

WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
09 DHC 20 & 15 BCR 1

IN RE REINSTATEMENT PETITION OF)
)
)
)
HILTON STUART MITCHELL)

ORDER DENYING
REINSTATEMENT

This matter came on to be heard and was heard on May 18, 2015 by a hearing panel of the Disciplinary Hearing Commission composed of Fred M. Morelock, Chair, F. Lee Farmer and Patti Head; with Fred Owens representing the petitioner and A. Root Edmonson representing the North Carolina State Bar. 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. Hilton Stuart Mitchell ("Mitchell") was licensed to practice law in North Carolina on August 27, 2002.
2. On December 11, 2009, Mitchell filed an affidavit surrendering his license to practice law in North Carolina, admitting that he had misappropriated \$21,665.00 in legal fees owed to his law firm employer.
3. On December 18, 2009, Mitchell was disbarred by order of the Chair of the Disciplinary Hearing Commission.
4. On March 27, 2015, Mitchell filed a Petition for Reinstatement that resulted in this hearing.
5. Prior to filing his petition, Mitchell had published a notice of his intent to seek reinstatement in *The North Carolina State Bar Journal*.
6. Mitchell notified his former law firm employer of his intent to seek reinstatement by certified mail.
7. Mitchell was never charged with or convicted of a criminal offense related to his misappropriation from his law firm employer and, thus, never lost his citizenship.
8. At the time of his disbarment, Mitchell properly wound down his law practice.
9. Mitchell complied with the Disciplinary Hearing Commission's order of disbarment.

10. No court entered an order relating to the matter that resulted in Mitchell's disbarment.
11. Mitchell has not engaged in the unauthorized practice of law during the period of disbarment.
12. Because Mitchell's misconduct did not involve misappropriation of clients' funds, the Client Security Fund did not disburse any funds to any of Mitchell's clients.
13. Mitchell paid all dues, Client Security Fund assessments and CLE fees and penalties owed to the North Carolina State Bar at the time of his disbarment.
14. The State Bar did not contest Mitchell's current understanding of the Rules of Professional Conduct.
15. Mitchell expressed remorse for the harm to his former law firm employer. Mitchell did not present any evidence of facts, events or circumstances demonstrating that he is remorseful and has not attempted to pay back any of the money he admits he misappropriated from his former employer.
16. Mitchell made no effort to repay any of the money he misappropriated from his former law firm employer. This failure shows that he has not done the right thing to rectify his wrongful conduct.
17. Mitchell did not present any evidence that he had affirmatively demonstrated reformation to people in his community that may have been aware of his disbarment.
18. Mitchell worked with a lawyer for a year after his disbarment. He has not had any involvement with the practice of law since then. He has not taken any continuing legal education courses since his disbarment. Mitchell did not present evidence that he is aware of changes that have occurred in the law during the period of disbarment. Mitchell did not present evidence that he has the competency and learning in the law required to practice law in this state.

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

CONCLUSIONS OF LAW

1. Mitchell published notice of his intent to seek reinstatement in compliance with 27 NCAC 1B § .0125(a)(3)(A).
2. In compliance with 27 NCAC 1B § .0125(a)(3)(B), Mitchell notified the complainant in his disciplinary action, his former law firm employer, of his intent to seek reinstatement.
3. Mitchell's misappropriation of his law firm employer's funds was a serious offense that requires a strong showing of a reformed character before reinstatement of Mitchell's license would be appropriate.

4. Mitchell has not satisfied his burden under 27 NCAC 1B § .0125(a)(3)(C) to prove by clear, cogent and convincing evidence that he has reformed and presently possesses the moral qualifications required for admission to practice law in this state, taking into account the gravity of the misconduct which resulted in the order of disbarment.

5. Mitchell has not met his burden of proving by clear, cogent and convincing evidence that Mitchell's reinstatement to the practice of law would not be detrimental to the integrity and standing of the bar, to the administration of justice, and to the public's interest. Therefore, Mitchell has not satisfied his burden under 27 NCAC 1B § .0125(a)(3)(D).

7. Mitchell never lost his citizenship. Therefore, Mitchell has satisfied his burden pursuant to 27 NCAC 1B § .0125(a)(3)(E).

8. Mitchell appropriately wound down his law practice after his disbarment in compliance with 27 NCAC 1B § .0125(a)(3)(F).

9. Mitchell complied with all applicable orders of the Council in compliance with 27 NCAC 1B § .0125(a)(3)(G).

10. No court entered any order relating to the matter that resulted in Mitchell's disbarment. Therefore, Mitchell has satisfied his burden pursuant to 27 NCAC 1B § .0125(a)(3)(H).

11. In compliance with 27 NCAC 1B § .0125(a)(3)(I), Mitchell has not engaged in the unauthorized practice of law during the period of disbarment .

12. In compliance with 27 NCAC 1B § .0125(a)(3)(J), Mitchell has not engaged in conduct during the period of disbarment constituting grounds for discipline under G.S. 84-28(b).

13. The State Bar did not contest Mitchell's current understanding of the Rules of Professional Conduct. Therefore, Mitchell has satisfied his burden pursuant to 27 NCAC 1B § .0125(a)(3)(K).

14. The Client Security Fund did not disburse any funds to any of Mitchell's clients as a result of Mitchell's misconduct. Therefore, Mitchell has satisfied his burden pursuant to 27 NCAC 1B § .0125(a)(3)(L).

15. The Disciplinary Hearing Commission's Order of Disbarment in 09 DHC 20 made findings and conclusions about the adequacy of Mitchell's surrender affidavit, but did not include findings or conclusions regarding the misappropriation alleged in the Amended Complaint filed in 09 DHC 20. Therefore, the panel is not able to conclude that Mitchell failed to satisfied his burden pursuant to 27 NCAC 1B § .0125(a)(3)(M) to prove that he had reimbursed all sums which the Disciplinary Hearing Commission found in the order of disbarment were misappropriated by Mitchell.

16. Mitchell satisfied his burden pursuant to 27 NCAC 1B § .0125(a)(3)(N) to pay to the North Carolina State Bar all dues, Client Security Fund assessments, and CLE fees and penalties owed at the time of disbarment.

17. Mitchell did not meet his burden pursuant to 27 NCAC 1B § .0125(a)(4) to prove by clear, cogent and convincing evidence that he has the competency and learning in the law required to practice law in this state.


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 Mitchell's reinstatement hearing and recommends to the Council that Mitchell's petition for reinstatement to the practice of law in North Carolina be denied.

2. If Mitchell 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. Mitchell is taxed with the costs and administrative fees associated with this proceeding as assessed by the Secretary.

Signed on this the 12th day of June 2015 with the knowledge and consent of the other members of the panel.



Fred M. Morelock, Chair
Hearing Panel