

108 PRB

[Filed 17-Apr-2008]

In re Lane (2008-153)

2008 VT 73

[Filed 08-May-2008]

ENTRY ORDER

2008 VT 73

SUPREME COURT DOCKET NO. 2008-153

MAY TERM, 2008

In re Frederick S. Lane, III } APPEALED FROM:
} }
} }
} Professional Responsibility Board
} }
} DOCKET NO. 2008-120

}

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

¶ 1. The Professional Responsibility Board's recommendation that petitioner be reinstated as a member of the Vermont Bar is accepted. Within thirty days of readmission, petitioner must file an affidavit evincing compliance with Section 8 of the M.C.L.E.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice

108 PRB

[Filed 17-Apr-2008]

STATE OF VERMONT

PROFESSIONAL RESPONSIBILITY BOARD

In re: Frederick S. Lane III

PRB File No. 2008.120

Decision No. 108

Petitioner filed a Motion for Reinstatement on January 15, 2008. The matter was heard before a Hearing Panel of Richard Wadham, Esq., Chair, Keith Kasper and Samuel Hand on March 19, 2008. Petitioner was present with his counsel, Joseph E. McNeil, as was Disciplinary Counsel, Michael Kennedy. Disciplinary Counsel took no position with respect to the reinstatement, leaving the petitioner to his proof. The Hearing Panel finds that Petitioner has proved by clear and convincing evidence that he has met the requirements of Administrative Order 9 Rule 22D and recommends to the Supreme Court that Petitioner be reinstated with one condition outlined below.

Disbarment

Petitioner was disbarred by order of the Supreme Court dated October 9, 2002. The facts leading to the disbarment are as follows: Petitioner was serving as Treasurer of the Chittenden County Democratic Party and was responsible for maintaining the party's savings account. During the period of July 2001 through March of 2002 Petitioner removed funds from the account and used them for his personal expenses. Petitioner repaid the money and self-reported the violation of the Vermont Rules of Professional Conduct. He filed an affidavit of resignation with the Supreme Court, admitting the facts and was disbarred without hearing. More than five years has elapsed since the disbarment and Petitioner is eligible to move for reinstatement. A.O. 9 Rule 22A.

Standard for Reinstatement

A.O.9 Rule 22D provides that in a reinstatement proceeding the petitioner ". . . shall have the burden of demonstrating by clear and convincing evidence that he or she 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 has been rehabilitated." The Hearing Panel considered each of these elements as it evaluated the testimony of Petitioner's witnesses. Disciplinary Counsel presented no witnesses.

The two most important in this matter are whether Lane has the competence and learning to return to practice, and whether he has been rehabilitated. We will discuss those first.

Competency and Learning

Prior to the disbarment Lane had developed an interest writing and lecturing on issues relating to computers and the law. In 1996, after the passage of the Internet Decency Act, he put together a book proposal which was accepted. He spent two years writing the book, Obscene Profits, which was published in 2000. He has since written two other books, The Naked Employee, published in 2003, which deals with employer surveillance of employee's computer use, and The Decency Wars published in 2006 the idea for which was sparked by the FCC's reaction to perceived indecency during the Super Bowl

entertainment in 2004. He has recently had a book proposal accepted for The Court and the Cross which will focus on the religious right and the legal system.

In order to assist with the research for his books, Lane subscribes to Loislaw, a case law database similar to Westlaw. He especially reads cases from the U.S. District courts on issues relating to first amendment rights and technology issues.

During the past several years, Lane has written regularly for Newsfactor.com, a website relating to technical computer issues. He typically writes two short articles per day and is paid by the article. He chooses his own subject matter and tends to write about legal issues relating to computers. He is presently on leave from this job to write his next book, but could return at any time.

The publication of the books has led to seminar presentations for lawyers, which Lane is now doing on a regular basis. This in turn has led to requests to act as an expert consultant. Attorney James Murdoch testified about his use of Lane's services as a consultant. Murdoch, who works as a family and criminal attorney, has known Lane since the mid-1990s when they worked together on a case involving computer privilege. In recent years he has associated with Lane several times as a computer expert on issues of privacy and First Amendment rights in cases involving employee embezzlement and computer pornography. He has found Lane to be always up to date on the technical as well as the legal aspects, and that he is an articulate expert witness. Murdoch believes that there is no doubt that Lane has stayed current with the law relating to the First Amendment and free speech. He characterized Lane as an "extra-ordinary one man band of competence."

Murdoch told the Panel that he had been contacted by the State's Attorney in Charlotte, NC about using Lane as an expert. He told him about the disbarment, but they were undeterred, and Murdoch believes that Lane has consulted with the attorney in North Carolina for a substantial period.

Through a seminar presentation on computers and federal and state obscenity law, Lane came to the attention of Attorney Lisa Shelkrot. She is a litigator and approximately 30 to 50 percent of her practice involves criminal defense. She thought Lane a thoughtful and knowledgeable presenter at the seminar and has engaged him to assist her with the legal and technical issues in the defense of two criminal cases. In one case, Lane was helpful in developing a motion strategy based on the legal issues which led to a good plea agreement. In the other case, Lane was able to discard some defenses and to identify other available defenses. She believes that he has enormous competency and currency in these types of issues, "probably one of the best in the country." For her his greatest value was the fact that he

understood the technical and the legal issues and that he was able to thoughtfully analyze all aspects of her cases in light of the current state of the law.

The other specialized area of the law with which Lane has remained current has been that relating to his work on the school board which we will cover in more detail in our discussion of his rehabilitation.

While we believe that Lane has the necessary competency and learning to return to the practice of law, we believe that he should meet the minimum standards required of any lawyer returning to practice after a period of more than three years of inactivity. Section 8 of the Mandatory Continuing Legal Education Rules provides that any attorney returning to practice must submit an affidavit showing completion of 20 hours of accredited continuing legal education within two years of the date of readmission. We believe that Lane should meet this requirement, and thus as a condition of this recommendation we require that within 30 days of readmission Lane shall complete any necessary continuing legal education needed and submit the required affidavit to the M.C.L.E. Board with a copy to Disciplinary Counsel.

Rehabilitation

Whether Lane has been rehabilitated is an issue of concern. His disbarment was as a result of using money belonging to others for his personal use. Even though Lane testified that he has no present intention of returning to practice, we are not in a position to put long term restrictions on his license, and thus have to be satisfied that should he decide to return to practice at some time in the future, that client monies would not be at risk.

In order to assess this element of the rule, it is helpful to look at Lane's personal and professional situation at the time of the disbarment and to compare it to the present date. Lane had separated from his wife in May of 2001. The misuse of funds began shortly thereafter. It was a period of emotional and financial stress for Lane. His first book had been published but was not bringing in money, and he had not yet developed the lecture and computer forensics business that he now has. Lane was clear that he believed that these factors led to the misconduct, but that he still made the decision to use the money and is responsible for the consequences.

Lane's misuse of funds was a very public matter in Burlington where he lives. It was covered by the Free Press and became general knowledge. Despite this, Lane continued to live in Burlington's

South End. He believes that some of his neighbors have forgiven him, and some have not. It also caused difficulties with his family, who felt that he had let them down.

The professional toll for Lane is two-fold. He has not been able to practice law, or to hold himself out as an attorney when soliciting his legal consulting business, and he has had to explain the circumstances to each person with whom he works.

The most compelling testimony about Lane's rehabilitation came from the evidence concerning his work on the Burlington School Board. He was a member of the Board when the news broke and he offered to resign. The then chair of the Board deliberated and decided to leave it up to the voters, and they have returned Lane to the Board in subsequent elections, and he remains on the Board and now serves as Chair of the Finance Committee.

Paul Hale, the present Chair of the School Board testified that when he was elected to the Board, Lane was already a member and that Lane helped him to understand the complex issues before the Board. When Hale became Chair, he appointed Lane to head the Finance Committee. He believes that the committee under Lane's guidance has done an outstanding job. Lane has worked on complex financial situations to obtain a new track for the high school and to do work on old school buildings.

Jeanne Collins, the Superintendent of the Burlington Schools, also testified about the value of Lane's work on the Board and especially as chair of the Finance Committee. Lane has been a public face for the Board, attending Neighborhood Planning Assemblies and presenting to the city council. For the last two years he has attended the National School Board Association meetings and has taken 10-12 hours of legal seminars prior to the meetings.

In his testimony Lane outlined the steps that he has taken which he believes have led to his rehabilitation. He believes that he knows himself a lot better now. He has been working with a therapist. The therapist no longer believes that he needs treatment and will not bill Lane's insurance carrier, but Lane still sees him and intends to continue to do so in the future as a means of support.

His staying in the South End of Burlington instead of moving has been difficult, but has enabled him to face up to his situation and to persuade his neighbors by his actions that he is again worthy of respect. The fact that he continues to be elected to the School Board leads us to conclude that he has regained this respect.

His financial situation is much better now than it was in 2000. In addition to his books, he has steady work now as a consultant and as a seminar presenter. He has taken a leave from Newsfactor.com to write his newest book, but he is certain that should the need for money arise that they would reengage him.

He is seeking readmission not because he has a present intention of returning to the practice of law, but for personal reasons he does not want to end his legal career in the way that he did. He wants to restore that part of his life. Also, he believes that having the credential of bar admission would be beneficial in the work he is presently doing.

Amy Werbel, his domestic partner, testified at some length about his success in putting his personal life back together. He is now divorced, as is Werbel. They each have two boys and have worked hard to make a successful blended family. Werbel testified that Lane has made tremendous changes in his life, but that even at the worst times he was an excellent father, a productive member of the school board, a good writer and a loving companion to her. He has told the boys about his difficulties and has encouraged them to be honest and to reach out for help.

We now return to our initial concern about the risk to client money if Lane should resume law office practice. There was nothing in any of the evidence to suggest that he would allow himself to get into this type of situation again. He appears to be in a much improved personal and financial situation with a good support system and better awareness of himself. He acknowledged to the Panel that this might be a concern, but he had no present intention of returning to practice, and if he did so, it would not be as a solo practitioner, but rather in association with other lawyers. While this is no guarantee, it is additional assurance to the Panel that client monies would not be at risk.

Moral Qualifications, and Questions relating to the Integrity and Standing of the Bar and Whether Readmission will be Subversive to the Public Interest

Lane presented himself as a person who has faced his shortcomings, learned from them, and is no longer letting them define him. He appears to have gained not just the trust and confidence of those he works and interacts with, but their admiration as well.

The witnesses, both attorneys and non-attorneys were unanimous in their enthusiasm about Lane's moral qualifications to practice law, and all believe that the way that he has handled himself since the disbarment is a credit to him and will in no way damage the profession or subvert the public interest. Paul Hale testified that every process Lane went through with the Board and the Finance Committee showed integrity, and that his

readmission would not be subversive to the public interest. Jeanne Collins testified as well that there is no question in her mind about Lane's integrity, that his readmission would have no negative effect on the standing of the bar and that he is a good candidate to return to the bar.

Petitioner also submitted the testimony of Mary Sullivan by way of affidavit. She knows Lane, Werbel and their children on a personal basis and knows of his work on the School Board. She too believes that Lane should be readmitted to the bar.

Conclusions of Law

The Panel finds by clear and convincing evidence that Lane has met the requirements for readmission set forth in Rule 22D of A.O.9. He has the moral qualifications, the necessary competency and learning and his return to 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. We also find that Lane has been rehabilitated.

In assessing the issue of rehabilitation the Panel in both In re Lichtenberg, PRB Decision No. 1 (December 1990) approved by Supreme Court Entry Order, Docket No. 99-533, (January 2000), and In re Blais, PRB Decision No. 58, (October 2003), approved by Supreme Court Entry Order, Docket No. 2004-010, (October 2003), considered the underlying causes of the disbarment or suspension in connection with its determination of the attorney's rehabilitation. During the period when Lane used the funds of the Democratic Committee, he was under great emotional and financial stress. He was recently separated from his wife and had none of the support systems that he now has in place. He is now financially much more stable and has a back-up employment plan if at some time his writing, consulting and seminar work is insufficient. He has worked with a therapist and plans to continue to do so, and is in a stable and loving family relationship. Lane clearly knows himself better than he did eight years ago and understands the value to him of these types of support systems. We do not believe that, given the changes he has made in his life in this period, that he would again find himself in the situation that led to his disbarment.

In Blais and also in In re Illuzzi, PCB Decision No. 128 (May 1998), approved by Supreme Court Entry Order, Docket No. 98-191, (July 1998), the Panels were concerned about whether the attorney's attitude toward the practice of law had changed during the time of the suspension or disbarment. In the present case it is not so much the fact that Lane's attitude has changed, but that he has a new appreciation of both the personal and professional value to him of his license to practice law and of his role as an attorney. At the time of his disbarment, his chosen career path of writer and computer forensic expert was just in the beginning stages. He now knows more fully that his passion is writing and that his area of compelling interest is the intersection of technology and the First Amendment. He has clearly worked hard to develop substantial expertise in this area of the law, and his services are of value to other lawyers. He wants the credential of being a member of the bar, and he wants the restored dignity that would provide. We do not believe that he would jeopardize this again.

Recommendation

Based upon the foregoing the Panel recommends that Frederick S. Lane III be reinstated to the practice of law in the State of Vermont and that within 30 days of readmission he file an affidavit evincing compliance with Section 8 of the M.C.L.E. Rules.

Date APRIL 17, 2008

Hearing Panel No. 7

FILED APRIL 17, 2008

/s/

Richard Wadhams, Jr. Esq.

/s/

Keith Kasper, Esq.

/s/

Samuel Hand