

FILE NO. A03-676

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against JAMES J. BOYD,  
a Minnesota Attorney,  
Registration No. 1039X.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 20, 1967. Respondent last practiced law in St. Paul, Minnesota. Respondent is presently suspended from practice for failure to successfully complete the professional responsibility portion of the bar examination.

DISCIPLINARY HISTORY

1. On January 16, 1985, respondent was issued an admonition for misrepresenting to counsel that counsel's lien would be paid and for failing to honor that promise to pay, in violation of DR 1-102(A)(4), (5) and (6), Minnesota Code of Professional Responsibility (MCPR) (Exhibit 1).

2. On April 1, 1986, respondent received an admonition for failing to pay court ordered fees to adverse counsel, in violation of DR 7-106(A) and DR 6-101(A)(3),

MCPR, and Rules 1.3 and 3.4(c), Minnesota Rules of Professional Conduct (MRPC) (Exhibit 2).

3. On October 21, 1986, respondent received an admonition for failing to promptly return client funds, failing to tender a defense on behalf of a client and allowing the client's settlement offer to lapse, all in violation of Rules 1.1, 1.3 and 1.15(b)(4), MRPC (Exhibit 3).

4. On October 28, 1988, the Supreme Court suspended respondent from the practice of law for six months for preparing a false deed, causing the false deed to be forged, falsely notarizing the forged signature, filing the false deed and issuing a title opinion based on the false deed (Exhibit 4). Respondent was reinstated from his suspension on June 9, 1989, subject to a two-year period of probation (Exhibit 5).

5. On July 16, 2003, the Supreme Court suspended respondent from the practice of law for six months, with all but 30 days of the suspension stayed, for failing to timely file state and federal income tax returns (Exhibit 6). Respondent was reinstated from his suspension on September 5, 2003, subject to probation (Exhibit 7).

6. Among the requirements of respondent's probation was that he successfully complete the professional responsibility portion of the bar examination ("PR exam") within one year of the July 16, 2003, order. On August 2, 2004, the Supreme Court granted respondent's request for an extension to August 13, 2004, to successfully complete the PR exam (Exhibit 8). Respondent sat for the exam on August 13, 2004, as required, but failed to achieve a passing score. As a result, on October 7, 2004, the Supreme Court suspended respondent from the practice of law pending his successful completion of the PR exam (Exhibit 9).

Respondent has committed the following unprofessional conduct warranting public discipline:

## FIRST COUNT

### Trust Account Violations

1. Pursuant to Rule 1.15(j) to (o), MRPC, US Bank reported to the Director a March 2, 2004, overdraft on respondent's trust account number 0-000-0090-2809 ("trust account").
2. The Director's subsequent investigation of the overdraft revealed that respondent was not operating his trust account in the manner required by Rule 1.15, MRPC, as interpreted by Lawyers Professional Responsibility Board (LPRB) Opinion No. 9.
3. Specifically, as of February 29, 2004, the balance in respondent's trust account was approximately \$260 short of that necessary to cover client balances. This shortage caused the March 2, 2004, overdraft.
4. Respondent routinely deposited earned fees into his trust account and issued trust account checks payable to "Cash" or his personal and business creditors. Respondent improperly used his trust account in this manner in order to shelter funds from the tax authorities.
5. In addition, respondent deposited funds belonging to his disabled son into his trust account and made disbursements from the account on his son's behalf. Again, respondent improperly used his trust account in this manner in order to shelter his son's funds from the tax authorities.
6. During periods of time in which respondent held his own funds and/or his son's funds in his trust account, he also held client funds in the account, thus commingling his funds with client funds.
7. Respondent failed to maintain trust account client subsidiary ledgers, trial balances or reconciliations.

8. Respondent's conduct violated Rules 1.15(a), (b), (c) and (h), and 8.4(c) and (d), MRPC, and LPRB Opinion No. 9.

### SECOND COUNT

#### Practice While Suspended

9. Prior to his October 4, 2004, suspension, respondent represented A.O. concerning her deceased husband's estate.

10. On November 4, 2004, following his suspension, respondent filed with the Ramsey County probate court a petition for determination of descent on A.O.'s behalf. Respondent specifically stated in the petition that he was A.O.'s attorney.

11. Respondent's conduct violated Rules 5.5(a), MRPC.

### THIRD COUNT

#### Improper Use of an Estate Account

12. Respondent served as the personal representative for the M.P. estate. On October 31, 2002, the probate court discharged respondent as personal representative.

13. Respondent paid the filing fee for the A.O. petition for determination of descent with a check drawn on the M.P. estate bank account.

14. Following his discharge as personal representative, respondent continued to use the M.P. estate bank account for his own personal and business purposes.

15. Respondent improperly used the M.P. estate bank account in the manner described above in order to shelter his funds from the tax authorities.

16. Respondent's conduct violated Rule 8.4(c) and (d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent, or imposing otherwise appropriate discipline, awarding costs

and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: December 9, 2004.

  
\_\_\_\_\_  
KENNETH L. JORGENSEN  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 159463  
1500 Landmark Towers  
345 St. Peter Street  
St. Paul, MN 55102-1218  
(651) 296-3952

and

  
\_\_\_\_\_  
BETTY M. SHAW  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 130904

-----  
In the Matter of the  
Investigation Regarding  
James J. Boyd, Respondent  
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DIRECTOR'S ADMONITION AND  
NOTICE PURSUANT TO RULE  
8(c)(2), RULES ON LAWYERS  
PROFESSIONAL RESPONSIBILITY  
(RLPR)

ADMONITION

This matter was initiated by the Director. Thereafter, it was assigned for investigation to the Second District Ethics Committee which recommended that the Director issue an admonition. Based upon the entire file the Director hereby makes the following findings of fact:

1. Respondent is, and has been since October 20, 1967, admitted to practice law in Minnesota. Respondent is current in paying the registration fee required by the Minnesota Supreme Court. Respondent currently practices law in St. Paul, Minnesota.
2. Respondent was retained by William J. Warnecke to pursue a claim for uninsured motorist benefits arising out of a motor vehicle accident.
3. Warnecke had previously retained attorney A. Keith Hanzel to represent him in a personal injury claim arising out of the same accident, but not to represent him in an uninsured motorist claim. Warnecke obtained a default judgment against the other motorist, which remains uncollected.
4. Warnecke subsequently dismissed attorney Hanzel and retained respondent. Attorney Hanzel obtained a court determination of the value of his legal services and a court-granted attorney's lien against Warnecke's cause of action. Hanzel notified respondent of his lien.

5. On December 3, 1982, respondent wrote Hanzel and stated that Hanzel's interest in his fees would be protected.
6. In or about June, 1983, respondent, on behalf of Warnecke, settled the UM claim. Neither respondent nor Warnecke notified attorney Hanzel. Hanzel retained counsel and brought a motion to enforce his lien. The court ordered payment. Respondent and Warnecke appealed to the Minnesota Court of Appeals. The appeal was ultimately dismissed and respondent's law firm paid attorney Hanzel.

Based upon the foregoing facts, the Director hereby makes the following conclusions:

1. Respondent's conduct in misrepresenting to Hanzel that his lien would be paid, and in failing to honor this promise, violated DR 1-102(A)(4), (5), and (6), Minnesota Code of Professional Responsibility.
2. Respondent's unprofessional conduct warrants the issuance of an admonition.

WHEREFORE, this admonition is issued pursuant to Rule 8(c)(2), RLPR. The attached memorandum is made a part hereof.



MICHAEL J. HOOVER  
DIRECTOR OF LAWYERS PROFESSIONAL  
RESPONSIBILITY  
444 Lafayette Road, Fourth Floor  
St. Paul, MN 55101  
(612) 296-3952

NOTICE

To Respondent:

You are hereby notified that the Director has, pursuant to Rule 8(c)(2), RLPR, issued the foregoing admonition.

You are further notified that the issuance of this admonition is in lieu of the Director's presenting charges of unprofessional conduct to a Lawyers Professional Responsibility Board Panel. You have the right to demand that the Director so present the charges to a panel which shall consider the matter de novo or instruct the Director to file a petition for disciplinary action in the Minnesota Supreme Court.

To demand the presentation of charges to a panel, you must notify the Director in writing within fourteen days of the date of this notice. If you demand a hearing, you are hereby requested, pursuant to Rule 25, RLPR, to enclose a reply to the facts and conclusions contained in the admonition. Your reply should set forth with specificity, those facts and conclusions which you admit, those which you deny, and any qualifications, explanations, defenses, or additional information you deem relevant.

If you do not demand the presentation of charges within fourteen days of the date of this notice, the Director's file will be closed with the issuance of this admonition. The complainant, if any, and the district ethics committee, if any, that has considered this complaint, will be notified and provided with a copy of the admonition and memorandum, if any.

Dated: January 16, 1985.

MICHAEL J. HOOVER  
DIRECTOR OF LAWYERS PROFESSIONAL  
RESPONSIBILITY

By Martin A. Cole  
MARTIN A. COLE  
Assistant Director

MEMORANDUM

Respondent clearly misrepresented to attorney Hanzel that Hanzel's fees would be paid out of any UM settlement, in a December 3, 1982, letter. Respondent gave no explanation for his subsequent failure to honor this promise. Non-clients, as well as clients, have a right to expect an attorney to deal fairly and honestly in his professional dealings. See, In re Raskin, 307 Minn. 233, 230 N.W.2d 459, 461 (1976). Accordingly, this admonition is warranted.

M.J.H.

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In the Matter of the Complaint of  
GREER E. LOCKHART  
3550 Multifoods Tower  
Minneapolis, MN 55402-3787,  
Complainant, against JAMES J. BOYD,  
Attorney at Law.  
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ADMONITION AND NOTICE  
PURSUANT TO RULE 8(c)(2),  
RULES ON LAWYERS  
PROFESSIONAL RESPONSIBILITY  
(RLPR)

ADMONITION

This matter was initiated by a written complaint filed with the Director by the complainant. Thereafter, it was assigned for investigation to the Second District Ethics Committee which recommended that the Director determine discipline is not warranted. Based upon the entire file the Director hereby makes the following findings of fact:

1. The above-named attorney, hereinafter respondent, is, and has been since October 20, 1967, admitted to practice law in Minnesota. Respondent is current in paying the registration fee required by the Minnesota Supreme Court. Respondent currently practices law in St. Paul, Minnesota.
2. Respondent represented plaintiff in a medical malpractice claim. Complainant's firm represented one of the defendants.
3. On May 22, 1985, a summary judgment motion hearing was held in Hennepin County District Court. Complainant's firm also brought a motion for attorney's fees and costs pursuant to MINN. STAT. §549.21 (bad faith claim statute). Respondent did not attend the hearing. Respondent's associate, however, did appear at the hearing for respondent. Judge Schiefelbein granted defendant's summary judgment motion and the motion for attorneys fees. Judge Schiefelbein requested complainant's firm to submit an affidavit of fees and costs.

4. On May 28, 1985, complainant's law firm submitted an affidavit of attorney's fees to Judge Schiefelbein and served a copy on respondent's firm. On May 30, 1985, Judge Schiefelbein entered an order awarding defendant \$350 in fees and costs. Respondent was provided by the court with a copy of the May 30, 1985, order.
5. On October 3, 1985, complainant wrote respondent requesting payment of the \$350 within one week.
6. Payment was not received and on October 18, 1985, complainant filed this complaint.

Based upon the foregoing facts, the Director hereby makes the following conclusions:

1. Respondent's failure to pay the \$350 required by the court order violated DR 7-106(A) and DR 6-101(A)(3), Minnesota Code of Professional Responsibility, and Rule 3.4(c) and Rule 1.3, Minnesota Rules of Professional Conduct.
2. Respondent's unprofessional conduct warrants the issuance of an admonition.

WHEREFORE, this admonition is issued pursuant to Rule 8(c)(2), RLPR. The attached memorandum is made a part hereof.

  
WILLIAM J. WERNZ  
DIRECTOR OF LAWYERS PROFESSIONAL  
RESPONSIBILITY  
444 Lafayette Road, Fourth Floor  
St. Paul, MN 55101  
(612) 296-3952

NOTICE

To Respondent:

You are hereby notified that the Director has, pursuant to Rule 8(c)(2), RLPR, issued the foregoing admonition.

You are further notified that the issuance of this admonition is in lieu of the Director's presenting charges of unprofessional conduct to a Lawyers Professional Responsibility Board Panel. You have the right to demand that the Director so present the charges to a panel which shall consider the matter de novo or instruct the Director to file a petition for disciplinary action in the Minnesota Supreme Court.

To demand the presentation of charges to a panel, you must notify the Director in writing within fourteen days of the date of this notice. If you demand a hearing, you are hereby requested, pursuant to Rule 25, RLPR, to enclose a reply to the facts and conclusions contained in the admonition. Your reply should set forth with specificity, those facts and conclusions which you admit, those which you deny, and any qualifications, explanations, defenses, or additional information you deem relevant.

If you do not demand the presentation of charges within fourteen days of the date of this notice, the Director's file will be closed with the issuance of this admonition. The complainant, if any, and the district ethics committee, if any, that has considered this complaint, will be notified and provided with a copy of the admonition and memorandum, if any.

Dated: April 1, 1986.

WILLIAM J. WERNZ  
DIRECTOR OF LAWYERS PROFESSIONAL  
RESPONSIBILITY

BY

  
Kenneth L. Jorgensen  
Assistant Director

MEMORANDUM

The district ethics committee (DEC), pursuant to Rule 7(b)(1), RLPR, recommended the Director determine that discipline is not warranted. The Director, upon receipt of the DEC recommendation, may accept, reject or modify it. Rule 8, RLPR. While the Director gives great weight to DEC recommendations, modification of DEC recommendations is occasionally necessary to ensure that lawyer disciplinary standards are applied uniformly statewide. See Problems and Recommendations in Disciplinary Enforcement, Problem II, pp. 24-29, ABA Final Draft, June, 1970. See also, Standards for Lawyer Discipline and Disability Proceedings, § 3.1 Commentary at 6 (1978).

The DEC found that respondent inadvertantly overlooked the court's order and did not respond to complainant's demand because of a hectic schedule. However, respondent should have been aware of the order or its possibility from: (1) defendant's motion; (2) the May 22, 1985 hearing; (3) complainant's May 28 letter and affidavit; (4) the court's order; (5) service of the order; (6) the notice that one assumes respondent gave his client of the order; and (7) complainant's October 3 letter. Inadvertance has its limits as an excuse and respondent exceeded these. Moreover, the order itself was for bad faith refusal to dismiss a claim despite notice.

An attorney may not disregard rulings of a tribunal made in a proceeding other than in a good faith effort to test the validity of a ruling. See DR 7-106(A); Rule 3.4(c), MRPC. Respondent failed to ensure that payment was made in compliance with the court order. Respondent's firm received the court order

and the affidavit of costs from complainant's firm. Moreover, respondent's associate had attended the hearing and had actual notice of the court's order. Respondent's failure to promptly comply with the court order warrants issuance of this admonition.

W.J.W.

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In the Matter of the Complaint of  
AGNES WIBLISHAUSER  
2049 James Avenue  
St. Paul, MN 55105, Complainant,  
against JAMES J. BOYD,  
an Attorney at Law of the  
State of Minnesota.  
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ADMONITION AND NOTICE  
PURSUANT TO RULE 8(c)(2),  
RULES ON LAWYERS  
PROFESSIONAL RESPONSIBILITY

ADMONITION

This matter was initiated by a written complaint filed with the Director by the complainant. Thereafter, it was assigned for investigation to the Second District Ethics Committee which recommended that the Director refer the matter to a Panel to determine whether probable cause existed for public discipline. Based upon the entire file the Director hereby makes the following findings of fact:

1. The above-named attorney, hereinafter respondent, is, and has been since October 20, 1967, admitted to practice law in Minnesota. Respondent is current in paying the registration fee required by the Minnesota Supreme Court. Respondent currently practices law in St. Paul, Minnesota.
2. On February 1, 1984, respondent accepted a \$300 retainer to defend complainant in a residential property dispute. Respondent did not attempt to ascertain whether complainant's homeowner's insurance covered the claim, or if her carrier had a duty to defend.
3. Respondent negotiated a settlement whereby complainant agreed to pay \$500 to the plaintiffs. Respondent instructed complainant to mail a personal check in the amount of \$500 to him, leaving the payee line blank. Complainant sent the check as requested on January 22, 1986.

4. On January 23, 1986, complainant called respondent and notified him that she had stopped payment on the check since she now believed her insurance would cover the claim. Complainant requested that her check be returned immediately. Respondent did not comply. Respondent states the check could not be located.
5. Sometime thereafter, complainant came to again believe her insurance company would not provide coverage and so informed respondent. She asked respondent to resume his representation of her. Respondent did not verify the insurance coverage or formally tender defense of her claim to the insurer, or obtain a denial of coverage.
6. By letter dated February 13, 1986, the plaintiffs' attorney notified respondent that if he did not tender the settlement amount, the offer would be withdrawn on February 20, 1986. Respondent did not reply.
7. By letter dated March 21, 1986, plaintiffs' attorney withdrew the settlement offer and requested the matter be placed on the calendar for trial.
8. From January 23, to April 22, 1986, complainant requested (three times by phone and once in writing) that her personal check be returned to her, so she could exchange it for a cashier's check payable to the plaintiffs and their attorney. Respondent failed to comply.
9. By letters dated April 1 and 16, 1986, the plaintiffs' attorney requested the name of complainant's insurance company. Respondent failed to reply.
10. On April 22, 1986, after this complaint was filed, respondent returned to complainant her personal check in

exchange for her cashier's check. Respondent promptly tendered the cashier's check as settlement to the plaintiffs' attorneys. The opposing party refused to accept the offer.

11. The matter was set for trial on May 22, 1986. Before this date, complainant's insurance company assumed the defense and completed the settlement on the same terms which respondent originally negotiated.

Based upon the foregoing facts, the Director hereby makes the following conclusions:

1. Respondent's conduct in failing to promptly deliver upon request Wiblishauser's check for a period of three months violated Rule 1.15(b)(4), Minnesota Rules of Professional Conduct (MRPC).
2. Respondent's failure to tender defense of Wiblishauser's claim to her insurance company, and his allowing the settlement offer to lapse, violated Rules 1.1 and 1.3, MRPC.
3. Respondent's unprofessional conduct warrants the issuance of an admonition.

WHEREFORE, this admonition is issued pursuant to Rule 8(c)(2), Rules on Lawyers Professional Responsibility (RLPR). The attached memorandum is made a part hereof.

  
WILLIAM J. WERNZ  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
520 Lafayette Road, 1st Floor  
St. Paul, MN 55155  
(612) 296-3952

NOTICE

To Respondent:

You are hereby notified that the Director has, pursuant to Rule 8(c)(2), RLPR, issued the foregoing admonition.

You are further notified that the issuance of this admonition is in lieu of the Director's presenting charges of unprofessional conduct to a Lawyers Professional Responsibility Board Panel. You have the right to demand that the Director so present the charges to a panel which shall consider the matter de novo or instruct the Director to file a petition for disciplinary action in the Minnesota Supreme Court.

To demand the presentation of charges to a panel, you must notify the Director in writing within fourteen days of the date of this notice. If you demand a hearing, you are hereby requested, pursuant to Rule 25, RLPR, to enclose a reply to the facts and conclusions contained in the admonition. Your reply should set forth with specificity, those facts and conclusions which you admit, those which you deny, and any qualifications, explanations, defenses, or additional information you deem relevant.

If you do not demand the presentation of charges within fourteen days of the date of this notice, the Director's file will be closed with the issuance of this admonition. The complainant, if any, and the district ethics committee, if any, that has considered this complaint, will be notified and provided with a copy of the admonition and memorandum, if any.

Dated: October 21, 1986.

WILLIAM J. WERNZ  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY

By

Martin A Cole  
MARTIN A. COLE  
ASSISTANT DIRECTOR

MEMORANDUM

The district ethics committee (DEC), pursuant to Rule 7(b)(3), RLPR, recommended the Director refer this matter to a panel. The Director, upon receipt of the DEC recommendation, may accept, reject or modify it. Rule 8, RLPR. While the Director gives great weight to DEC recommendations, modification of DEC recommendations is occasionally necessary to ensure that lawyer disciplinary standards are applied uniformly statewide. See Problems and Recommendations in Disciplinary Enforcement, Problem II, pp. 24-29, ABA Final Draft, June, 1970. See also Standards for Lawyer Discipline and Disability Proceedings, § 3.1 Commentary at 6 (1978). The district committee's investigator recommended referral to a panel for consideration of whether respondent should be ordered to refund to complainant his attorney's fees. This is an issue which the panel would not have resolved in a disciplinary proceeding.

The Director agrees with the district committee that respondent's conduct was improper and warrants discipline. Only because complainant's insurance company counsel was able to settle this matter, on terms identical to what respondent had previously negotiated, may respondent's conduct be considered non-serious as required by Rule 8(c)(2), RLPR, for issuance of an admonition.

Respondent must be cautioned, however, that further misconduct will result in more severe disciplinary sanctions.

W.J.W.

STATE OF MINNESOTA

IN SUPREME COURT

No. C3-87-1439

Supreme Court

RECEIVED

OCT 27 1988

LAWYERS PROF RESP BOARD  
Per Curiam

In re Petition for Disciplinary  
Action against James J. Boyd,  
an Attorney at Law of the  
State of Minnesota

Filed October 28, 1988  
Office of Appellate Courts

S Y L L A B U S

A 6-month suspension is warranted where an attorney prepares a false deed and causes it to be forged, notarized and filed and later issues a false title opinion based on that deed.

Suspended.

Heard, considered and decided by the court en banc.

O P I N I O N

PER CURIAM.

The Office of Lawyers Professional Responsibility filed a petition for discipline against respondent, James J. Boyd, on July 27, 1988. The parties agreed to dispense with formal panel proceedings pursuant to R. Law. Prof. Resp. 10(a), and the matter was subsequently heard by a court-appointed referee. Following the hearing, the referee issued findings of fact and conclusions of law

and recommended a 4-month suspension. The director's office and respondent then entered into a stipulation for discipline incorporating the referee's recommendations. After consideration, this court rejected the stipulation and ordered both parties to submit briefs.

Neither the director nor the respondent ordered a transcript of the referee hearing so the referee's findings of facts and conclusions of law are, therefore, conclusive in accordance with R. Law. Prof. Resp. 14(e). We adopt the findings and recommendations of the referee with the exception of the penalty.

Since being admitted to the practice of law in Minnesota on October 20, 1967, Mr. Boyd has been associated with four different law firms, worked as a sales representative for West Publishing, assisted in the writing of two legal books and taught courses at Hamline University and William Mitchell College of Law. Since February 1987, he has been a sole practitioner in St. Paul.

The matter which has resulted in the current disciplinary action against respondent began with his preparation of a false warranty deed in December 1984 or January 1985. At that time, Judith Lefto and Donald Wellgrant, Jr., came to Attorney Boyd's office to discuss the estate of their father, Donald Wellgrant, Sr., who had died intestate on August 24, 1984. Respondent presented to Judith Lefto an unsigned warranty deed purporting to convey the estate's homestead to the two children prior to Donald Wellgrant, Sr.'s death. After practicing her father's signature, Judith Lefto signed his name to the deed at the direction of the respondent. The forged deed was dated June 28, 1984, almost 2 months before Wellgrant's death, and was designed to avoid probate proceedings.

Respondent then subjected himself to further discipline by directing a notary public at his office to certify the false signature. On February 26, 1985, the forged deed was recorded at the Ramsey County Recorder's Office.

On February 28, 1985, respondent provided a title opinion regarding the Welligrant property to the First State Bank of White Bear Lake. In that opinion, he affirmed the false transfer of the property by the back-dated warranty deed. The bank relied on the false title opinion in approving a mortgage application for Judith Lefto and Donald Welligrant, Jr.

Respondent alleged in his answer to the petition for disciplinary action that his conduct was due to "substantial personal mitigating circumstances including alcoholism." Despite a recognition of respondent's alcohol problem, the referee concluded that alcoholism was not a mitigating factor to consider in deciding the appropriate disciplinary sanction. The referee's final conclusion of law reads: "Respondent failed to establish by clear and convincing evidence that his alcoholism was a direct and contributing cause toward his misconduct and that he is recovering from his alcoholism. Respondent's alcoholism does not constitute a mitigating factor in determining the appropriate disciplinary sanction."

Other mitigating factors were also considered, and rejected, by the referee. Respondent's conduct was attributed not to his alcoholism or other work or family stresses, but to his lack of "being motivated and influenced by the importance of fully abiding by our system of justice." The referee did note, however, that respondent has cooperated in the disciplinary process and had made sincere and convincing expressions of remorse.

After citing numerous Minnesota Code of Professional Responsibility violations, the referee recommended that Boyd be suspended from the practice of law for 4 months. The director's proposed recommendation had been a 1-year suspension. The director, however, now concurs with the referee's recommendation.

The referee also recommended 2 years' probation after respondent's suspension. Additionally, reinstatement was to be conditional on respondent following through on the recommendations of a chemical dependency evaluation and passing the multistate professional responsibility exam. The respondent underwent a chemical dependency evaluation on December 9, 1987, and, in the stipulation for discipline, agrees to abide by the recommendations of the evaluator (participation in an out-patient treatment program, abstinence, attendance at regular AA and Lawyers Concerned for Lawyers meetings).

Neither the referee's recommendation nor the stipulation agreed to by the parties necessarily controls the outcome of this disciplinary action. The court places great weight on recommendations made by a referee; nevertheless, it alone has the final responsibility to determine the appropriate discipline. In re Franke, 345 N.W.2d 224, 228 (Minn. 1984); In re Fling, 316 N.W.2d 556, 559 (Minn. 1982). It is not unusual for this court to substitute its judgment for referees' recommendations. The actual discipline may be less than the referee's recommendation as in In re Getty, 401 N.W.2d 668 (Minn. 1987) (the court issued a strong reprimand instead of following the referee's recommended 60-day suspension), or more severe. See, e.g., In re Franke, 345 N.W.2d 224 (Minn. 1984). Similarly, the court is free to reject the stipulation of the parties as it alone is responsible for determining the appropriate discipline. In re Pearson, 352 N.W.2d 415, 419 (Minn. 1984).

The court's rejection of the parties' stipulation presents the following issue: What is the appropriate discipline for an attorney who prepares a false deed, causes it to be forged, falsely notarized and filed and later issues a title opinion based on the fraudulent deed?

The inquiry into the appropriate measure of discipline for an attorney is necessarily subjective. Consistency is certainly a goal, but each case involves a different factual setting, different violations and different mitigating or aggravating circumstances. In re Gubbins, 380 N.W.2d 810, 812 (Minn. 1986). To this extent, prior disciplinary case law is helpful only through analogy, In re Serstock, 316 N.W.2d 559, 561 (Minn. 1982), and the facts of each individual case must be carefully examined.

Respondent's conduct in preparing the false deed and directing Judith Lefto to forge her father's signature was criminal in nature. In addition to numerous ethical violations cited by the referee, respondent exposed himself, as well as his client and the notary in his office, to criminal liability. The fraudulent conduct here was more than a mistake in judgment. The forged deed was deliberately designed to avoid probate proceedings.

Despite the fact that neither Judith Lefto nor the bank suffered a direct economic harm, respondent's conduct shows a grave lack of respect for the law. Mr. Boyd arguably could have faced criminal charges of forgery, aggravated forgery, or liability for recording or filing a forged document. (See Minn. Stat. § 609.625-65 (1986).) His misconduct was not only untruthful and in poor judgment, it was patently illegal. This court has strongly condemned untruthfulness and a lack of due respect for the law: "When \* \* \* a lawyer demonstrates a lack of that truthfulness and candor that the courts have a right to expect of their officers to the end that the system of justice will not be undermined, courts do not hesitate to impose severe discipline." In re Schmidt, 402 N.W.2d 544, 548 (Minn. 1987).

The director's and respondent's briefs to this court discuss previous disciplinary cases in Minnesota involving forgeries or false sworn statements.

Both parties concluded from these cases that a 4-month suspension was appropriate for Mr. Boyd's misconduct. Three of the cases discussed by the parties resulted in public reprimands. In re Cohen, 354 N.W.2d 429 (Minn. 1984); In re Dowdal, 284 N.W.2d 394 (Minn. 1979); In re Finley, 261 N.W.2d 841 (Minn. 1978). The court's leniency in these cases, however, is not due to its acquiescence in this type of misconduct, but, rather, is the result of the unique facts of each case.

In Finley, the reprimanded attorney notarized documents that were not signed in his presence. 261 N.W.2d at 845. He believed that the signatures he notarized were genuine and the court found that he, unlike Attorney Boyd, had no intent to defraud. Id. at 846. Noting that a public censure would suffice in Finley due to the above mitigating factors, and the fact that respondent had an otherwise unblemished record and had cooperated in the proceedings, the court warned: "Similar violations by members of the bar in future cases may well be dealt with more severely. \* \* \* [In this case,] the sanction of public censure is deemed adequate but should not necessarily be construed as a precedent in all future cases." Id.

The censured attorney in In re Dowdal, 284 N.W.2d 394 (Minn. 1979), submitted an otherwise true affidavit to the court to which he had signed his client's name. Id. at 394. The court ordered a public reprimand in Dowdal based in part on the client's knowledge and authorization of his attorney's conduct. Id. The decision also recognizes the action as an "isolated instance of misconduct." Id.

In re Cohen, 354 N.W.2d 429 (Minn. 1984), also involved documents with true contents, but false signatures. The public reprimand was issued in Cohen

because the respondent-lawyer allowed a non-lawyer staff member to sign his name to various pleadings and affidavits. Id. at 430.

The three cases above are easily distinguishable from the facts before the court at this time. The attorneys' conduct in Finley, Dowdal and Cohen did not involve the same degree of deception as Attorney Boyd's misconduct. This case is not an example of a document containing true facts, but a false signature. The attorney here fabricated a deed and caused its forgery. When the deed was filed, a fraud was perpetuated on the legal system. The fact that the bank given the false title opinion did not suffer any economic harm was merely fortuitous. Respondent should have realized that if the bank would ever have to foreclose, it would incur additional expenses due to the title defect. The conduct here clearly is more severe than the acts in the previous cases which resulted only in public reprimands.

Finley, Dowdal and Cohen were likewise distinguished by In re Holmay, 399 N.W.2d 564 (Minn. 1987). The court in Holmay issued a 30-day suspension when an attorney forged and falsely notarized a client's signature on a petition for dissolution of marriage. Id. at 565. Finley was distinguished because Finley, unlike Holmay, believed that the signatures he notarized were genuine. Id. Cohen and Dowdal involved forgeries where the individual whose signature was forged gave the attorney permission to do so. Id. Recognizing that Holmay's conduct in forging the documents, submitting them to court and serving them on the opposing party was more serious than the conduct in the public reprimand cases, the court ordered a 30-day suspension. Id.

To understand the rationale for only a 30-day suspension in Holmay, it is helpful to examine the subsequent case of In re Kaminsky, 407 N.W.2d 670 (Minn. 1987). Kaminsky, like Holmay, submitted forged documents (affidavits in

Kaminsky) to the court and opposing counsel. Id. at 670. The petition against Kaminsky also involved a count of neglect. Id. Nevertheless, a 30-day suspension was ordered.

Although the Holmay and Kaminsky decisions do not explain why the discipline ordered was relatively modest, we point out that, in those cases, the contents of the forged documents were true. To that extent, the forgeries, though technically fraudulent, were harmless and the result of convenience, not a criminal intent.

The most extreme forgery case in Minnesota thus far is In re Danna, 403 N.W.2d 239 (Minn.1987). Danna submitted false affidavits to the court, concealed the forgery from his client and attempted to block the Lawyers Professional Responsibility Board investigation by giving perjured testimony. Id. at 240. Recognizing that Danna's conduct was more severe than the false notarization in Holmay, the court ordered a 90-day suspension. Id. at 241.

The contents of the affidavits signed by Danna with his client's name were essentially true. Id. at 240. The referee had considered this fact "in mitigation but not exoneration." Id. Taking into account the seriousness of Danna's misconduct and previously issued private censure and admonitions for neglect of client matters, this court, in ordering the 90-day suspension, cautioned: "If the following sanctions do not serve to deter such misconduct, we will impose more serious sanctions in the future." Id. at 241.

Respondent's conduct is distinguishable from that in Danna and, therefore, warrants more severe discipline. Danna's initial deception involved only the execution of the documents; the contents were essentially true. The most disturbing deception in Danna was that he subsequently lied to the board. Conversely, Boyd's conduct was blatantly fraudulent and deceptive until the time

he was caught. Unlike Danna and the other forgery/false notarization cases, the contents of the warranty deed were not essentially true; they were totally fabricated by the respondent. Moreover, respondent in this case involved his own client and his secretary in his illegal conduct by coaching the client to practice her father's signature and then directing the secretary to notarize it. His later cooperation in the disciplinary proceedings should not shield him from realizing the significance of the dishonest nature of his acts. The back-dating and forgery of the deed and issuance of a false title opinion based on the forgery are acts more grievous and deceptive than any of the facts to come before the court in "analogous" cases thus far.

In addition to the severe nature of respondent's acts, the timing of his conduct must be considered. Mr. Boyd had received three previous disciplinary admonitions between January 1985 and October 1986. This prior discipline is used to help determine the appropriate sanction in this case.

The admonition issued to respondent on January 16, 1985, resulted from a misrepresentation he made to another attorney regarding satisfaction of an attorney lien. This admonition was issued around the time that respondent prepared the false deed. Despite the admonition, Boyd carried out the fraud he had begun and approximately a month after receiving the admonition, he provided First State Bank with the false title opinion. Clearly, the admonition for misrepresentation did not deter respondent from making future misrepresentations regarding the warranty deed. Even the two admonitions that followed on April 1, 1986 and October 21, 1986, did not persuade him to admit or correct the false deed and title opinion.

One goal of attorney discipline is to deter misconduct by members of the bar generally and by the respondent specifically. In re Daffer, 344 N.W.2d 382,

386 (Minn. 1984). The timing of Attorney Boyd's misconduct in conjunction with the admonitions he received would seem to justify a fairly severe sanction in order to deter future misconduct on his part.

In addition to the nature and timing of respondent's conduct, it would generally be appropriate to consider possible mitigating factors. In this case, however, the issue of mitigation has already been determined by the referee. Because the referee's findings of facts and conclusions of law are deemed conclusive, it is unnecessary to determine whether "substantial personal mitigating circumstances including alcoholism" were a direct cause of respondent's misconduct. The referee has already concluded that they were not.

According to the referee, mitigating factors which favor Boyd include his admission of misconduct, cooperation in these proceedings and sincere and convincing expressions of remorse. These mitigating factors must be balanced with the severe nature of respondent's misconduct and the apparent ineffectiveness of the prior admonitions.

Accordingly, it is the order of this court that all terms of the respondent's and director's stipulation, except the period of suspension, are incorporated in this order. Respondent is ordered suspended from the practice of law in the State of Minnesota for 6 months from the date of this order rather than the 4 months recommended by the referee.

In addition to the 6-month suspension, respondent may be reinstated only on the following conditions:

1. The requirements of R. Law. Prof. Resp. 18 are waived except as modified hereafter.
2. As recommended by the chemical dependency evaluator, respondent shall enroll in the out-patient chemical dependency treatment program at either St. Paul Ramsey Hospital or Metropolitan Medical Center.

3. Respondent shall attend either Alcoholics Anonymous or Lawyers Concerned for Lawyers on a weekly basis and provide written proof of his attendance to the director's office.
4. Respondent shall remain abstinent from alcohol.
5. Respondent shall pay the director \$750 in costs pursuant to R. Law. Prof. Resp. 24(a) and \$270 as disbursements (court reporter appearance fee for the referee hearing) pursuant to R. Law. Prof. Resp. 24(b).
6. Respondent shall comply with R. Law. Prof. Resp. 26.
7. Respondent is current in his continuing legal education requirements.
8. At least 15 days prior to the expiration of the suspension period, respondent shall file an affidavit with the Clerk of Appellate Courts and the director's office verifying his compliance with the above conditions. Respondent shall then be reinstated by the court's written order unless an objection is filed by the director.
9. Upon his reinstatement to the practice of law, respondent shall be placed on probation for a period of 2 years under the supervision of a Minnesota attorney nominated by respondent and approved by the director and subject to the following conditions:
  - a. Respondent shall complete the out-patient chemical dependency treatment program and provide a copy of the program's discharge summary to the director's office.
  - b. Respondent shall continue weekly attendance at either Alcoholics Anonymous or Lawyers Concerned for Lawyers and provide written proof of his attendance to the director's office.

- c. Respondent shall successfully complete the professional responsibility portion of the multistate bar exam within 1 year of the date of the court's suspension order.
  - d. Respondent shall remain abstinent from alcohol.
10. If at anytime during the probation, the director concludes that respondent has not complied with the terms and conditions of the probation or has committed further violations of the Rules of Professional Conduct, the director may, after providing respondent an opportunity to be heard, file a petition for revocation of respondent's probation and for further disciplinary action without the necessity of panel proceedings.

RECEIVED

JUN 14 1989

LAWYERS PROF. RESP. BOARD

STATE OF MINNESOTA  
IN SUPREME COURT

C3-87-1439

In Re the Petition for  
Reinstatement to the Practice of  
Law of James J. Boyd, Petitioner.

ORDER

WHEREAS, on October 28, 1988, this court suspended James J. Boyd from the practice of law for a period of six months, and further ordered that, upon reinstatement, James J. Boyd would be placed on probation for a period of two years, and

WHEREAS, James J. Boyd has filed with this court an affidavit stating that he has fully complied with the terms of the court's suspension order, and

WHEREAS, the Director of the Office of Lawyers Professional Responsibility has filed with this court an affidavit certifying that James J. Boyd has complied with the terms of the suspension order, and

WHEREAS, on May 15, 1989, James J. Boyd commenced an outpatient chemical dependency treatment program which involves six weeks of outpatient treatment followed by eight weeks of aftercare,

NOW, THEREFORE, IT IS ORDERED, James J. Boyd is reinstated to the practice of law in the State of Minnesota effective immediately, subject to a two-year probation on the terms set forth in this court's order of October 28, 1988.

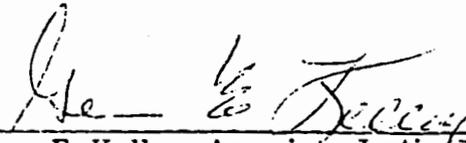
Dated: June 9, 1989.

OFFICE OF  
APPELLATE COURTS

JUN 12 1989

FILED

BY THE COURT:

  
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Glenn E. Kelley, Associate Justice

**RECEIVED**

JUL 17 2003  
OFFICE OF LAWYERS  
PROF. RESP.

STATE OF MINNESOTA

IN SUPREME COURT

A03-676

OFFICE OF  
APPELLATE COURTS

JUL 16 2003

**FILED**

In re Petition for Disciplinary Action against  
James J. Boyd, a Minnesota Attorney,  
Registration No. 1039X.

**ORDER**

The Director of the Office of Lawyers Professional Responsibility has filed a petition for disciplinary action alleging that respondent James J. Boyd has committed professional misconduct warranting public discipline, namely, failure to timely file state and federal individual income tax returns in violation of Minn. R. Prof. Conduct 8.4(b) and (d).

The parties have entered into a stipulation with the Director in which respondent admits his conduct violated the Rules of Professional Conduct, waives his rights under Rule 14, Rules on Lawyers Professional Responsibility (RLPR), and the parties jointly recommend that the appropriate discipline is a 6-month suspension with all but 30 days stayed subject to the following conditions:

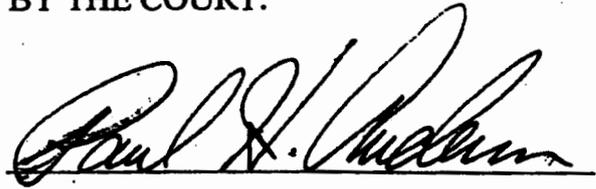
a. Respondent's suspension shall begin two weeks from the date of this order. One week prior to completion of the 30 days non-stayed suspension respondent may file and serve an affidavit seeking an order for reinstatement under Rule 18(f), RLPR. The reinstatement hearing provided for in Rule 18, RLPR, is waived.

b. Respondent shall comply with Rule 26, RLPR, and shall successfully complete the professional responsibility portion of the bar examination within one year from the date of this order.

IT IS HEREBY ORDERED that respondent James J. Boyd is suspended from the practice of law for 6 months, with all but 30 days of the suspension stayed subject to the agreed-upon conditions set forth above. Respondent shall pay \$900 in costs and disbursements under Rule 24, RLPR.

Dated: July 16, 2003

BY THE COURT:

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

Paul H. Anderson  
Associate Justice

STATE OF MINNESOTA  
IN SUPREME COURT

OFFICE OF  
APPELLATE COURTS

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FILED

In re Petition for Disciplinary Action against  
James J. Boyd, a Minnesota Attorney,  
Registration No. 1039x.

SEP 08 2003

OFFICE OF LAWYERS  
PROF. RESP.

ORDER

On July 16, 2003, this court suspended respondent James J. Boyd from the practice of law for a period of six months with all but 30 days stayed. The order provided for reinstatement by affidavit under Rule 18(f), Rules on Lawyers Professional Responsibility.

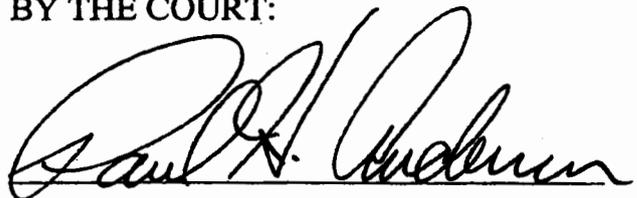
The Director of the Office of Lawyers Professional Responsibility has filed with this court an affidavit certifying that respondent has filed an affidavit of compliance indicating that respondent has complied with the suspension order, that respondent is current with continuing legal education requirements, and that the Director does not object to reinstatement.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that respondent James J. Boyd is reinstated to the practice of law in the State of Minnesota effective immediately and is placed on probation subject to the terms and conditions set forth in the July 16, 2003, order.

Dated: *September 5, 2003*

BY THE COURT:



Paul H. Anderson  
Associate Justice

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AUG 04 2004

OFFICE OF LAWYERS  
PROF. RESP.

STATE OF MINNESOTA

IN SUPREME COURT

A03-676

OFFICE OF  
APPELLATE COURTS

AUG 03 2004

FILED

In re Petition for Disciplinary Action against  
James J. Boyd, a Minnesota Attorney,  
Registration No. 1039X.

ORDER

On July 16, 2003, the court suspended respondent attorney James J. Boyd from the practice of law for a period of six months, with all but 30 days of the suspension stayed. Respondent was reinstated on September 5, 2004.

The July 16, 2003, order also required respondent to successfully complete the professional responsibility portion of the bar examination within one year from the date of the order. Respondent missed the deadline to apply for the March 13, 2004, professional responsibility bar examination, unaware that the examination was not given again until after the July 16 deadline. By stipulation, respondent and the Director of the Office of Lawyers Professional Responsibility jointly request an extension of time for respondent to pass the examination, subject to the following conditions:

1. Respondent shall take the professional responsibility examination on August 13, 2004.
2. Respondent shall on August 14, 2004, inform the Director if he does not take the examination on August 13, 2004, and shall report to the Director his results of the August 13, 2004, examination on the same day he receives the results.

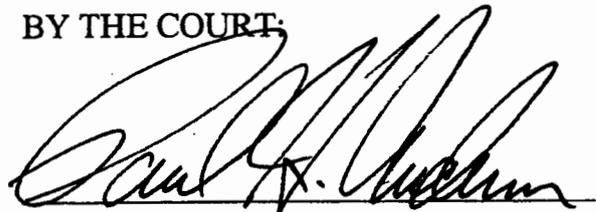
3. No further extensions of time will be granted.
4. The court will issue an order suspending respondent without further hearing or proceedings upon the Director's affidavit that respondent did not take or did not pass the August 13, 2004, examination.

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that respondent is granted an extension of time in which to take and pass the professional responsibility examination, subject to the conditions stated above.

Dated: *August 2, 2004*

BY THE COURT:

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

Paul H. Anderson  
Associate Justice

STATE OF MINNESOTA  
IN SUPREME COURT

A03-676

In re Petition for Disciplinary Action against  
James J. Boyd, a Minnesota Attorney,  
Registration No. 1039X.

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OCT 11 2004  
OFFICE OF LAWYERS  
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ORDER

On July 16, 2003, the court suspended respondent James J. Boyd from the practice of law for a period of six months with all but 30 days of the suspension stayed. The July 16, 2003, order required respondent to successfully complete the professional responsibility portion of the bar examination within one year from the date of the order.

By order dated August 2, 2004, the court, at respondent's request, extended the time for respondent to pass the professional responsibility examination. The order also stated that "[n]o further extensions of time will be granted. The court will issue an order suspending respondent without further hearing or proceedings upon the Director's affidavit that respondent did not take or did not pass the August 13, 2004, examination."

The Director has filed an affidavit indicating that respondent did not pass the professional responsibility portion of the bar examination.

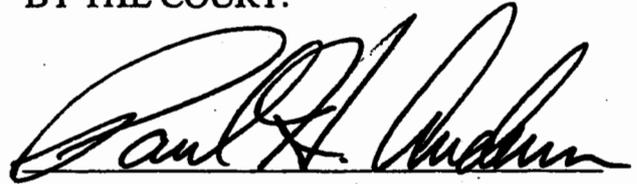
Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that respondent James J. Boyd is suspended from the practice of law effective 14 days from the date of this order. Respondent may be

reinstated to the practice of law pursuant to Rule 18(f), Rules on Lawyers Professional Responsibility, by submitting an affidavit with proof of successful completion of the professional responsibility portion of the bar examination. Such affidavit shall be filed with the court and served on the Director's Office.

Dated: October 7, 2004

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul H. Anderson", written in a cursive style.

Paul H. Anderson  
Associate Justice