

FILE NO. A07-2126

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JOHN T. ANDERSON, JR.,
a Minnesota Attorney,
Registration No. 2549.

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

The above-captioned matter was heard on March 17, 2008, by the undersigned acting as referee by appointment of the Minnesota Supreme Court. Cassie Hanson appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Respondent John T. Anderson, Jr., appeared *pro se*. The hearing was conducted on the Director's April 3, 2007 petition for revocation of probation and for further disciplinary action and the February 5, 2008 supplementary petition for disciplinary action. The Director presented the testimony of witnesses Levy Jesse Jones, Jr., Paul Thompson and Jenny Westbrook. Respondent testified at the hearing and presented no testimony of witnesses. The parties stipulated to the submission of Director's Exhibits 1-18 and Respondent's Exhibits 19-20.

The parties were directed to submit on or before April 5, 2008, proposed findings of fact, conclusions of law, and a recommendation for appropriate discipline. The parties were given the opportunity to submit a memorandum of law by this date. The Respondent did not submit proposed findings, but did submit his Memorandum of Law and Fact which included his thoughts on appropriate sanctions. The referee's findings of fact, conclusions of law and recommendation are due to the Supreme Court no later May 6, 2008.

In his answer to the petition for revocation of probation and for further disciplinary action, respondent admitted certain factual allegations made by the Director, denied others, and denied any rule violations. The findings and conclusions made below are based upon respondent's admissions, the documentary evidence the parties submitted, the testimony of witnesses, the testimony of respondent, the demeanor and credibility of respondent and the other witnesses as determined by the undersigned and the reasonable inferences to be drawn from the documents and testimony.

Based upon the evidence as outlined above, and upon all of the files, records and proceedings, the referee makes the following:

FINDINGS OF FACT

1. Respondent was admitted to practice law on October 16, 1970.
2. On August 11, 2005, the Supreme Court suspended respondent from the practice of law for 60 days and ordered that respondent be placed on probation for two years upon reinstatement. *In re Anderson*, 702 N.W.2d 217 (Minn. 2005).
3. By order dated November 28, 2005, respondent was reinstated to the practice of law and placed on supervised probation for a period of two years under the terms set forth in the Supreme Court's August 11, 2005, order.
4. On April 3, 2007, the Director filed a petition for revocation of probation and for further disciplinary action based upon respondent's failure to comply with the terms of his supervised probation and the Director's efforts to monitor respondent's supervised probation.
5. On May 23, 2007, respondent met with Cassie Hanson, an attorney with the Director's Office, to discuss the terms of the parties' proposed settlement agreement. Also present during this meeting was Jenny Westbrook, a paralegal with the Director's Office. Respondent was provided a proposed stipulation for discipline (hereinafter

stipulation) setting forth an agreement whereby the parties agreed that respondent's supervised two-year probation be extended for another two years. The stipulation included the following provisions for respondent's supervised probation:

a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify 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. Respondent shall provide to the Director the names of four attorneys who have agreed to be nominated as respondent's supervisor within two weeks from the date this stipulation is executed. If, after diligent effort, respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, the respondent shall on the first day of each month provide the Director with an inventory of active client files described in paragraph d. below. Respondent shall make active client files available to the Director upon request.

d. Respondent shall cooperate fully with the supervisor in his/her 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, 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 may reasonably be requested by the Director.

e. Respondent shall initiate and maintain office procedures which ensure that there are prompt responses to correspondence, telephone calls, and other important communications from clients, courts and other persons interested in matters which respondent is handling, and which will ensure that respondent regularly reviews each and every file and completes legal matters on a timely basis.

f. Respondent shall maintain law office and trust account books and records in compliance with Rule 1.15, MRPC, and Appendix 1 to the MRPC. These books and records include the following: client subsidiary ledger, checkbook register, monthly trial balances, monthly trust account reconciliation, bank statements, canceled checks, duplicate deposit slips and bank reports of interest, service charges and interest payments to the Lawyer Trust Account Board. Such books and records shall be made available to the Director within 30 days of the approval of this stipulation and thereafter shall be made available to the Director at such intervals as he deems necessary to determine compliance.

Respondent and the Director reviewed the terms of the proposed stipulation and the parties signed the agreement that same day. Respondent was provided a copy of the

stipulation. During this meeting, respondent asked the Director to forward all correspondence to his home address at 184 Otis Avenue, Apt. 202, St. Paul, MN 55104.

6. The Supreme Court issued an order dated June 27, 2007, approving the parties' stipulation for discipline and extending respondent's supervised probation for another two years under the exact terms as set forth in the May 23, 2007, stipulation for discipline.

7. On July 17, 2007, the Director sent respondent a letter setting forth the conditions of his supervised probation. The letter was mailed to respondent's home address. The Director asked respondent to provide the names of four attorneys who had agreed to be nominated to act as his supervisor. The Director also requested an inventory of respondent's current files and complete trust account books and records for the period of December 1, 2005, through June 30, 2007. Respondent claimed that he did not receive the letter in his answer to the petition. Respondent now admits to receiving the letter and not responding.

8. On September 7, 2007, the Director sent respondent a follow-up letter again requesting the names of four potential supervisors, a client inventory list and trust account books and records. The Director scheduled a meeting for 1:30 p.m. on September 26, 2007. The letter was sent to respondent's home address. Respondent claimed again that he did not receive the letter in his answer to the petition. Respondent now admits receiving the letter, failing to provide any of the requested documentation and failing to appear at the meeting. Respondent admits that he did not contact the Director to reschedule the meeting.

9. On September 27, 2007, the Director opened a disciplinary file based upon respondent's non-cooperation and sent respondent a third letter again requesting the documentation and the names of four potential supervisors. The Director gave respondent nine business days in which to respond, and warned that the Director would have no choice but to seek a revocation of respondent's supervised probation.

Respondent claimed again that he did not receive the letter in his answer to the petition. Respondent now admits that he received the letter and failed to respond.

10. Respondent received a copy of the stipulation for discipline and the Supreme Court's June 27, 2007, order, both of which clearly set forth the terms of respondent's supervised probation. Respondent disregarded numerous communications from the Director seeking information required under the terms of respondent's supervised probation. Respondent did not attend a meeting with the Director about the terms of his probation. Respondent testified that he received the Director's letters but did not open them, and therefore, was not aware of any meeting or requests for information. Whether respondent opened the letters and failed to respond or discarded the letters unread is inconsequential, because respondent was obligated to cooperate with the Director and to provide certain documents under the terms of his supervised probation. Respondent's non-compliance appears to have been intentional..

11. Respondent's claim that he was advised by Cassie Hanson, an attorney in the Director's Office, during a May 23, 2007, meeting that he did not have to provide trust account books and records as part of his supervised probation is not supported by the factual record. The May 23, 2007, stipulation for discipline and the June 27, 2007, disciplinary order both contain the same terms for respondent's supervised probation, including that he provide trust account books and records. Subsequent correspondence from the Director directed respondent to provide trust account books and records. At no time did respondent seek to clarify any questions he had regarding the terms of his probation. Respondent either discarded the Director's correspondence unread or refused to respond.

12. Jenny Westbrook, a paralegal with the Director's Office, testified that she attended the May 23, 2007, meeting and at no time was respondent informed that his trust account books and records were in compliance or that he would not be required to provide them under the terms of the proposed stipulation for discipline. Westbrook

testified that she in fact reviewed some of respondent's books and records with him and pointed out errors in his bookkeeping.

13. Respondent's claim that he did not understand the terms of his supervised probation does not appear to be credible given the fact that respondent successfully completed a two-year period of supervised probation after he was publicly reprimanded by the Supreme Court by order dated October 16, 1996. Except for the requirement of providing books and records to the Director, the terms of respondent's 1996 supervised probation are identical to the terms of his current supervised probation. Moreover, respondent has a history of on-compliance with the terms of his probation requirements. Respondent's non-compliance establishes a pattern of misconduct.

14. Respondent's failure to respond to communications with the Director; failure to comply with the Director's effort to monitor his compliance with terms of his supervised probation; and failure to submit trust account books and records, the names of potential supervisors and a client inventory list, as required under the terms of his supervised probation, violated the Supreme Court's June 27, 2007, order. Respondent's conduct further constituted non-cooperation

15. Since being placed on probation Respondent has made no effort to clarify or alter the terms of his probation.

16. On June 14, 2007, Levy Jesse Jones, Jr. filed a complaint against respondent with the Director. On June 21, 2007, the Director mailed respondent a notice of investigation. The notice of investigation was sent to respondent's home address. Respondent claims that he did not receive the notice of investigation. The letter was mailed to respondent's home address where he admittedly received all other

correspondence from the Director. Respondent further testified that there was no interruption in his mail to his knowledge. Respondent failed to respond to the notice of investigation.

17. On July 18, 2007, the Director sent respondent a follow-up letter requesting his response by no later than July 27, 2007. The letter was sent to respondent's home address. Respondent admits he received the letter but failed to respond. The Director sent respondent a third request for a response on August 3, 2007. The letter was again mailed to respondent's address. Respondent admits receiving the letter and failing to respond.

18. On September 7, 2007, the Director sent respondent a fourth letter reminding him of his obligation to cooperate with the Director under the terms of his supervised probation. The Director requested that respondent bring his response to the Jones complaint to the meeting with the Director scheduled for September 26, 2007. Respondent failed to attend the meeting and failed to respond to the notice of investigation.

19. Respondent's failure to cooperate with the Director's investigation of a disciplinary complaint constituted non-cooperation and also violated the probation requirements under the Supreme Court's June 27, 2007, order.

20. On October 15, 2005, Levy Jesse Jones, Jr. was involved in a car accident. Jones sustained injuries and hired an attorney to represent him. He could not recall the name of the attorney at the time of the hearing. The attorney passed away and in the process of getting his file Jones met Respondent who had shared office space with, but did not share a practice with, the deceased attorney. Respondent became Jones' second attorney. Jones was a vulnerable adult having sustained a head injury, which resulted in a medical discharge from the Marines. He also suffered a stroke, which left him with a neurological disorder known as aphasia. This results in difficulty speaking and writing. This also affects his memory.

21. Jones was not happy with Respondent's representation and claims Respondent did not keep him informed and did not return his phone calls. In the process of moving his office Respondent lost Jones' file. Jones subsequently hired a new attorney and claims Respondent did not cooperate in efforts to create a new file.

22. The Director claims that Respondent's failure to return phone calls, loss of Jones' file, and the failure to cooperate with the creation of a new file all resulted in a loss of value to Jones' personal injury case

23. Respondent claims he responded to the Jones' complaint as soon as he was aware of it. He further claims he was in contact with Jones and did return phone calls.

24. The Director has failed to show by clear and convincing evidence that Respondent did not act competently during the time he represented Jones.

25. The Director has failed to show by clear and convincing evidence that Respondent failed to communicate with his client and did not return phone calls

26. The Respondent did lose the Jones file while moving his office and he did not cooperate with Jones' subsequent attorney in that attorneys' efforts to create a new file.

27. Respondent's history of prior discipline is as follows:

a. On April 17, 1992, Respondent was issued an admonition for neglecting his client's wrongful death action and for practicing law while his license was suspended for non-payment of attorney registration fees, in violation of Rules 1.1, 1.3 and Rule 5.5(a), Minnesota Rules of Professional Conduct (MRPC).

b. On June 4, 1993, Respondent was issued an admonition for failing to respond to his client's multiple requests for communication and answers to questions, in violation of Rule 1.4, MRPC.

c. On July 17, 1996, Respondent was issued an admonition for surrendering a client's files to another law firm and failing to disclose to that client his intention to divide his fee with the other law firm, in violation of Rules 1.5(e) and 1.16(d), MRPC.

d. On October 16, 1996, the Supreme Court publicly reprimanded Respondent and placed him under supervised probation for neglect and non-communication in three client matters in violation of Rules 1.3 and 1.4, MRPC. *In re Anderson*, 554 N.W.2d 616 (Minn. 1996).

e. On August 26, 1997, respondent was issued an admonition for neglect and non-communication while representing a client in a workers' compensation matter in violation of Rules 1.3 and 1.4, MRPC.

f. On August 21, 2000, respondent was issued an admonition for losing a client's paperwork in violation of Rule 1.15, MRPC.

g. On August 11, 2005, the Supreme Court suspended respondent from the practice of law for sixty days to be followed by two years supervised probation upon reinstatement for neglect and non-communication in a client matter, making misrepresentations to the client in order to conceal the neglect, and non-cooperation in the disciplinary investigation, in violation of Rules 1.3, 1.4, 3.2, 8.1(a)(3), and 8.4(c) and (d), MRPC *In re Anderson*, 702 N.W.2d 217 (Minn. 2005).

h. On June 27, 2007, the Supreme Court extended respondent's two-year supervised probation for another two years for failure to comply with the terms of probation and the Director's efforts to monitor his compliance therewith in violation of Rules 8.1(b) and 8.4(d), MRPC *In re Anderson*, 734 N.W.2d 238 (Minn. 2007).

28. Respondent has a substantial history of prior, including public, discipline. Respondent has committed multiple acts of professional misconduct over an

extended period of time. Respondent's prior and current misconduct spans the last fifteen years that respondent has had an active license to practice law in Minnesota.

29. Respondent refused to acknowledge the wrongful nature of his misconduct, exhibited no recognition or remorse for his misconduct, and failed to offer any evidence or assurance that similar misconduct will be avoided in the future. To the contrary, respondent attempted to blame others, including the Director's Office and his client. Respondent has acknowledged his failure to respond to letters from the Director.

30. The combination of respondent's prior misconduct, current misconduct and refusal to acknowledge his misconduct shows that respondent is not amenable to further probation at this time. Respondent has already failed to comply with the terms of a prior public probation.

31. Respondent's current misconduct involves the commission of multiple similar acts of misconduct, including client related misconduct and non-cooperation that constitutes a continuing pattern of professional misconduct over an extended period of time.

32. The client that suffered harm from respondent's misconduct was a vulnerable client who suffered from a disability. Respondent was aware of Jones' brain injuries and that he suffered from aphasia. Respondent knew that Jones had limitations with his long-term memory, that Jones had difficulty understanding the substantive legal issues involved in his legal case, and that Jones had difficulties with verbal and written communication. Despite being aware of these limitations, respondent took no action to minimize the harm caused by his losing Jones' client file. Respondent made no effort to help Jones or his successor counsel, Thompson, reconstruct the lost client file or to provide basic information, such as a claim number, to Thompson.

CONCLUSIONS OF LAW

1. Respondent's failure to comply with the terms of his supervised probation and the Director's efforts to monitor his compliance therewith violated Rules 8.1(b) and 8.4(d), MRPC, and the terms of the Supreme Court's June 27, 2007, order.

2. Respondent's failure to respond to the Director's investigation of a disciplinary complaint violated Rules 8.1(b) and 8.4(d), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility (RLPR).

3. Respondent's losing a client file and subsequent failure to take any steps to mitigate the damage to the client violated Rules 1.16(d) and 8.4(d), MRPC.

4. Respondent's misconduct occurred while on probation. This aggravates his misconduct.

5. Respondent's substantial history of prior discipline and commission of multiple similar acts of misconduct constitutes a continuing pattern of professional misconduct over an extended period of time and aggravates his current misconduct.

6. Respondent has not acknowledged the wrongful nature of his misconduct. This aggravates his misconduct. Respondent's failure to acknowledge the wrongful nature of his misconduct, his lack of regret or remorse for his misconduct, and his efforts to blame the Director's Office, aggravate respondent's current misconduct.

7. The victim of respondent's misconduct was a vulnerable client who suffered from a disability. Respondent was aware of the client's limitations due to his disability and, despite these limitations, took no action to assist the client or the client's successor counsel in minimizing the harm caused by his misconduct.

8. Respondent offered no evidence of any mitigation of his misconduct. There are no factors which mitigate the sanction for respondent's misconduct. The referee has considered respondent's explanations. None of them, alone or in any combination, excuse or mitigate his misconduct.

RECOMMENDATION FOR DISCIPLINE

Respondent John T. Anderson, Jr., has committed multiple acts of professional misconduct over a lengthy period of time. Respondent has a lengthy history of prior, including public, discipline involving similar acts of misconduct that constitutes a pattern of ongoing misconduct. The appropriate discipline is suspension followed by a reinstatement proceeding in which respondent demonstrates his fitness to practice and the necessary willingness to comply not only with his obligations under the Rules of Professional Conduct, but also with the terms, if any, of any probation imposed upon reinstatement. Accordingly, the undersigned recommends:

1. That respondent, John T. Anderson, Jr., be suspended from the practice of law in the State of Minnesota, ineligible to apply for reinstatement for a minimum of nine months (270 days).

2. That respondent, John T. Anderson, Jr., comply with the requirements of Rule 26, RLPR.

3. That respondent, John T. Anderson, Jr., pay to the Director \$500 in costs, plus disbursements, pursuant to Rule 24, RLPR.

4. After the 270 day suspension has elapsed, respondent John T. Anderson, Jr., may petition for reinstatement pursuant to Rule 18, RLPR, if he can demonstrate by clear and convincing evidence that:

a. He has paid \$500 in costs, plus disbursements, to the Director pursuant to Rule 24, RLPR;

b. He has complied with the notice requirements of Rule 26, RLPR;

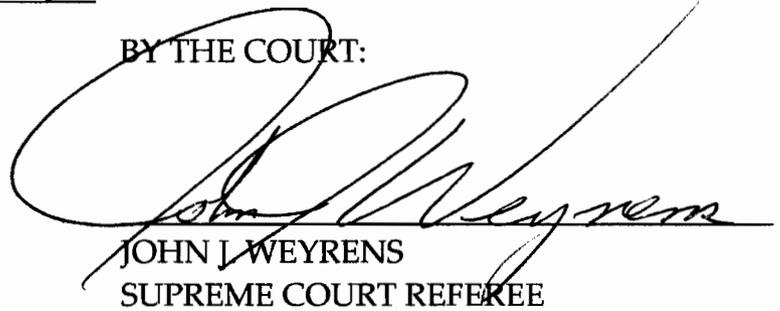
c. He has successfully completed and obtained a passing grade on the multi-state professional responsibility examination within one year from the date of the Supreme Court's suspension order pursuant to Rule 18(e), RLPR;

d. He has satisfied all continuing legal education requirements pursuant to Rule 18(e), RLPR; and

e. He is fit to practice law and that his past misconduct is not likely to recur.

Dated: April 30, 2008.

BY THE COURT:



JOHN J. WEYRENS
SUPREME COURT REFEREE