

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Sigismund Wysolmerski
PRB File No. 2018-069

PETITION OF MISCONDUCT

In accordance with a finding of probable cause dated September 19, 2018, Disciplinary Counsel formally charges Attorney Sigismund Wysolmerski (Respondent) with the following violations pursuant to A.O. 9, Rule 11(D)(1)(b) as set forth below.

NOTICE TO RESPONDENT: This is a formal Petition of Misconduct. Pursuant to A.O. 9, Rule 11(D)(3), you are required to file an Answer within 20 days addressed to the Professional Responsibility Program, 109 State St., Montpelier, VT 05609, with copy to Disciplinary Counsel. Failure to file a timely answer may result in the facts and charges being deemed admitted.

Count 1 of 5

On August 20, 2015, Sigismund Wysolmerski, a licensed Vermont attorney, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; to wit: filed with the Rutland Civil Division a sworn, notarized affidavit purporting to bear the signature of his client, T.L., when in fact T.L. did not swear to the statements in the affidavit and did not sign it, in violation of Vermont Rule of Professional Conduct 8.4(c).

Count 2 of 5

On October 27, 2016, Sigismund Wysolmerski, a licensed Vermont attorney, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; to wit: filed with the Rutland Civil Division a sworn, notarized affidavit purporting to bear the signature of his client, T.L., when in

fact T.L. did not swear to the statements in the affidavit and did not sign it, in violation of Vermont Rule of Professional Conduct 8.4(c).

Count 3 of 5

On January 5, 2017, Sigismund Wysolmerski, a licensed Vermont attorney, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; to wit: filed with the Rutland Civil Division a sworn, notarized affidavit purporting to bear the signature of his client, T.L., when in fact T.L. did not swear to the statements in the affidavit and did not sign it, in violation of Vermont Rule of Professional Conduct 8.4(c).

Count 4 of 5

On January 5, 2017 and July 18, 2018, Sigismund Wysolmerski, a licensed Vermont attorney, knowingly made a false statement of fact or law to a tribunal or failed to correct a false statement of material fact or law previously made to the tribunal; to wit, falsely stated in support of a motion for a default judgment or failed to subsequently correct the false statement that he properly served a defendant with a summons and complaint when he had not in fact done so, in violation of Vermont Rule of Professional Conduct 3.3(a)(1).

Count 5 of 5

In August and September 2017, Sigismund Wysolmerski, a licensed Vermont attorney, failed to keep his client, T.L. reasonably informed about the status of his pending Vermont Supreme Court Appeal, to wit, did not inform his client that he would not be filing a brief on his behalf and did not inform his client that the Court dismissed his appeal for failure to file any brief, in violation of Vermont Rule of Professional Conduct 1.4(a)(3).

Facts Alleged in Support of Petition

1. Respondent is an attorney licensed to practice law in Vermont.
2. He maintains a solo practice in Rutland.
3. Respondent began representing T.L. in connection with a 2006 mortgage on his home in West Haven, VT in 2008. Respondent and T.L. entered into a written contingency fee agreement dated May 16, 2008 in which Respondent agreed to help T.L. recover damages, fees, and costs he incurred in the course of obtaining the mortgage, including undisclosed financing fees, a last-minute change in the interest rate and terms of the loan and prepayment penalties, lending practices sometimes referred to as “predatory.”
4. Respondent engaged in some negotiations with the lender, and eventually filed a civil action naming JP Morgan Chase and West Star Mortgage, Inc. as defendants on December 5, 2014. The complaint was served on December 9, 2014 by sheriff to a Vermont agent of “West Star.” The party “West Star” was not further clarified or identified as being “West Star Mortgage, Inc.,” the party named in the December 5, 2014 complaint.
5. West Star Mortgage, Inc. was a company based in Woodbridge, Virginia at the time of the complaint. West Star Mortgage Corporation was and still is a company based in Albuquerque, New Mexico.
6. Respondent then filed a Motion to amend the complaint. The amendment removed the party “West Star Mortgage, Inc.” and changed it to “West Star Mortgage without suffix.” This amended complaint was filed December 17, 2014.

There was no indication of service having been made on the new party or upon West Star Mortgage, Inc.

7. The trial court granted the motion to amend by entry order dated December 19, 2014.
8. Respondent then filed another amended pleading on February 13, 2015. The certificate of service shows that it was served on counsel for JP Morgan Chase and another newly added defendant Select Portfolio Servicing. There is no indication of service of the amended complaint on West Star Mortgage or West Star Mortgage, Inc.
9. Gravel & Shea entered an appearance for Defendant JP Morgan Chase. Pratt Vreeland Kennelly Martin & White entered an appearance for Defendant Select Portfolio Servicing (SPS). No one entered an appearance for West Star Mortgage or West Star Mortgage, Inc.
10. Chase and SPS filed motions to dismiss (which were granted in part), answers and motions for summary judgment. Nothing was ever filed by anyone representing West Star Mortgage or West Star Mortgage, Inc.

Rule 8.4(c) – the August 20, 2015 false affidavit

11. Respondent filed on behalf of T.L. an affidavit in support of his opposition to Defendant SPS's motion for summary judgment. The affidavit appears to be signed by T.L. The affidavit is dated August 20, 2015. T.L. did not actually sign the affidavit and did not know Respondent filed the false document with the court,

facts which Respondent knew.

Rule 8.4(c) – the October 27, 2016 false affidavit

12. Respondent filed an opposition to Defendant Chase's motion for summary judgment on October 27, 2016. In support of that opposition he again filed an affidavit that appears to be signed by T.L. The affidavit itself is undated, but the electronic filing stamp indicates it was filed October 27, 2016. T.L. did not actually sign this affidavit and did not know Respondent filed the false document with the court, facts which Respondent knew.

Rule 8.4(c) – the January 5, 2017 false affidavit

13. On December 19, 2016, the trial court granted summary judgment in favor of Chase. The same day it issued an order pertaining to "West Star Mortgage," stating that proof of service and motion for default should be filed by the plaintiff by January 9, 2017 or the claim against West Star Mortgage would be dismissed.
14. On January 5, 2017, Respondent filed a series of documents representing that service was made upon "West Star" in hand by Sherrif McManis on December 9, 2014. He also filed a motion for default judgment and an affidavit of T.L.
15. T.L. did not actually sign the January 5, 2017 false affidavit and did not know Respondent filed it with the court, facts which Respondent knew.

Rule 3.3(a)(1) – False statement to a tribunal

16. In connection with the January 5, 2017 motion for default judgment filings, Respondent filed with the trial court his own affidavit, stating that he properly served the defendant and included a proposed order for default. He represented in his filings service had been made on “West Star” on December 9, 2014. There was no indication any service was ever made on “West Star” or “West Star Mortgage” or “West Star Mortgage, Inc.” of the two subsequent amended complaints, in which “West Star Mortgage” (no suffix) was actually a named defendant. On the basis of Respondent’s representations to the court, default judgment was granted against “West Star Mortgage,” and T.L. was awarded \$325,000.
17. Subsequently, on April 26, 2018, the successor in interest to West Star Mortgage, Inc. (the originally named defendant in the original December 5, 2014 complaint, based in Virginia) filed a Rule 60(b) motion. In its motion and attachments, the successor to West Star Mortgage, Inc. set forth evidence that Respondent had not been truthful in his statements to the court surrounding his motion for default judgment and his representations regarding proof of service. Specifically, it set forth evidence that Respondent had had three instances of communication with West Star Mortgage, Inc.’s general counsel in 2014 and 2015 when he filed the original complaint.
18. On December 15, 2014, West Star Mortgage, Inc.’s general counsel spoke to Respondent on the telephone and told Respondent that the Virginia-based

company was likely not the proper defendant and they had no record of lending to T.L. He also told Respondent that there was a company “West Star Mortgage” based in New Mexico which might be the proper defendant and Respondent agreed to research the issue.

19. Respondent never followed up to clarify he had sued the proper entity or made service of his subsequent amended complaints to any entity at all.
20. The general counsel also sent Respondent email on December 15, 2014 memorializing their conversation and then again followed up by email in January 2015, asking Respondent for an update.
21. Despite these 2014 and 2015 communications with West Star Mortgage, Inc.’s general counsel, Respondent falsely represented to the court in January 2017 that his initial proof of service dated December 9, 2014 upon the likely improper defendant, West Star Mortgage, Inc., was sufficient to support a motion for default judgment on a different party, West Star Mortgage.
22. Respondent knew the representations were false because of his conversations with West Star Mortgage, Inc.’s general counsel and his own failure to follow up.
23. The court held a hearing on the Rule 60(b) motion on July 18, 2018. The matter of whether Respondent made a false statement to the court was not specifically taken up and not necessary to resolve the issue of whether West Star Mortgage, Inc.’s successor should be “relieved from judgment,” to the extent there ever was a judgment against it at all because it was removed as a party by the amendment to the complaint. Nonetheless, Respondent appeared at the hearing and did not

correct or otherwise address his false statements from January 5, 2017, and the court did not inquire about the matter directly.

Rule 1.4(a)(3) – Communication surrounding the status of the appeal

24. On June 1, 2017, Respondent filed a notice of appeal from the summary judgment order granted in favor of SPS Portfolio Servicing and JP Morgan Chase.
25. The appeal was docketed and assigned a Docket No. 2017-204.
26. On August 1, 2017, Respondent sought a 30-day extension with the Supreme Court, indicating he believed this would extend his briefing deadline to September 1, 2017.
27. On August 7, 2017, the Court issued an entry order stating that Respondent’s brief “shall be filed by September 1, 2017 or the appeal may be dismissed without further notice.”
28. During the months that the appeal was pending, T.L. and Respondent spoke several times over the telephone. In one conversation sometime in early to mid September 2017, Respondent told T.L. that on September 8, 2017, he had mailed T.L. a copy of the brief he filed in the pending appeal.
29. T.L. never received the brief, and emailed Respondent on September 14 and September 25 to tell Respondent he had not received it, expressing concern, and indicating he was checking with the post office to see if it had possibly been returned.
30. By order dated September 21, 2017, the appeal was dismissed for failure to

comply with the Court's August 7, 2017 order to file the brief by September 1, 2017.

31. T.L. did not receive any reply to his emails or call back from Respondent, so on an unknown date between September 26 and October 17, 2017, T.L. went to Respondent's Rutland office from his home in Maine and met with him. On the day they met, Respondent did not tell T.L. that he never filed a brief in the pending appeal. T.L. did not leave the meeting with the understanding that the appeal had been dismissed.
32. T.L. telephoned the Vermont Supreme Court directly on or about October 18, 2017 and learned that the appeal had been dismissed for his attorney's failure to file a brief.

DATED: September 26, 2018



Sarah Katz, Disciplinary Counsel

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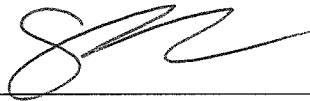
CERTIFICATE OF SERVICE

I certify that on September 26, 2018, Sigismund Wysolmerski (Respondent) was served with the Petition of Misconduct by certified mail with restricted delivery and return receipt at the following address:

Wysolmerksi Law Office, P.C.
13 Church St.
Rutland, VT 05701-3412

and by email to siglaw@comcast.net

in accordance with A.O. 9, Rule 14.A and Vermont Rule of Civil Procedure 5.



Sarah Katz

Disciplinary Counsel