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VIA EMAIL TO COMMENTS.MAILBOX@NJCOURTS.GOV

Hon. Glenn A. Grant, J.A.D.,
Administrative Director of the Courts
25 Market Street
P.O. Box 970
Trenton, NJ 08625-0970

July 18, 2023

Re: Comments on the Report of the Special Committee on the Duration of Disbarment for Knowing Misappropriation (Wade Committee)

Dear Judge Grant,

I write to you as a public interest advocate and the founder of OPRAmachine.com, a platform that has contributed significantly to open government and the promotion of transparency as well as ethics in government in New Jersey. While I am not an attorney, my extensive engagement with the legal profession, particularly in the public interest arena, as an expert witness, and as a litigant on both sides of the versus sign has furnished me with an informed perspective on the matters currently under your consideration. Thank you for the opportunity to comment on the Report and Recommendations of the Supreme Court Special Committee on the Duration of Disbarment for Knowing Misappropriation (the “Committee” and the “Report”).

After careful examination of the Report, for the reasons set forth herein, I feel compelled to voice my firm opposition to the Committee majority’s proposal of introducing a mechanism for the reinstatement of attorneys disbarred for the knowing misappropriation of client funds. The Committee’s proposal threatens to irreparably harm the public’s trust in the legal profession and our judiciary by allowing attorneys disbarred for the knowing misappropriation of funds a path back to the profession.

The longstanding rule of automatic and permanent disbarment for such offenses, as established in In re Wilson and reaffirmed in In re Hollendonner and In re Wade, has consistently been a cornerstone of maintaining public trust and upholding the integrity of the legal profession in New Jersey. It is this firm and unequivocal rule that reinforces the significance of professional integrity and reminds attorneys of the severe consequences they face when they breach the trust placed in them via the knowing misappropriation of client funds. The Committee’s recommendation to depart from this standard, while well intentioned, has caused me grave concern as an advocate for ethics in the legal profession.

In this context, I find the dissent of the Hon. Maurice J. Gallipoli, A.J.S.C. (ret.) in the Committee’s report particularly persuasive. As Judge Gallipoli rightly points out, the principle

set out in In re Wilson was unequivocal – the knowing misappropriation of client funds results in permanent disbarment. This is not a rule constructed in ambiguity; rather, it is a bright-line rule founded on the universally accepted moral principle that the unauthorized use of another's funds is morally wrong. I respectfully submit that this standard should not be disturbed.

Moreover, Judge Gallipoli's dissent astutely draws attention to the negligible distinction between "stealing" and "borrowing" a client's funds. The unauthorized use of clients' funds, regardless of the intention to repay, is an inexcusable breach of trust that tarnishes the integrity of the legal profession. The Court must not treat such offenses leniently, as this would risk eroding public confidence in the integrity of the profession and the judiciary.

On the topic of the proposed five-year waiting period for disbarred attorneys to apply for reinstatement, I concur with Judge Gallipoli's contention that equating non-permanent disbarment with an "indeterminate suspension" sends the wrong signal to both the profession and the public. It dilutes the severity of the sanction for gross violations of professional ethics, potentially undermining the very fabric of public trust that the legal profession is built upon.

Moreover, in my view the five-year wait time proposed for applying for readmission seems disproportionately lenient when considering the lifetime impact that a client may suffer due to an attorney's knowing misappropriation of funds. This contrasts sharply with the lifetime burden often imposed on victims of such misconduct and sends the wrong message to the public and stakeholders in the attorney ethics process.

Despite the trend of other jurisdictions adopting policies allowing for the possibility of reinstatement, I strongly urge that New Jersey remain a beacon of uncompromising legal ethics by upholding the permanency of disbarment for knowing misappropriation. This stance does not deny the potential for personal change or redemption; rather, it acknowledges that the severity of this particular breach of trust necessitates a definitive professional consequence.

Introducing a mechanism for reinstatement, even with the proposed safeguards, risks sending a message that such misconduct is not conclusively career-ending, which could inadvertently dilute the deterrent effect of disbarment. Moreover, while rehabilitation and redemption are important societal values, these principles should not come at the cost of potentially diminishing public trust in the legal profession, and consequently, the administration of justice.

Public trust, once damaged, is exceedingly difficult to rebuild. While an individual attorney may laudably demonstrate personal change, this does not guarantee that the public's faith in the attorney – and by extension, the profession – can be fully restored. See Matter of Rigolosi, 107 N.J. 192, 206, 526 A.2d 670 (1987) ("The purpose of a disciplinary proceeding, as distinguished from a criminal prosecution, is not so much to punish a wrongdoer as it is to protect the public from an untrustworthy lawyer."); Matter of Wilson, 81 N.J. 451, 456, 409 A.2d 1153 (1979) (emphasizing that "the principal reason for discipline is to preserve the confidence of the public in the integrity and trustworthiness of lawyers in general"); Matter of Makowski, 73

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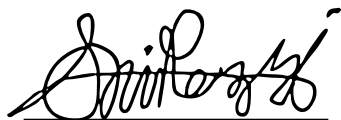
N.J. 265, 271, 374 A.2d 458 (1977) (“The ultimate objectives of imposing a disciplinary measure are ‘the protection of the public, the purification of the bar and the prevention of a re-occurrence.’” (quoting In re Baron, 25 N.J. 445, 449, 136 A.2d 873 (1957))). I firmly believe the potential cost to the public's trust significantly outweighs any potential societal benefit of reintegrating a disbarred attorney back into the legal profession. Given the current societal climate, where public confidence in institutions and the judiciary has been at an all-time low, the importance of upholding the bright-line rule of Wilson and ensuring its strict enforcement is more critical than ever.

Finally, it is my belief that maintaining the current rule will not only help preserve public confidence in the legal profession, but also serve as a constant reminder to attorneys of the serious implications of such ethical breaches, reinforcing the high ethical standards to which attorneys are, and must remain, held.

In conclusion, I respectfully urge the Court to reaffirm its commitment to upholding the highest standards of legal ethics by retaining the existing rule on disbarment for knowing misappropriation.

I appreciate your attention to my concerns and trust that you will thoughtfully consider my comments in your deliberations. If you should have any questions, please feel free to contact me at (609)-222-4161 or gr@gavinrozzi.com.

Most Sincerely,



GAVIN ROZZI