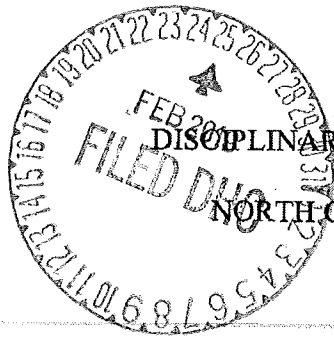


WAKE COUNTY
NORTH CAROLINA



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

IN THE MATTER OF:)

PETITION FOR REINSTATEMENT OF)

THEODORE G. HALE)

) REPORT AND ORDER DENYING
) REINSTATEMENT

THIS MATTER came on to be heard on February 7, 2019 by a hearing panel of the Disciplinary Hearing Commission composed of Donald C. Prentiss, Chair, Fred W. DeVore, Jr. and Tyler B. Morris upon the Petition for Reinstatement of Theodore G. Hale ("Petitioner" or "Hale"). Petitioner appeared *pro se*. G. Patrick Murphy, Deputy Counsel in the Office of Counsel, represented the North Carolina State Bar. Based upon the oral stipulations of the parties, the evidence presented and the arguments of the parties, the Hearing Panel makes, by clear, cogent and convincing evidence, the following:

FINDINGS OF FACT

1. Hale was licensed to practice law in North Carolina on August 29, 1998.
2. Hale went to the Thomas Cooley School of Law in Lansing, Michigan. When Hale entered law school, he was married to his first wife, K. Hale, and had a child, A. Hale. During his third year, his daughter, P. Hale, was born.
3. After Hale was licensed, he joined the practice of Joseph Levinson ("Levinson") in New Hanover County, Levinson, Levinson & Hatch. Later, Levinson and Hale became partners and practiced as Levinson & Hale. Hale's law practice was general in nature and included criminal, civil, domestic and real estate matters.
4. Levinson did not mentor Hale to any significant degree and gave Hale free reign to develop his practice on his own. Hale enjoyed the freedom that his practice with Levinson provided.
5. Hale's law practice grew to the point that he was overwhelmed by the volume of cases he was accepting. At the same time, he was trying to cope with the death of his grandfather, his marriage was falling apart, and he began to abuse crack cocaine and alcohol.
6. Levinson and Hale terminated their business relationship in May/June 2003 and Hale continued to practice law as a solo practitioner.

7. Hale represented clients charged with felony violations of North Carolina's controlled substances act, and, in some cases, Hale would accept controlled substances as his fee.

8. Hale's drug habit got to the point that he could spend as much as \$600 to \$800 per day to support his addiction. During his active addiction, Hale appeared in court representing clients while under the influence of controlled substances and alcohol.

9. Based on information that Hale was suffering from a physical or mental condition that impaired his ability to practice law, on September 30, 2003 an Order Appointing Trustee of Disabled Attorney's Law Practice ("Order Appointing Trustee") was entered and filed in New Hanover County Superior Court by Senior Resident Superior Court Judge Ernest B. Fullwood.

10. At or about the time of the Order Appointing Trustee was entered, Hale was in a drug treatment facility.

11. On March 10, 2004, while he was being treated for his drug addiction, Hale agreed to the entry of a Consent Order of Preliminary Injunction ("Injunction") with the North Carolina State Bar ("State Bar"). The injunction was based on complaints that Hale had mishandled funds of former clients and the injunction enjoined Hale from accepting funds in a fiduciary capacity and from taking any action with respect to any entrusted funds he was holding.

12. On April 14, 2004, Hale signed a Consent Order and Agreement to Restricted Practice of Law ("Order Restricting Practice") with Judge Fullwood. The Order Restricting Practice imposed conditions on Hale's continued practice of law including participation in treatment programs for his addiction as recommended by mental health professionals, and the appointment of Wilmington Attorney Clay Collier ("Collier") as Hale's practice monitor. Collier was and had been a long-time friend to Hale.

13. Prior to agreeing to allow Hale to resume practicing under the Order Restricting Practice, Judge Fullwood reviewed the findings of Hale's treating professionals.

14. On May 19, 2004, the State Bar filed a complaint against Hale in the Disciplinary Hearing Commission ("DHC"), *The North Carolina State Bar v. Theodore G. Hale*, 04 DHC 26. The complaint alleged, among other violations, that Hale 1) converted money belonging to Levinson & Hale to his own use; 2) converted to his own use \$15,287.09 that should have been paid to his client, S. Robinson; and 3) obtained \$2,650 as purported legal fees from the parents of his court appointed client, W. Salmon, Jr., without disclosing to Salmon's parents that he was court appointed and would be paid by the State of North Carolina.

15. On August 13, 2004, Hale filed an answer to the State Bar's complaint denying that he violated the Rules of Professional Conduct as alleged in the State Bar's complaint.

16. Notwithstanding Hale's denial of any misconduct in his answer related to the \$15,287.09 he received on behalf of S. Robinson, the State Bar's Client Security Fund Board ("CSF") on April 22, 2004 considered S. Robinson's claim that Hale misappropriated the \$15,287.09. Though Hale had notice of the CSF's proceeding, he failed to participate and the CSF approved S. Robinson's claim and awarded her \$15,287.09.

17. After being allowed to resume the practice of law by Judge Fullwood under the Order Restricting Practice, Hale was sober for a period of time but later relapsed and began to abuse drugs and alcohol again.

18. On October 7, 2004, Hale was directed to appear before Judge Fullwood to assess his compliance with the Order Restricting Practice, but Hale failed to appear. On October 11, 2004, Judge Fullwood entered an Order suspending Hale's privilege to practice law in North Carolina pending further orders of the court.

19. On October 13, 2004, Hale signed an affidavit of surrender of his license in the DHC proceeding. In his affidavit of surrender, Hale acknowledged that the material facts in the State Bar's complaint were true, that he engaged in the misconduct to obtain money to buy alcohol and cocaine, drugs to which he was addicted, and that he could not successfully defend against the charges pending against him.

20. On October 14, 2004, the Chair of the DHC entered an order disbaring Hale from the practice of law in North Carolina. In the Order of Disbarment, the Chair found that Hale misappropriated money from his former law partner, charged and collected money from the parents of a criminal defendant whom he was appointed to represent without telling them that he was obligated to represent their son at State expense, and represented a woman in a divorce/equitable distribution case and collected and converted to his own use the proceeds of an annuity contract in the amount of \$15,287.09 that belonged to her.

21. On or about January 20, 2005, the CSF met and considered claims by former clients of Hale, Y. Johnson and W. Salmon, Jr. Hale obtained \$225 from Y. Johnson to represent her in a traffic case after Judge Fullwood suspended him from the practice of law and just two days before Hale surrendered his license to the DHC. The CSF approved the claims of Y. Johnson and W. Salmon, Jr. and awarded them \$225 and \$2,826, respectively.

22. On or about July 12, 2006, the State Bar filed a complaint against Hale in Wake County Superior Court seeking to recover money paid out by the CSF to Hale's former clients pursuant to the subrogation provisions of 27 NCAC 1D § .1419.

23. The subrogation action was transferred to New Hanover County and on June 15, 2009 the State Bar and Clay A. Collier, attorney for Hale, reached a consent judgment partially resolving the claims and resulting in a judgment for \$3,051 being entered against Hale for the Y. Johnson and W. Salmon, Jr. claims. The S. Robinson claim was unresolved by the consent judgment and the parties agreed to stay the claim, subject to review by the court in one year.

24. On or about July 10, 2017, Hale sold his residence and paid \$3,051 to the State Bar for the judgment related to the Y. Johnson and W. Salmon, Jr. CSF claims.

25. On November 13, 2017, Hale's son, A. Hale, paid the State Bar \$15,721.09 on behalf of Hale to satisfy the CSF award to S. Robinson. The S. Robinson award was never reduced to a judgment and Hale reimbursed the CSF because it was a condition of petitioning for reinstatement.

26. As noted above, Hale was abusing drugs and alcohol at the time he was disbarred, and he continued to do so for approximately a year after he was disbarred. During that time, Hale was homeless.

27. Shortly after he was disbarred, Hale committed misdemeanor larceny and damage to real property. He pled guilty and was convicted of those two offenses in February 2005.

28. In November 2005, Hale sought help for his addiction from his father who, though reluctant at the start, allowed Hale to stay in his home which helped begin Hale's recovery process.

29. With the help of AA, his church, and his family, Hale was able to stop using drugs on November 17, 2005. Since then, Hale has maintained employment for ten years working with disabled children and their families. He also participated in several volunteer efforts on behalf of the disabled community and the homeless. Hale is currently working for Corning, where he has been employed without incident since March 5, 2018.

30. Hale and his second wife, M. Hale, had a son, J. Hale. M. Hale and Petitioner later divorced.

31. Hale is under a child support order for J. Hale. Hale remains active in the lives of his children.

32. Hale has outstanding student loans from law school in excess of \$250,000.

33. Hale has not attended any AA meetings in approximately 5 years, he did not present an evaluation of his fitness for practice, or any mental health evaluation regarding any mental or emotional issues he may be suffering. Though Hale presented evidence that he has been able to stay clean from drug and alcohol abuse for an extended period and he finds support in his spirituality, he failed to present any material evidence of having a support system in place to verify his abstinence and provide accountability in his continued recovery.

34. Hale's misappropriation and misrepresentations that resulted in him acquiring funds to which he was not entitled were serious violations of the Rules of Professional Conduct and occurred in separate matters during a time of chronic substance abuse.

35. While Hale and his son, A. Hale, testified they hope to practice together some day, Hale did not present the Panel with a clear business plan going forward if he were to be reinstated.

36. On September 24, 2018, Hale filed his Petition for Reinstatement with supporting documents.

37. Hale and the State Bar stipulated and agreed that Hale met the following elements of 27 NCAC 1B § .0129(a)(3):

- a. (A) not more than six months or less than 60 days before filing the petition for reinstatement, a notice of intent to seek reinstatement has been published by the petitioner in an official publication of the North Carolina State Bar. The notice

will inform members of the Bar about the application for reinstatement and will request that all interested individuals file notice of their opposition or concurrence with the secretary within 60 days after the date of publication;

- b. (E) the petitioner's citizenship has been restored if the petitioner has been convicted of or sentenced for the commission of a felony;
- c. (G) the petitioner has complied with all applicable orders of the commission and the council;
- d. (H) the petitioner has complied with the orders and judgments of any court relating to the matters resulting in the disbarment;
- e. (K) the petitioner understands the current Rules of Professional Conduct, he passed the Multistate Professional Responsibility Exam in 2018;
- f. (L) the petitioner has reimbursed the CSF of the North Carolina State Bar for all sums, including costs other than overhead expenses, disbursed by the Client Security Fund as a result of the petitioner's misconduct;
- g. (M) the petitioner has reimbursed all sums which the SHC found in the order of disbarment were misappropriated by the petitioner and which have not been reimbursed by the Client Security Fund; and
- h. (N) the petitioner paid all dues, CSF 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 disbarment.

38. Regarding element (B) of 27 NCAC 1B § .0129(a)(3) that Hale notify the complainants in the disciplinary hearing proceeding of his intent to seek reinstatement, Hale's evidence only showed that he mailed letters to the complainants via certified mail. Return receipts, if any, were not produced as required by the rule.

39. Regarding element (F) of 27 NCAC 1B § .0129(a)(3) that Hale show that he complied with the wind-down provisions of Rule .0128, Hale's client files were managed by a trustee until Hale was permitted to resume a limited practice for a few months. After he relapsed, Hale relied upon Attorney Clay Collier to look after his wind-down obligations.

40. Regarding element (I) of 27 NCAC 1B § .0129(a)(3) that Hale has not engaged in the unauthorized practice of law during the period of disbarment, Hale's evidence established this condition.

41. Regarding element (J) of 27 NCAC 1B § .0129(a)(3) that requires Hale to show that he has not engaged in conduct during the period of disbarment constituting grounds for discipline, Hale committed two misdemeanor offenses shortly after he was disbarred while he was actively abusing drugs and alcohol and was convicted of the offenses in 2005.

42. Hale's misconduct leading to his disbarment occurred over a period lasting more than a year. Hale's misconduct occurred while he was under personal pressures and stress that he could face again if he is reinstated to the practice of law. There was no expert testimony or evidence presented by Hale as to the impact of the pressure and stress of a return to the practice of law if Hale was reinstated.

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

CONCLUSIONS OF LAW

1. Either by stipulation or by evidence presented at the hearing, Hale established by clear, cogent and convincing evidence that he complied with elements (A), (E), (F), (G), (H), (I), (K), (L), (M) and (N) of 27 NCAC 1B § .0129(a)(3).

2. Hale has failed to satisfy his burden of proving by clear, cogent and convincing evidence that he met or complied with elements (B), (C), (D), and (J) of 27 NCAC 1B § .0129(a)(3).

3. Of the elements Hale failed to prove by clear, cogent and convincing evidence, the Hearing Panel finds Hale's evidence was particularly deficient regarding elements (C) and (D) of 27 NCAC 1B § .0129(a)(3) in that 1) given the gravity of Hale's misconduct and the pervasiveness of the stresses and pressure that contributed to his misconduct, Hale failed to establish that he has reformed and presently possesses the moral qualifications required for admission to the practice of law in this state; and 2) Hale failed to show that permitting him to resume the practice of law 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 his misconduct.

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

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

2. If Hale chooses not to ask the Counsel to review the decision of this Hearing Panel, this order will constitute the final order in this matter.

Signed on this the 25 day of February, 2019 with the knowledge and consent of the other members of this panel.



Donald C. Prentiss, Chair
Disciplinary Hearing Panel