEARING

PANEL RECOMMENDING PETITIONER'S

REINSTATEMENT

RICHARD S. POE

On June 15, 2016, a hearing panel of the Disciplinary Hearing Commission composed of Barbara B. Weyher, Chair; Fred M. Morelock and Patti Head heard the above-referenced matter pursuant to 27 NCAC 1B, Sec. .0125(a). F. Lane Williamson represented Petitioner Richard S. Poe and A. Root Edmonson represented the North Carolina State Bar. Pursuant to 27 NCAC 1B, Sec. .0125(a)(3), the Petitioner had the burden of proving that he had satisfied all of the elements qualifying him for reinstatement by clear, cogent and convincing evidence.

Based upon the evidence presented at the hearing, the hearing panel makes the following:

FINDINGS OF FACT

The parties stipulated to the following elements set forth in Sec.0125 (a)(3):

1. Poe was licensed to practice law in North Carolina on August 22, 1981.
2. Poe surrendered his license and was disbarred pursuant to a Consent Order entered in Wake County Superior Court on June 30, 2010.
3. Poe has caused to be published in the Winter, 2015 edition of the North Carolina State Bar Journal a notice of his intent to seek reinstatement.
4. By letter dated December 10, 2015, counsel for Poe notified the complainant in the disciplinary proceeding which led to Poe's disbarment of the notice to seek reinstatement.
5. Poe was never charged with or convicted of a criminal offense relating to the misconduct which resulted in the Order of Disbarment, and thus never lost his citizenship.
6. There were no applicable orders of the Disciplinary Hearing Commission or of the Council of the North Carolina State Bar relating to Poe's disbarment.
7. The Client Security Fund did not disburse any funds as a result of Poe's misconduct.

8. Poe has paid all dues, Client Security Fund assessments, and late fees owed to the North Carolina State Bar, as well as all attendee fees and late penalties due and owing to the Board of Continuing Legal Education at the time of his disbarment.

The following facts were established by evidence presented at the hearing:

9. Prior to his disbarment, Poe primarily practiced in the field of residential real estate law and was employed with several law firms.
10. In October of 2009 Poe was hired as an associate by the firm of McMillan and Terry, P.A. ("the Firm").
11. Poe did not have a written employment agreement with the Firm.
12. Poe and Ralph McMillan, the senior partner of the Firm, orally agreed at a meeting between the two at the Southpark Mall in Charlotte that the Firm would pay Poe \$10,000 per month.
13. Poe testified that he informed McMillan at the meeting that Poe occasionally did expert witness work for Lawyers Mutual Insurance Company and others, as well as certain minor work that did not require law firm resources, and that at his former firm he was allowed to keep fees for such work as his own. McMillan testified that he had no recollection of a discussion about this topic.
14. While the panel does not find either that there was or was not an agreement between Poe and the Firm regarding Poe's fees for expert witness consulting and minor work, the panel does find that there was at least a misunderstanding and genuine dispute as to Poe's entitlement to such fees.
15. On Christmas Eve, December 24, 2009, McMillan called Poe by telephone and told Poe that the Firm would reduce Poe's pay to minimum wage because Poe's real estate closing originations were fewer than anticipated.
16. The sudden and unexpected reduction in his salary caused great anxiety for Poe and created a substantial financial burden.
17. Although Poe protested the salary reduction, he continued to work at the Firm with the expectation that his compensation would eventually be increased.
18. On March 16, 2010, McMillan and the other members of the Firm confronted Poe with several checks for legal work totaling \$3,787.50 that Poe had endorsed and deposited into his personal account.
19. Poe endorsed the name of the Firm on some of the checks without the Firm's authorization or consent. Although Poe believed at the time of his surrender that he had

endorsed the name of one of the Firm members on some of the checks, the evidence does not support that.

20. All of the checks were for either expert witness fees or minor matters to which Poe believed he was entitled.
21. The Firm immediately terminated Poe and escorted him from the office.
22. Poe reimbursed the Firm for the entire \$3,787.50 by obtaining a certified check from his bank that same day and tendering it to the Firm.
23. The following day, March 17, 2010, McMillan called the North Carolina State Bar to report the incident. He followed up with a written grievance by letter dated March 23, 2010.
24. Sometime later the Firm allowed Poe to return to the Firm to retrieve his personal belongings. Although McMillan was not present on this occasion, Poe met with the other named partner, Daniel Terry, and apologized to Terry for what had happened.
25. Both before and after his termination from the Firm and his disbarment, Poe has been very active in his church and other charitable activities. For instance, he has sung in the choir, served as a substitute pianist, taught Sunday School and Disciple Bible classes and has been active in Crisis Assistance Ministry and Habitat for Humanity.
26. For several months after his termination from the Firm and his disbarment, Poe was unemployed and suffered from depression and financial anxiety for which he received counseling through his church. Nevertheless, he actually increased his devotion to charitable activities during this period.
27. Given that Poe was an employee of the Firm, there was little for Poe to do to wind down his practice other than to close a trust account that he had maintained prior to being employed by the Firm. Poe did close the account after his disbarment.
28. Subsequent to his disbarment, Poe passed the real estate licensing exam for both North Carolina and South Carolina, and obtained his real estate license in both states following hearings where each licensing body was aware of his disbarment.
29. In late March of 2013, Poe was hired as a paralegal by Lancaster and Trotter, P.A. ("LT") a law firm in Charlotte specializing in residential real estate. His title is "closing coordinator."
30. Raymond Lancaster, the senior partner of LT, testified at the hearing. He and Poe have known each other since elementary school and were classmates at Wake Forest Law School.

31. Prior to being hired to work at LT, Poe researched and discussed with Lancaster the restrictions that would apply to Poe's activities at the firm required by applicable ethical rules and opinions in order for Poe to avoid engaging in the unauthorized practice of law. LT and Poe have a clear understanding of these limits and have been scrupulous in adhering to them.
32. Poe has attended continuing education programs, including both programs relating to various real estate topics required to maintain his real estate license, as well as continuing legal education programs. The latter include programs he has attended within the past year on ethics and professionalism, substance abuse prevention, and a two day program on Real Property Practical Skills. He has made a particular effort to study the new TRID regulations governing residential real estate practice.
33. Poe acknowledged at the time of his misconduct, and still acknowledges, his responsibility for the moral and legal wrong that he engaged in by forging the endorsements on the checks for the disputed fees and not resolving the dispute over entitlement to the fees in an open and forthright manner with the Firm.
34. Poe had an excellent reputation as an attorney for competence and good character, as evidenced by the numerous letters submitted in support of his reinstatement and the testimony of witnesses Raymond Lancaster and David Dulin. It is especially noteworthy that Daniel Terry, a partner in the Firm at the time of Poe's misconduct and disbarment, submitted a letter unequivocally supporting Poe's reinstatement.
35. Ralph McMillan and his law partner Michelle Psaroudis were the only persons who either by letter or testimony expressed opposition to Poe's reinstatement.
36. Because Poe's misconduct resulted from a private dispute with the Firm, Poe's disbarment did not have an adverse impact on the public's perception of lawyers in North Carolina and had no impact on the administration of justice.
37. Poe and Lancaster intend for Poe to practice with the LT firm if Poe is reinstated to the practice of law.

BASED UPON the foregoing FINDINGS OF FACT, the panel makes the following:

CONCLUSIONS OF LAW

1. Poe has reformed and presently possesses the moral qualifications required for admission to practice law in this State taking into account the gravity of the misconduct which resulted in the Order of Disbarment.
2. The gravity of the misconduct by Poe which resulted in the Order of Disbarment was moderate.

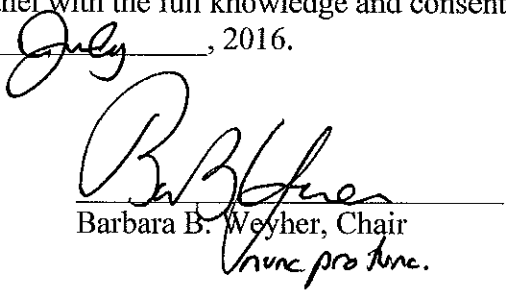
3. Permitting Poe to resume the practice of law within the State will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest, taking into account the gravity of the misconduct which resulted in the Order of Disbarment.
4. At the time of his disbarment, Poe properly wound down his law practice and complied with the provisions of Subchapter B, Section .0124 of the Rules and Regulations of the North Carolina State Bar.
5. Poe has complied with the Consent Order of Disbarment entered in Wake County Superior Court.
6. Poe has not engaged in the unauthorized practice of law during the period of disbarment.
7. Poe understands the current Rules of Professional Conduct.
8. Poe has the competency and learning in the law required to practice law in this State.
9. Poe has satisfied all of the requirements for eligibility for reinstatement set forth in 27 NCAC 1B, Sec. 0125(a).

WHEREFORE, BASED UPON the foregoing Findings of Fact and Conclusions of Law, the panel make the following:

RECOMMENDATION TO THE COUNCIL

1. That Richard S. Poe's license to practice law in North Carolina be **reinstated** without conditions.
2. That the costs of the hearing and producing and transmitting the record to the Council be taxed to Poe.

Signed by the undersigned Chair of the hearing panel with the full knowledge and consent of the other members of the panel this 15 day of July, 2016.


Barbara B. Weyher, Chair

inunc pro tunc.