

STATE OF MINNESOTA
IN SUPREME COURT
A13-0755



In re Petition for Disciplinary Action against
Duane A. Kennedy, a Minnesota Attorney,
Registration No. 55128.

O R D E R

The Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action alleging that respondent Duane A. Kennedy committed professional misconduct warranting public discipline, namely, having a conflict of interest by representing the defendant in a criminal matter, even though he represented a witness in that matter, resulting in his disqualification from representing the defendant, and failing to inform another client of a settlement offer in a criminal matter unless the client resolved the outstanding attorney fee balance due to respondent, in violation of Minn. R. Prof. Conduct 1.4(a)(1), (2), and (3), and (b), 1.17(a)(2), 1.9(a), and 8.4(d).

Respondent waives his procedural rights under Rule 14, Rules on Lawyers Professional Responsibility (RLPR), admits the allegations in the petition, and, with the Director, recommends that the appropriate discipline is a public reprimand and unsupervised probation for 2 years.

The court has independently reviewed the file and approves the recommended disposition except for the terms of probation. Given respondent's disciplinary history and misconduct at issue in this case, respondent's probation should be supervised.

Based upon all the files, records, and proceedings therein,

IT IS HEREBY ORDERED that:

1. Respondent Duane A. Kennedy is publicly reprimanded;
2. Respondent is placed on disciplinary probation for 2 years subject to the

following terms and conditions:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation. Respondent shall promptly respond to the Director's correspondence by its due date. Respondent shall provide the Director with a current mailing address and shall immediately notify the Director of any change of address. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct that may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify respondent's compliance with the terms of this probation;

b. Respondent shall abide by the Minnesota Rules of Professional Conduct;

c. Respondent shall be supervised by a licensed Minnesota attorney, appointed by the Director to monitor compliance with the terms of this probation. Within two weeks from the date of filing of this order, respondent shall provide the Director with the names of four attorneys who have agreed to be nominated as respondent's supervisor. If, after diligent effort, respondent is unable to locate a supervisor acceptable to the Director, the Director shall seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, respondent shall, on the first day of each month, provide the Director with an inventory of client files as described in paragraph d below. Respondent shall make active client files available to the Director upon request; and

d. Respondent shall cooperate fully with the supervisor's efforts to monitor compliance with this probation. Respondent shall contact the supervisor and schedule a minimum of one in-person meeting per calendar quarter. Respondent shall submit to the supervisor an inventory of all active client files by the first day of each month during the probation. With respect to each active file, the inventory shall disclose the client name, type of representation, action respondent took to ensure there were no conflicts of interest with the representation, date opened, most recent activity, next

anticipated action, and anticipated closing date. Respondent's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as the Director may reasonably request; and

3. Respondent shall pay \$900 in costs pursuant to Rule 24, RLPR;

Dated: June 19, 2013

BY THE COURT:

/s/

Alan C. Page
Associate Justice