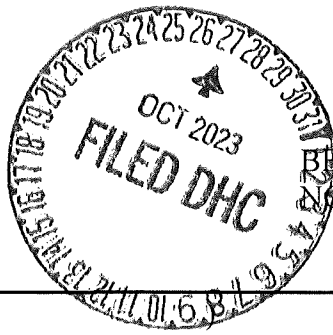


WAKE COUNTY  
NORTH CAROLINA



BEFORE THE COUNCIL OF THE  
NORTH CAROLINA STATE BAR  
22 BCR 2

IN RE: PETITION FOR  
REINSTATEMENT  
OF LAW LICENSE OF  
DAVID SHAWN CLARK

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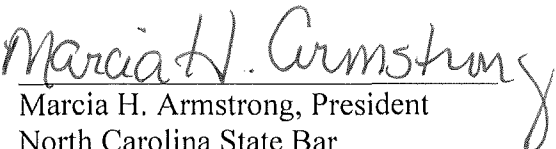
ORDER DENYING  
REINSTATEMENT

This matter was heard by the Council of the North Carolina State Bar on 27 October 2023 pursuant to N.C. Admin. Code, Chapter 1, Subchapter B, § .0129(a) of the State Bar Discipline and Disability Rules upon the 28 April 2023 order of the Disciplinary Hearing Commission recommending that David Shawn Clark's petition for reinstatement be denied. The DHC order and the entire record of the February 2023 hearing before the DHC in this matter were transmitted to each member of the Council. After arguments made by Edward T. Hinson, counsel for the Petitioner, and State Bar Deputy Counsel Carmen Bannon, a motion to deny the petition was made and seconded. The motion passed.

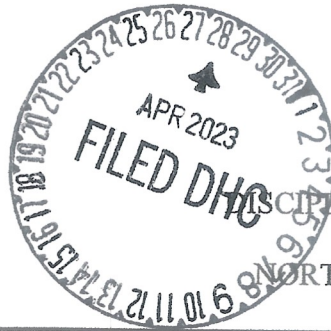
WHEREFORE, the Council enters the following order:

1. David Shawn Clark's application for reinstatement to the practice of law in North Carolina is hereby DENIED.
2. David Shawn Clark is taxed with the administrative fees and costs of this reinstatement proceeding, including the hearing before the Hearing Commission.

DONE AND ORDERED this the 27<sup>th</sup> day of October, 2023.

  
Marcia H. Armstrong, President  
North Carolina State Bar

WAKE COUNTY  
NORTH CAROLINA



BEFORE THE  
DISCIPLINARY HEARING COMMISSION  
OF THE  
NORTH CAROLINA STATE BAR  
22 BCR 2

IN RE: PETITION FOR  
REINSTATEMENT  
OF LAW LICENSE OF  
DAVID SHAWN CLARK

ORDER DENYING  
REINSTATEMENT

This matter was heard over three days on February 15-16 and 24, 2023 by a hearing panel of the Disciplinary Hearing Commission composed of Panel Chair Brian O. Beverly, Jaye P. Meyer, and Ronald C. Brinson. Petitioner was represented by Jason White and Ed Hinson, and the North Carolina State Bar was represented by B. Tessa Hale and Carmen Bannon. Based upon the record in 12 DHC 42, the record in 19 BCR 1, the stipulations of the parties, and the evidence and argument presented at the hearing, the Hearing Panel makes the following:

**FINDINGS OF FACT**

1. David Shawn Clark was licensed to practice law in North Carolina in August 1997.
2. By order dated 5 March 2013, Clark's law license was suspended on an interim basis due to his conviction of two counts of communicating threats and one count of misdemeanor obstruction of justice.
3. By order dated 30 October 2013, Clark was disbarred by the Disciplinary Hearing Commission. The findings and conclusions of the 30 October 2013 Order of Discipline in 12 DHC 42 are incorporated herein.
4. There was significant publicity about Clark's misconduct, his criminal convictions, and his disbarment. Contributing to the publicity was Clark's decision to run for District Attorney, a decision he made after he had engaged in a sexual relationship with a vulnerable client.
5. Clark notified the North Carolina State Bar, the "complainant" in his disciplinary case, of his intent to seek reinstatement.
6. Clark was convicted of misdemeanor criminal offenses related to his misconduct.
7. At the time of his interim suspension, Clark properly wound down his law practice.
8. Clark complied with the DHC's 30 October 2013 Order of Discipline.
9. Clark complied with the terms of his probation in the criminal cases related to his disbarment.

10. The Client Security Fund did not disburse funds to any of Clark's clients as a result of Clark's misconduct.

11. On 28 January 2019, Clark filed a Petition for Reinstatement, which was heard by the DHC on 2 April 2019. The DHC concluded that Clark had not met his burden of proving the requirements for reinstatement set forth in § .0129(a)(3)(C) or (D). *In re Clark*, 19 BCR 1 (DHC Order dated 17 May 2019). The findings and conclusions of the 17 May 2019 Order in 19 BCR 1 are incorporated herein.

12. Upon review of the record from the DHC hearing, the State Bar Council denied Clark's petition. *In re Clark*, 19 BCR 1 (Council Order dated 25 October 2019). The North Carolina Court of Appeals affirmed the Council's decision denying reinstatement. *In re Reinstatement of Clark*, 272 N.C. App. 577 (2020) (unpublished).

13. On 29 April 2022, Clark filed another Petition for Reinstatement with supporting documents that resulted in this hearing.

14. Prior to filing his 2022 petition, Clark had published a notice of his intent to seek reinstatement in *The North Carolina State Bar Journal*. No objections were submitted to the Bar after this published notice of intent to seek reinstatement.

15. Clark paid all dues, Client Security Fund assessments and CLE fees owed to the North Carolina State Bar at the time of his disbarment.

16. Clark has not engaged in the unauthorized practice of law during his disbarment.

17. Clark sat for the 2021 North Carolina Bar Exam, including undergoing the requisite character and fitness evaluation by a 2-member panel. Clark obtained a passing score on the July 2021 North Carolina Bar exam, which served as conclusive evidence on the issue of his competence to practice law pursuant to § .0129(a)(4)(D).

18. Clark obtained passing scores on the Multistate Professional Responsibility Exam in November 2018 and March 2022 and the State Bar did not contest Clark's current understanding of the Rules of Professional Conduct.

19. Clark expressed remorse about the misconduct that resulted in his disbarment, including having a sexual relationship with a client and deceiving those around him.

20. After his 2019 reinstatement effort, Clark contacted his former legal assistant and former client—the primary victims of his misconduct. Clark's former client testified that she believes he is remorseful, forgives him, and thinks he deserves a second chance. Likewise, Clark also contacted and apologized to Tim Turnmire, the ex-husband of his former client, and Mr. Turnmire would not object to Clark's reinstatement.

21. After his 2019 reinstatement effort, Clark has made the following efforts to rectify harm to the community:

- a. Clark contacted the editor of the Hickory Daily Record to apologize and he posted a "Letter to the Editor" in the newspaper apologizing to the community.
- b. Clark contacted Hal Rowe of WHKY Radio to apologize for his untrue statements during the radio interview in 2010.
- c. Clark apologized to his former church men's group, his former attorneys, campaign participants and family.
- d. Clark has performed community service at various events in Catawba County and made presentations to church groups and to the local minor league baseball team.

22. Clark acknowledged that he gave false testimony before the DHC during the 2019 reinstatement hearing when he testified that he did not attempt to obstruct justice by preparing a false affidavit for his client to sign, insisting that the document was intended only to mislead his wife about his infidelity. [T. p. 378, 382-83]

23. In his July 2022 sworn responses to the State Bar's interrogatories in this case, Clark again maintained that the only purpose of the false affidavit he prepared for his client to sign was to deceive his wife, claiming "After showing it to my wife, I put the document in a folder and never used it again." This response was false, in that (a) it did not acknowledge that the affidavit was designed to rebut a threatened alienation of affection claim by his client's husband; and (b) Clark did use the affidavit again to support his response to the State Bar wherein he falsely denied having a sexual relationship with his client.

24. In his July 2022 sworn interrogatory responses, Clark also denied that he told his former client that he would cause her to lose custody of her children if she told the truth about their relationship. Clark repeated this denial while testifying in this proceeding, adding the qualifier that he doesn't "remember" making that threat. [T. pp. 340-41]

25. In his 2019 testimony before the DHC, Clark denied that he communicated a threat to his former legal assistant in an effort to prevent her from telling the truth about his sexual relationship with his client. In his discovery responses and testimony in this proceeding, Clark continued to deny any intent to threaten his legal assistant, but stated he now realizes his "inappropriate attempt at levity may have been received in a different manner than which I intended;" "it's possible I created an environment which was uncomfortable for other people;" and he admitted to saying, "You know I could tell you, but then I would have to kill you", but contends the statement was taken out of context.

26. Clark's testimony in this proceeding, which was informed by his study of the transcript and order denying his 2019 reinstatement did not deny that he engaged in the acts that led to his disbarment but still did not admit that he threatened his former client and employee.

27. Clark's testimony and discovery responses in this proceeding regarding the threats to his client and his legal assistant are inconsistent with (a) the narrative he presented in his 2019 reinstatement effort, and (b) the admissions he made in connection with his guilty pleas and at his original disciplinary hearing in 2013.

28. Clark had the benefit of counsel when he pled guilty to the criminal offenses and throughout the disciplinary process.

29. Clark attributes the professional misconduct he engaged in (after his initial decision to have sex with a vulnerable client) to the pressure he felt to continue his campaign for District Attorney, rather than an inherent character flaw or moral failing. [See, e.g. T. p. 291]

30. During his testimony in this proceeding, Clark described the baseless and false lawsuit he filed against his former client as “a political tool,” which “no one seemed to care about” after the May 2010 primary that marked the end of his campaign for District Attorney. [T. pp. 361, 364-65] When asked why he continued to pursue the lawsuit for more than seven months after the primary, Clark said his lawyers (who were unaware the lawsuit was based on entirely false allegations) advised him not to dismiss his claims. [T. pp. 363-64]

31. Three lawyers who previously represented Clark’s former client in defending the baseless and false lawsuit Clark brought against her testified regarding the extreme vulnerability of Clark’s victims and stated their opinion that Clark’s reinstatement would be detrimental to the integrity and standing of the bar. Each of these witnesses acknowledged that they do not personally know Mr. Clark’s present character, moral characteristics, or any efforts by Mr. Clark to reform and make amends.

32. By attributing most of his misconduct to the pressures he felt as a candidate for elected office, Clark has failed to acknowledge any personal characteristic that made it possible for him to engage in the pattern of misconduct that led to his disbarment.

33. Since his disbarment, Clark has (a) remained in Hickory and been active in the community; (b) had success in his new vocation; (c) paid taxes; (d) engaged intermittently in therapy during which he discussed his misconduct and the notion of “making amends;” (e) contributed to—or participated in—various charitable projects; (f) has had no claims or judgments filed against him; (g) has filed no bankruptcy petitions; and (g) has had no arrests or charges for violations of any law of North Carolina or the United States. Regarding his vocation, he has been consistently employed and promoted as Finance Director and Human Resource Director for a local firearms distributor and has been interviewed and approved by the U.S. Department of State for a license to import/export firearms and by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) for a Federal Firearms License.

34. Local lawyers, elected officials, former clients, and other friends and acquaintances (collectively “the character witnesses”) testified to Clark’s good character. All character witnesses are longtime residents of Catawba County and are/were employed in Catawba County. They were familiar with Clark in 2009, had knowledge of the behaviors that resulted in Clark’s disbarment, and have maintained contact with Clark since then. They universally testified to Clark’s good character at the time of his disbarment and presently. Most of these witnesses’ testimony conveyed that they believed Clark’s misconduct was an aberration from his usual course of conduct.

35. Many of the character witnesses offered essentially the same favorable opinion of Clark’s trustworthiness and good character as they did in 2019.

36. The character witnesses' testimony emphasized their opinions that Clark had served his punishment and deserved a second chance.

37. The local lawyers and elected officials testified that there is a lack of skilled attorneys in Catawba County devoted to representing defendants on the criminal court-appointed lists, and that Catawba County does not have a public defender's office.

38. Dr. Gary Indenbaum, Ph.D. was retained by Clark to perform an independent psychological evaluation and provide expert testimony. Based on that evaluation, Dr. Indenbaum opined that Clark would not pose a threat to the public if reinstated to the practice of law. Dr. Indenbaum's conclusion was based on: (a) psychological test results that were largely uninterpretable due to Clark's level of defensiveness in responding to the tests; (b) Clark's self-reported state of mind; and (c) interviews with individuals identified by Clark as collateral sources of information. Moreover, Dr. Indenbaum's testimony was not probative of whether Clark has reformed because there is no indication his misconduct was attributable to any psychological disorder and there is no baseline evaluation from the time of Clark's disbarment for comparison.

BASED UPON the foregoing Findings of Fact, the Hearing Panel makes the following:

#### CONCLUSIONS OF LAW

1. Clark published notice of his intent to seek reinstatement in compliance with § .0129(a)(3)(A).

2. Clark notified the North Carolina State Bar, the complainant in his disciplinary action, of his intent to seek reinstatement in compliance with § .0129(a)(3)(B).

3. Clark's sexual relationship with a vulnerable client, attempts to suborn perjury, threats to witnesses, disclosure of confidential information, filing of a meritless false lawsuit, criminal convictions, and false statements to the State Bar were serious offenses that require a strong showing of a reformed character before reinstatement of Clark's license would be appropriate.

4. Given Clark's refusal to acknowledge all of his wrongdoing, and his attribution of his misconduct to external circumstances rather than character, this panel concludes that Clark 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, this panel concludes that Clark has not satisfied his burden pursuant to § .0129(a)(3)(C).

5. Given the extreme gravity of Clark's misconduct, which was antithetical to his duties as a fiduciary and an officer of the court, this panel concludes that his reinstatement would be detrimental to the profession absent sufficient evidence that he has reformed. This panel concludes that Clark has not proven by clear and convincing evidence that his reinstatement to the practice of law will not be detrimental to the integrity and standing of the bar and to the

administration of justice and to the public's interest. Therefore, this panel concludes that Clark has not satisfied his burden pursuant to § .0129(a)(3)(D).

6. Clark never lost his citizenship. Therefore, Clark has satisfied his burden pursuant to § .0129(a)(3)(E).

7. Clark appropriately wound down his law practice after his interim suspension in compliance with § .0129(a)(3)(F).

8. Clark complied with all applicable orders of the Commission in compliance with § .0129(a)(3)(G).

9. The only court orders relating to the matter that resulted in Clark's disbarment were in Clark's criminal cases, and he complied with the terms of his sentence. Therefore, Clark has satisfied his burden pursuant to § .0129(a)(3)(H).

10. Clark did not engage in the unauthorized practice of law during his disbarment in compliance with § .0129(a)(3)(I).

11. Clark has not engaged in conduct during his period of disbarment that may have been grounds for discipline in compliance with § .0129(a)(3)(J).

12. Clark has satisfied his burden pursuant to § .0129(a)(3)(K) to demonstrate that he understands the current Rules of Professional Conduct.

13. The Client Security Fund did not disburse any funds to any of Clark's clients as a result of Clark's misconduct. Therefore, § .0129(a)(3)(L) is not applicable to Clark.

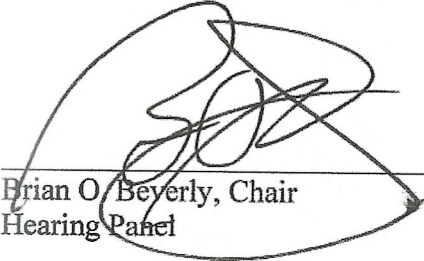
14. The DHC did not find that Clark misappropriated funds. Therefore, § .0129(a)(3)(M) is not applicable to Clark.

15. Clark paid all dues and fees owed to the North Carolina State Bar in compliance with § .0129(a)(3)(N).

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Hearing Panel enters the following Order:

1. The Hearing Panel considered all the evidence offered at Clark's reinstatement hearing and prior related decisions and recommends to the State Bar Council that Clark's petition for reinstatement to the practice of law in North Carolina be denied.
2. If Clark 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. Clark is taxed with the costs and administrative fees associated with this proceeding as assessed by the Secretary.

Signed on this the 28<sup>th</sup> day of April 2023 with the knowledge and consent of  
the other members of the panel.



Brian O. Beyerly, Chair  
Hearing Panel