

FILE NO. A10-545

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DAVID G. DeSMIDT,
a Minnesota Attorney,
Registration No. 139749.

**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 David G. DeSmidt, 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 withdraws the answer filed herein and unconditionally admits the allegations of the petition which may be summarized as follows:

a. In the course of representing two separate clients, respondent failed to deposit into a trust account advance fee payments received pursuant to an oral agreement, failed to diligently pursue both client matters, failed to keep both clients reasonably informed about the status of their matters and failed to comply with reasonable requests for information from both clients. With regard to one of the clients, respondent abandoned the client's appeal to the Minnesota Court of Appeals by deliberately failing to file a brief, made a series of misrepresentations to the client regarding the appeal and failed to give the client reasonable notice of his decision not to pursue the appeal.

b. Respondent's conduct violated Rules 1.3, 1.4, 1.5(a) and (b), 1.15(c)(5), 1.16(d), 4.1, and 8.4(c) and (d), Minnesota Rules of Professional Conduct (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 is a public reprimand pursuant to Rule 15, RLPR, and supervised probation for a period of two years based upon the conditions set forth below. Respondent agrees to the imposition and payment of \$900 in costs pursuant to Rule 24, RLPR.

7. Respondent shall be placed on supervised probation for a period of two years with 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 four 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. 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. At this time, it is understood that respondent practices law only as a public defender, and does not engage in the private practice of law. If and when respondent undertakes to represent private clients outside the scope of his position with the public defender's office, 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 filing of the Court's order and thereafter shall be made available to the Director at such intervals as he deems necessary to determine compliance. Respondent shall devise and utilize written retainer agreements where appropriate in accord with Rule 1.5, MRPC.

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

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

10. Respondent has been advised of the right to be represented herein by an attorney but has freely chosen to appear *pro se*.

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

Dated: April 16, 2010.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
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Dated: April 16, 2010.



SIAMA Y. CHAUDHARY
ASSISTANT DIRECTOR
Attorney No. 350291

Dated: 04/29/10, 2010.



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RESPONDENT
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