

FILE NO. A11-976

STATE OF MINNESOTA

IN SUPREME COURT

OFFICE
ATTORNEY GENERAL

OCT 17 2011

FILED

In Re Petition for Disciplinary Action
against STEPHEN VINCENT GRIGSBY,
a Minnesota Attorney,
Registration No. 291973.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDATION FOR
DISCIPLINE**

The above-captioned matter was heard on September 14, 2011, by the undersigned acting as Referee by appointment of the Minnesota Supreme Court. Robin J. Crabb appeared on behalf of the Director of the Office of Lawyers Professional Responsibility ("Director"). Respondent ("respondent") appeared *pro se*. The hearing was conducted on the Director's petition for disciplinary action ("Pet.") which was filed on April 20, 2011. The Director submitted John Roeschlein's testimony by deposition, and Stephen Vincent Grigsby appeared and testified by telephone, all with the consent and agreement of Respondent. The Director submitted exhibits. The parties were directed to submit written arguments on or before September 23, 2011. The Director was directed to submit proposed findings of fact, conclusions of law, and recommendation for discipline on or before September 23, 2011, and respondent was directed to submit his comments on the Director's proposed findings of fact, conclusions of law, and recommendation for discipline on or before September 30, 2011. The referee's findings of fact, conclusions of law and recommendation for discipline are due to the Supreme Court no later than October 20, 2011.

The findings and conclusions made below are based upon the documentary evidence submitted by the Director, the testimony presented, the demeanor and

credibility of the witnesses as determined by the undersigned and the reasonable inferences to be drawn from the documents and testimony.

Based upon the evidence as outlined above, and upon all the files, records, and proceedings herein, the Referee makes the following:

FINDINGS OF FACT

1. Respondent was admitted to practice law in the state of Minnesota on May 21, 1999. (Pet., p. 1; Respondent's Testimony ("R. Test.")). Between that date and April 16, 2009, the date respondent was suspended, respondent practiced mainly criminal law. (Pet., p. 1; R. Test.)

2. Respondent had represented J.R. in a criminal matter in late 2008 and early 2009. J.R. was convicted of his criminal charges in January 2009, and respondent at the request of J.R. filed a notice of appeal on his behalf on February 2, 2009. (Pet., p. 1; R. Answer, p. 1-stipulated; R. Test.; Transcript of Roeschlein deposition ("Tr.") at 7-8.)

3. On April 16, 2009, respondent was suspended from the practice of law for a period of sixty days for violations of the Minnesota Rules of Professional Conduct (MRPC). *In re Grigsby*, 764 N.W.2d 54 (Minn. 2009). Respondent was found to have engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), MRPC, among other misconduct. Respondent's suspension took effect immediately upon filing of the order. (Pet., p. 1; R. Answer, p. 1-stipulated; Director's Exh. 1 ("Exh.")).

4. Suspended lawyers are required to notify all clients, opposing counsel, and tribunals in which they regularly appear of their suspension. Rule 26, Rules on Lawyers Professional Responsibility (RLPR). Respondent sent a letter to J.R. on or about April 29, 2009, notifying J.R. of his suspension. Within that letter, respondent stated, "As a client you may either hire substitute counsel and collect your file from me

otherwise I will have another lawyer handle your case for no cost." (Pet., p. 1; R. Answer, p. 1-stipulated; Exh. 2.)

5. J.R. did not hire a lawyer to take over the appeal from respondent. Instead, J.R. assumed that respondent would find another lawyer to handle the case, or otherwise take care of it. (Tr. at 11-12, 27-28.)

6. Respondent notified the Court of Appeals of his suspension by a letter similar to the one sent to J.R. (R. Test.)

7. The brief relating to J.R.'s appeal was due during the period of respondent's suspension. Respondent completed the work on J.R.'s appellate brief while he was suspended from the practice of law. (R. Test.)

8. Respondent submitted J.R.'s appellate brief on or about May 27, 2009, while suspended from the practice of law. (R. Test; Exh. 3.)

9. Respondent signed J.R.'s name to the brief without obtaining the explicit prior consent or approval of J.R. (Exhs. 5 and 6; Tr. at 26; R. Test.) Respondent did not communicate with J.R. in the time period between April 29, 2009, when respondent notified J.R. of respondent's suspension, and May 27, 2009, when respondent sent J.R. a copy of the appellate brief. Since he had notified the Court of Appeals of his suspension, respondent was aware that signing his own name to the brief would likely cause the brief to be rejected by the Court of Appeals. (R. Test.)

10. Respondent has failed to acknowledge his misconduct. Respondent has maintained that he has committed no misconduct, even though the facts establishing the misconduct were essentially undisputed. He continually seeks to justify and explain away his actions. He could not find another lawyer to handle the matter and his client had not hired one. He thus argues that in order to protect his client's interests on appeal he had no other choice but to forge his client's name. The Referee rejects this as a defense.

11. Respondent believed that he had implicit authority to sign J.R.'s name to the brief and J.R. testified that he would have signed it himself or authorized Respondent to sign it had he been asked. He figured that another lawyer was handling the matter. Again this is rejected as a defense

12. Respondent falsely indicated within the brief that J.R. was *pro se*, when J.R. did not act as his own attorney in the matter. (Exh. 3; Tr. at 19.) Respondent was aware that J.R. had no part in the drafting or filing of the brief. (R. Test.)

Aggravating Factors

13. Respondent has the following disciplinary history:

a. On April 16, 2009, respondent was suspended from the practice of law for failing to file individual income tax returns in violation of Rule 8.4(b) and (d), MRPC; failing to report income to taxing authorities in violation of Rule 8.4(c), MRPC; failing to maintain practice-related books and records in violation of Rule 1.15(h), MRPC; failing to use written retainer agreements in connection with nonrefundable fees in violation of Rule 1.15, MRPC, as further interpreted by Lawyers Professional Responsibility Board Opinion 15; and making misrepresentations to the Director and failing to cooperate with the Director's investigation in violation of Rules 8.1(a)(1) and (3), and 8.4(c) and (d), MRPC, and Rule 25, RLPR. (Exh. 1.)

b. On February 27, 2007, respondent was issued a Panel Admonition for failing to timely appear with his client in a federal criminal matter in violation of Rules 1.3, 3.2, and 8.4(d), MRPC. (Exh. 7.)

14. Respondent committed the present misconduct while under suspension. This is an aggravating factor. *In re Ray*, 610 N.W.2d 342, 346 (Minn. 2000); *In re Brehmer*, 642 N.W.2d 431, 434 (Minn. 2002).

15. Respondent's current misconduct is similar to his previous misconduct. Respondent was suspended for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation and his current misconduct is of the same nature. This is an aggravating factor. *Ulanowski*, 800 N.W.2d at 803.

16. Respondent is experienced in criminal law. During the ten years respondent practiced, he practiced primarily in criminal representation. This is an aggravating factor. *Ulanowski*, 800 N.W.2d at 802.

Mitigating Factors

17. Harm to client: Respondent's client ran the risk of having J.R.'s appellate brief rejected if or when the forgery was discovered. Respondent had notified the Court of Appeals that he was suspended from the practice of law. If respondent's rather crude¹ forgery had been discovered, the brief would likely have been rejected by the Court of Appeals. The Court of Appeals did not apparently discover the forgery, and the brief was not rejected. Respondent's client suffered no harm. In fact the appeal was successful. (Tr. at 20, 21)

CONCLUSIONS OF LAW

1. Respondent's conduct, in that he completed drafting a legal document on behalf of a client, and submitted that document in the client's appeal, constituted the practice of law pursuant to the definition in Minn. Stat. § 481.02.² This conduct took

¹ Respondent placed the incorrect file number in the caption of the brief, and misspelled J.R.'s name in the title page and signature page of the brief.

² It shall be unlawful for any person or association of persons, except members of the bar of Minnesota admitted and licensed to practice as attorneys at law, to appear as attorney or counselor at law in any action or proceeding in any court in this state to maintain, conduct, or defend the same, except personally as a party thereto in other than a representative capacity, or, by word, sign, letter, or advertisement, to hold out as competent or qualified to give legal advice or counsel, or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counselor at law, or in furnishing to others the services of a lawyer or lawyers, or, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services, or, for or without a fee or any consideration, to prepare, directly or through another, for another person, firm, or corporation, any will or testamentary

place while respondent was suspended. Respondent's conduct, in that he practiced law while not authorized to do so, violated Rule 5.5(a), MRPC.

2. Respondent knew when he forged J.R.'s name to the brief that he was making a false statement to the Court of Appeals. A representation is made with fraudulent intent when it is known to be false. *Florenzano v. Olson*, 387 N.W.2d 168, 173 (Minn. 1986), cited in *In re Winter*, 770 N.W.2d. 463, 467 (Minn. 2009). Respondent's conduct, in that he forged J.R.'s name to the brief with the intent of concealing his participation in the matter from the court and opposing counsel, violated Rules 3.3(a)(1), 4.1, and 8.4(c) and (d), MRPC.

3. Respondent was aware, when he represented in the brief that J.R. was *pro se*, that he was making a false statement to the Court of Appeals. Respondent's conduct, in that he represented to the Court of Appeals that J.R. was *pro se* with the intent of concealing his participation in the matter from the court and opposing counsel, violated Rules 3.3(a)(1), 4.1, and 8.4(c) and (d), MRPC.

4. Respondent's conduct, in that he forged J.R.'s name to the brief and submitted the brief without obtaining authorization from J.R., violated Rule 1.2(a), MRPC.

disposition or instrument of trust serving purposes similar to those of a will, or, for a fee or any consideration, to prepare for another person, firm, or corporation, any other legal document, except as provided in subdivision 3. Minn. Stat. § 481.02.

RECOMMENDATION FOR DISCIPLINE

Respondent's misconduct warrants the extension of respondent's current suspension for a minimum of 9 (nine) months, with the explicit additional requirement of a reinstatement hearing pursuant to Rule 18, RLPR.

Dated: October 11, 2011.



HONORABLE CHARLES A. FLINN, JR.
SUPREME COURT REFEREE