

STATE OF MINNESOTA
IN SUPREME COURT
FILE NO. C3-97-356

In Re Petition for Disciplinary
Action Against Alan J. Albrecht
An Attorney at Law of the
State of Minnesota

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATION FOR DISCIPLINE**

The above matter came on for hearing on May 28, 2002 before the undersigned appointed Referee by Supreme Court at the courtroom of the Office of Lawyer's Professional Responsibility in St. Paul, Minnesota. The Director was represented by Attorney Patrick Burns. The Respondent appeared with his attorney, Rebecca Egge Moos. Based on the evidence submitted at trial and the stipulations of the parties, the Referee makes the following:

FINDINGS OF FACT

I.

Alan Albrecht was admitted to practice law in Minnesota on October 28, 1988. On January 9, 1998, the Respondent was suspended from the practice of law by Order of the Supreme Court of the State of Minnesota. He was to be suspended for 45 days based on a stipulation which, among other conditions, required the Respondent to be on supervised probation for a period of two years on conditions set forth in said Order. Pursuant to an Order filed April 14, 1998, the Minnesota State Supreme Court reinstated Respondent's license subject to four years supervised probation. As of the date of this hearing, the Respondent continues to be supervised pursuant to said Order and as described below.

II.

The Respondent has received 9 admonitions from the Office of Lawyer's Professional Responsibility. The first such admonition was received October 22, 1993 and the

last such admonition was received February 28, 2001. Further, the Respondent received a public reprimand by the Supreme Court by Order dated July 2, 1997 in which he received a two year supervised probation. He is currently supervised by Attorney Andrea Rubenstein, 2100 Stevens Avenue South, Minneapolis, Minnesota 55404-2533. Ms. Rubenstein reports to the Office of the Lawyer's Professional Responsibility on a regular basis as to the completion of conditions and the law practice office and procedures of the Respondent.

III.

Though the Respondent has been involved in a significant number of admonitions, as well as a public reprimand and two suspensions, the Referee does find significant mitigating circumstances surrounding the conditions of Respondent's early employment (after his judicial clerkship), which add explanation for these. Respondent's first employment after law school was a Judicial Clerkship from September 1988 to August 1989 in the Eighth Judicial District. Respondent first became employed (following the clerkship) in 1989 at the law firm of Scar and Richards. In 1992 the Respondent became employed by the law firm of Nyquist and Associates. Two weeks upon employment in this firm he became aware that Attorney Nyquist was soon to be disbarred. He then became an employee with the remaining partner, who also was under investigation by the Director. As a result of these disciplinary actions against his partner and former associate, and due to a lack of mentoring, the Respondent became involved in a series of acts which led to multiple admonitions starting in 1993, as further set forth above.

IV.

The Respondent has, and remains, owner and sole practitioner in the law firm of Albrecht & Associates. Respondent focuses on family law, personal injury, bankruptcy, criminal

law and appellate work. Respondent also refers matters for which he feels he does not have competence to other attorneys. This is a significant change in his practice which, according to his supervising attorney, Andrea Rubenstein, should minimize the risk of his handling matters in such a way that would lead to disciplinary problems.

V.

The current disciplinary matter arises out of three separate transactions involving clients, Greg Arnovich, Richard Raatz and Ella R. Christopherson. The Director alleges that the Arnovich matter results in a violation of Professional Responsibility 1.1, 1.3, 1.4, 8.1(a)(1) and 8.4(c). They further allege that Count 2, the Richard Raatz matter, results in violations of Rules 1.1, 1.3, 1.4, 3.1, 8.1(a)(1), and 8.4(c). With regard to Count 3, the Director alleges a violation of 1.1, 1.4, 3.1, 8.4(c), 4.1, and 5.5.

GREG ARNOVICH MATTER

VI.

Greg Arnovich sought the services of the Respondent on July 31, 1998. His primary need for legal services was in relation to what he perceived to be a discriminatory practice of his employer, Lil Orbits Donut Company, due to the fact that he was Jewish. Mr. Arnovich was satisfied with the Respondent's services initially regarding receiving unemployment compensation. However, he indicated he was unhappy with his services regarding the Complaint filed with the Human Rights Department for discrimination.

VII.

The Respondent filed a Complaint with the Department of Human Rights on January 29, 1999. On April 7, 1999 the Department of Human Rights responded to Mr. Arnovich directly acknowledging receipt of the Complaint and the Respondent's answers to the

Complaint. The letter further required that the Respondent correspond to the Department of Human Rights within 30 days of said letter, which was April 7, 1999. The letter notes that it was copied to the Respondent. The parties stipulate as follows:

It is the regular practice of the Minnesota Department of Human Rights in employment discrimination matters to send to a complaining party and their attorney a copy of the employer's response to the complaint together with a cover letter requesting a rebuttal to the response. The cover letter advises the complaining employee and their attorney that if a rebuttal is not received within thirty days, the complaint may be dismissed.

VIII.

The Respondent does not recall receiving the letter though he presumes his office received the letter because, after reviewing his files and completing his own investigation of the matter, he noted that his office calendar indicated that a response was due June 7. He acknowledges this is a mistake in that the letter indicated a response was due within 30 days of April 7.

IX.

On May 25, 1999 the Department of Human Rights forwarded a letter to Mr. Arnovich indicating the matter had been dismissed, apparently because no response had been received within the 30 day deadline. A letter dated June 7, 1999 was filed by the Respondent with the Department of Human Rights which did not address the timing issue. The Respondent, on behalf of Mr. Arnovich, then sent a separate letter to the Department on June 8 asking that they reconsider the matter despite the late response. By letter of June 16 the Department of Human Rights confirmed they had received a request to reconsider. The Department indicated it would reconsider. By letter of August 6, 1999 the Department of Human Rights dismissed

"because of the charging party's failure to reply to the Department's request." The Department affirmed their dismissal.

X.

Andrea Rubenstein, the supervising attorney as part of the Court required supervision of the Respondent, indicated that she has significant experience in employment law, including dealings with the Department of Human Rights. She confirmed that the Department of Human Rights is anxious, due to a lack of resources, to dismiss matters and she was not surprised that the Department would not re-open the matter despite the technical reason for dismissal based on failing to respond within 30 days.

XI.

Holly Peterson, secretary for the Respondent during the time of all of these matters including the Arnovich matter, indicated that she put the notice on the calendar in June, instead of May. She indicated she did not recall receiving the letter from the Department of Human Rights and she believes that if they have received the letter, she would have known because it would have been date stamped, whereas the exhibit copy she was shown was not. She does believe that, perhaps, their office obtained the date from the client.

The Referee cannot make a finding as to whether the MDHR letter was received by the Respondent directly. However, it is clear to the Referee that the Respondent did receive a copy of the letter prior to the conclusion of the 30 day requirement and that Respondent, or the employees under his supervision, simply failed to properly note this in the calendar.

XII.

Despite the dismissal of the Human Rights matter, which Mr. Arnovich agreed was not intended as the primary source for his cause of action which was to be in District Court, the Respondent represented Mr. Arnovich in the completing and filing of a civil Complaint for discrimination in July of 1999. Mr. Arnovich terminated the services of the Respondent in September of 2000 because no discovery had been completed and no correspondence had been received between the summer of 1999 and 2000. Respondent began drafting discovery documents soon after the filing of the lawsuit. However, Mr. Arnovich failed to return the initial calls from Respondent. Thereafter, Respondent failed to pursue the matter further with Mr. Arnovich and the Respondent agreed he had not contacted Mr. Arnovich between this same time period. Mr. Arnovich felt he could not trust the Respondent.

XIII.

In both the Arnovich and Christopherson matters that are subject of these proceedings, after the service of the Summons and Complaint in each matter, Respondent had no further contact with the opposing parties or their counsel. Specifically, Respondent did not correspond with opposing counsel by letter, did not conduct in-person, telephonic or written negotiations with the opposing parties or their counsel, and did not file or serve any discovery or other pleadings on opposing counsel in either case.

XIV.

The Referee finds that the Respondent was not diligent and prompt in representing Mr. Arnovich in this instance, and that he did not keep Mr. Arnovich reasonably informed on the status of the matter in violation of Rule 1.3 and 1.4. The Referee does not find

evidence that Respondent committed violations of Rule 1.1, 8.1(a)(1) or 8.4(c) as to the Arnovich matter.

XV.

The Referee does find that the Respondent has taken steps, due largely to his current attorney supervision and the office procedure changes suggested by his secretary, to avoid a similar problems in the future. For example and as testified to by Holly Peterson, the Respondent, and Andrea Rubenstein, documents that come into the office are immediately date stamped and pending dates are noted immediately on the physical calendar. Further, regular meetings occur with the Respondent and his staff to review critical dates.

RICHARD RAATZ MATTER

XVI.

Richard Raatz retained the services of the Respondent for himself personally and on behalf of an owner's association in the real estate development in which he lived. Mr. Raatz was the Chair of the Architectural Committee. Mr. Raatz and some of his fellow residents were concerned about a barn that was being constructed by one of the neighbors in violation of a restrictive covenant against such out-buildings. An injunction action was commenced by Richard Raatz, and other individuals, in Hennepin County District Court in 1998. This led to a meeting with a Judge who recommended the matter be put to a vote with the homeowners association to determine whether they agree to change the restrictive covenant to allow for the building of this particular out-building. The evidence indicates that Respondent's client, Mr. Raatz, also agreed to the vote.

XVII.

Immediately prior to the April 23, 1998 court hearing at which the vote was to be reviewed by the Judge, Mr. Raatz did inform the Respondent that he was concerned about some inappropriate voting conduct, perhaps fraud, which puts into question the validity of the vote. The Respondent brought this to the attention of the Court at the April 23 hearing. However, the Judge disregarded this request and ordered the vote to be confirmed. This vote worked to the disfavor of Mr. Raatz in that it indicated the majority wished to allow for the restrictive covenant to accommodate such an out-building.

XVIII.

Mr. Raatz indicated he had a meeting with the Respondent to consider appealing the May 5, 1998 Order. No further communication by the Respondent to Mr. Raatz occurred after the May 5, 1998 Order until a meeting in early 1999 when Mr. Raatz learned that the Appellate Court issued a ruling on September 23, 1998 dismissing the appeal as untimely. The appeal was untimely because the effective date of the notice of filing of the May 5, 1998 District Court Order was 30 days which meant it needed to be filed by June 5, 1998 (The Rule has now changed, to allow a sixty day period for both appealable Judgments and Orders, *see* Minn. R. Civ. App. 104.01), which was filed on August 7, 1998. Respondent did not inform Mr. Raatz that either an appeal had been filed or the results of the Appellate Court's decision until it was brought to the attention of Mr. Raatz who initiated a meeting at a local golf club in early January of 1999 to discuss the situation.

The Respondent agrees, in retrospect, that the Order was appealable within 30 days, pursuant to the former rule, rather than an appeal from a judgment, which is appealable

within 60 days, pursuant to the former rule. However, he notes that the rules has now changed so that it is 60 days for all such appeals whether an Order or Judgment.

XIX.

Despite the adverse decisions from the Appellate Court, Respondent recommended Mr. Raatz commence a second lawsuit in District Court seeking to set aside the vote based on fraud. Respondent agreed to file this lawsuit and to represent Mr. Raatz without fee, to which Mr. Raatz agreed. The case resulted in a summary judgment dismissal on the basis of res judicata and collateral estoppel. Further, the District Court Judge dismissing the matter awarded attorney's fee against Respondent. The Referee cannot here find, from these facts, that the lawsuit was frivolous.

XX.

The Referee does find Respondent did not keep his client reasonably informed about the status of the case and he did not act with reasonable diligence in representing Mr. Raatz by failing to properly file the appeal. Thus, the Referee finds Respondent violated Rules 1.3 and 1.4. However, the Referee does not find Respondent violated Rules 1.1, 3.1, 8.1(a)(1) or 8.4(c).

Further, the Referee is confident that necessary changes in Mr. Raatz' practice will eliminate the repeat of the timing issue that led to the dismissal of the appeal.

XXI.

Mr. Raatz indicated that he is not upset with the Respondent based on the case result (dismissal) as he understood that the Respondent would have to be paid either way. However, he felt the amount of legal fees were excessive. Mr. Raatz stated he did indicate to the Respondent that, if Respondent would agree to pay all attorneys fees previously paid him by Mr.

Raatz, he would not file a Complaint with the Office of the Lawyer's Professional Responsibility. Therefore, the Referee finds that the primary concern of Mr. Raatz was not that of professional ethics of the Respondent and how those may have may affected the public, but simply seeking his money from the case.

ELLA R. CHRISTOPHERSON MATTER

XXII.

Ms. Christopherson was referred to the Respondent to handle her employment discharge based on age discrimination. Her husband had previously been represented by the Respondent in a divorce proceeding and was satisfied with his services. The Respondent indicates that Ms. Christopherson was informed by him that he was suspended from the practice of law between January and April of 1998 and therefore could not proceed on her matter. However, he did prepare a Complaint for her to sign Pro Se, which she did. She indicates she was not told the reason she was signing the papers. It was her belief that the Respondent was representing her even at the time she signed the Complaint. The Referee does not find this credible since the document indicates she is signing on her own behalf. Further, it is not clear from the evidence when Respondent drafted the Complaint and it is further not clear whether he practiced law during a period in which his license was suspended.

XXIII.

The Respondent agrees that, retrospectively, the Complaint was signed by Ms. Christopherson after the Statute of Limitations had run on her claim. Further, he admits that he should have more appropriately informed Ms. Christopherson of this fact. However, it is his position that he was previously disciplined for this error. The Referee finds this evidence sufficient to resolve that count of the Director's Complaint.

XXIV.

Ms. Christopherson initially retained the services of the Respondent in June of 1996. However, the Respondent did not remain in contact with Ms. Christopherson to update her on the case. Several messages were left by her inquiring as to the status of her case that were not returned by the Respondent. In both the Arnovich and Christopherson matters that are subject of these proceedings, after the service of the Summons and Complaint in each matter, Respondent had no further contact with the opposing parties or their counsel. Specifically, Respondent did not correspond with opposing counsel by letter, did not conduct in-person, telephonic or written negotiations with the opposing parties or their counsel, and did not file or serve any discovery or other pleadings on opposing counsel in either case.

XXV.

The Referee does find that the Respondent did not keep Ms. Christopherson reasonably informed about the status of her matter, nor did he promptly reply to her request for information and he did not act with reasonable diligence and promptness in representing her. Thus, the Referee finds the Respondent violated Rule 1.4. However, the Referee does not find Respondent violated Rules 1.1, 3.1, 4.1, 5.5 or 8.4(c). However, the Referee is satisfied, for the reasons stated above, that the office procedures have now been implemented by Respondent to provide for prompt return of phone calls and to keep clients informed on their case status.

MITIGATION

XXVI.

Dr. Theodore M. Berman testified on behalf of the Respondent. Dr. Berman is a pulmonologist who focuses most of his time on sleep disorders. He completed a sleep study on the Respondent and diagnosed him with severe sleep apnea. Apparently the Respondent's

condition is considered severe because, as a result of the sleep study, it was learned by Dr. Berman that while Respondent was sleeping his throat would close 84 times per each hour of sleep. He would then awake, which means he has no deep or REM sleep.

Symptoms of sleep apnea include sleepiness during the day, snoring, impairment of day time functions, temporary loss of memory, attention to detail and driving. It is the opinion of Dr. Berman that the allegations related to missing dates, failing to return calls, sleepiness during the day, are consistent with the affects of sleep apnea. The Referee finds this testimony credible mitigating evidence.

SATISFIED CLIENTS

XXVII.

Nancy Haberer and Jason Bodin testified they were satisfied with the legal representation provided by the Respondent. Further, Leroy Kessler, a former client of the Respondent, owned his own company and hired the Respondent for the first time in 1987. The Respondent is the only attorney who has represented Mr. Kessler on approximately fifteen matters.

ATTORNEY SUPERVISOR

XXVIII.

As the supervising attorney, Andrea Rubenstein's role is to monitor the practice and to receive monthly inventory and, every three months, to review the report with the Lawyer's Board regarding the status of cases. Ms. Rubenstein has significant experience on the Fourth District Ethics Committee, which has investigated many complaints against lawyers and has so served since 1983. She testified that her first step in the matter was to learn if office systems were in place that would satisfy the suspension conditions of the 1998 Court Order.

XXIX.

Ms. Rubenstein's current assessment is that the Respondent is professionally competent in that he has made the changes necessary to avoid making any filing mistakes. Despite the complaints alleged in this Complaint it is her opinion that, overall, the Respondent is performing quite well. She indicated that the Respondent is hard working and quite productive as an attorney. The Referee finds Ms. Rubenstein's testimony convincing.

XXX.

Ms. Rubenstein testified that, as for the Arnovich matter, she agreed it was unfortunate that the response to the Department of Human Rights was not timely. However, this dismissal would have no substantive impact on the civil court case. She also did find that Mr. Arnovich was rather stubborn and that the Department of Human Rights was rather arbitrary in dismissing cases. Therefore, this incident did not raise significant concern to Ms. Rubenstein regarding Respondent's professional competence.

XXXI.

Ms. Rubenstein is familiar with the Raatz matter and, although she agreed that the Court Order that should have been appealed, it appeared to her to be an Order as opposed to a judgment. She did not believe this indicated general incompetence as an attorney, though perhaps it does in this in this particular instance.

XXXII.

It is also the opinion of Ms. Rubenstein that she has not found, in her review of all the files, that the Respondent was intentionally dishonest in any matters. The Referee finds Ms. Rubenstein's assessment of Respondent's professional competence and professionalism credible.

CONCLUSIONS OF LAW

GREG ARNOVICH MATTER

1. Findings of Fact VI through XV establish by clear and convincing evidence that the Respondent violated Minnesota Rules of Professional Conduct 1.3 and 1.4.

2. The Director has failed to demonstrate by clear and convincing evidence that the Respondent committed a violation of Minnesota Rules of Professional Conduct 1.1, 8.1(a)(1) and 8.4(c).

RICHARD RAATZ MATTER

3. Findings of Fact XVI through XXI establish by clear and convincing evidence that the Respondent violated Minnesota Rules of Professional Conduct 1.3 and 1.4.

4. The Director has failed to demonstrate by clear and convincing evidence that the Respondent committed a violation of Minnesota Rules of Professional Conduct 1.1, 3.1, 8.1(a)(1) and 8.4(c).

ELLA CHRISTOPHERSON MATTER

5. Findings of Fact XXII through XXV establish by clear and convincing evidence that the Respondent violated Minnesota Rule of Professional Conduct 1.4.

6. The Director has failed to demonstrate by clear and convincing evidence that the Respondent committed a violation of Minnesota Rules of Professional Conduct 1.1, 3.1, 4.1, 8.4(c) and 5.5.

MITIGATION

7. All of the Findings of Fact demonstrate that the Respondent's conduct is substantially mitigated as a result of the supervision that he is currently participating in, which has resulted in significant changes in his office procedures and practice. Further, the same

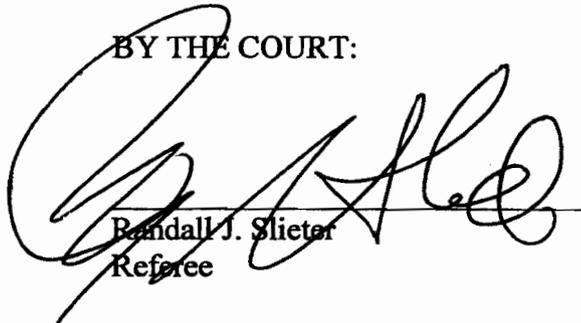
evidence demonstrates the existence of a medical condition which contributed to the current disciplinary matters. Further, the Referee finds the evidence demonstrates that, though prior disciplinary actions occur, there are separate mitigating circumstances surrounding those such that such evidence does not demonstrate a substantial aggravating factor to the current violations.

RECOMMENDATION

An additional two year supervision subject to the same terms and conditions as set forth by the Court's Order of April 14, 1998.

Dated: July 15, 2002

BY THE COURT:



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Randall J. Slietar
Referee

MEMORANDUM

If one was to stop at only the initial glance of this case, either through review of the initial Petition of the Director or a combination of the initial Petition plus all prior admonitions and ultimate suspensions, one would likely conclude that the Respondent ought to be suspended. However, it quickly became apparent to the undersigned that Respondent has made significant and substantial changes and improvements to his practices and procedures so as to minimize similar violations. When I use the phrase minimize I am suggesting that it is minimized to the point such that we may have confidence, as much confidence as with any practicing attorney, these problems will not persist. I was particularly impressed with the opinion of Andrea Rubenstein. As noted in the findings, she has significant experience on the Fourth District Ethics Committee, and has investigated numerous complaints against attorneys since 1983. I presume that is the reason that she was recommended by the Director for supervision pursuant to the 1998 Court Order.

It is the undersigned's belief that Ms. Rubenstein would not likely make the recommendations she has made unless she was convinced that the changes necessary to support such an opinion occurred. For these reasons, the undersigned is confident that the procedures and practices in place are in fact occurring and have occurred such that the Respondent may continue to practice law and to do so with the interests of the public in mind.



Handwritten signature of BJS in black ink, written over a horizontal line.