

In re Blais (2003-444)

[Filed 21-Oct-2003]

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-444

OCTOBER TERM, 2003

In re Norman R. Blais, Esq. } Original Jurisdiction
 }
 } FROM:
 } Professional Responsibility Board
 }
 }
 } DOCKET NO. 2004.010

In the above-entitled cause, the Clerk will enter:

The Professional Responsibility Board's recommendation that petitioner be reinstated as a member of the bar is accepted. The suspension is lifted as of the date of this order.

FOR THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

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58 PRB

[01-Oct-2003]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: Norman R. Blais, Esq.
PRB File No. 2004.010

Decision No. 58

Respondent filed a Petition for Reinstatement pursuant to Rule 22(d) of the Vermont Rules of Professional Conduct, following the expiration of two orders of Suspension from the practice of law. The matter was heard on September 11, 2003, before Hearing Panel No. 5 of the Professional Responsibility Board consisting of Mark L. Sperry, Esq., Chair, Jane Woodruff, Esq. and Sara Gear Boyd. Beth DeBernardi appeared as Disciplinary Counsel. Respondent was present and appeared pro se.

Procedural History

On February 14, 2002, a Hearing Panel of the Professional Responsibility Board heard three separate complaints and found that Respondent had neglected his clients' matters and made substantial misrepresentations to them in violation of DR 1-101(A)3 and DR-1-102(4) of the Code of Professional Responsibility. (FN1) The Panel suspended Respondent from the practice of law for a period of five months with probation of not less than eighteen months following his reinstatement to the practice of law. In re Norman R. Blais, PRB Decision No. 31, (February 14, 2002). Respondent appealed the matter to the Supreme Court. While the matter was pending in the Supreme Court, Respondent appeared before Hearing Panel No. 6 of the Professional Responsibility Board on charges of neglect of a client's personal injury case and failure to keep her informed about the status of her case in violation of Rules 1.3 and 1.4(a) of the Vermont Rules of Professional Conduct. The Panel found a violation and ordered that Respondent be suspended from the practice of law for a period of six months commencing January 20, 2003, with a period of probation of not less than one year following his reinstatement. In re Norman R. Blais, PRB Decision No. 48, (December 20, 2002).

On December 19, 2002, the Supreme Court adopted the Panel's recommendations and conclusion in PRB Decision No. 31, ordered Respondent to comply with Rule 23 of the Vermont Rules of Professional Conduct and suspended him from the practice of law for a period of five months commencing January 17, 2003, with probation to follow in accordance with the Hearing Panel's decision.

The period of Respondent's suspension has now expired and he is eligible for reinstatement upon satisfying the requirement of Rule 22(D) which requires him to demonstrate by clear and convincing evidence that he has

the moral qualifications, competency, and learning required for admission to practice law in the state, and the resumption of the practice of law will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest and that the respondent-attorney had been rehabilitated.

Facts

Respondent called a number of witnesses on his behalf. Disciplinary Counsel called no witnesses and informed the Panel that she took a neutral stand on the Petition for Reinstatement, neither supporting it nor opposing it. Rule 23

In addition to the requirements of Rule 22(D), the Panel was concerned about how Respondent had handled the mechanics of winding up his practice in accordance with Rule 23. The vast majority of Respondent's cases were taken over by Karen Shingler, Esq., a fellow Burlington attorney who has known Respondent since 1984. She was admitted to practice in 1983, and after a number of years as a prosecutor, she commenced a solo practice in 1989.

Respondent began meeting with Attorney Shingler prior to the commencement of his suspension, and they arrived at an arrangement whereby she would enter an appearance in all of his court cases, handle all court appearances and sign all pleadings. Respondent continued to handle the client contact, drafted documents and did research. He continued to meet weekly with her so that both would be up-to-date on his cases.

Rule 23 requires that clients be notified of the suspension by mail. Respondent did so, but he also talked personally with each of his clients, a task that he admitted was extremely difficult. The result of this personal contact was that all of Respondent's clients fully understood the facts of the situation, and all decided to stay with him under the arrangement with Attorney Shingler.

In essence, during the period of his suspension, Respondent has been acting as a paralegal for Attorney Shingler in connection with his cases as well as doing research and writing on her cases and for other attorneys. In addition, he has served as a Guardian ad Litem in three cases and has taught Criminal Law at Burlington College.

Moral Qualifications

Respondent's witnesses were confident about Respondent's moral qualifications. Susan Fowler, Chittenden County Probate Judge, testified that his character was fine and that she had never known him to be dishonest or unethical. Judge Fowler was admitted to practice in 1980. After four years working as a prosecutor, she entered into practice with Respondent first in partnership and later in an office sharing arrangement until she was elected Probate Judge in 1994. Attorney Karen Shingler also testified to Respondent's good character. Respondent testified that there are no legal malpractice cases pending against him at the present time.

Competency

Respondent's witnesses were unanimous in their opinion that Respondent is a fine lawyer. Judge Fowler testified that he is "truly one of the best attorneys I know." Attorney Shingler believes him to have great legal ability. Alan Bruce, a Burlington attorney, admitted in 1950, who has been in solo practice since 1958, has known Respondent for twenty-five years. He testified that Respondent is "one of the finest lawyers around here," and that he would be comfortable referring cases to him.

Learning

During the period of suspension Respondent has kept up with the law. He has completed all of his required CLE and every Friday reads the Vermont Supreme Court cases handed down in his areas of practice.

Integrity of the Bar and Public Interest

There was no evidence presented that Respondent's return to practice would have any detrimental effect on either the bar, the administration of justice or the public. To the contrary, the witnesses all testified that Respondent would be an asset to the bar and that his return to practice posed no dangers.

Rehabilitation

The question of whether Respondent has been fully rehabilitated was of the greatest concern to the Panel. Specifically, the Panel needed to be assured that Respondent understands and recognizes what led to his violations of the Code, that he has truly changed his ways, and that his attitude toward the practice of law has changed since January of 2002, the time of his hearing in PRB Decision No. 31.

It was clear from Respondent's testimony and that of Judge Fowler that the root of Respondent's problem was his failure to effectively manage his case load. He has always had difficulty saying no to clients seeking his help. As a result, he took on too many cases, and some of them were neglected. Judge Fowler testified about her unsuccessful attempts in the partnership to change the way Respondent operated. She admitted that she had been unsuccessful, partly because the clients, having hired Respondent, were reluctant to receive services from another attorney in the office. Respondent also recognizes this pattern in his practice. Often, as a result of his taking difficult or high profile cases, the smaller cases would be neglected. This is born out by the facts of the earlier disciplinary proceedings. The neglect for which Respondent was disciplined occurred not in the massive time-consuming cases but in cases which did not require a substantial investment or time or energy, cases which fell by the wayside in the press of the "big case" but which were of course still "big cases" to the clients involved.

Respondent testified that he knows that he no longer needs or wants to do the high profile cases. He recognizes that it was those cases which got him into difficulty. He also sincerely believes that he must learn to effectively manage his caseload, and that if there are further complaints he will no longer be able to practice.

The Panel believes that Respondent has taken the first step toward rehabilitation. He understands how he got here. The next question is whether he has changed his ways. Respondent admitted to the Panel that he knows how hard it is for him to say no, but that he has had eight months to think about it. The entire process has been very painful for him, and the Panel believes that he is sincere in his commitment to doing what is necessary to insure that it never happens again. Both Judge Fowler and Attorney Shingler testified that they had discussed Respondent's situation with him, that he understands what led to his discipline, and both believe that he is serious about changing the way he practices.

Mentoring

The Panel was particularly impressed with Attorney Stephen Blodgett who testified for Respondent and has agreed to serve as the Mentor under the probation agreement. Attorney Blodgett was admitted to practice in 1970 and has known Respondent since 1975. He is familiar with the disciplinary system, having acted as one of four state wide Bar Counsel in the 1980's and occasionally as conflict Disciplinary Counsel since that time. Attorney Blodgett had obviously given his role of mentor thoughtful consideration prior to the hearing. He appreciates the seriousness of the task and is committed to mentoring Respondent and to doing it well. It was clear that he had investigated the circumstances leading up to Respondent's suspension and given considerable thought to how he would organize the mentoring arrangement to both protect clients and to assist Respondent in altering his methods of practice. Attorney Blodgett testified that his personal case load is similar to that of Respondent, and thus he has some sense of the number of cases that Respondent could reasonably handle. He plans to begin with an inventory of Respondent's cases and to meet with him on a monthly basis to review the status of each case. He intends to install a tickler system for case management and to set up a phone log system so that he can insure that client calls are returned in a timely fashion. Respondent has no reservations about Attorney Blodgett as a mentor and is committed to working with him to revise his methods of practice.

There is some confusion between the two cases in which Respondent was suspended. PRB Decision No. 31 ordered an 18 month mentoring period. PRB Decision No. 48 ordered a twelve month period. At the hearing Respondent consented to an 18 month period in order to avoid confusion. In addition the decision of the Supreme Court affirming the decision in PRB Decision No. 31 ordered that the probation be in accordance with the terms set out in the Panel's decision in that case. For these reasons we adopt the 18 month probation and the terms of probation set forth in PRB Decision No. 31.

Mental Attitude

A final concern of the Panel is Respondent's attitude toward the practice of law. At the hearing in PRB Decision No. 31, Respondent testified that the practice of law had changed and that he no longer enjoyed it. Absent assurances that Respondent's attitude has changed and that he is sincere in his desire to return to practice, the Panel doubts whether rehabilitation would be possible or mentoring successful. Based upon Respondent's testimony and that of all of his witnesses, the Panel believes that Respondent has changed his attitude to the practice of law since the time of that hearing. He testified that his discussions with his clients prior to his suspension made him realize how much he missed it. Attorney Shingler supported that opinion and the Panel finds that Respondent's present attitude toward practice is positive and that he is sincere in his desire to resume his practice. Attorney Blodgett also believes that Respondent is eager to return to practice. He believes that what happened was out of character and that the dissatisfaction expressed by Respondent was a momentary reaction to his then existing circumstances. His sense is that what is needed is not so much to change Respondent but to bring him back to normal.

Expenses

Rule 22(F) of the Vermont Rules of Professional Conduct provides that

expenses in connection with a reinstatement petition may be assessed against the Respondent. Disciplinary Counsel presented the Panel with an invoice for a deposition in the amount of \$85.17. The Panel has considered this matter and declines to make any order for repayment.

Conclusion of Law

The Panel finds by clear and convincing evidence that Respondent has met the requirements of Rule 22(D) of the Vermont Rules of Professional Conduct. We find that the evidence demonstrates that Respondent has the "moral qualifications, competency, and learning required for admission" and that his return to practice will have no adverse effect on the bar, the administration of justice or the public. We find that Respondent has been rehabilitated, that his attitude toward the practice of law has changed and that there is no reason why he should not be reinstated.

In *In re Lichtenberg*, PRB Decision No. 1 (December 3, 1999), approved by Supreme Court Entry Order, Docket No. 99-533, (January 5, 2000), the Panel considered the underlying causes of the suspension in connection with its determination of the attorney's rehabilitation. In the present matter, it is clear that poor case management and inability to limit case load led to Respondent's suspension. The Panel believes that Respondent appreciates the problems with his conduct, and that he is sincere in his efforts to change this behavior, and further, that the mentoring attorney is committed to assisting him.

Similarly in *In re Illuzzi*, PCB Decision No. 128 (May 5, 1998) approved by Supreme Court Entry Order, Docket No. 98-191, (July 28, 1998), the Panel looked at Respondent's attitude toward the practice prior to his suspension and the changes that occurred in his attitude during the period of suspension. Again it was the altering of the behavior leading to discipline that persuaded the Panel and the Court to order reinstatement.

Recommendation

Based upon the foregoing the Panel recommends that Norman Blais be reinstated to practice law in the State of Vermont and that he comply with the Probation and Mentoring Program as set forth in PRB Decision No. 31.

Dated FILED OCTOBER 1, 2003

Hearing Panel No. 5

/s/

Mark Sperry, Esq.

/s/

Jane Woodruff, Esq.

/s/

Sara Gear Boyd

Footnotes

FN1. Since this misconduct took place prior to September 1, 1999, it was governed by the Code of Professional Responsibility, the predecessor to the Vermont Rules of Professional Conduct. The provisions on neglect and misrepresentation are substantially similar in both rules.