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Via email to Comments.Mailbox@njcourts.gov

Glenn A. Grant, Administrative Director of the Courts
Comments on the Report of the Special Committee on the Duration of Disbarment for
Knowing Misappropriation (Wade Committee)

I have been a practicing attorney since 1965 and also served a term on the District XII Ethics Committee. I am extremely disappointed with the Committee's recommendation to allow applications for reinstatement for those who were disbarred for knowing misappropriation. It has always been an uphill battle for attorneys to overcome the distrust of attorneys that many people have. This seems especially so during these controversial times when there is so much negativity about SCOTUS, about government in general, the delays in getting to trials, the suspension of trials, etc.

The NJ Supreme Court has been an ardent proponent of avoiding even the appearance of impropriety, which I totally support. I have a grave concern that allowing such applications will only undermine whatever good has been created by the Court's attempts to convey to the public its concern for trying to set the highest possible standards for our profession.

The Report shows a very low percentage of disbarred attorneys in other jurisdictions that are re-admitted. I can't see how trying to help such a small percentage of disbarred attorneys is worth the negativity that will be created by such a systemic change.

I also note what I perceive to be the following deficiencies in the Report:

1. There are no statistics about what percentage of re-admitted attorneys become repeat offenders.
2. Possible conditions for readmission are the maintenance of professional liability insurance and/or a fidelity bond. However, there is no information about cost. I would suspect that even if these are obtainable, the cost would be extremely high and would probably require the posting of a large security. The net effect would be only the wealthy could provide these; more discrimination on minorities and non-affluent. The net result

would be very few people could qualify. Again, what is the benefit of an apparent system for reinstatement which is not attainable vs the anticipated undermining of the public's confidence in the profession. These costs should be known by the Court before considering this new policy.

Moreover, the heavy burden of these costs only puts more economic pressure on the readmitted attorney which may lead to more misappropriation.

Should the costs be too high and the Court should decide not to require either or both of them, imagine the public damage if someone is injured by a reinstated attorney and suffers a loss, and the story is published or broadcasted.

3. While the report contains item 7 entitled "Requirement to Make Aggrieved Persons Financially Whole," it only makes mention of reimbursing the Fund. I don't know, but I assume that the Fund does not always fully reimburse all losses. If my assumption is correct, public perception of just reimbursing the Fund but not all aggrieved persons, would not be good. On the other hand, I feel that if the system is adopted, the repayment plan should be continued. Otherwise we are again discriminating against those who are not wealthy. If we truly believe in second chances, we should not just be giving the opportunity to the wealthy.

If the system is adopted, in addition to my above comments on readmission conditions, I submit:

A. Annual audits should be required so long as the attorney is practicing. The public deserves that protection.

B. Requiring a disclosure to prospective clients should not be adopted. I strongly suspect that such a disclosure would deter most prospective clients. The net effect would either be that the attorney is effectively not readmitted or that much more economic pressure (due to lack of clients) would be put on the attorney to again misappropriate.

C. The attorney should not be prevented from maintaining a trust account. This only hampers the attorney's practice.

D. I agree with CLE requirements for bookkeeping, but CLE should also be required on ethics.

E. I agree with options 7, 8 & 9 for attorneys with alcohol or drug abuse, mental health conditions, and gambling or other addictions.

F. I think a monitor is a great suggestion.

G. While not mentioned in the report, consideration ought to be given to a condition that the attorney not be allowed to be a sole practitioner either ever or for at least 5 years. Such a condition could solve many of the economic pressures mentioned above, and could provide the necessary oversight that would be provided by a monitor and by annual auditing.

While the report makes a blanket statement that reinstatement is in the public interest, no reasons were given to support that conclusion. I can't see any benefit to the public. I only see a benefit to the very small percentage of disbarred attorneys who would apply for reinstatement. Again, I see the negative public perception of such a policy greatly outweighing the benefit to the small percentage of attorneys who might seek reinstatement.

Accordingly I urge the Supreme Court not to implement this change.

Respectfully submitted,

Alfred H. Sauer