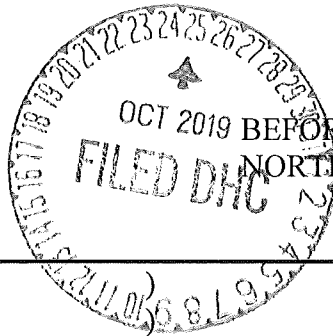


WAKE COUNTY
NORTH CAROLINA



BEFORE THE COUNCIL OF THE
NORTH CAROLINA STATE BAR
19 BCR 1

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 25 October 2019 pursuant to N.C. Admin. Code, Chapter 1, Subchapter B, § .0129(a) of the State Bar Discipline and Disability Rules upon the 17 May 2019 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 2 April 2019 hearing before the DHC in this matter were transmitted to each member of the Council. After arguments made by Jason White, Counsel for 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 costs of this proceeding.

DONE AND ORDERED this the 25th day of October, 2019.

G. Gray Wilson, President
North Carolina State Bar

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
19 BCR 1

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

ORDER DENYING
REINSTATEMENT

This matter was heard on 2 April 2019 by a hearing panel of the Disciplinary Hearing Commission composed of Allison C. Tomberlin, Chair, Maya Madura Engle, and Christopher R. Bruffey. Petitioner was represented by Forrest Ferrell and Jason White, and the North Carolina State Bar was represented by Alex Nicely and Carmen Bannon. Based upon the record in 12 DHC 42, 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. On 28 January 2019, Clark filed a Petition for Reinstatement with supporting documents that resulted in this hearing.
5. Prior to filing his petition, Clark had published a notice of his intent to seek reinstatement in *The North Carolina State Bar Journal*.
6. Clark notified the North Carolina State Bar, the "complainant" in his disciplinary case, of his intent to seek reinstatement.
7. Clark was convicted of misdemeanor criminal offenses related to his misconduct and, thus, did not lose his citizenship.
8. At the time of his interim suspension, Clark properly wound down his law practice.
9. Clark complied with the DHC's 30 October 2013 Order of Discipline.

10. Clark complied with the terms of his probation in the criminal cases related to his disbarment.

11. Clark did not engage in the unauthorized practice of law during his disbarment.

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

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

14. Clark offered evidence that he had taken 10 hours of Continuing Legal Education courses since his disbarment and stayed abreast of developments in the law by regularly reading Lawyers Weekly magazine. The State Bar did not contest Clark's competency and learning in the law.

15. Clark offered evidence that he obtained a passing score on the Multistate Professional Responsibility Exam in November 2018 and the State Bar did not contest Clark's current understanding of the Rules of Professional Conduct.

16. Clark expressed remorse about some of the misconduct that resulted in his disbarment, including his sexual relationship with a client and his disclosure of confidential information.

17. Clark testified that he did not attempt to obstruct justice by preparing a false affidavit for his client to sign; rather, the document was intended only to mislead his wife about his infidelity. This testimony was not credible, in that the document he prepared for his client's signature was captioned "Affidavit" and contained language specifically tailored to rebut any alienation of affection lawsuit that might be brought against Clark.

18. Clark further testified that although he pled guilty to communicating threats and obstruction of justice, he did not actually commit those offenses. Specifically, he denied that he threatened either his client or his legal assistant. With respect to his client, he stated "If she felt [threatened], I'm sorry." Regarding his legal assistant, he said "To the extent I made her feel that way, I'll accept responsibility."

19. Clark's testimony at this hearing denying that he threatened either his client or his legal assistant is inconsistent with admissions he previously made in connection with his guilty pleas and at his original disciplinary hearing in 2013.

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

21. Clark presented no evidence that he made efforts to rectify the harm he caused to either of the victims of his criminal acts.

22. The evidence offered by Clark to support his claim that his character has been reformed was that he (a) remained in Hickory; (b) found other employment; (c) paid taxes and

obeyed traffic laws; (d) contributed to—or participated in—one or more charitable projects per year; (e) supported his family and parented his children. In addition, Clark engaged in individual therapy with Mary Nelson (2013), Steve Shores (2014), Pastor Carlos Rodriguez (2015), Pastor Stephen Clark (2017), and Kevin Rutter (2018-2019). Clark testified that he gained self-awareness about his behavior and learned more about appropriate professional boundaries through therapy.

23. Clark acknowledged that there was significant publicity about his misconduct, his criminal convictions, and his disbarment.

24. The only evidence that Clark affirmatively demonstrated reformation to those in the community that may have been aware of his disbarment as a result of publicity was Clark's own testimony that he made presentations at several community gatherings regarding the events that led to his disbarment and his efforts to reform.

25. Local lawyers, elected officials, and other friends and acquaintances testified to Clark's good character and to their opinion that reinstatement would not be detrimental to the integrity and standing of their local Bar. Most of these witnesses' testimony conveyed that they believed Clark's misconduct was an aberration from his usual course of conduct. Because they did not believe Clark had bad moral character at the time of his disbarment, the character witnesses did not demonstrate that Clark had reformed. Likewise, they did not establish that he currently possesses the moral character required for admission to practice law in this state.

26. These character witnesses indicated that within the year preceding his reinstatement petition Clark had approached them to discuss his misconduct. In these discussions, Clark did not acknowledge communicating threats to his client or legal assistant, despite his criminal convictions.

27. The character witnesses' testimony emphasized the amount of harm caused to Clark by his disbarment.

28. Dr. Gary Indenbaum was retained by Clark to perform an independent psychological evaluation. He testified that in his opinion Clark poses no threat to the public should he be reinstated, but the Hearing Panel did not find this testimony to be credible in light of the Dr. Indenbaum's written report.

29. The State Bar presented two local lawyers who testified to their opinion that Clark's reinstatement would be detrimental to the integrity and standing of their local Bar.

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 frivolous lawsuit, conviction of crimes, 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. 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, Clark has not satisfied his burden pursuant to § .0129(a)(3)(C).

5. 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, 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, Clark has satisfied his burden pursuant to § .0129(a)(3)(L).

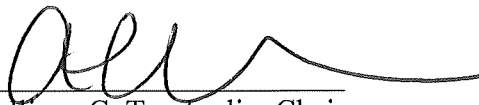
14. The DHC did not find that Clark misappropriated funds. Therefore, § .0129(a)(3)(M) is not applicable to Clark.

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 of the evidence offered at Clark's reinstatement hearing 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 17th day of May 2019 with the knowledge and consent of the other members of the panel.


Allison C. Tomberlin, Chair
Hearing Panel