

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against WILLIE HERMAN DAVIS, JR.,
a Minnesota Attorney,
Registration No. 298384.

**PETITION FOR REVOCATION OF
PROBATION AND FOR FURTHER
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 pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility, and pursuant to this Court's October 17, 2007, and December 20, 2012, orders in the matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on December 16, 1999. Respondent currently practices law in Minneapolis, Minnesota.

INTRODUCTION AND CASE HISTORY

By October 17, 2007, order, the Minnesota Supreme Court suspended respondent from the practice of law for six months based upon his felony conviction for driving while impaired. The Court stayed respondent's suspension on the condition that he comply with the terms of his criminal probation and maintain total abstinence. *In re Davis*, 740 N.W.2d 568, 568 (Minn. 2007). Respondent was placed on probation for seven years. A copy of the Court's order is attached as Exhibit 1.

In January 2010, respondent was convicted of felony operating of a motor vehicle under the influence, which was a violation of his criminal probation and the terms of the Court's order. On July 13, 2011, the Court revoked the stay of respondent's 2007 disciplinary probation and suspended him from the practice of law for a minimum of

two months. *In re Davis II*, 799 N.W.2d 602 (Minn. 2011). The Court ordered that respondent could be reinstated to the practice of law by serving and filing an affidavit demonstrating compliance with the Court's 2007 order and other requirements. The Court also ordered respondent to submit an affidavit by July 13, 2012, of proof of successful completion of the professional responsibility portion of the state bar examination (MPRE) or face possible automatic re-suspension. *Id.* at 604.

Respondent filed an affidavit as required by the Court's order, and the Court reinstated him on October 13, 2011, subject to later filing proof of passage of the MPRE. *In re Davis III*, 805 N.W.2d 12 (Minn. 2011).

Respondent failed to successfully complete the MPRE by the July 13, 2012, deadline. Respondent filed a motion to have the Court waive the requirement or stay the imposition of an automatic suspension. The Court declined to grant respondent's motion and suspended him indefinitely, until he provided proof of his successful completion of the MPRE. *In re Davis IV*, No. A11-1089 (Minn. Sept. 18, 2012).

Respondent filed an affidavit of compliance with the terms of the suspension order and successful completion of the MPRE. On December 20, 2012, the Court reinstated respondent to the practice of law and placed him on unsupervised probation until October 17, 2014, subject to the conditions imposed by the Court's October 17, 2007, order. *In re Davis V*, 824 N.W.2d 634 (Minn. 2012). Among the conditions of respondent's probation are that respondent "shall abide by the Minnesota Rules of Professional Conduct." A copy of the Court's order is attached as Exhibit 2.

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

FIRST COUNT

Hirsi Matter

1. Respondent was retained by Sekeriye Hirsi to defend him against criminal charges in Hennepin County District Court, Case No. 27-CR-11-16482. Hirsi's trial began on May 14, 2012.

2. Respondent was assisted at Hirsi's trial by Stephen P. Astrup, who was then a law student. Astrup has since graduated and been admitted to the bar of the State of Minnesota.

3. After Hirsi's trial was done for the day on Wednesday, May 16, 2012, respondent and Astrup were riding back to respondent's office in Minneapolis in respondent's car. Respondent was driving.

4. While en route to respondent's office, Astrup noticed a car accident that appeared to have just happened because there were no emergency vehicles or personnel on the scene.

5. Astrup told respondent one of the participants in the accident appeared to be a female juror from Hirsi's trial. Respondent told Astrup he (Astrup) could have contact with a juror, but respondent could not.

6. Respondent drove around the block and stopped near the accident scene so that Astrup could get out. Astrup approached the accident scene and observed that, in fact, one of the participants was a female juror from Hirsi's trial. Astrup believed the juror recognized him. Astrup asked the juror if she was alright, and she said she was.

7. Astrup returned to respondent's car. Respondent asked Astrup if the woman was alright, and Astrup said yes.

8. Astrup expressed concern to respondent about the fact he had just had contact with a juror from Hirsi's trial. Astrup asked respondent whether they should inform the judge of the contact. Astrup does not recall respondent's exact response, but recalls respondent said letting the judge know was the right thing to do, and that respondent would do so.

9. Astrup was still concerned and tried to continue the discussion about the incident with the juror a little further, but respondent told him things would be fine and that they should move on (or words to that effect). Astrup and respondent did not discuss the incident further on the trip to respondent's office and did not see each other until in court the next morning.

10. The female juror contacted a clerk for presiding judge, the Honorable Jacqueline M. Regis, just before Hirsi's trial was scheduled to start on Thursday, May 17, 2012, to reveal the car accident and her contact with Astrup.

11. Respondent was late in arriving to court on May 17, 2012. The juror was brought into the jury room, along with Judge Regis, prosecutors Sarah E. Becker and James K. Nichols, and respondent. Astrup was not present. The juror told Judge Regis about her contact with Astrup the evening before at the accident scene.

12. At Becker's request, the juror was questioned by Judge Regis on the record by respondent and Becker. The juror identified (and pointed to) Astrup as the person with whom she had contact at the accident scene on the previous evening. Judge Regis removed the juror from the jury pool.

13. Judge Regis called Becker and respondent to the bench and asked respondent whether he knew anything about the incident. Respondent said he learned about the incident at the same time as did Judge Regis and Becker. Although Judge Regis appears to have accepted respondent's statement, it was false.

14. At the lunch break later that day, Becker told Astrup things were okay regarding the incident with the juror and that she did not think Astrup did anything wrong.

15. Astrup told Becker he had discussed the incident with respondent the evening before. Becker was surprised by this. Becker told Astrup that, during the meeting with the judge earlier that morning (in which Astrup did not participate), respondent had told the judge he only learned of Astrup's conduct with the juror on the morning of May 17, 2012, when he arrived late to court and the juror described the incident.

16. Becker and her supervisor, Lisa Godon, visited Judge Regis in chambers on Friday, May 18, 2012. Respondent was also present. Becker told Judge Regis that Astrup told her he and respondent discussed Astrup's contact with the juror on the evening of the accident, May 16, 2012. Respondent again denied knowing about Astrup's contact with the juror until the morning of May 17, 2012. Respondent's statement was false.

17. Godon attempted to address the incident on the record before the jury was brought in later on May 18, 2012. Judge Regis did not allow Godon to do so, saying the issue was "extraneous to the trial." Judge Regis proceeded with the trial.

18. Astrup did not assist respondent at trial on Friday, May 18, 2012, and resigned from the case in email to respondent on Sunday, May 20, 2012. On May 22, 2012, Hirsi was convicted of some counts against him and found not guilty of others.

19. Respondent's conduct in making false statements to the court on May 17 and 18, 2012, violated Rules 3.3(a)(1), 4.1, and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Grostyan Matter

20. Respondent hired private investigator Michael A. Grostyan on May 7, 2012, to conduct an investigation in the Sekeriye Hirsi matter, described above, and to give court testimony. The agreement between respondent and Grostyan was not put into writing.

21. Grostyan spent 5.7 hours taking crime scene photos and conducting other investigative activities for respondent in May 2012.

22. On May 31, 2012, Grostyan sent respondent an invoice for \$714.77 (5.7 hours at \$100 per hour plus expenses).

23. Respondent did not pay Grostyan's invoice despite written reminders and phone calls from Grostyan. Respondent told Grostyan the invoice was Hirsi's responsibility, not respondent's. Respondent copied Grostyan on letters to Hirsi dated

June 18 and July 18, 2012, in which he instructed Hirsi to pay Grostyan's invoice. Respondent also sent a similar letter to Hirsi on September 6, 2012, but did not copy Grostyan. Hirsi did not pay Grostyan's invoice.

24. On September 13, 2012, Grostyan wrote to respondent about the invoice. Grostyan acknowledged that Hirsi had agreed to pay Grostyan directly, but demanded payment from respondent within 30 days, stating "you hired me." Respondent did not pay the invoice.

25. On October 17, 2012, Grostyan filed a conciliation court complaint against respondent. After a hearing held on December 21, 2012, the court ordered judgment in favor of Grostyan and against respondent in the amount of \$784.77. The deadline to remove the case to district court was March 4, 2013.

26. Respondent attempted to file a demand for removal of the case to district court on February 19, 2013, but it was deficient and rejected by the court administrator. Respondent attempted to re-file the demand for removal on March 18, 2013. It was rejected by the court administrator as deficient, including the fact that the deadline for filing was March 4, 2013.

27. On March 27, 2013, respondent filed a motion "requesting [an] order to re-open case to file appeal/removal" with the district court. After a hearing held on April 15, 2013, the Hon. Janet Poston denied the motion. Respondent then filed a motion for "limited removal" with the district court. The Hon. Tanya M. Bransford denied respondent's motion following a hearing held on May 23, 2013.

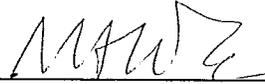
28. As of June 11, 2013, when respondent met with the Director's representative, respondent had not paid any part of Grostyan's invoice.

29. Respondent's conduct in failing to pay Grostyan's judgment, which is a law-related debt, violates Rule 8.4(d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, 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.

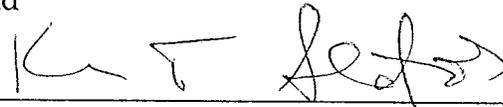
Dated: July 9, 2013.



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