

IN THE SUPREME COURT
STATE OF MISSOURI

IN RE:

ROBERT PHILLIP NUMRICH,

Respondent.

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Supreme Court #SC93890

RESPONDENT'S BRIEF

KEMPTON AND RUSSELL

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ATTORNEY FOR RESPONDENT

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STATEMENT OF FACTS

Respondent accepts Informant's Statement of Facts.

POINT RELIED ON

I.

RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE HE ENGAGED IN SEVERAL INSTANCES OF PROFESSIONAL MISCONDUCT.

POINT RELIED ON

II.

PROBATION IS THE MOST APPROPRIATE DISCIPLINARY SANCTION.

ARGUMENT

I.

**RESPONDENT IS SUBJECT TO DISCIPLINE BECAUSE HE
ENGAGED IN SEVERAL INSTANCES OF PROFESSIONAL
MISCONDUCT.**

Respondent has not argument to make in regard to Point I and accepts the argument of Informant.

ARGUMENT

II.

PROBATION IS THE MOST APPROPRIATE DISCIPLINARY SANCTION.

ELIGIBILITY – Respondent is eligible for probation pursuant to Rule 5.225(a) because he is unlikely to harm the public during the period of probation, and can be adequately supervised. Two mental health professionals have examined Respondent and found that the misconduct was the direct result of a depressive episode which is now in remission.

Dr. John Wisner, MD opined that Respondent is “. . . able to continue to continue the practice of law without risk of detriment either to the profession or to his clients and the public.” Dr. Wisner goes on to state: “It appears to me that he has already made adjustments in the way his practice is structured and his cases handled that would prevent any recurrence of similar conduct in any event.” A88

Informant had Respondent examined by John M. Wuebbenhorst, a Missouri Licensed Psychologist who agreed with the findings of Dr. Wisner. Mr. Wuebbenhorst also opined: “ In closing it is my impression that Mr. Numrich presents no present danger to his clients, the public or himself.” A92

The opinions of Dr. Wisner and Mr. Wuebbenhorst clearly show Respondent is unlikely to harm the public during the period of probation. Because both mental health professionals agree that Respondent is not now suffering from depression and because Respondent has now gone almost 5 years without any further depressive problems, it is

safe to say he can be adequately supervised. The supervision plan is a comprehensive one and provides for significant supervision and monitoring including monitoring of Respondent's mental health. The safeguards which are in place at Respondent's firm also provide for significant supervision.

Given the facts of this case and the mitigating factors, it is clear that this is not a disbarment case. Likewise the almost 5 year period without any additional acts of misconduct and without any further depressive episodes show that Respondent is able to manage his mental health problem, is able to perform legal services and is able to practice law without causing the Courts or the profession to fall into disrepute. Clearly, pursuant to Rule 5.225(a), Respondent is eligible for probation.

The next question is whether, pursuant to Rule 5.225(b) probation is the proper sanction and do the probation plan and the probation take into consideration the nature and circumstances of the misconduct and the history, character and health status of the Respondent.

In regard to the nature and circumstances of the misconduct it is clear that the misconduct was completely out of character for Respondent and is an aberration for a lawyer who has traditionally given a high quality of service with a high degree of professionalism and who is a person of his word and completely trustworthy. *See the Affidavits of John Turner, Stephen Millin and John Kurtz.* A82, 84, 85

The circumstances of the misconduct are that the misconduct occurred while Respondent was suffering from a psychiatric disorder classified as a Major Depressive

Disorder. In fact Dr. Wisner, the MD Psychiatrist, states that the disorder was the direct cause of Respondent's lapses in judgment and the resulting misconduct. A87

In Respondent's history he has never had a single disciplinary complaint in all of the years of his practice. His history is of an exemplary attorney who handled major litigation. He started at the firm which was originally Rogers Field and Gentry and which later became Field Gentry Benjamin and Robertson. That firm was one of the outstanding firms in Kansas City and clearly Respondent received excellent training there. He went on from there to be a founding member of the firm of Baty Holm Numrich & Otto. In that firm he was a well respected, highly regarded, competent litigation attorney.

Respondent has provided letters of reference from 3 outstanding lawyers in the Kansas City area who regularly practice on the plaintiff side and who have had contact over the years with Respondent. All of those contacts have been in adversarial situations. The letters of John Turner, Stephen Millin and John Kurtz clearly show that the acts were completely out of character, an aberration and a surprise to all three. All three of those lawyers attested to the high quality of service provided by Respondent, to Respondent's respect for the Courts and other lawyers, and indicated that Respondent is a lawyer respected for his candor and his honest, forthright and zealous representation of his clients and a person who, without exception, is a man of his word and held in high regard.

The final item to be considered in determining probation deals with the health status of the Respondent. Both of the mental health professionals find that Respondent had a major depressive episode which is in complete remission at this point. Both agree

that he is able to continue the practice of law without risk of detriment either to profession or to his clients and the public. They further indicate he has been fully educated to the signs of recurrence and the means for treatment for this disorder. The probation conditions agreed to between the OCDC and Respondent require Respondent to obtain a new and updated evaluation by a mental health professional within 30 days of the date of the Court's Order placing Respondent on probation. That mental health professional shall be designated by the Office of Chief Disciplinary Counsel. The probation condition requires respondent to follow the mental health professional's recommendations for any therapy or treatment. Because Respondent is in remission from his depression and because the two mental health professionals who have examined him find there is little likelihood of recurrence the present mental health status of Respondent is good.

Respondent has been licensed for 40 years as an attorney in Missouri. This is his first and only disciplinary complaint. He self-reported and has fully cooperated with the disciplinary authorities. He has clearly demonstrated remorse. He has taken steps within his firm to change his responsibilities and his work load so that there can be no problem with his cases.

It is the conclusion of the Chief Disciplinary Counsel, which is agreed to by Respondent, that Respondent is a proper and qualified candidate for probation in this matter. Respondent meets all of the requirements of Rule 5.225. His long and illustrious exemplary service to the Bar and his high level of performance over the 40 years in which he has been an attorney make it clear that he is a lawyer of extremely high ethical

standards and uncommon ability and honesty. The fact that he has now gone 5 years without any further incident indicates that he does not present a threat to the public or to the profession. Probation is the appropriate remedy in this case. The Stipulation of the parties was presented to the Disciplinary Hearing Panel which approved the Stipulation and recommended discipline. The findings and recommendations of the Disciplinary Hearing Panel are entitled to considerable weight. *In Re: Donaho*, 98 S.W. 3d 871 (Mo. banc 2003).

CONCLUSION

Respondent respectfully requests this Court to accept the Findings and Recommendations of the Disciplinary Hearing Panel and to place Respondent's law license in suspension for an indefinite period of time with no leave to apply for reinstatement until after the expiration of 2 years and to stay such suspension and place Respondent on probation for 3 years pursuant to the Probation Plan proposed by the parties and adopted by the Disciplinary Hearing Panel.

Respectfully submitted,

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

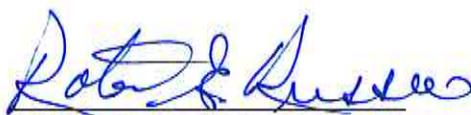
I hereby certify that on this 24th day of June, 2014, a copy of Respondent's Brief is being served upon Informant through the electronic filing system pursuant to Rule 103.08:


Robert G. Russell

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(c);
3. Contains 1,444 words, according to Microsoft Word, which is the word processing system used to prepare this brief.


Robert G. Russell