

STATE OF NORTH CAROLINA
COUNTY OF ANSON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
19 EDC 03616

Jason M Price, Petitioner, v. State Board of Education, Respondent.	FINAL DECISION
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THIS MATTER WAS HEARD before Administrative Law Judge J. Randall May on October 29, 2019, in High Point, North Carolina.

APPEARANCES

For the Petitioner: Jason M. Price, *pro se*
For the Respondent: Stephanie Lloyd, North Carolina Department of Justice

WITNESSES

For the Petitioner: Jason M. Price
For the Respondent: Eric Snider
Jennifer Poulsen

EXHIBITS ADMITTED INTO EVIDENCE

For the Petitioner: Exhibits 1 and 2
For the Respondent: Exhibits 3, pp. 1-3; 4; 5, and 6

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing and the entire record in this proceeding, the undersigned makes the following findings of fact. In making the findings of fact, the undersigned has weighed all the evidence, or the lack thereof; and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness; any interests, bias, or prejudice the witness may have; the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether the testimony is consistent with all other believable

evidence in the case. From the sworn testimony of witnesses and the evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner was a licensed attorney practicing in Cabarrus County, North Carolina, from 2001 until his disbarment in October of 2011. Petitioner's primary practice area was real estate. (Petitioner's Testimony) Petitioner's disbarment was based on a finding made by the Council of the North Carolina State Bar that:

Jason M. Price misappropriated funds belonging to his clients in excess of \$25,000.00 and converted the money to his own use and benefit. This conduct constitutes grounds for discipline, under N.C. Gen. Stat. § 84-28 (b)(2), in that Price violated Rule 1.15-2(j) and Rule 8.4 of the Rules of Professional Conduct.

(Resp. Ex. 4, p. 5)

2. On or about November 9, 2018, Petitioner applied for an initial, alternative North Carolina teaching license. On his application, Petitioner disclosed the following:

In 2011, I self reported that [sic] ethical violation when I was a practicing attorney and notified the NC State Bar of my desire to surrender my license. At that time, I surrendered my license.

(Resp. Ex. 4, p. 1; Petitioner's Testimony; Snider's Testimony)

3. At the time of his application, Petitioner also provided documentation to support his disclosure: Affidavit of Surrender and Order of Disbarment. (Resp. Ex. 4, pp. 4-5, respectively; Petitioner's Testimony)

4. Because of Petitioner's disclosure on his application, he was invited to attend a meeting of the Educator Ethics Advisory Committee ("Ethics Committee"). The Ethics Committee advises the State Board of Education ("SBE") and the State Superintendent of Public Instruction on licensure related discipline given reports of misconduct by prospective and licensed educators. (Resp. Ex. 3, p. 2; Snider's Testimony) The invitation provided Petitioner an opportunity to explain, in his own words, the circumstances surrounding his disbarment. (Id.) The invitation also enclosed a one-page document with further information regarding the procedures of the Ethics Committee. (Resp. Ex. 3, p. 3; Petitioner's Testimony). Among other things, this document informed Petitioner of the following:

Each interviewee can present additional documentation to the Committee during the interview. While it is not mandatory or required, in many cases, an interviewee will bring a letter or two of character reference from their current principal or other school administrator. Family members, school personnel, clergy, etc. may also accompany the

applicant but remarks from others are limited to allow the Committee to spend the allotted time talking with you. While this is not a “legal hearing” but rather part of an investigation/fact finding interview, you are welcome to bring an attorney with you if you are more comfortable having one there. Again, attorney’s remarks are limited to allow the Committee to ask questions and hear from you.

(Id.)

5. The Ethics Committee is made up of education professionals appointed by the State Superintendent of Public Instruction to review matters where a person’s teaching license or application for a teaching license is at issue. These matters include, but are not limited to, where an applicant has a criminal conviction; had his/her license revoked or suspended in another state; or where an applicant was suspended, terminated, or resigned from a position due to ethical fitness issues. (Resp. Ex. 3, p. 3; Snider’s Testimony)

6. Petitioner accepted the invitation and attended the Ethics Committee meeting on February 15, 2019. (Resp. Ex. 5; Snider’s Testimony; Poulsen’s Testimony)

7. During his interview with the Ethics Committee, Petitioner explained that he had been very unhappy with the practice of law and was suffering mental health issues when he failed to disburse real estate funds on time and, instead, used the money to pay his bills. (Resp. Ex. 5; Snider’s Testimony) Petitioner further admitted that this conduct led to his misappropriation of around \$25,000 of his clients’ funds. When asked whether he had repaid the misappropriated funds to his former clients, Petitioner did not confirm he had made restitution. Instead, he explained that a portion of it was being held in trust. (Poulsen’s Testimony)

8. During his interview with the Ethics Committee Petitioner also described his employment status since his disbarment. Petitioner said that he had previously worked for the Department of Public Safety (DPS) and was currently working for Anson County Schools as a substitute teacher. (Resp. Ex. 5; Snider’s Testimony) The Ethics Committee specifically asked Petitioner whether he had disclosed his disbarment to DPS, to which Petitioner responded that he did not disclose it because DPS did not ask about it. (Id.) The Ethics Committee also specifically asked Petitioner whether he had disclosed his disbarment to Anson County Schools, to which Petitioner responded that he had informed Anson County Schools that he had surrendered his law license due to emotional health reasons, but he did not disclose that he had misappropriated client funds. (Id.)

9. Petitioner was made aware, prior to his interview before the Ethics Committee, that he would be allowed to present documentation and bring support persons with him. (Resp. Ex. 3, p. 3; Petitioner’s Testimony)

10. Petitioner did not provide the Ethics Committee with any supporting documents for its consideration. He did not provide character references, performance evaluations, or anything else in support of his application. (Snider’s Testimony; Poulsen’s Testimony)

11. Petitioner did not bring with him to the interview before the Ethics Committee any support persons or character references to speak on his behalf. (Snider's Testimony; Poulsen's Testimony)

12. Following the interview and after a review of the relevant information and documentation, including Petitioner's application (Resp. Ex. 4 pp. 1-3); Affidavit of Surrender (Resp. Ex. 4, p. 4); and Order of Disbarment (Resp. Ex. 4, p. 5); the Ethics Committee voted unanimously to recommend that Petitioner's application for a North Carolina teaching license be denied. (Poulsen's Testimony)

13. The Ethics Committee's recommendation was presented to the State Superintendent of Public Instruction Mark Johnson. Superintendent Johnson agreed with, and accepted, the Ethics Committee's recommendation; and informed Petitioner of Respondent's decision by certified mail on or around May 2, 2019. (Resp. Ex. 6; Snider's Testimony)

14. On June 24, 2019, Petitioner filed a petition for a contested case hearing with the Office of Administrative Hearings ("OAH"), appealing Respondent's decision to deny his application for a North Carolina teaching license.

15. On September 16, 2019, OAH issued a Notice of Hearing setting the matter for hearing on October 29, 2019.

16. Attached to his petition, Petitioner included two letters of reference that were admitted into evidence at the hearing in this matter: (1) Letter from M.A. Godwin, Assistant Superintendent of Anson County Schools, dated June 20, 2019; and (2) Letter from Daniel Burrows, Administrative Support/Instructional Coach at Anson High School, undated. (Pet. Exs. 1 and 2, respectively)

17. Mr. Godwin's letter endorses Petitioner as someone who "has demonstrated a great degree of competency in the classroom as a first year teacher" and acknowledges that Petitioner made a "grave error in judgment some time ago." (Pet. Ex. 1) Mr. Godwin's letter, however, never identifies Petitioner's "grave error in judgment" and makes no mention of Petitioner's disbarment from the practice of law. (Id.) Therefore, it is not evidence that Petitioner disclosed his disbarment to Anson City School. And, it is not evidence that Mr. Godwin supports Petitioner's application for licensure despite his disbarment. Mr. Godwin's letter should have offered greater clarity as to his knowledge of the disbarment.

18. Mr. Burrow's letter also endorses Petitioner as a teacher and describes him as someone who has earned Mr. Burrow's trust and who "will uphold the values and morals the profession demands." Mr. Burrow's letter also subtly alludes to an error in judgment in Petitioner's past: "He teaches that failure is a lesson worth learning." (Pet. Ex. 2) Mr. Burrow's letter, however, is undated and makes no mention of Petitioner's disbarment from the practice of law. Therefore, it is not evidence that Petitioner disclosed his disbarment to Anson City Schools. And, it is not evidence that Mr. Burrow's supports Petitioner's application for licensure despite his disbarment.

19. At the hearing in this matter, Petitioner testified that he had been a practicing attorney in North Carolina for approximately 10 years before his disbarment in 2011. He stated that he primarily practiced real estate law in Cabarrus County. He also testified that he disclosed his disbarment on his application for a North Carolina teaching license. Petitioner further testified that Respondent had “overstepped” in denying his application because “someone who had a prior bad act” is not prohibited from becoming a teacher so long as it does not limit his ability to operate effectively in the classroom. Petitioner, however, put on no testimonial evidence, either himself or from other witnesses, regarding his effectiveness in the classroom. Petitioner only made the conclusory statement under oath that his prior bad act, his disbarment, did not affect his ability to conduct himself effectively in the classroom. The only evidence Petitioner offered besides his own testimony was the two reference letters discussed above. (Pet. Exs. 1 and 2) Neither of these reference letters is a sworn statement, and neither specifically acknowledges Petitioner’s disbarment.

20. Petitioner did not make these character references available to the Ethics Committee when it made its recommendation. (Snider’s Testimony; Poulsen’s Testimony) Petitioner first provided them when he filed his petition for a contested case hearing in this matter.

21. At the hearing, Ms. Jennifer Poulsen, an Ethics Committee member who reviewed Petitioner’s matter, testified to her extensive experience as an education professional in North Carolina for the past twenty years. Ms. Poulsen testified to her work evaluating and coaching teachers on the standards set for North Carolina educators.

22. Ms. Poulsen specifically referred to the Code of Ethics for North Carolina Educators and opined that Petitioner’s conduct violated the standards requiring teachers to practice professional standards and to not engage in conduct involving dishonesty. Ms. Poulsen further explained that in addition to her concerns regarding Petitioner’s ethical violations as an attorney, she also had concerns with Petitioner’s lack of disclosure to his employers, including Anson City Schools, regarding the circumstances under which he was disbarred. In short, given Petitioner’s conduct, and the lack of evidence to support his effectiveness in the classroom, Ms. Poulsen testified that she did not have confidence that Petitioner should hold a North Carolina teaching license.

23. Furthermore, Eric Snider, General Counsel for the SBE, testified to the extensive and deliberate process the SBE has for reviewing cases that may warrant action being taken on a teacher’s license. Mr. Snider testified that the State Superintendent, through authority delegated to him by the SBE, supported the recommendation of the Ethics Committee to deny Petitioner’s application based on the determination that Petitioner’s conduct was inconsistent with the standards of professional educators in this State as promulgated in the North Carolina Administrative Code.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction of the parties and the cause. N.C. Gen. Stat. §§ 115C-12(9)a; 150B-1(c); 150B-23(b) and (f); 16 NCAC 6C .0312(c).

2. To the extent the foregoing Findings of Fact contain conclusions of law, or that these Conclusions of Law are findings of fact, they should be so considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 40 S.E. 2d 600, 604 (1946); *Warren v. Dep't of Crime Control*, 221 N.C. App. 376, 377, 726 S.E.2d 920, 923 (2012).

3. N.C. Gen. Stat. § 150B-34(a) provides that an Administrative Law Judge shall decide a contested case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and experience of the agency with respect to facts and inferences within the specialized knowledge of the agency.

4. The State Board of Education may revoke or deny a teaching license for any illegal, unethical or lascivious conduct if there is an adverse relationship between that conduct and the continuing ability of the person to be an effective teacher. 16 N.C.A.C. 6C.0312(a)(8).

5. In teacher licensure cases, the Petitioner bears the burden of proving at an administrative hearing, by a preponderance of the evidence, that he or she is entitled to relief from the action of the administrative agency. *Richardson v. N.C. Dept. of Pub. Instr.*, 199 N.C. App. 219, 228, 681 S.E.2d 479, 485; *Overcash v. N.C. Dept. of Env't & Natural Res.*, 179 N.C. App. 697, 635 S.E.2d 442 (2006); *Peace v. Employment Sec. Comm'n*, 349 N.C. 315, 507 S.E.2d 272 (1988); N.C. Gen. Stat. §§ 150B-25.1(a); 150B-34(a).

6. Teachers are required in this State, by both Rule and by case law, to maintain the highest level of ethical and moral standards, and to serve as positive role models for children. 16 N.C.A.C. 6C.0602(b)(2); *Faulkner v. New Bern-Craven Bd. of Educ.*, 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984).

7. As our Supreme Court observed in *Faulkner*:

Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. *Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil.* It is not inappropriate or unreasonable to hold our teachers to a *higher standard of personal conduct*, given the youthful ideals they are supposed to foster and elevate.

Id. (emphasis added)

8. Petitioner's conduct bears a "reasonable and adverse relationship" to the Petitioner's ability to perform his professional duties in an effective manner. *Faulkner*, 311 N.C. at 42, 316 S.E. 2d at 281.

9. Petitioner's conduct as reflected in the Order of Disbarment is not consistent with the high standards of conduct expected of teachers in this State.

10. Petitioner failed to carry his burden of proof that Respondent's denial of his application for a North Carolina teaching license deprived him of property; ordered him to pay a fine or civil penalty or otherwise substantially prejudiced his rights; and, that in doing so, the Respondent exceeded its authority or jurisdiction; acted erroneously; failed to use proper procedure; acted arbitrarily or capriciously; or failed to act as required by law or rule. N.C. Gen. Stat. §§ 150B-23(a); 150B-25.1(a).

BASED ON the foregoing, the undersigned makes the following:

DECISION

The Respondent's decision to deny Petitioner's application for a North Carolina teaching license must be, and hereby is, **AFFIRMED**. It is not with any amount of satisfaction that this tribunal must take this position for an otherwise talented individual; however, the Petitioner has not carried his burden to my satisfaction.

NOTICE OF APPEAL

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties as indicated by the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 31st day of December, 2019.



J. Randall May
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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Stephanie Lloyd
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This the 31st day of December, 2019.



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