

FILE NO. A08-1845

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against JOHN M. BROEKER,  
a Minnesota Attorney,  
Registration No. 11782.  
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**STIPULATION  
FOR DISCIPLINE**

THIS STIPULATION is entered into by and between Martin A. Cole, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and John M. Broeker, attorney, hereinafter respondent.

WHEREAS, respondent has concluded it is in respondent's best interest to enter into this stipulation,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. Pursuant to the Rules on Lawyers Professional Responsibility (RLPR), the parties agree to dispense with further proceedings under Rule 14, RLPR, and respondent agrees to the immediate disposition of this matter by the Minnesota Supreme Court under Rule 15, RLPR.
2. Respondent understands this stipulation, when filed, will be of public record.
3. It is understood that respondent has certain rights pursuant to Rule 14, RLPR. Respondent waives these rights, which include the right to a hearing before a referee on the petition; to have the referee make findings and conclusions and a recommended disposition; to contest such findings and conclusions; and to a hearing before the Supreme Court upon the record, briefs and arguments.

4. Respondent admits the allegations of the petition except as follows:

a. As to paragraph 12, respondent and the Director stipulate that the correct date of the scheduled meeting was August 27, 2007.

b. As to paragraph 20, respondent and the Director stipulate that respondent did not provide a copy of his letter to the committee because they did not request a copy.

c. As to paragraph 26, respondent and the Director stipulate that it was respondent's understanding that he had only agreed to determine whether the father qualified for government assistance. Respondent and the Director also stipulate that respondent failed to deposit the advance fees of \$750 into his trust account.

d. As to paragraph 30, respondent and the Director stipulate that based on respondent's calendar, respondent believes the date Osunkoya came to his office was December 17, 2007.

e. As to paragraph 31, respondent and the Director stipulate that respondent has now refunded the \$457.50 to Osunkoya that respondent acknowledges as the unearned portion of the retainer.

f. As to paragraph 32, respondent and the Director stipulate that respondent's conduct did not violate Rule 1.3, Minnesota Rules of Professional Conduct (MRPC).

g. As to paragraph 41, respondent and the Director stipulate that respondent's conduct did not violate Rule 3.4(c), MRPC.

5. Respondent understands that based upon these admissions, this Court may impose any of the sanctions set forth in Rule 15(a)(1) - (9), RLPR, including making any disposition it deems appropriate. Respondent understands that by entering into this stipulation, the Director is not making any representations as to the sanctions the Court will impose.

6. The Director and respondent join in recommending that the appropriate discipline pursuant to Rule 15, RLPR, is a public reprimand and probation for a period

of two years. Respondent agrees to the imposition and payment of \$900 in costs and \$574.62 in disbursements pursuant to Rule 24, RLPR. Respondent's probation is subject to the following conditions:

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 provide to the Director a current mailing address and shall immediately notify the Director of any change of address. 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 up to three attorneys who have agreed to be nominated as respondent's supervisor within two weeks from the date of the Court's order. 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. The term of respondent's probation does not begin to run until the supervisor has signed a consent to supervise. 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. Within thirty days from the issuance of the Court's order, respondent shall provide to the Director and to the probation supervisor, if any, a written plan outlining office procedures designed to ensure that respondent is in compliance with probation requirements. Respondent shall provide progress reports as requested.

g. Respondent shall initiate or continue current treatment by a licensed consulting psychologist or other mental health professional acceptable to the Director, and shall complete all therapy programs recommended by the therapist.

h. 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 from the Court's order and thereafter shall be made available to the Director at such intervals as he deems necessary to determine compliance.

7. This stipulation is entered into by respondent freely and voluntarily, without any coercion, duress or representations by any person except as contained herein.

8. Respondent hereby acknowledges receipt of a copy of this stipulation.

9. Respondent has been advised by the undersigned counsel concerning this stipulation and these proceedings generally.

IN WITNESS WHEREOF, the parties executed this stipulation on the dates indicated below.

Dated: May 28, 2009. M.A. Cole  
MARTIN A. COLE  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 148416  
1500 Landmark Towers  
345 St. Peter Street  
St. Paul, MN 55102-1218  
(651) 296-3952

Dated: May 28, 2009. Craig D. Klausning  
CRAIG D. KLAUSING  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 202873

Dated: June 1, 2009. John M. Broeker  
JOHN M. BROEKER  
RESPONDENT  
Attorney No. 11782

Dated: June 1, 2009. William J. Wernz  
WILLIAM J. WERNZ  
ATTORNEY FOR RESPONDENT  
Attorney No. 11599X  
50 South Sixth Street, Suite 1500  
Minneapolis, MN 55402-1498  
(612) 340-5679

## MEMORANDUM

The Director and respondent recognize that respondent's misconduct involves conduct that is similar to the misconduct that resulted in respondent being placed on probation previously. In some circumstances such additional misconduct might warrant suspension. However, in this case respondent has offered evidence of various personal difficulties, including clinical depression, which he argues were a substantial cause of his misconduct.

Respondent has sought and is receiving treatment for his condition, regularly participates in therapy sessions and in support groups, and takes prescribed medications, which he indicates enable him to properly handle client matters. After initially not cooperating with the Director's investigation, respondent has provided the Director with the information necessary to address the complaints against him, including providing the requested trust account books and records. Respondent has also refunded the unearned fees he obtained from Rebecca Osunkoya.

Given these factors, the Director and respondent conclude that a public reprimand, followed by probation (which includes a condition for ongoing mental health treatment), will provide sufficient assurance that respondent can be entrusted with the handling of client matters and is the appropriate discipline.