



C2-89-1081

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LAWYERS PROF. RESP. BOARD

Supreme Court

Per Curiam

In Re Petition for Disciplinary Action
against Nancy T. Klemek, an Attorney
at Law of the State of Minnesota.

Filed October 13, 1989
Office of Appellate Courts

O P I N I O N

Per Curiam.

This matter comes to us on the petition of the Director of the Lawyers Professional Responsibility Board for disciplinary action against respondent Nancy T. Klemek, a sole practitioner admitted to the Minnesota bar in 1977. Respondent failed to serve and file answers to the petition and, thus, the allegations in the petition are deemed admitted. Rule 13(b), Rules on Lawyers Professional Responsibility (RLPR). A hearing was set before this court for the purpose of considering the imposition of appropriate discipline. We now conclude that respondent should be suspended indefinitely for a minimum of six months with conditions for reinstatement.

Respondent has been subject three times before to private sanctions for client neglect. The present petition, served on June 14, 1989, while respondent was on private supervised probation, arises from neglect of another client matter, failure to cooperate with the requirements of her probation, and failure to cooperate with this disciplinary investigation.

In her more recent private probation, respondent agreed that she would cooperate with her probation supervisor in efforts to monitor compliance with her probation, to report

at least quarterly to her supervisor about all client matters, and to reply to all correspondence from the director within 10 days. Despite these stipulations, respondent has repeatedly ignored her obligations under the private probation. She failed to initiate timely contact with her supervisor, failed to provide information on her client files as requested by her supervisor when contact was finally made, failed to reply to two certified letters from the director, and failed to attend two scheduled meetings with the director arranged for the purpose of discussing the persistent difficulties experienced with respondent regarding the requirements of her probation. In failing to cooperate with her probation, respondent violated Minnesota Rules of Professional Conduct 3.4(c) (lawyer shall not knowingly violate rules of tribunal), and 8.4(d) (lawyer shall not engage in conduct prejudicial to administration of justice).

Respondent's noncooperation with her private probation was aggravated by another complaint of client neglect. Respondent was retained to probate an estate. When property belonging to the estate was sold, both the personal representative and the buyer requested respondent to provide the abstract in her possession to the buyer. Despite these requests, and several requests from the buyer's attorney, respondent apparently still has not provided the buyer the abstract. Respondent's failure to provide this abstract violated, and continues to violate, Minnesota Rules of Professional Conduct 1.15(b)(4) (lawyer shall promptly return property to client), and 1.3 (lawyer shall act with reasonable diligence).

Respondent has also demonstrated indifference to the present disciplinary process. The only reply received from respondent about the latest allegations of client neglect and her noncooperation with her probation was a letter delivered the day before oral arguments were heard. Respondent has proffered to the Office of Professional Responsibility and this court neither explanation nor excuse for her conduct. Respondent's failure to cooperate with the Board, and her decision to ignore these proceedings, constitutes a separate act of professional misconduct. In re Cartwright, 282 N.W.2d 548, 552 (Minn. 1979). Rule 25,

RLPR (lawyer's required cooperation).

Our purpose in suspending respondent is not to punish but to protect the public and deter future misconduct. In re Jensen, 418 N.W.2d 721, 722 (Minn. 1988). The nature of the misconduct, the cumulative weight of the disciplinary violations, the harm to the public and to the legal profession are all factors considered when determining the appropriate discipline. See, e.g., In re Schaefer, 423 N.W.2d 680, 683 (Minn. 1988); In re Moore, 431 N.W.2d 261, 263 (Minn. 1988). Because of her repeated neglect of client matters and the lack of cooperation with her private probation and this disciplinary process, we are forced to take steps to impress upon respondent the seriousness of her ethical obligations to her clients and to the legal profession.

It is, therefore, the judgment of this court:

1. Effective immediately respondent Nancy T. Klemek is indefinitely suspended from the practice of law.
2. Respondent may not petition for reinstatement until at least six months have elapsed from the date of filing this opinion and, in addition, the following conditions have been met:
 - a. Respondent shall successfully complete such written examination as the State Board of Law Examiners requires for admission to the practice of law on the subject of professional responsibility.
 - b. Respondent shall comply with the requirements of Rule 26, RLPR.
 - c. Respondent shall pay to the director \$750 in costs pursuant to Rule 24, RLPR, payment to be made within 60 days of the date of filing this opinion.

IT IS SO ORDERED.