

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against RICHARD J. COLEMAN
a Minnesota Attorney,
Registration No. 136141.

**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 contained in the attached August 29, 2007, stipulation for probation (Exhibit I) 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 May 7, 1982. Respondent currently practices law in St. Paul, Minnesota.

INTRODUCTION

In 2001, respondent was issued two private admonitions for failing to deposit client funds in a trust account. In 2003, respondent was issued a private admonition for failing to communicate with his client, failing to act diligently in the course of representing a client, and failing to deposit client funds into a trust account.

Respondent was issued a public reprimand and placed on probation for two years on May 12, 2004, for leaving a courtroom while trial was in session, failing to adequately supervise a non-lawyer assistant, failing to appear in court on time, failing

to deposit advance retainers in trust, failing to return client property and failing to cooperate with the Director's investigation. *In re Coleman*, 679 N.W.2d 330 (Minn. 2004)

On August 29, 2007, respondent and the Director entered into a stipulation for private probation for a period of two years. Respondent's probation was based upon an admission that respondent engaged in a pattern of inadequate client communication, failing to diligently represent his clients, failing to obey court rules, failing to expedite litigation, and engaging in conduct prejudicial to the administration of justice.

Among the conditions of respondent's probation was that respondent would abide by the Minnesota Rules of Professional Conduct and commit no further unprofessional conduct, and that if, after giving respondent an opportunity to be heard, the Director concluded that respondent had not complied with the conditions of the probation, then the Director could file this petition without the necessity of Panel proceedings.

The Director, after giving respondent an opportunity to be heard, has concluded that respondent has not complied with the conditions of the probation.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Armstrong Matter

1. Respondent executed a fee agreement with Scott Dennis Armstrong ("Armstrong") and Ehren Mohrman ("Mohrman") for representation in their criminal matters on September 15, 2006. Both Armstrong and Mohrman were arrested and charged with possession of narcotics and possession of a firearm after police stopped a car which contained both men and the contraband.

2. Armstrong had an omnibus hearing on June 26, 2007, at which respondent presented several motions challenging the legality of Armstrong's arrest. On October 12, 2007, the court issued an order denying each of those motions. Respondent did not notify Armstrong of his receipt of the order or the denial of the motions until December 5, 2007.

3. In November 2007, First Assistant Kandiyohi County Attorney C. J. Crowell ("Crowell") presented a written plea offer to defendant Mohrman, through respondent. One of the terms of that plea offer was that Mohrman would be required to testify truthfully at Armstrong's trial. Respondent continued to represent both Armstrong and Mohrman.

4. Mohrman, through respondent, accepted Crowell's plea offer on January 28, 2008.

5. Respondent and Armstrong appeared in court on April 21, 2008, in a trial management hearing. During that hearing, Armstrong stated that he no longer wished to be represented by respondent due to the conflict of interest inherent in respondent representing Mohrman, and due to respondent's failure to communicate with him. On that date, respondent sought and obtained leave of court to withdraw from representing Armstrong.

6. Respondent's conduct in this matter violated Rules 1.4(a)(3) and 1.7(a)(2) Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

McGuire Matter

7. Respondent represented Michelle McGuire in a criminal matter before the Tenth District Court in Isanti County. He filed a certificate of representation on behalf of McGuire on March 22, 2007.

8. McGuire's case was set for trial on Monday, October 1, 2007. On that date, respondent did not appear in court. At the request of the court, another attorney contacted respondent by telephone and informed him that the matter was before the court. Beyond this telephone call, respondent did not make any further contact with McGuire, the court, or opposing counsel. McGuire's case was continued until October 8, 2007.

9. On October 5, 2007, the judge's office relayed a message to respondent through his message service. The message read, "Gwen Williams (763) 689-8366. If his case Michelle McGuire is still on for Monday morning. Received on: 3:33 p.m. Oct. 5, 07[.]" Respondent received the message, late in the afternoon of Friday, October 5, 2007. Respondent did not make or attempt to make any further contact with his client, the court, or opposing counsel.

10. Respondent did not appear at McGuire's rescheduled trial on October 8, 2007.

11. After filing a certificate of representation for a party in a criminal matter, a lawyer cannot withdraw from the case until all proceedings have been completed, except upon written order of the court pursuant to a written motion, or upon written substitution of counsel approved by the court *ex parte*. Rule 703, Minn. R. Gen. Prac. At the time of McGuire's two trials, set for October 1, 2007, and October 8, 2007, respondent had not submitted any such written motion to the court, nor had he otherwise obtained a written order approving any withdrawal.

12. A notice of investigation concerning the above facts was sent to respondent on November 5, 2007.

13. Respondent submitted a written motion to withdraw in this matter on November 13, 2007. Respondent's motion to withdraw was granted.

14. Respondent's conduct in this matter violated Rules 1.3, 1.4(a)(3), 1.16(c), 1.16(d), 3.4(c), and 8.4(d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court imposing 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: August 26, 2009.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

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and



ROBIN J. CRABB
ASSISTANT DIRECTOR
Attorney No. 387303

STATE OF MINNESOTA

LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

In Re Probation of
RICHARD J. COLEMAN,
a Minnesota Attorney,
Registration No. 136141.

**STIPULATION FOR
PROBATION PURSUANT
TO RULE 8(d)(3), RLPR**

This stipulation is entered into by Martin A. Cole, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and Richard J. Coleman, the above-named attorney, hereinafter respondent.

WHEREAS, the parties desire to present this stipulation to the Lawyers Professional Responsibility Board (LPRB) Chair, hereinafter Chair, for consideration pursuant to Rule 8(d)(3), Rules on Lawyers Professional Responsibility (RLPR),

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS
FOLLOWS:

1. Respondent was admitted to practice law in Minnesota on May 7, 1982. Respondent has paid through December 31, 2007, the registration fee required by the Minnesota Supreme Court, hereinafter the Court. Respondent currently practices law in Minneapolis, Minnesota.

2. Respondent's history of prior public discipline is a May 12, 2004, public reprimand and placement on probation for two years for leaving a courtroom while trial was in session, failing to adequately supervise a non-lawyer assistant, failing to appear in court on time, failing to deposit advance retainers in trust, failing to return client property and failing to cooperate with the Director's investigation. *In re Coleman*, 679 N.W.2d 330 (Minn. 2004).

3. The Director alleges and respondent unconditionally admits for purposes of these and any future disciplinary proceedings the following allegations of unprofessional conduct:

A. Neglect, Non-Communication, Failure to Comply With Court Rules -
Topper Matter

a. On or about March 3, 2005, James W. Topper retained respondent to represent him in a criminal matter venued in Polk County, Wisconsin. When Topper retained respondent, Topper paid a \$6,000 flat fee.

b. At all times material, respondent was not licensed to practice law in Wisconsin. On or about April 4, 2005, respondent retained Robert J. Shane to act as Wisconsin counsel. Shane is admitted to practice in Wisconsin. Respondent thereafter moved to be, and was, admitted *pro hac vice*.

c. A local rule of court provides in pertinent part that if a lawyer is admitted *pro hac vice*, "The active member of the Wisconsin State Bar shall appear in person at all proceedings held on the record, including those held out of court, such as depositions."

d. A hearing in the matter was scheduled for October 18, 2005. Respondent failed to notify Shane of the hearing.

e. Respondent and Topper appeared for the October 18 hearing. Shane was not aware of the hearing and did not appear. The judge would not allow the hearing to proceed because respondent did not have Wisconsin counsel with him.

f. Respondent last spoke with Topper in January 2006. During that conversation, respondent stated that he would call the court to obtain a new hearing date and then call Topper. Respondent failed to do so.

g. Topper subsequently retained Shane independently to handle the matter. Respondent did not return any of the \$6,000 Topper paid.

h. During respondent's representation of Topper, respondent failed to return multiple calls from Topper.

i. Respondent's conduct violated Rules 1.3, 1.4, 3.2, 3.4(c), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

B. Halverson Matter

j. In April 2002, Ronald K. Halverson was issued a citation for driving under the influence (DUI) and was provided notice of license revocation for an implied consent refusal to test.

k. On or about April 20, 2002, Halverson retained respondent to represent him regarding the DUI and license revocation matters. Respondent agreed to represent Halverson for a \$6,000 nonrefundable flat fee. When Halverson retained respondent, Halverson paid \$3,000 of the fee. At that time Halverson also provided to respondent the notice of license revocation.

l. Respondent filed a notice of appearance in the criminal matter and, on or about May 1, 2002, filed a request for judicial review of the license revocation.

m. Some time after May 1, 2002, respondent met with Halverson. Halverson paid the remaining \$3,000 of respondent's fee.

n. Respondent had no further communication with Halverson after this meeting.

o. On multiple occasions Halverson attempted to contact respondent by telephone, but respondent failed to return the calls. On one occasion Halverson appeared at respondent's office. Respondent was not in at that time. Halverson asked respondent's assistant who was present to leave a message for respondent to contact Halverson. Respondent did not then do so.

p. Trial on Halverson's DUI matter was scheduled for June 12, 2002. Respondent failed to advise Halverson of the June 12 trial date. Neither respondent nor Halverson appeared for trial on June 12.

q. Trial was rescheduled to June 17, 2002. Respondent failed to advise Halverson of the June 17 trial date. Neither respondent nor Halverson appeared for trial on June 17.

r. Because Halverson had not appeared on June 12 or June 17, a bench warrant was issued for Halverson's arrest.

s. On June 26, 2006, Halverson was stopped by a police officer in Minnesota for an alleged speeding violation. Halverson provided the officer with Halverson's valid Wisconsin Commercial Driver's License. The officer advised Halverson that Halverson's driving privileges in Minnesota had been cancelled. The officer issued an impoundment order and confiscated the plates on Halverson's commercial vehicle. This was the first time Halverson was notified that he had lost all driving privileges in the State of Minnesota.

t. Halverson then retained new counsel.

u. Respondent's conduct violated Rules 1.3, 1.4, 3.2, and 8.4(d), MRPC.

C. Failure to Cooperate

v. On July 31, 2006, the Director sent to respondent notice of investigation of Topper's complaint. The notice directed respondent to provide his response to Jacqueline Scott, the District Ethics Committee (DEC) member assigned to investigate the matter, within 14 days of the date of the notice.

w. On August 16, 2006, Scott received respondent's response to the complaint. That day Scott left a voicemail message for respondent stating that she had received respondent's response and requesting a phone interview with respondent. Respondent failed to return the call.

x. On August 23, 2006, Scott left a voicemail message and a numeric page for respondent. Respondent failed to return the phone call or to respond to the page.

y. On August 23, 2006, Scott wrote to respondent and requested respondent to contact her by August 29, 2006. Respondent failed to respond.

z. On September 12, 2006, Scott left a voicemail message and a numeric page for respondent. Respondent failed to return the phone call or to respond to the page.

aa. On September 15, 2006, Scott wrote to respondent and requested respondent to contact her by September 19, 2006. Respondent failed to respond.

bb. On September 20, 2006, Scott telephoned and spoke with respondent. They scheduled a phone interview for 7:00 p.m. that evening. Scott called respondent at 7:00 p.m. as scheduled, but respondent failed to answer the call.

cc. On October 11, 2006, the Director sent to respondent notice of investigation of a complaint filed with the Director by the Renville County Sheriff's Office. The notice directed respondent to submit his response to R. Daniel Rasmus, the DEC member assigned to investigate the matter.

dd. On October 26, 2006, respondent requested, and Rasmus granted, an extension of time to respond to the complaint until the end of the business day on October 27, 2006.

ee. On October 28, 2006, respondent faxed documents to Rasmus, but did not provide a written response to the complaint or any explanation regarding the documents.

ff. On October 31, 2006, Rasmus spoke with respondent about respondent's failure to provide a written response to the complaint. On November 3, 2006, respondent faxed his response to the complaint to Rasmus.

gg. On November 13, 14, 15 and 16, 2006, Rasmus called respondent. Each time Rasmus was unable to leave a voicemail message as respondent's mailbox was full.

hh. On November 20, 2006, Rasmus wrote to respondent and requested respondent to meet with Rasmus to discuss the complaint.

- ii. On November 27 and 28, 2006, Rasmus called respondent but was unable to leave a voicemail message as respondent's mailbox was full.
 - jj. On December 6, 2006, Rasmus met with respondent.
 - kk. Respondent's conduct violated Rule 8.1(b), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.
4. Respondent has been advised of the right to be represented herein by an attorney but has freely chosen to appear *pro se*.
5. Upon approval by the Chair, pursuant to Rule 8(d)(3), RLPR, respondent shall be on private probation for two years, under 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 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. If, during the period of this probation, either of the clients discussed in this probation request a refund of any or all of the fee paid to respondent, and should respondent and the client be unable to mutually agree on the amount of a refund, then respondent agrees to submit the dispute to fee arbitration through the Hennepin County Bar Association.

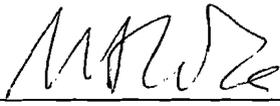
6. If at any time during the period of probation, after giving respondent an opportunity to be heard by the Director, the Director concludes that respondent has violated the conditions of the probation or engaged in further misconduct, the Director may file a petition for disciplinary action against respondent in the Minnesota Supreme Court without the necessity of submitting the matter to a Panel or Panel Chair. Respondent waives the right to such consideration by the Panel or Panel Chair.

7. The complainant(s), if any, and the district ethics committee, if any, that has considered this matter, will be notified and provided with a copy of this stipulation pursuant to Rule 8(d)(3), RLPR.

If respondent complies with all the conditions of the probation as set forth above, the probation will be terminated. Pursuant to Rule 8(d)(3), RLPR, the Director will maintain a permanent disciplinary record of this stipulation and probation file.

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

Dated: August 21, 2007

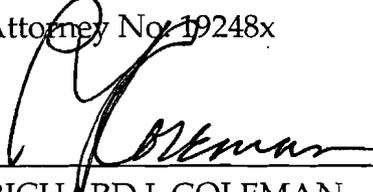

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and

Dated: August 7, 2007


TIMOTHY M. BURKE
SENIOR ASSISTANT DIRECTOR
Attorney No. 19248x

Dated: August 20, 2007


RICHARD J. COLEMAN
RESPONDENT
1820 Girard Avenue South
Minneapolis, MN 55403
(651) 216-8701

Pursuant to Rule 8(d)(3), RLPR, this stipulation for probation is hereby approved.

Dated: 8-29-07


KENT A. GERNANDER
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD

DIRECTOR'S MEMORANDUM

The Director considered whether public discipline was warranted, and issued charges of unprofessional conduct. One of the allegations in the charges is that respondent made a false statement about the status of the matter to Halverson. After receiving additional information, however, the Director has determined that there may well not be clear and convincing evidence to support this allegation.

Respondent has been publicly disciplined previously for, among other things, neglect and failure to cooperate. Respondent's conduct in the Halverson matter, predated respondent's prior public discipline. Were the Director aware of the Halverson matter at that time, it likely would not have materially altered the level of discipline imposed.

Respondent's conduct in the Topper matter did occur while he was on probation. His neglect in that matter, however, was limited to failing to advise local counsel of a hearing; respondent thereafter failed to communicate adequately with his client. Respondent received no discipline while on probation, however. Respondent's failure to cooperate occurred after he had completed probation.

It appears that probation was largely, though not completely, successful in allowing respondent the opportunity to correct insufficiencies in his practice to avoid further problems, including neglect and non-communication. It appears that those problems were largely, though not completely, resolved through probation. The Director is hopeful that another period of supervised probation will allow respondent to substantially eliminate the remaining problems.

In addition, the Director does not believe that public discipline is necessary. Respondent has been publicly disciplined previously for similar conduct. Thus, there is notice to the public. Respondent's post-probation misconduct caused little, if any, harm to his client other than understandable frustration and anxiety.

Although not entirely free from doubt, the Director believes that this stipulated private probation is the appropriate form of discipline.