FILE NO. A10-1906

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against CHRISTOPHER THOMAS KALLA,
a Minnesota Attorney,
Registration No. 325818.

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

The above-captioned matter was heard on February 18, 2011, by the undersigned acting as referee by appointment of the Minnesota Supreme Court. Julie E. Bennett appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Respondent Christopher Thomas Kalla appeared *pro se* and was personally present throughout the proceedings. The hearing was conducted on the Director's September 29, 2010, petition for disciplinary action. The Director presented evidence of witnesses Kerry Anderson, Joseph Kantor, Chanel Melin and Christopher Kalla. The Director also submitted exhibits numbered 1 through 21 which were admitted. Respondent presented his own testimony and also submitted exhibits numbered 101 through 133, 142 through 158, 161, 163, 166, 167, and 169 which were admitted. The parties were directed to submit, on or before March 11, 2011, proposed findings of fact, conclusions of law, a recommendation for appropriate discipline and a memorandum. The recommendations of the undersigned are to be submitted to the Minnesota Supreme Court on or before March 24, 2011.

In his answer and amended answer to the petition for disciplinary action ("R. ans."), respondent admitted certain allegations, qualified others, denied others and denied any rule violations. The findings and conclusions made below are based upon

respondent's admissions, the documentary evidence submitted by the parties, the testimony presented, the testimony of respondent, the demeanor and credibility of respondent and the other witnesses as determined by the undersigned and the reasonable inferences drawn from the documents and testimony. Based upon the evidence as outlined above, and upon all the files, records, and proceedings, the referee makes the following findings of fact:

FINDINGS OF FACT

1. Respondent was admitted to the practice of law in the State of Minnesota on May 9, 2003.

2. Respondent is currently employed by Usset, Weingarden & Liebo, PLLP. However, at the time of the matter at issue, respondent was employed by TRIAD Law Group, LLC.

Concurrent Conflict of Interest

Initial Proceedings

3. In 2006, Kari Driste (Driste) purchased a home. In order for Driste to purchase the home, it became necessary for Driste to obtain financing. Driste obtained a loan from Equifirst, which was secured by a mortgage on the real property (Equifirst loan), and also a loan from Michael Kirscht (Kirscht), which was secured by a second mortgage on the real property (Kirscht loan) (Ex. 21, p. 0001).

4. Kerry Anderson (Anderson), who was a licensed real estate agent, assisted Kari Driste in the purchase of her home. Kerry Anderson was also a co-owner of Future Mortgage, the company that helped arrange the loans described in paragraph 3 (Kerry Anderson test. Ex.161 p 27-29).

5. In 2007, Driste was referred to respondent for assistance with her mortgages. Respondent reviewed Driste's loan documents and believed the Kirscht loan to be usurious (Ex. 2, p. 0002).

6. During his representation of Driste, respondent identified Anderson and her company, Future Mortgage, as potential defendants as he believed Driste's loans were brokered through Future Mortgage (Ex. 2, p. 0002, 0011; Ex. 21, p. 0011; Ex.161 p. 94).

7. On or about October 17, 2007, respondent initiated a lawsuit on behalf of Driste against Kirscht (the Driste lawsuit). The Driste lawsuit sought to avoid the Kirscht loan pursuant to the usury statute (Ex. 4).

8. During the course of representing Driste, respondent learned of a similar loan that Anderson had with Kirscht and advised Anderson about the usury issues with the loan (Ex. 2, p. 0003).

9. On or about November 21, 2007, respondent received Kirscht's answer and counterclaim. In his counterclaim to the Driste lawsuit, Kirscht identified Future Mortgage as the broker of his loan to Driste and also indicated that Future Mortgage represented that the proceeds of the Kirscht loan would be used as a loan to purchase a home (Ex. 6, p. 4).

10. On or after December 5, 2007, respondent served a reply to Kirscht's counterclaim in the Driste lawsuit (Ex. 11).

11. Anderson initially did not want to pursue an action against Kirscht, but respondent advised her regarding other issues, including legal issues related to Anderson's rights, liabilities and obligations concerning her ownership interest in Future Mortgage. Anderson was concerned with actions being taken by Bobbi Jo Gustafson, and the potential impact of Gustafson's action on Anderson as co-owner of Future Mortgage (Anderson test.; Ex. 2, p. 0003).

12. Respondent also advised Anderson about her financial situation (Ex. 2, p. 0003).

13. On or about December 21, 2007, respondent commenced a separate lawsuit on behalf of Anderson against Kirscht seeking to avoid a $30,000 loan pursuant to usury statutes (Anderson lawsuit) (Ex. 5).

14. Prior to initiating the Anderson lawsuit, respondent had received and reviewed Kirscht's answer and counterclaim in the Driste lawsuit (Ex. 2, p. 0004; Ex. 6).

15. Prior to commencing the Anderson lawsuit, respondent did not advise Anderson that Future Mortgage was implicated in Kirscht's counterclaim against Driste and did not advise Anderson regarding any potential impact the Driste lawsuit could have on Anderson's lawsuit (Anderson test.).

16. Prior to commencing the Anderson lawsuit, respondent did not obtain informed consent, confirmed in writing, from either Anderson or Driste (Anderson test.; R. test. Ex.161 p. 81).

17. On or about January 24, 2008, respondent received Kirscht's answer and counterclaim in the Anderson lawsuit. Kirscht's answer and counterclaim in the Anderson lawsuit also implicated Future Mortgage (Ex. 7).

18. On or after February 13, 2008, respondent served a reply to Kirscht's counterclaim in the Anderson lawsuit (Ex. 12).

The Third Party Proceedings

19. On or after February 19, 2008, Kirscht served a third party complaint in the Driste lawsuit, naming Future Mortgage, Anderson and others as third party defendants (Ex. 8).

20. On or about February 14, 2008, prior to serving the third party complaint, Kirscht's attorney, Joseph Kantor, discussed the third party complaint with respondent (Kantor test.; Ex. 114).

21. Kantor discussed the problem of respondent's representing both Driste and Anderson with respondent. *Id.*

22. On or after February 19, 2008, Kirscht also served a third party complaint in the Anderson lawsuit, naming among others, Anderson's company, Future Mortgage, as a third party defendant (Ex. 9).

23. Sometime after he was served with Kirscht's third party complaint in the Driste and Anderson lawsuits, respondent drafted and requested a conflict of interest waiver from Driste and Anderson. Driste signed the waiver, but Anderson did not, after initially indicating she would (R. ans.).

24. Respondent continued his representation of both Anderson and Driste without a signed conflict of interest waiver from Anderson (R. ans.; Ex. 2, p. 0005-0006).

25. On or after March 10, 2008, in response to Kirscht's third party complaint in the Driste lawsuit, respondent served a joint answer and cross-claim of Anderson and Future Mortgage (Ex. 13).

26. On or around February 29, 2008, among other motions, Kirscht served a motion to disqualify respondent based on Kirscht's belief that respondent had a conflict of interest in representing both Driste and Anderson (Ex. 2, p. 0178).

27. On or about March 4, 2008, respondent brought a motion to dismiss Kirscht's third party complaint in the Driste lawsuit (Ex. 2, p. 0187; Ex. 107).

Duties to Former Clients

28. On March 28, 2008, prior to the hearing on the pending motions, respondent notified Anderson of his withdrawal from representing Anderson as legal counsel and advised Anderson that he would continue to represent Driste. On the same date, respondent served a notice of withdrawal of counsel in the Anderson lawsuit against Kirscht (Exs. 14 and 15).

29. Chanel Melin took over Anderson's representation after respondent withdrew. Respondent continued to represent Driste.

30. After his withdrawal from representing Anderson, respondent did not obtain Anderson's informed consent, confirmed in writing, for his continued representation of Driste (Anderson test.; Melin test.).

31. On June 11, 2008, Judge Ivy Bernhardson heard arguments regarding various motions, including Kirscht's motion to disqualify (Ex. 20).

32. On behalf of Driste, respondent argued that he should not be disqualified and that it was only the third party complaint which created a conflict of interest between Driste and Anderson.

33. Prior to the hearing, Anderson's counsel did not take a position with regard to the disqualification motion, as she believed the arguments beneficial to her client had been made by other parties (Melin test.; Ex. 18).

34. In a telephone conversation with respondent on June 11, 2008, and during mediation on June 12, 2008, Melin understood respondent to indicate that if the Driste and Anderson cases were consolidated, he might have to use information he obtained as Anderson's attorney in his representation of Driste, and that although he did not want to use such information to the detriment of Anderson, he stated that "you don't always know how trial will go." Believing respondent's continued representation of Driste constituted a conflict of interest,

Melin filed an affidavit in support of Kirscht's motion to disqualify respondent as Driste's counsel (Ex. 18).

35. After his withdrawal from representation of Anderson and Anderson's subsequent counsel joining the motion to disqualify respondent, respondent submitted an affidavit arguing against Anderson's position (Ex. 16).

36. On June 27, 2008, Judge Bernhardson issued an order which, among other things, disqualified respondent from continued representation of Driste based on the conflict of interest with Anderson (Ex. 17).

37. On July 15, 2008, the district court stayed its order of June 27, 2008, disqualifying respondent as Driste's counsel in order to provide an orderly transition of counsel for Driste, but otherwise disqualified respondent from taking any further action in the underlying case (Ex. 19).

38. Driste appealed the district court's order disqualifying respondent. While the appeal was pending, Driste settled her lawsuit with Kirscht.

39. On June 16, 2009, the Minnesota Court of Appeals affirmed the district court's order disqualifying respondent from representing Driste on the basis of conflict of interest (Ex. 21).

Aggravation and Mitigation

40. Respondent's conduct and demeanor in the matter before the undersigned demonstrate respondent has no insight into his misconduct and does not recognize his misconduct despite the findings of the Hennepin County District Court and the Minnesota Court of Appeals.

a. Respondent mistakenly believes that the third party complaint is what caused the conflict of interest. Respondent fails to see that his clients had differing interests which were hindered by respondent's representation of both Driste and Anderson.

b. Respondent had a conflict of interest at the time he initiated the Anderson lawsuit, as respondent had already identified Anderson as a potential defendant and had received information which implicated Anderson and her company, Future Mortgage, in the Driste lawsuit.

c. Respondent inappropriately argues that under his theory of the Driste lawsuit, Anderson could not be found liable in that litigation. This is a clear demonstration of the flaw in respondent's thinking regarding the conflict of interest. The presence or absence of liability does not determine the presence or absence of a conflict of interest.

d. Respondent demonstrated a willingness to use or reveal information obtained during his representation of Anderson to the disadvantage of Anderson, his former client, in violation of Rule 1.9(c), Minnesota Rules of Professional Conduct (MRPC).

41. Respondent has taken no responsibility for his misconduct and continues to blame others for his failure to recognize and appropriately respond to the conflict of interest.

42. Respondent has exhibited little or no remorse for his misconduct.

43. It is a migrating factor that Respondent has no prior disciplinary record.

CONCLUSIONS OF LAW

1. Respondent's failure to recognize and deal with the conflict of interest between Anderson and Driste at the outset of his representation of Anderson violated Rule 1.7(a), MRPC. By not obtaining the informed consent, confirmed in writing of both Driste and Anderson, respondent violated Rule 1.7(a), MRPC, when he undertook the representation of Anderson.

2. After withdrawal from representation of Anderson, respondent's continued representation of Driste violated Rule 1.9(a), MRPC. Because respondent's continued representation of Driste was substantially related to his prior representation of Anderson and with Anderson being potentially liable to Driste, having been named as a third party defendant in the Driste litigation, Driste's interests were materially adverse to Anderson's interests. By not obtaining Anderson's informed consent, confirmed in writing, respondent violated Rule 1.9(a), MRPC, by continuing to represent Driste.

RECOMMENDATION FOR DISCIPLINE

Respondent, Christopher Thomas Kalla, has committed acts of professional misconduct. Respondent has demonstrated a lack of insight into his misconduct and continues to blame others for his actions. Accordingly, the undersigned recommends:

1. That, respondent, Christopher Thomas Kalla, be publically admonished;

2. That respondent, Christopher Thomas Kalla be on supervised probation for a period of two years;

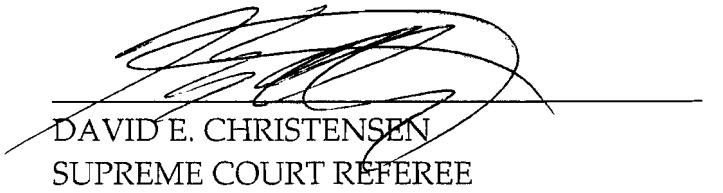
3. That respondent, Christopher Thomas Kalla, be required to successfully complete the professional responsibility portion of state bar examination within one (1) year of the date of the Court's order;

4. That respondent, Christopher Thomas Kalla, comply with Rule 26, RLPR;

5. That respondent, Christopher Thomas Kalla, pay $900 in costs pursuant to Rule 24(a), RLPR, plus disbursements pursuant to Rule 24(b), RLPR.

Dated: March 24th 2011.

BY THE COURT:



DAVID E. CHRISTENSEN
SUPREME COURT REFEREE

MEMORANDUM

FACTS

The facts in this case can be summarized as follows: Respondent initiated a usury action on behalf of one Kari Driste (Driste) against Michael Kirscht (Kirscht). Prior to initiating the action against Kirscht on behalf of Driste, respondent identified Kerry Anderson (Anderson) and Future Mortgage, a company that Anderson had an ownership interest in, as other defendants that Driste might have actions against. In spite of this knowledge, and with the further knowledge that Kirscht had in his counterclaim to the Driste matter listed Future Mortgage as the broker of the loan, respondent initiated an action on behalf of Anderson against Kirscht also alleging a usurious loan. No waiver was obtained from Anderson as to any conflicts she might have with the Driste litigation.

Following the initiation of the Anderson lawsuit against Kirscht, Kirscht brought third party actions in both lawsuits naming Future Mortgage and Kerry Anderson and others as third party defendants. Prior to doing so, counsel for Kirscht advised respondent that he had a conflict of interest in representing the plaintiffs and on or about February 29th he served a motion to disqualify respondent based on the perceived conflict of interest. On March 28th, 2008 prior to the disqualification hearing, respondent withdrew from representing Anderson, but continued to represent Driste until ordered not to do so by the District Court.

While representing Anderson, respondent learned of information which would be harmful to her case. In discussing the case with Anderson's new attorney, Chanel Melin, respondent indicated that he might have to use this information against her.

CONCLUSIONS

Respondent's position, if this referee understands it correctly, is that the facts set forth above do not constitute a conflict of interest because his two clients, Driste and Anderson, never sued each other. That ignores the fact that Driste had possible claims against both Future Mortgage and Anderson, and respondent's representation limited her options in regard to those claims. More serious is the continued representation of Driste after the third party complaint was served. At this point in time, Driste's interests were materially adverse to Anderson's interests and respondent had knowledge gained from his representation of Anderson that he would not otherwise have had. Respondent had a duty to withdraw for representing both parties once the third party complaint was filed, and his failure to do so was a violation of the rules.

DISCIPLINE

The Referee has more information about procedural history of this case than in most disciplinary cases because the respondent chose to introduce into evidence the Investigation Report of the Second District Ethics Committee (Ex.166), the Admonition issued by the Director (Ex.163) and the transcript of the Panel Proceedings held on August 30th, 2010. (Ex.161). The conclusion of the Second District Ethics Committee and the Director was that respondent should receive a private admonition. The respondent refused to accept this discipline with the result that the matter was referred to the Supreme Court and a referee was appointed. Respondent continues to take the position that he did nothing wrong and thus should not be disciplined. Should the referee find that in fact violations occurred, then respondent argues he should at the most receive a private admonition.

The facts of this case have in full or in part been argued before the District Court, the Appellate Court, the Second District Ethics Committee, a panel proceeding before the Lawyers Professional Responsibility Board and now before this referee. Throughout all of those proceedings respondent has maintained he did nothing wrong and everyone else is wrong.

Normally given the facts of this case, the referee would recommend a public admonition and that may well be appropriate. Given the actions of respondent during these proceedings, however, the referee has included a recommendation that respondent be on supervised probation for a period of two years and successfully complete the professional responsibility portion of the state bar examination within one year. Respondent throughout these proceedings has made the process difficult. He served numerous and frivolous demands for admissions. He attempted to take the

depositions of Judge Bernhardson, apparently for the purpose of showing that she would have ruled differently in regard to his disqualification if she would have had more information and he attempted to take the deposition of the complainant in this case after already cross examining her during the panel proceedings. The latter attempt was given up after respondent's process server was assaulted by Ms. Anderson's husband and threatened with a shotgun (Email from respondent dated January 20, 2011). At the hearing in this case, respondent refused to stipulate as to the admissibility of exhibits which were clearly admissible and when an objection was sustained as irrelevant in his cross examination, he would ignore the ruling and ask the same question with slightly different wording.

One witness in this proceeding, Chanel Melin, testified before the referee that respondent had become obsessed with the case and was not able to step back and look at the case objectively. That appears to be an accurate reflection and a relatively simple case has become much more complex than necessary.

DEC