

ENTRY ORDER

MAR 25 2013

SUPREME COURT DOCKET NO. 2013-102

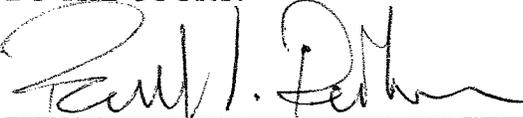
MARCH TERM, 2013

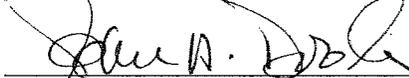
In re George Harwood	}	Original Jurisdiction
	}	
	}	
	}	Professional Responsibility Board
	}	
	}	PRB NO. 2013.032

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

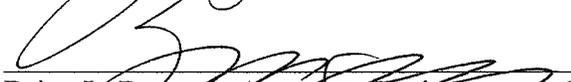
The Court accepts the recommendation of the hearing panel of the Professional Responsibility Board that petitioner George Harwood be reinstated as a member of the Vermont bar. As a condition of reinstatement, petitioner shall comply with the requirements of § 8 of the Rules for Mandatory Continuing Legal Education.

BY THE COURT:

  
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 Paul L. Reiber, Chief Justice

  
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 John A. Dooley, Associate Justice

  
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 Marilyn S. Skoglund, Associate Justice

  
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 Brian L. Burgess, Associate Justice

  
 \_\_\_\_\_  
 Beth Robinson, Associate Justice

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In Re: George Harwood  
PRB File No. 2013.032

Decision No. 157

Petitioner filed a Motion for Reinstatement on August 8, 2012, pursuant to Rule 22(D) of Vermont Supreme Court Administrative Order 9. The matter was referred to this Hearing Panel by the Professional Responsibility Board on August 8, 2012. A Pre-hearing Order was issued on September 11, 2012. The matter was heard on January 11, 2013, before Hearing Panel No. 4, William Piper, Esq., Chair, Jill Lanman Broderick, Esq. and David Tucker. Disciplinary Counsel, Beth DeBernardi, was present as was petitioner and his counsel, Christopher L. Davis, Esq. Disciplinary Counsel took no position with respect to the Motion for Reinstatement.

The Hearing Panel finds that Harwood has proved by clear and convincing evidence that he has met the requirements of A.O. 9 Rule 22(D) and recommends to the Supreme Court that he be reinstated to the practice of law in Vermont.

### **History**

#### Leading Up to Disbarment

Harwood was disbarred by order of the Supreme Court dated February 3, 2006, pursuant to a recommendation by the hearing panel after an evidentiary hearing. The parties stipulated to the facts, and the panel took testimony on sanctions. The panel found that Harwood had violated Rules 1.15(a), 8.4(c) and 8.4(d) of the Vermont Rules of Professional Responsibility. *In re Harwood*, PRB Decision No.83 (December 6,

2005), Aff'd by Supreme Court Entry Order filed February 3, 2006.

During a period of approximately seven years prior to the disbarment, Harwood had commingled his funds with client funds and had misappropriated client funds, using them for his personal and business expenses.

Prior to the disbarment, Harwood was one of 100 attorneys randomly chosen by Disciplinary Counsel to receive a survey concerning trust (IOLTA) account management. Response to the survey was mandatory, and the answers were under oath. Based upon the survey responses, Disciplinary Counsel selected 10 attorneys for audit by a certified public accountant to determine whether the attorneys were managing their accounts in accordance with the IOLTA rules. Harwood's IOLTA accounts were selected for audit. Just prior to the scheduled audit Harwood, acting through counsel, contacted Disciplinary Counsel to report his misconduct. The audit revealed that his responses to some of the questions were inaccurate, and Harwood admitted at the disbarment hearing that his answers on the survey were intended to mislead Disciplinary Counsel.

#### Since Disbarment

Pursuant to the disbarment order, Harwood was required to notify clients and courts and to wind down his practice. The Supreme Court appointed attorney Joseph F. Cahill, Jr. to monitor his progress. Attorney Cahill testified at the reinstatement hearing that there were no problems in this process and no further problems with Harwood's trust account. At the time of his disbarment, Harwood was serving on a number of boards, including the Champlain Islands Adaptive Riding Academy and the Vermont Bar Foundation, and he acted as treasurer of the Rock Point Board. He resigned from all of these positions.

Initially, Harwood worked for a period of two years as a customer service representative for U.S. Airlines but had to resign because of medical problems. He now works for Gardener's Supply, a company which has an on-line and retail store in Burlington. His position is expert customer service representative. He acts as a back-up supervisor and works as closing supervisor two or three times a week.

Gardener's Supply is an employee owned company and Harwood serves on the Employee Stock Ownership Plan (ESOP) committee where he is presently the chair. The role of the ESOP committee is mainly to communicate with the employees; it has no involvement in the finances of the company.

At the time of the disbarment, Harwood was serving as financial guardian for five accounts by appointment of the probate court. He did not resign from these positions and, in fact, was asked not to do so by the probate court. Four of the five were wound up within six to eight months of the disbarment. On these he submitted final accounts and the funds were distributed. The final case was more complicated and was only wound up recently. Judge Lawrence Bruce of the Franklin County Probate Court testified at the reinstatement hearing that he was aware of Harwood's disbarment, but had seen nothing to indicate that he was not doing an outstanding job and kept him on as guardian. The Judge was satisfied with the work that Harwood did after the disbarment.

During the period since the disbarment, Harwood has volunteered with several organizations. He has served as a reading mentor for two years, going into the Integrated Arts Academy in Shelburne to read with a student once a week and to participate in other events with the student. The coordinator of the program also testified at the reinstatement hearing and had high praise for his ability to connect with the students and for his

dependability.

Harwood has also volunteered with the Champlain Islanders Developing Essential Resources (CIDER), an organization that provides rides to medical appointments for the elderly and the disabled. The coordinator testified at the reinstatement hearing that Harwood was reliable, and that she had had no complaints about his work.

Mark Howe, the director of music at St. Paul's Cathedral in Burlington has known Harwood since 1999. Harwood sings in the choir and has taken a leadership role with the choir. Howe was impressed with Harwood's handling of a situation in the choir when the group decided to purchase leather bound hymnals which Harwood knew to be a financial burden to some members of the choir. Harwood worked to make sure that all could have the books.

Harwood testified about the emotional toll that the disbarment took on him personally and on his family, He sought counseling for depression and met with a counselor on a regular basis for two years. During this time his daughter contracted multiple sclerosis and had to move back home, which put additional stress on Harwood and his family. At that time he sought help from an employee assistance program (EAP) counselor. He is not presently in counseling, though he will occasionally meet with his original counselor. In counseling he sought to understand why he did what he did and to deal with the emotional toll the disbarment had on his family and the loss of his ability to practice a profession that is important to him.

#### **Standard for Reinstatement**

A.O.9 Rule 2(D) 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.

#### Moral Qualifications and Rehabilitation

Section II, Theoretical Framework, of the ABA Standards for Imposing Lawyer Sanctions, addresses this concern. “In addition to duties owed to clients, the lawyer also owes duties to the general public. Members of the public are entitled to be able to trust lawyers to protect their property, liberty and lives. The community expects lawyers to exhibit the highest standards of honesty and integrity, and lawyers have a duty not to engage in conduct involving dishonesty, fraud, or interference with the administration of justice.”

Harwood’s failure to meet these standards resulted in his disbarment. It falls to us to determine whether he is now capable of meeting these standards should he return to the practice of law, in order that future clients and the public will be protected.

The panel finds that there were in essence two separate types of misconduct leading up to the disbarment. The first of these is the co-mingling and misappropriation of client funds. The second is his lying under oath on the trust account questionnaire. It is the second of these that gives us the most concern. With respect to each of these two actions we must determine whether Harwood has been rehabilitated and whether he now has the moral qualifications to resume practice. In other words, when faced with a

stressful practice situation in the future, will he adhere to the Rules of Professional Conduct and will he exhibit the strength of moral character expected of members of the bar?

With respect to the mishandling of his client's trust account, Harwood testified that prior to the disbarment he had a "poor concept of money." He has come to realize that about himself and to appreciate the absolute necessity of dealing correctly with client funds. He was also under financial pressure working alone in an office sharing arrangement. He would like to return to private practice but would prefer to work with a partner and understands that having a bookkeeper would be a valuable asset. He also now understands that a line of credit would be a way of managing cash flow problems in any future practice.

Harwood testified to the fact, and his witnesses confirmed, that when he told them about the disbarment it was couched in terms of the co-mingling and misappropriation of trust funds. He did not detail his lying on the trust account questionnaire, though he did say that he had told his mother and sister all of the details. When asked about his moral qualifications and rehabilitation, his witnesses all indicated that, though they had not known about the lying on the trust account questionnaire, they believe that Harwood possesses the moral qualifications to practice law and that he has been rehabilitated.

This is confirmed by Harwood's actions since the disbarment. He testified to the difficulties, both financial and personal, that the disbarment had on his life. As he said, he was instantly unemployed and unemployable. In counseling he believes that he was able to understand why he did what he did. He is remorseful and apologetic. He believes that he is in a "good place" now and that he can continue there.

He resigned from the several boards on which he served telling them that he had been disbarred. On only one board was he handling money, but he did not want his damaged reputation to jeopardize any of the organizations. He did not resign from the guardianships he was handling, nor did the court want him to do so. The Judge trusted him to conclude the matters appropriately and professionally and it appears that he did so.

Harwood's differing approaches to the non-profit boards and the guardianships gives some insight into his concepts of personal responsibility. He resigned from the boards because of a concern that his presence would reflect negatively on the organizations. He did not resign from the guardianship, but carried through with the responsibilities that he had undertaken, some of which were uncompensated. We believe that this shows the concern for both the public perception of the bar and the commitment to clients that we would expect on his return to practice.

Harwood's testimony about the effect of the disbarment on his life and the self reflection and self knowledge gained during this period was sincere and direct. We believe that he has a real desire to return to practice and that he has learned enough about himself and about the practice of law that he will not again put himself in a position that either compromises his clients or jeopardizes his right to practice law.

#### Competency and Learning

During the period of his disbarment, Harwood has assisted Attorney David Carter in his practice in areas in which Harwood had more experience such as formation of small corporations, partnerships or LLCs.

Harwood provided the panel with a list of continuing legal education courses that he had taken in the past year several years. For some of these he has obtained credit

approval from the state. There were several courses in the ESOP area for which he did not obtain approval, and he acknowledges that he is six credits short of those necessary for re-licensure and that he plans to obtain them. It is our understanding that it is not necessary for this panel to insure compliance with the Mandatory Continuing Legal Education Rules, but that it will be handled in connection with the re-licensure process.

We believe Harwood possesses the necessary competency and learning to resume the practice of law.

Integrity of the Bar and the Administration of Justice and whether Readmission will be Subversive to the Public Interest

These criteria all relate in some way to an attorney's relationship to the bar and to the public and require us to consider whether there will be any negative effect on the bar or the legal system should Harwood be readmitted. Perhaps the strongest evidence for his future actions as a lawyer can be found in how he has conducted his life since the disbarment. The evidence on these issues also relates to whether Harwood possesses the moral qualifications for the bar which we considered above.

Harwood called as witness his former legal colleagues, the present Franklin County Probate Judge, the staff of the non-profits he serves and the chief financial officer of Gardener's Supply where he now works and who has worked closely with him on the corporation's ESOP committee. All testified without reservation that his readmission would not compromise the integrity of the bar or the administration of justice nor do they believe that there is any public interest in denying him readmission to the bar. They all spoke of his high moral character and believe him to be fully qualified to practice law.

His recent election as the chair of the ESOP committee at Gardener's Supply

gives some indication of the respect and confidence that his co-workers have in his ability and his integrity.

In his present job, in the legal assistance he has provided to Attorney Carter, as well as his volunteer activities, reading with children, transporting the elderly and the disabled and working with his church choir, Harwood has been reliable, committed and competent.

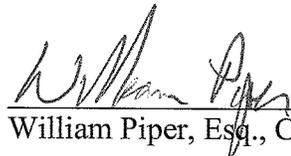
We believe that at this time he will be able to carry these traits and the self knowledge he has gained during the period of disbarment into the future practice of law, and thus we find that Harwood's readmission will not be detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest.

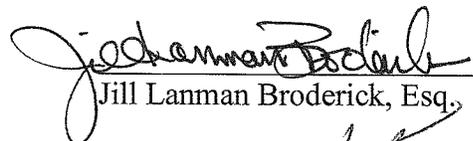
#### **Recommendation**

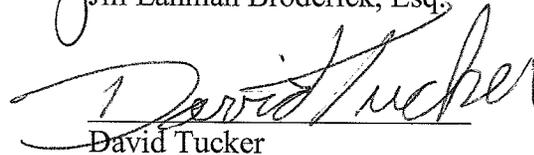
Based upon the foregoing, the Panel recommends to the Supreme Court that George Harwood be reinstated to the practice of law in the State of Vermont.

Dated: 3-8-13

Hearing Panel No. 4

  
William Piper, Esq., Chair

  
Jill Lanman Broderick, Esq.

  
David Tucker

