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STATE OF MINNESOTA

IN SUPREME COURT

A05-0646

OFFICE OF
APPELLATE COURTS

JUN 15 2005

FILED

In re Petition for Disciplinary Action against
Brian J. Peterson, a Minnesota Attorney,
Registration No. 85625

ORDER

On March 31, 2005, the Director of the Office of Lawyers Professional Responsibility filed with this court a petition commencing disciplinary action against Brian J. Peterson, alleging that Peterson had committed professional misconduct. The Director also filed a petition requesting that this court temporarily suspend Peterson from the practice of law pending that final determination. Peterson filed an answer to the petition on April 19. On May 10, the Director filed a memorandum in support of the petition, and on May 12, Peterson filed a response. Together with his response, Peterson filed a motion to strike two affidavits, Exhibits A and B, attached to the Director's memorandum on the grounds that he disputed the facts alleged in said affidavits. On May 17, we appointed Renville County Judge Randall J. Slieter as referee to hear the petition for disciplinary action. On June 2, we held a hearing on the Director's request for temporary suspension. Peterson appeared at this hearing.

The Director has made serious allegations regarding Peterson's conduct relating to his representation of a client who is now 96 years old and likely in need of nursing home

care for the remainder of her life. As of January 1, 2003, the client had approximately \$170,000 in a variety of investments, much of which she intended to leave to a religious organization upon her death. Peterson assumed power of attorney for the client and drafted a pooled trust agreement in January 2003 for the purpose of protecting the client's assets from medical assistance limits. A lawyer for whom Peterson worked as a paralegal while he was suspended from the practice of law was named as trustee of the pooled trust.

The Director alleges that Peterson purchased two cars with the client's funds and billed her for his time and travel expenses in doing so, then transferred both of the cars to himself shortly after the purchase. One of the cars was titled in both Peterson's and the client's names, which Peterson claims he did for insurance purposes. The Director alleges that Peterson purchased the car for the client using approximately \$40,000 of her funds, and then paid the client \$27,300 when he transferred the car to himself a few months later. The Director also alleges that Peterson used the client's funds to purchase approximately \$70,000 worth of furniture and art. The Director alleges that the furniture and art have remained in Peterson's possession at his home. Peterson acknowledges that the furniture and art are in his possession, but asserts that they are being kept in storage for the client.

The Director next alleges that from May to September of 2003, Peterson retained in his bank account approximately \$26,000 of the client's funds purportedly used for the medical assistance spend-down, and that approximately \$5,600 of these funds remained unaccounted for after the Director began investigating the matter. Finally, the Director

alleges that Peterson failed to disclose substantial assets belonging to the client on two medical assistance applications that he submitted on her behalf. Peterson asserts that his failure to disclose the assets was inadvertent.

Peterson denies that he misused the client's funds. He asserts that the purchases he made on her behalf "were intended to conserve her estate and to make her eligible for Medicaid," and he denies that the fees charged were excessive. In support of his assertion, Peterson provided an affidavit by an experienced lawyer familiar with the practice of elder law. This lawyer stated that he believed Peterson's representation of the client with regard to her medical assistance planning was lawful and reasonable.

In addition to the foregoing allegations of professional misconduct, Peterson has been convicted of a crime based on his conduct while representing the client. The Hennepin County Attorney charged Peterson with failure to pay the motor vehicle tax in excess of \$300 in violation of Minn. Stat. § 297B.10(a) (2004), and theft by swindle in violation of Minn. Stat. § 609.52 (2004). Both offenses related to the transfer of title of one of the cars from the client to Peterson. Peterson faulted the Department of Motor Vehicles for not telling him that the transfer of the car was a taxable transaction, and claimed that he did not act with criminal intent.

Peterson and the Hennepin County Attorney's Office entered into an agreement whereby they submitted the violation of § 297B.10(a) to the court on stipulated facts, and the theft by swindle charge was dismissed. The court found Peterson guilty of failure to pay the motor vehicle tax in excess of \$300. Because criminal intent is an element of Minn. Stat. § 297B.10(a), Peterson's conviction under that statute stands as conclusive

evidence of his criminal intent. *See In re Oberhauser*, 679 N.W.2d 153, 159 (Minn. 2004) (citing 19(a), Rules on Lawyers Professional Responsibility (RLPR), and stating that “an attorney’s criminal conviction is ‘conclusive evidence that the [attorney] committed the conduct for which the [attorney] was convicted’”).

Peterson has a history of discipline before our court. In December 2000, we issued an order suspending Peterson from the practice of law for six months effective February 1, 2001. Peterson’s suspension was based on his misconduct in fabrication of a waiver and in filing an attorney’s lien against a client’s homestead without obtaining a validly executed waiver of homestead exemption. *In re Peterson*, 620 N.W.2d 29, 30 (Minn. 2000). The Director brought another petition for disciplinary action against Peterson, alleging that, while suspended, he filed an attorney’s lien against a client’s homestead with a fabricated waiver of the homestead exemption. *See In re Peterson*, 658 N.W.2d 875, 875 (Minn. 2003). Peterson and the Director entered into an agreement stipulating the conditions for Peterson’s reinstatement, and we then ordered his reinstatement to the practice of law. *In re Peterson*, 660 N.W.2d 419, 420-21 (Minn. 2003). At that time, we did not extend Peterson’s suspension because we issued our order after the date that the referee recommended that Peterson be eligible to apply for reinstatement. *In re Peterson*, 658 N.W.2d at 875. In addition to being suspended from the practice of law, Peterson has been admonished for professional misconduct with respect to at least six separate clients. Peterson does not dispute any aspect of his prior disciplinary history and misconduct.

In the context of disciplinary proceedings, we aim to “guard the administration of justice and to protect the courts, the legal profession, and the public, not to punish the lawyer.” *In re Ruffenach*, 486 N.W.2d 387, 390 (Minn. 1992). We may suspend a lawyer pending final determination of the disciplinary proceedings against him if we conclude that the lawyer’s continued practice of law “poses a substantial threat of serious harm to the public.” Rule 16(a), RLPR. Allegations of misuse and misappropriation of client funds, repeated neglect of client matters, and failure to cooperate with an investigation often serve as bases for temporary suspension. *See In re Wheat*, 575 N.W.2d 101, 101-02 (Minn. 1998); *In re Pang*, 502 N.W.2d 390, 391 (Minn. 1993); *In re Shoemaker*, 494 N.W.2d 29, 29 (Minn. 1992); *In re Loewenthal*, 472 N.W.2d 298, 298 (Minn. 1991); *In re Plowman*, 463 N.W.2d 497, 497 (Minn. 1990); *In re Okerman*, 298 N.W.2d 28, 29 (Minn. 1980).

Here, the Director’s allegations that Peterson has misused and misappropriated an elderly client’s funds are serious. Further, Peterson has been convicted of failure to pay the motor vehicle tax in conjunction with the transfer of one of the cars from the client to himself, but does not appear to have accepted responsibility for the conduct underlying that conviction. Finally, Peterson has a lengthy record of prior discipline for similar misconduct, including being suspended from the practice of law. Moreover, Peterson disobeyed this court’s order during one of those suspensions as he continued to advise clients. Based on the foregoing facts, we conclude that Peterson’s continued practice of law poses a substantial threat of serious harm to the public.

We therefore now order:

1. That Peterson's motion to strike the two affidavits, Exhibits A and B, attached to the Director's Memorandum in Support of the Petition for Temporary Suspension is denied.

2. That, under Rule 16 of the Rules on Lawyers Professional Responsibility, respondent Brian J. Peterson is temporarily suspended from the practice of law pending final determination of these disciplinary proceedings.

3. That Peterson shall, within 10 days of this order, notify each of his clients of his inability to continue representation of the client and otherwise shall comply fully with all provisions of Rule 26, Rules on Lawyers Professional Responsibility.

Dated: June 15, 2005.

A handwritten signature in black ink, appearing to read "Paul H. Anderson", written over a horizontal line.

Paul H. Anderson
Associate Justice