

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against TRACY R. EICHHORN-HICKS,  
a Minnesota Attorney,  
Registration No. 26128.  
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**STIPULATION FOR DISPENSING  
WITH PANEL PROCEEDINGS,  
FOR FILING PETITION FOR  
DISCIPLINARY ACTION,  
AND FOR DISCIPLINE**

THIS STIPULATION is entered into by and between Martin A. Cole, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and Tracy R. Eichhorn-Hicks, 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. It is understood that respondent has the right to have charges of unprofessional conduct heard by a Lawyers Professional Responsibility Board Panel prior to the filing of a petition for disciplinary action, as set forth in the Rules on Lawyers Professional Responsibility (RLPR). Pursuant to Rule 10(a), RLPR, the parties agree to dispense with Panel proceedings under Rule 9, RLPR, and respondent agrees to the immediate filing of a petition for disciplinary action, hereinafter petition, in the Minnesota Supreme Court.

2. Respondent understands that upon the filing of this stipulation and the petition, this matter 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. Respondent hereby admits service of the petition.

4. Respondent waives the right to answer and unconditionally admits the allegations of the attached petition for disciplinary action.

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 sanction the Court will impose.

6. The Director and respondent join in recommending that the appropriate discipline is a public reprimand and probation for a term of two years pursuant to Rule 15, RLPR. Respondent agrees to the imposition and payment of \$900 in costs pursuant to Rule 24, RLPR. It is recommended that respondent's probation be 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 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.

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

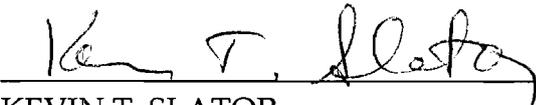
8. Respondent hereby acknowledges receipt of a copy of this stipulation.

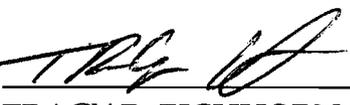
9. Respondent has been advised by the undersigned counsel concerning this stipulation and these proceedings generally.

IN WITNESS WHEREOF, the parties executed this stipulation on the dates

indicated below.

Dated: March 12, 2009.   
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: Mar. 12, 2009.   
KEVIN T. SLATOR  
ASSISTANT DIRECTOR  
Attorney No. 204584

Dated: 5/3, 2009.   
TRACY R. EICHHORN-HICKS  
RESPONDENT

Dated: 5/13, 2009.   
EDWARD F. KAUTZER  
ATTORNEY FOR RESPONDENT  
Attorney No. 54112  
Suite 313, Spruce Tree Centre  
1600 University Avenue West  
St. Paul, MN 55104-3829  
(651) 645-9359

## DIRECTOR'S MEMORANDUM

Respondent has a lengthy disciplinary history. On August 21, 2000, respondent was suspended from the practice of law for one year based on numerous violations of the Minnesota Rules of Professional Conduct (MRPC), including Rules 1.15(c) and 8.1(a)(1). Respondent was reinstated on February 8, 2002, and placed on supervised probation for three years. Respondent has also been the subject of private discipline on five occasions, including four admonitions received after being reinstated from suspension, in 2002, 2004 and 2005 (twice). Prior to his public discipline, respondent was placed on private probation for one year in 1992, and received an admonition in 1994.

Arguably, based on respondent's disciplinary history, the appropriate discipline for respondent's current misconduct would include a period of suspension. The Minnesota Supreme Court has held that previously disciplined attorneys are expected to demonstrate "a renewed commitment to comprehensive ethical and professional behavior." *In re Simonson*, 420 N.W.2d 903, 906 (Minn. 1988). The MRPC that respondent has admitted violating in the present matter, Rules 1.5(b), 1.15(c)(5), and 8.1(b),<sup>1</sup> are either identical or similar to those that were the basis of respondent's suspension in August 2000 and two of his private disciplines that followed his reinstatement to practice in 2002. The Director and respondent recognize that the Court's precedents support the imposition of harsher discipline for a lawyer who, having previously been publicly disciplined, commits additional serious misconduct.

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<sup>1</sup> Respondent has admitted violating Rule 8.1(b), MRPC, which provides, in part, "[A] lawyer in connection . . . with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter." Respondent's August 21, 2000, suspension was based on a violation of Rule 8.1(a)(1), MRPC, which was renumbered 8.1(a) in 2005. It provides, "[A] lawyer in connection . . . with a disciplinary matter, shall not knowingly make a false statement of material fact."

There is precedent, however, for imposing less serious discipline for subsequent misconduct in appropriate circumstances. *See, e.g., In re Garcia*, 746 N.W.2d 126 (Minn. 2008) (public reprimand for attorney fee violations after 30-day suspension for forgery and attorney fee violations in 2006); *In re Selmer*, 749 N.W.2d 30 (Minn. 2008) (public reprimand for tax filing violations after 12-month suspension for frivolous claims in 1997); *In re Stanbury*, 614 N.W.2d 209 (Minn. 2000) (public reprimand for failure to cooperate with Director's disciplinary investigation preceded by public reprimand after 30-day suspension for failure to satisfy a judgment and other misconduct in 1997).

Public discipline is warranted in this matter. But the Director and respondent submit that this is an exceptional case in which the appropriate level of public discipline to be imposed is a public reprimand, which is less than that previously received by respondent.

The District Ethics Committee (DEC) recommended that respondent receive only an admonition for accepting advance fee payments and failing to deposit the payments in a trust account in violation of Rules 1.5(b) and 1.15(c)(5), MRPC. By itself, these violations likely would not warrant public discipline, even considering respondent's disciplinary history.

The DEC did not know that respondent had actually received fees totaling \$9,300 rather than \$7,500. Respondent violated Rule 8.1(b), MRPC, by failing to disclose this fact to the DEC's investigator. But as noted above, complainant's complaint mentions only the figure of \$7,500, because the additional \$1,800 was actually paid on complainant's behalf by a friend to whom complainant had given power of attorney and who was handling complainant's business affairs. Respondent's failure to disclose appears to have been careless rather than dishonest.

Moreover, the DEC's investigator never asked respondent whether he had received any fees in addition to the \$7,500. Respondent's misconduct appears not to be

intentional deception or a conscious effort to mislead the DEC and Director's Office in violation of Rule 8.1(a), MRPC, but rather was a failure to correct a misapprehension in violation of Rule 8.1(b), MRPC. While the difference is subtle and slight, it is significant. In the Director's view, it lends support for the conclusion that a disciplinary sanction of a public reprimand is more appropriate under these circumstances than a suspension.