

STATE OF MINNESOTA
IN SUPREME COURT
A22-0424



In re Petition for Reinstatement of
Rachel Lauren Toberman, a Minnesota Attorney,
Registration No. 0389481.

O R D E R

In October 2012, we indefinitely suspended petitioner Rachel Lauren Toberman from the practice of law for a minimum of 9 months, with no right to petition for reinstatement for 6 months. *In re Toberman*, 822 N.W.2d 809, 809 (Minn. 2012) (order). Petitioner engaged in a conflict of interest, made false statements to and failed to communicate with clients, failed to return a client file, failed to cooperate with a disciplinary investigation, and made false statements during a disciplinary investigation. *Id.* Petitioner violated Minn. R. Prof. Conduct 1.4(a)(3) and (4), 1.7(a)(1) and (2), 1.16(d), 4.1, 7.1, 8.1(a), and 8.4(c), and Rule 25, Rules on Lawyers Professional Responsibility (RLPR). *Toberman*, 822 N.W.2d at 809.

Petitioner applied for reinstatement in March 2022. A hearing was held before a panel of the Lawyers Professional Responsibility Board. The panel submitted its findings of fact, conclusions, and recommendation. The panel found that petitioner had proven by clear and convincing evidence that she had undergone the requisite moral change to render her fit to resume the practice of law, that she possessed the intellectual competency to practice law, and that she had otherwise met the conditions of reinstatement set forth in our

prior order. The panel recommended that petitioner be reinstated to the practice of law, subject to her passing the Multistate Professional Responsibility Exam, and be placed on probation for at least 3 years.

Petitioner and the Director of the Office of Lawyers Professional Responsibility waive their procedural rights under Rule 18, RLPR. They jointly recommend that petitioner be reinstated and placed on probation, as recommended by the panel.

We have independently reviewed the file and approve the recommended disposition.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. Petitioner Rachel Lauren Toberman is reinstated to the practice of law, effective upon (a) payment of the required registration fees to the Minnesota Lawyer Registration Office, and (b) providing proof to the Director of a passing score for the Multistate Professional Responsibility Exam no later than December 31, 2024.

2. Petitioner is placed on probation for 3 years, subject to the following terms and conditions:

(a) Petitioner's supervised probation shall begin when she resumes the practice of law, but the 3-year probation timeframe commences only when petitioner begins representing clients. Until petitioner begins representing clients, she will provide the Director on a yearly basis with a declaration affirming that she is not practicing law or that she is engaged in the practice of law in which she does not directly represent clients.

(b) Petitioner shall provide written notice to the Director of her intention to resume representing clients within her practice of law. Petitioner shall provide as much advance notice as possible, and no less than 60 days advance notice.

(c) Petitioner shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation. Petitioner shall promptly respond to the Director's correspondence by the due date. Petitioner shall provide to the Director a current mailing address and shall immediately notify the Director of any change of address. Petitioner shall cooperate with the Director's investigation of any allegations of unprofessional conduct that may come to the Director's attention. Upon the Director's request, petitioner shall authorize the release of information and documentation to verify compliance with the terms of this probation.

(d) Petitioner shall abide by the Minnesota Rules of Professional Conduct.

(e) Petitioner shall not engage in the solo practice of law.

(f) Upon resuming the representation of clients, petitioner shall be supervised by a licensed Minnesota attorney, appointed by the Director to monitor compliance with the terms of this probation. Petitioner shall provide to the Director the names of up to four attorneys who have agreed to be nominated as petitioner's supervisor within 2 weeks from the date that petitioner notifies the Director that she intends to engage in the practice of law. If, after diligent effort, petitioner is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, petitioner shall on the first day of each month provide the Director with an inventory of active client files described in paragraph (g) below. Petitioner shall make active client files available to the Director upon request. If petitioner succeeds in obtaining a public defender position or other practice position with direct supervision, the Director will accept the employment supervisor as sufficient, provided the supervisor agrees to serve in this role.

(g) Petitioner shall cooperate fully with the supervisor's efforts to monitor compliance with her probation. Petitioner shall contact the supervisor and schedule a minimum of one in-person meeting per calendar quarter. Petitioner shall give the supervisor an inventory of all active client files by the first day of each month during the probation. With respect to each active file, the inventory shall disclose the client's name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Petitioner's supervisor shall regularly discuss with petitioner her caseload and what case levels are appropriate and realistic for petitioner. Petitioner's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as may reasonably be requested by the Director.

(h) Within 2 weeks of notifying the Director of her intent to return to the active practice of law, petitioner shall provide to the Director and to the supervisor, if any, a written plan outlining office procedures designed to ensure that petitioner complies with all probation requirements. Such office procedures shall outline petitioner's specific plans and resources available to her to address any practice related issues.

(i) Petitioner shall initiate and maintain office procedures enabling her to maintain a current case list and keep track of the status, deadlines, and next steps in every case.

(j) Petitioner shall maintain total abstinence from alcohol and other mood-altering chemicals, except that she may use prescription drugs in accordance with the directions of a prescribing physician who is fully advised of her chemical dependency before issuing the prescription.

(k) Petitioner shall complete outpatient treatment and any aftercare that may be recommended or prescribed by her treatment facility or healthcare provider.

(l) Petitioner shall initiate or continue current treatment by a licensed consulting psychologist or other mental health professional on a schedule to be determined by the professional. Petitioner shall complete all therapy programs recommended by the therapist and comply with all prescribed medication regimens. Petitioner shall cooperate with the Director's efforts to monitor compliance with this provision, including providing authorizations for the release of medical information to the Director, as may be necessary, for the confirmation of her continued treatment and compliance with recommended therapy and information pertaining to substance use and current state of functional mental health, which may include summary appraisals as well as diagnostic updates.

(m) If, after successfully completing probation, petitioner plans to return to the solo practice of law within 2 years of the completion of her supervised probation, petitioner shall provide the Director as much advance notice as practicable, but no less than 60 days advance notice. Petitioner shall then be placed on unsupervised probation for an additional year. If the Director believes that petitioner's probation arising from this circumstance should be supervised, require additional terms, or be longer than 1 year, the Director may file a motion requesting that the court amend the terms of probation.

(n) If, at any time during the period of probation, or such additional period of probation as may be applicable, after giving petitioner the opportunity to be heard by the Director, the Director concludes that petitioner has violated the conditions of probation or engaged in further misconduct, the Director may file a petition for disciplinary action against petitioner with the Minnesota Supreme Court without the necessity of submitting the matter to a panel or a panel chair. Petitioner waives the right to such consideration by a panel or a panel chair.

Dated: May 11, 2023

BY THE COURT:

A handwritten signature in black ink that reads "Natalie E. Hudson". The signature is written in a cursive, flowing style.

Natalie E. Hudson
Associate Justice