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Via Email - Comments.Mailbox@njcourts.gov

Attn: Glenn A. Grant, Administrative Director of the Courts

Comments on the Report of the Special Committee on the Duration of
Disbarment for Knowing Misappropriation

Dear Chief Justice and Associates Justices of the Supreme Court,

Having reviewed the "Report and Recommendations of the Supreme Court Special Committee on the Duration of Disbarment for Knowing Misappropriation" with the hindsight of some 40+ years of practice it is my opinion that the path to reinstatement suggested by this Committee is long overdue. The application process suggested is rigorous and will assure that only those most sincerely interested in returning to the practice will take the path. However, it is respectfully urged that some of the conditions outlined on pages 58-59 are unattainable and therefore would render the process illusory. Two specific conditions stand out, to wit: 4) the attorney must obtain and maintain professional liability insurance in an amount set by the Court; and 5) the attorney must obtain and maintain a blanket fidelity bond or dishonest insurance policy in an amount set by the Court. There is no market available for any candidate for readmission to obtain professional liability insurance or a fidelity bond. The policy underlying the suggested conditions is salutary; however, there are no markets in any corner of the world where such policies or bonds would be available for purchase at any premium. If the Court is inclined to impose such conditions there must be an identified market available to a disbarred attorney to obtain insurance or a bond.

Condition #4 cannot be achieved from any producer of professional liability insurance. Professional liability insurance premiums have increased dramatically over the past few years.

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Premiums increase even when a claim made against an attorney is determined to be meritless. The specific questions in the application process would make so that an applicant who has the stigma of disbarment on his/her professional record could not meet the underwriting criteria whereby an insurer would take the risk of insuring that attorney. There is no common sense solution for this issue other than to commission a captive insurance company that will insure attorneys who otherwise meet the criteria for reinstatement but who are unable to secure professional liability insurance in conventional markets. It is respectfully submitted that it is an illusory promise at redemption to require an applicant to submit to the process recommended by the committee, to successfully convince this Court that the applicant is worthy of reinstatement only to have that applicant sidelined because insurance is not available at any price.

Condition #5 is an impossibility. I have represented one of the largest producers of fidelity bonds in the United States for decades. It is impossible for an attorney to obtain a fidelity bond under circumstances where the attorney has been determined to have committed an act of theft, dishonesty or defalcation, from an insurance company. If financial security is required it is urged that the Court consider an alternative to the requirement that a bond be purchased from an insurance/bonding company, i.e. a cash deposit in lieu of bond with an appropriate arm of the court that is refundable after the passage of time or retirement of the attorney.

Aside from these comments I believe that the Committee has made a convincing case to modify the Court rules to allow for the possibility of a disbarred attorney (in misappropriation cases) to apply for reinstatement to the bar.

Respectfully,



STEPHEN N. DRATCH

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