



STATE OF NORTH CAROLINA

WAKE COUNTY

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

IN RE PETITION FOR
REINSTATEMENT OF:

DOUGLAS T. SIMONS

ORDER
DENYING REINSTATEMENT

This matter came on to be heard and was heard on May 31, 2024, by a hearing panel of the Disciplinary Hearing Commission composed of DeWitt F. McCarley, Chair, Maya Madura Engle, and Mark D. Jerrell. The petitioner was represented by F. Lane Williamson, and the North Carolina State Bar was represented by Kelley A. DeAngelus. Based upon the evidence presented at the hearing and the arguments made by the parties, the hearing panel makes the following:

FINDINGS OF FACT

1. Douglas T. Simons ("Simons") was licensed to practice law in North Carolina on March 23, 1996.
2. In 2001, the Grievance Committee issued Simons a Reprimand in file 00G1364 for violating Rule 3.3 by falsely stating to the Court that an affidavit that Simons presented to the Court had been sworn to and subscribed by the witness before a notary in his office in North Carolina when the witness was located in Massachusetts at the time.
3. On April 11, 2005, Simons filed an affidavit surrendering his license to practice law with the North Carolina State Bar in which he admitted to misappropriating more than \$300,000 in client and fiduciary funds to his own use over three years, and creating and submitting altered bank documents to falsely show that his trust account balance was \$100,000 more than its actual balance during the State Bar's investigation.
4. On April 15, 2005, Simons was disbarred by order of the Council of the North Carolina State Bar for violating Rules 1.15-2(a), (j), and (m), Rule 8.1(a), and Rule 8.4(a), (b), and (d) of the Rules of Professional Conduct.
5. The affidavit that Simons signed when he surrendered his license in April 2005 was drafted by staff 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.
6. From at least 2001 through his disbarment in 2005, Simons failed to properly maintain and reconcile his trust account pursuant to the Rules of Professional Conduct.

7. Simons used entrusted funds in his trust account to finance, operate, and maintain his law office.

8. Simons knew that there were problems with his trust account at least by late 2003.

9. During the State Bar's investigation of the matter leading to Simons' disbarment, Simons falsely told the State Bar that he employed an accountant to reconcile his trust account. However, Simons only employed an accountant to assist him with filing his taxes.

10. Simons was a member of the U.S. military and deployed to Afghanistan for four months in 2002, and seven months from the fall of 2004 to the spring of 2005. During those deployments, Simons' paralegal and others engaged in fraudulent conduct by closing real estate transactions in Simons' name and failing to payoff the sellers' existing mortgage loans in those transactions.

11. Before departing on his second deployment to Afghanistan, Simons learned that his paralegal failed to make proper disbursements from a closing that occurred during his previous deployment. Nonetheless, even after learning about his paralegal's misconduct, Simons left his paralegal unsupervised in his office during his second deployment where her misconduct became more severe. As a result, Chicago Title Insurance Company ("Chicago Title") had to payoff 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.

12. Although Simons' service to his country is admirable, while doing so Simons abdicated his responsibilities to ensure the entrusted funds in this trust account were safe and protected from misappropriation.

13. Simons learned about loans closed by others in his name in September 2005 after he was disbarred. At that time, he was contacted by a member of the North Carolina State Bar to resolve issues about who still had money remaining in his trust account. Simons was informed about the numerous closings conducted by his paralegal that resulted in Chicago Title paying out claims related to unpaid mortgages.

14. In 2006, Chicago Title filed a civil action against Simons and others to recover the amounts it paid to lenders because of the fraudulent closings conducted in Simons' office. The total loss claimed by Chicago Title was approximately \$2.4 million.

15. 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.

16. 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.

17. 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 as to why Chicago Title dismissed its appeal.

18. Simons did not take responsibility for or otherwise attempt to remedy Chicago Title's loss of approximately \$2.4 million.

19. Simons took responsibility for his and employee's misconduct by surrendering his license in April 2005.

20. Simons was remorseful about the harm caused by the misconduct that resulted in his disbarment.

21. However, despite Simon's acceptance of responsibility and remorse for his misconduct and that of his employee, the panel is concerned that Simons may lack understanding and comprehension of the magnitude of the misconduct that he admitted to in his affidavit of surrender, and of the misconduct concerning the use of his trust account for numerous closings conducted by his paralegal that resulted in Chicago Title paying out claims related to unpaid mortgages.

22. News of Simons' disbarment was published in *The Durham Herald-Sun*, on April 21, 2005, in Durham County, North Carolina, where he based his law practice at the time.

23. On December 9, 2013, Simons filed a Petition for Reinstatement with supporting documents resulting in a hearing before a panel of the Disciplinary Hearing Commission on February 21, 2014.

24. On March 27, 2014, the Disciplinary Hearing Panel entered an order recommending that Simons' petition to be reinstated be denied.

25. On March 22, 2024, Simons filed a second Petition for Reinstatement of his law license. He filed an Amended Petition for Reinstatement on May 13, 2024.

26. Prior to filing his March 22, 2024 petition, Simons published a notice of his intent to seek reinstatement in *The North Carolina State Bar Journal*.

27. Simons notified the North Carolina State Bar, the "complainant" in his disciplinary case, of his intent to seek reinstatement.

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

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

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

31. No court entered an order relating to the matter that resulted in Simons' disbarment.
32. Simons did not engage in the unauthorized practice of law during his disbarment.
33. The Client Security Fund did not disburse any funds to any of Simons' clients as a result of Simons' misconduct.
34. Simons paid all dues, Client Security Fund assessments and CLE fees owed to the North Carolina State Bar at the time of his disbarment.
35. Simons completed 28 hours of Continuing Legal Education courses in 2023, including five hours in ethics.
36. Simons completed 19.25 hours of Continuing Legal Education courses in 2024, including five hours in ethics.
37. Simons has continuously served his country as a member of the United States Military for a total of 36 years. Simons first served as a member of the United States Army, immediately followed by service with the United States Air Force and North Carolina Air National Guard. Altogether, Simons served from 1981 to 2018 without a break in service.
38. Simons was honorably discharged and has since been determined to be 100% service-connected disabled by the Department of Veterans Affairs.
39. During Simons' military service, he was deployed overseas on multiple occasions, including multiple deployments to Afghanistan after September 11, 2001. After his disbarment, Simons volunteered to deploy again to Afghanistan in place of another service member who was unable to deploy at that time.
40. Simons was a respected member of the U.S. military and served as a mentor to his fellow service members regardless of their rank or unit.
41. After his disbarment, Simons was assigned to the Pentagon as part of his Air Force service. During his time at the Pentagon, Simons voluntarily organized mental health resiliency programs for military service members as part of a coordinated effort to reduce suicide and suicidal ideation in the military.
42. Simons testified that he has struggled with alcoholism throughout his adulthood. Respondent has had long periods of sobriety interspersed with periods of relapse. Simons has attended formal rehabilitation programs to address his alcoholism and has successfully maintained his current sobriety since 2018.
43. Simons is a respected member of his community. He regularly assists his neighbors, participates in neighborhood activities, helps individuals experiencing financial distress, and has been of service to his church.

CONCLUSIONS OF LAW

1. Simons published notice of his intent to seek reinstatement in compliance with 27 N.C. Admin. Code Chapter 1B § .0129 (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 § .0129(a)(3)(B).
3. Simons service to his country, his good works in his community and with individuals experiencing financial distress, and his journey to sobriety establish that Simons has satisfied his burden pursuant to § .0129(a)(3)(C) and has reformed his character and presently possesses the moral qualifications required for admission to the practice of law in this state, taking into account the gravity of his misconduct that resulted in his disbarment.
4. However, Simon's readmission to the practice of law will be detrimental to the integrity and standing of the bar, the administration of justice, and to the public's interest such that he has not satisfied his burden pursuant to § .0129(a)(3)(D) in that:
 - a. Simons failed to abide by the Rules of Professional Conduct when confronted with his own wrongdoing on more than one occasion. Simons failed to be candid with the court regarding the notarization of a witness affidavit in 00G1364 resulting in his Reprimand, he created and submitted falsified bank statements in an effort to conceal his trust account deficiencies during the investigation of the matter leading to his disbarment, and he made false statements to the State Bar during that investigation that he employed an accountant who was responsible for reconciling his trust account.
 - b. When confronted with his obligations to serve his country via the U.S. Military and his obligations to serve his clients and the legal profession by ensuring that the entrusted funds in his trust account were safe and protected from misappropriation, Simons chose to ignore his obligations to ensure the safety and protection of the entrusted funds in his trust account.
 - c. Simons also failed to reconcile or otherwise properly administer and maintain his trust account pursuant to the Rules of Professional Conduct for several years, failed to supervise his paralegal who had access to his trust account, allowed his paralegal to continue to have access to his trust account even after learning of her failure to properly disburse entrusted funds in his trust account, and used entrusted funds in his trust account to finance, operate, and maintain his law firm.
 - d. Simons' failures to properly maintain and protect the entrusted funds in his trust account resulted in his creation of circumstances that lead to the fraudulent use of his trust account for which Chicago Title filed a civil action against Simons and others for losses that Chicago Title claimed totaled approximately \$2.4 million.

e. Simons may lack understanding and comprehension of the magnitude of the misconduct that he admitted to in his affidavit of surrender, and of the misconduct concerning the use of his trust account for numerous closings conducted by his paralegal that resulted in Chicago Title paying out claims related to unpaid mortgages.

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

6. Simons appropriately wound down his law practice after his disbarment in compliance with § .0129(a)(3)(F).

7. Simons complied with all applicable orders of the Council in compliance with §.0129(a)(3)(G).

8. No court entered any order relating to the matter that resulted in Simons' disbarment. Therefore, Simons has satisfied his burden pursuant to § .0129(a)(3)(H).

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

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

11. Simons understands the current Rules of Professional Conduct as demonstrated by his completion of 47.25 hours of Continuing Legal Education courses from 2023 through 2024. Therefore, Simons has satisfied his burden pursuant to § .0129(a)(3)(K).

12. 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 § .0129(a)(3)(L).

13. The Council disbarred Simons upon his surrender of his law license, thus the Disciplinary Hearing Commission did not enter an order finding that Simons had misappropriated money from anyone. Therefore, Simons has satisfied his burden pursuant to § .0129(a)(3)(M).

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

15. Since Simons' 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 § .0129(a)(5).

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

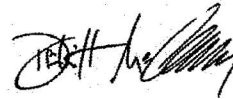
1. The hearing panel considered all of the evidence offered at Simons' reinstatement hearing and recommends to the Council that Simons' Petition for Reinstatement to the practice of law in North Carolina be denied.

2. That the magnitude of loss (to wit, approximately \$2.4 million) caused by Simons' failure to take control of the affairs of his office in his absence, despite having knowledge that significant problems existed, in combination with the cumulative effect of all of his other failures, makes it impossible to consider this an appropriate case for reinstatement. To do so would set a precedent so low that any petitioner requesting reinstatement would by this measure claim entitlement.

3. 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.

4. 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 28th day of June, 2024 with the knowledge and consent of the other members of the panel.



DeWitt F. McCarley, Chair
Hearing Panel