

IN RE REINSTATEMENT PETITION OF)
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DOUGLAS T. SIMONS)

This matter came on to be heard and was heard on February 21, 2014 by a hearing panel of the Disciplinary Hearing Commission composed of Joshua W. Willey, Jr., Chair, Beverly T. Beal and Patti Head; with the petitioner proceeding *pro se* and A. Root Edmonson representing the North Carolina State Bar. Based upon the oral stipulations of the parties, the evidence presented at the hearing and the arguments made by the parties, the hearing panel makes the following:

1. Douglas T. Simons ("Simons") was licensed to practice law in North Carolina on March 23, 1996.

2. On April 11, 2005, Simons filed an affidavit surrendering his license to practice law with the NC State Bar in which he admitted misappropriating more than \$300,000.00 in client and fiduciary funds to his own use over a period of three years.

3. On April 15, 2005, Simons was disbarred by order of the Council.

4. On December 9, 2013, Simons filed a Petition for Reinstatement with supporting documents that resulted in this hearing.

5. Prior to filing his petition, Simons had published a notice of his intent to seek reinstatement in *The North Carolina State Bar Journal*.

6. Simons notified the North Carolina State Bar, the “complainant” in his disciplinary case, of his intent to seek reinstatement.

7. Simons was never charged or convicted of a criminal offense related to his misappropriation and, thus, never lost his citizenship.

8. At the time of his disbarment, Simons properly wound his law practice down.

9. Simons complied with the Council's April 15, 2005 order.

10. No court entered an order relating to the matter that resulted in Simons' disbarment.
11. Simons did not engage in the unauthorized practice of law during his disbarment.
12. The Client Security Fund did not disburse any funds to any of Simons' clients as a result of Simons' misconduct.
13. Simons paid all dues, Client Security Fund assessments and CLE fees owed to the North Carolina State Bar at the time of his disbarment.
14. At the time of the misconduct that resulted in Simons' disbarment, Simons either did not understand the Rules of Professional Conduct or chose to ignore them. Simons' office was very poorly managed and his trust account was not properly managed or reconciled. Simons offered no evidence that he had taken a trust accounting CLE course or consulted with an experienced lawyer to mentor him on trust account management.
15. Simons testified that, in his absence from his law office during deployments to Afghanistan for four months in 2002 and for seven months from August 2004 to March 2005, his paralegal and others engaged in fraudulent conduct by closing real estate transactions in his name and failing to pay off the sellers' existing mortgage loans in those transactions. Simons testified that he was unaware of these transactions when they occurred and that he did not benefit from them.
16. Simons further testified that he learned about the loans closed by others in his name in September 2005, after his trust account had been reconciled, when he was contacted by a member of the North Carolina State Bar in an effort to resolve issues about who still had money remaining in his trust account. Simons testified that he was informed at that time about the numerous closings conducted by his paralegal that resulted in Chicago Title paying out claims related to unpaid mortgages.
17. Simons' testimony at this hearing about him not receiving any benefit from the dishonesty of others is inconsistent with his statement in his affidavit surrendering his license that he misappropriated funds "to his own use."
18. Simons testified that the affidavit that he signed when he surrendered his license in April 2005, just after he returned from Afghanistan, was prepared by someone at the North Carolina State Bar. However, Simons had the benefit of counsel when he signed the affidavit and neither he nor his counsel sought to change the contents of the affidavit.
19. Simons acknowledged that he had become aware of his paralegal's failure to make proper disbursements from a closing before departing on his second deployment to Afghanistan, but still left the paralegal insufficiently supervised in his office where her misconduct became more severe. As a result, Chicago Title Insurance Company ("Chicago Title") had to pay off prior mortgages from closings performed in Simons' office pursuant to coverage provided to lenders in Insured Closing Letters to put those lenders in a first lien position.
20. In 2006, Chicago Title filed a civil action against Simons and others to recover the amounts it paid to lenders as a result of the fraudulent closings conducted in Simons' office.

21. Chicago Title's civil action was dismissed due to its counsel's failure to attend a scheduled conference or state its position to the Court in writing as ordered.

22. Chicago Title obtained new counsel that filed a Rule 60 motion seeking to set aside the dismissal citing excusable neglect on the part of previous counsel. That motion was denied. Chicago Title entered notice of appeal.

23. On April 14, 2010, Chicago Title dismissed its appeal prior to Simons' filing a bankruptcy petition on June 7, 2010. There was no evidence presented showing whether or not Chicago Title's decision to dismiss its appeal was because it had determined that Simons was not responsible for the losses it suffered.

24. Simons failed to attempt to contact lenders on the HUD-1's for the fraudulent closings or Chicago Title Insurance Company to acquire evidence to support his claim that he received no financial benefit from the fraudulent closings. That left his testimony about receiving no financial benefit unconvincing.

25. Simons made no effort to affirmatively show that there were not others harmed by the fraudulent conduct of his paralegal and others for which he was responsible.

26. Simons took responsibility for the misconduct of his employee and others by surrendering his license in April 2005.

27. Simons was remorseful about the harm caused by the conduct that resulted in his disbarment.

28. During the investigation of misappropriation by the North Carolina State Bar, Simons produced a bank statement that he had altered to make the balance on the statement to appear to be \$100,000.00 more than the actual balance. Simons admitted that he had done that prior to surrendering his license to practice law.

29. In 2001, Simons was reprimanded for making a false statement to a court about an affidavit being signed in his assistant's presence when he knew that statement was false.

30. Simons acknowledged that there had been publicity about his disbarment at the time of his disbarment.

31. Simons did not present any evidence that he had affirmatively demonstrated reformation to those in the community that may have been aware of his disbarment as a result of the publicity. However, Simons did continue to serve his community, and his country, by continuing to serve in the United States Air Force following his disbarment in April 2005, including three tours of combat duty to Afghanistan.

32. Simons was admitted to the practice of law in the State of New York in August of 1994, and had not been disciplined by the State of New York for any misconduct prior to his disbarment by the State of North Carolina.

33. Simons acknowledged that any recommendation for reinstatement made by the panel would have to be contingent upon his receiving a passing grade on the North Carolina Bar Exam and the MPRE to satisfy his burden of proving competence and learning in the law.

BASED UPON the foregoing Findings of Fact, the hearing committee makes the following:

CONCLUSIONS OF LAW

1. Simons published notice of his intent to seek reinstatement in compliance with § .0125(a)(3)(A).

2. Simons notified the North Carolina State Bar, the complainant in his disciplinary action, of his intent to seek reinstatement in compliance with § .0125(a)(3)(B).

3. Simons' misappropriation of his clients' funds, his production of a false bank statement during the North Carolina State Bar's investigation of the misappropriation, and his making a false statement to a court were serious offenses that require a strong showing of a reformed character before reinstatement of Simons' license would be appropriate.

4. Given the conflict between Simons' surrender affidavit and his testimony at this hearing and Simons' failure to present affirmative evidence to support his present testimony, Simons has not proven by clear and convincing evidence that he has reformed and presently possesses the moral character required for admission to practice law in this state taking into account the gravity of the misconduct which resulted in his disbarment. Therefore, Simons has not satisfied his burden pursuant to § .0125(a)(3)(C).

5. Because he has not demonstrated a reformed character to his community beyond his military service, Simons' reinstatement to the practice of law will be detrimental to the integrity and standing of the bar and to the administration of justice and to the public's interest. Therefore, Simons has not satisfied his burden pursuant to § .0125(a)(3)(D).

6. Simons' never lost his citizenship. Therefore, Simons has satisfied his burden pursuant to § .0125(a)(3)(E).

7. Simons appropriately wound down his law practice after his disbarment in compliance with § .0125(a)(3)(F).

8. Simons complied with all applicable orders of the Council in compliance with § .0125(a)(3)(G).

9. No court entered any order relating to the matter that resulted in Simons' disbarment. Therefore, Simons has satisfied his burden pursuant to § .0125(a)(3)(H).

10. Simons did not engage in the unauthorized practice of law during his disbarment in compliance with § .0125(a)(3)(I).

11. Simons has not engaged in conduct during his period of disbarment that may have

been grounds for discipline in compliance with § .0125(a)(3)(J).

12. Given Simons' demonstrated lack of understanding of the Rules of Professional Conduct at the time of his disbarment and his failure to present evidence of any affirmative action taken to get a clearer understanding of those rules, Simons has failed to prove that he understands the current Rules of Professional Conduct. Therefore, Simons has not satisfied his burden pursuant to § .0125(a)(3)(K).

13. The Client Security Fund did not disburse any funds to any of Simons' clients as a result of Simons' misconduct. Therefore, Simons has satisfied his burden pursuant to § .0125(a)(3)(L).

14. The Council disbarred Simons upon his surrender of license, thus the Disciplinary Hearing Commission did not enter an order finding that Simons had misappropriated money from anyone. However, there was a lot of money that was missing from his trust account that resulted in his disbarment. Simons failed to make an affirmative effort to determine whether anyone other than Chicago Title Insurance Company was harmed by the misappropriation and failed to present any evidence of why Chicago Title Insurance Company dismissed its lawsuit against him just prior to him filing for bankruptcy. Therefore, while Simons has satisfied his burden pursuant to § .0125(a)(3)(M) according to the letter of that requirement, he failed to satisfy the spirit of that requirement.

15. Simons paid all dues and fees owed to the North Carolina State Bar in compliance with § .0125(a)(3)(N).

16. Since his petition for reinstatement was filed more than seven years from the effective date of his disbarment, to be reinstated Simons must pass a future North Carolina Bar Exam and the MPRE to be reinstated pursuant to § .0125(a)(5).

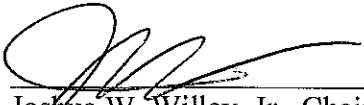
BASED UPON the foregoing Findings of Fact and Conclusions of Law, the hearing panel enters the following Order:

1. The hearing panel considered all of the evidence offered at Simons' reinstatement hearing and recommends to the Council that Simons' petition for reinstatement to the practice of law in North Carolina be denied.

2. If Simons chooses not to ask the Council to review the decision of this hearing panel, this order will constitute the final order in this matter.

3. If the Council reviews the decision of this hearing panel and chooses to reinstate Simons, Simons' reinstatement must be conditioned upon his successful completion of a written bar examination administered by the North Carolina Board of Law Examiners.

Signed on this the 24th day of March 2014 with the knowledge and consent of the other members of the panel.



Joshua W. Willey, Jr., Chair
Hearing Panel