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DECISION NO. 22

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

IN RE:
Sigismund J. Wysolmerski, Petitioner

PRB File No. 2001-171

This matter is before the undersigned Hearing Panel Members pursuant to Rule 22(D) of Administrative Order 9 ("A.O. 9"), on the Motion for Reinstatement of Petitioner Sigismund J. Wysolmerski dated April 27, 2001. A hearing was held on June 19, 2001 at the offices of Langrock, Sperry & Wool, LLP in Burlington, Vermont. Present were Panel Members Mark L. Sperry, Sara Gear Boyd, and Jane Woodruff, the Petitioner and his counsel, Peter W. Hall, and Michael E. Kennedy, Disciplinary Counsel. At the conclusion of the hearing, Disciplinary Counsel was given until July 3, 2001 to file a request for a further hearing. In a letter to the Panel dated June 29, 2001, Disciplinary Counsel indicated that he has not changed his previously stated neutral position on the Petitioner's Motion, and that "I am leaving the Petitioner to his proof and am neither opposing nor supporting the petition." Accordingly, this matter is now ready for decision.

Findings of Fact

Based on the testimony at the hearing, the Panel makes the following findings of fact:

1. Petitioner was suspended from the practice of law for three years, beginning September 8, 1997 pursuant to an order of the Vermont Supreme Court. (In Re Sigismund Wysolmerski, Esq., 169 Vt 562, 702 A. 2D 73 (July 25, 1997)).
2. The three year term of the suspension expired in September 2000, and Petitioner is eligible to seek reinstatement pursuant to A.O. 9, Rule 22(D).
3. Between mid 1993, when the last of Petitioner's ethical violations occurred, and the beginning of his suspension term in September of 1997, Petitioner continued in the practice of law, with no ethical violations or complaints of violations.
4. Petitioner closed his practice prior to the beginning of his suspension term in an orderly fashion, in compliance with the Code of Professional Responsibility (which was then in effect), referring his pending cases to other counsel and withdrawing of record in pending court cases.
5. There are no outstanding or unresolved professional liability claims against Petitioner. In an action instituted by the firm of

Abatiell and Valerio, a counterclaim has been asserted arising out of alleged occurrences while Petitioner was a partner. The counterclaim is covered by insurance, and Petitioner is cooperating in the defense. Disciplinary Counsel has investigated this matter, and it has not changed his stated neutral position on the reinstatement.

6. During his suspension term, Petitioner studied for and obtained a securities license allowing him to sell securities based insurance products, mutual funds, and annuities. He obtained a "Series 66" certification encompassing multi-state, blue sky regulations, and registered investment advisor representative status with the Securities and Exchange Commission Self-Regulatory Agency NASDAQ. Petitioner also became licensed with the Vermont Department of Banking, Insurance, Securities, and Health Care Administration to act as an agent in the sale of insurance products. Petitioner fully disclosed his previous ethical violations in obtaining such licenses, and as represented by Disciplinary Counsel at the hearing, was given a "more intense scrutiny" than usual by that Department. In practicing pursuant to these licenses, Petitioner acted in a position of trust with insurance companies and clients. There have been no complaints against Petitioner since he became so licensed.

7. In his practice as a licensed agent for the sale of securities based insurance products, Petitioner has taken examinations and has become familiar with insurance regulations, the Internal Revenue Service Code, and IRS regulations pertaining to pensions, retirement plans, and estate taxation, and Petitioner has become knowledgeable in the subject areas of medicare, medicomp supplemental insurance, long term care, and medicaid, to the extent that he has become a "resource" on these subjects for members of the "agency group" of other agents of the companies he represents.

8. During his suspension term, Petitioner has acted as a court appointed Guardian ad Litem for children in family court, and thus maintained familiarity with the procedures, issues, and law pertaining to family dissolution, child support, and related issues. He has held approximately one to three open contested Guardian ad Litem positions at all times since January, 1998. One witness, Robert P. McClallen, Esq., testified to the outstanding sensitivity, diligence, and competence of Petitioner in acting as Guardian ad Litem in Mr. McClallen's divorce cases. If reinstated, the Petitioner expects a significant portion of his pro-bono service will be performed in this area.

9. Petitioner has attended various seminars relating to the insurance and securities industry; and his seminars and practice in those areas have imparted several transferrable skills which he will incorporate into his practice, if reinstated.

10. Petitioner has maintained his familiarity with the decisions of the Vermont Supreme Court by reading the Vermont Reports on-line on a monthly basis. Additionally, he has periodically read the Vermont Lawyer and publications of the Vermont Bar Association and the Vermont Trial Lawyers Association.

11. Petitioner has attended 36.5 hours of Continuing Legal Education approved seminars since February 9, 2001, in the areas of Personal Injury Practice, Evidence, Elder Care Law, Supreme Court Case Review, and Ethics.

12. Petitioner has maintained public service and community ties in

the Rutland community, just finishing nine years as vice president of First Night Rutland, and most recently as a volunteer teacher with ELF (Environmental Learning for the Future), a Vermont Institute of Natural Science Program for elementary grades. He serves on the Christ the King School (Rutland) crisis committee with the faculty and school principal. He is also a member of the Rutland Regional Chamber of Commerce and various lake associations at a regional and state level.

13. Petitioner has remarried, has a young child with whom he spends substantial time, and is now in a stable family relationship and has his personal life in order.

14. Petitioner testified candidly and extensively about his previous ethical difficulties, his devastation in listening to the witnesses in his disciplinary proceedings, his previous mistakes in practicing law, his stresses, both personal and professional, and what he characterized as his "arrogance" in his client relationships. The Panel is convinced of his immense remorse for his prior conduct. The Panel is also convinced that Petitioner has turned his life around to a remarkable degree, and that he is fully committed to resuming the practice of law in a competent and ethical fashion. The Panel is so convinced not only by Petitioner's candid and convincing testimony, but by the facts recited in the previous findings as to his conduct and activities during his suspension.

15. Shelley R. Hill, Esq., who acted as Bar Counsel in Petitioner's disciplinary proceedings, has written to the Panel on May 23, 2001 that she believes Petitioner has been rehabilitated, and that "the purpose of the suspension and rehabilitation process is to provide individuals an opportunity to reflect on their wrongdoings and demonstrate a renewed commitment to the high ethical principles expected of members of the bar. I believe Mr. Wysolmerski has done so and urge his readmission to the bar."

16. Petitioner has proposed a mentoring program (Petitioner's Exhibit 2) with attorneys Robert P. McClallen and John B. Webber, both of whom have agreed to participate. The mentoring program will have two aspects; (i) case and office management, and (ii) issues of a personal nature which might have an impact on his practice.

17. The Panel finds the proposed mentoring program, with certain procedural modifications which are included below (herein the "Mentoring Program") to be appropriate. The Mentoring Program is as follows:

A. Dealing With Conflicts and Waivers. Petitioner will, for the duration of the Mentoring Program, use a client engagement letter with all his clients in order to disclose the mentoring relationship, which in substance shall state:

"I have agreed to represent you in this (lawsuit, claim, etc.) I will personally handle the case and will ensure that no client confidences are disclosed without your specific authorization. However, as I have advised you, I have established a mentoring relationship with Attorneys McClallen and Webber of Rutland, Vermont, to assist me in ensuring the highest quality of legal services will be provided on your behalf.

I have specifically requested and obtained your permission to discuss generally your claim with one or another of my mentors without discussion of the specific substantive bases of your claim. I will limit these discussions with my mentors to the general areas of client needs, client expectations, client communications, deadlines and schedules and my administrative plan for prompt resolution of your claim. If, in my opinion, it becomes advisable to discuss the substantive basis of your claim with either of my two mentors, I will request from you specific permission to do so in writing, and will do so only after you have given me that permission.

You will not be billed or charged in any way for the time I spend in discussion with my mentoring attorney."

Petitioner will ensure that a mentor has no conflict in discussing the client's case with him. Petitioner will not, for the duration of the Mentoring Program, accept clients who will not sign the engagement letter.

B. Caseload/Substantive Legal Issue Monitoring. For the first year following reinstatement, Petitioner shall meet at least once a month with one of the mentors, at his expense, to review substantive practice issues, including:

- Client needs
- Client expectations
- Quality of communications with client (no substantive issues)
- Status of the matter
- Deadlines and schedules
- Billing/payment issues

If recommended by either of the mentors or Disciplinary Counsel, the one year period shall be extended for an additional six months.

C. Personal Issues. For the first six months following reinstatement, Petitioner will, at his expense, meet with one of the mentors to discuss issues of a personal nature which might impact his practice, including:

- Peer perception
- Family situations
- Mental status
- Stress in and out of office

Such meetings shall occur monthly in the intervals between the monthly meetings required under (B) above.

D. Implementing. Petitioner will implement the recommendations of the mentors which they or either of them deem necessary to ensure continued appropriate conduct of his practice.

E. Miscellaneous. Petitioner shall permit and authorize Disciplinary Counsel to communicate with the mentors as to compliance with the Mentoring Program and its progress, and as to their recommendations for

extension of the one year initial period. Petitioner shall also secure from each of the mentors and file with the Professional Responsibility Board, with copies to the Panel members and Disciplinary Counsel, their reports as to the progress of the Mentoring Program, their recommendations, if any, made to Petitioner under (D) above, and their recommendations as to extension of the initial one (1) year period. Such reports shall be filed on a calendar quarterly basis, beginning with October 2001. The recommendations as to extension of the one (1) year period shall be filed at least thirty (30) days prior to the one (1) year period expiring.

18. Petitioner has proposed a program of risk management audits by the Risk Management Division of "ALPS" (Attorney's Liability Protection Society), at his expense, compassing conflict control, calendar management, caseload considerations, trust account procedures, client communications, and general law office management practices, with a view toward risk management and avoidance ("Risk Management Audits"). Disciplinary Counsel has recommended two such audits, one when Petitioner first opens his office. The Panel finds that the second audit should be one year thereafter.

Conclusions

The Panel finds as follows by clear and convincing evidence:

1. Petitioner has been rehabilitated.
2. Petitioner has the moral qualifications, competency, and learning required for admission to practice law in this state.
3. The resumption of the practice of law by Petitioner will be neither detrimental to the integrity and standing of the bar or the administration of justice, nor subversive to the public interest.

Decision

Based on the foregoing Findings and Conclusions, it is hereby ordered as follows:

1. Petitioner Sigismund J. Wyslomerski is hereby reinstated to the practice of law in this state.
2. Petitioner shall implement and comply with the Mentoring Program (as defined in Finding 17).
3. Petitioner shall implement a Risk Management Audit Program (as defined in Finding 18) when he first opens his office, and one year thereafter and shall in each instance report to Disciplinary Counsel that he has done so.

Dated this 14th day of August, 2001.

PROFESSIONAL RESPONSIBILITY PROGRAM

FILED AUGUST 15, 2001

HEARING PANEL NO. 5

Mark L. Sperry, Chair

Jane Woodruff, Panel Member

Sara Gear Boyd, Panel Member