

FILE NO. ~~15-1390~~ ^{A15-1390}

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DUANE A. KENNEDY,
a Minnesota Attorney,
Registration No. 0055128.

**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 June 10, 2015, order in the matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 1, 1976. Respondent currently practices law in Rochester, Minnesota.

INTRODUCTION

By June 10, 2015, order, this Court suspended respondent from the practice of law for minimum of 30 days, effective 14 days after the date of the filing of the order. A copy of the Court's order is attached as Exhibit 1. Respondent was reinstated by order of the Court dated July 23, 2015, effective July 25, 2015, and placed on disciplinary probation for two years subject to terms and conditions as described in the order.

Respondent's discipline was based upon offering to have his client, a complainant in a criminal sexual conduct case, act more favorably for the defendant as a witness in the defendant's criminal case if the defendant paid respondent's client to settle his civil claims against her in violation of Rule 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

Among the conditions of respondent's probation was the following:

"Respondent shall abide by the Minnesota Rules of Professional Conduct." *Id.* at 351.

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

FIRST COUNT

1. Respondent's suspension from the practice of law took effect on June 24, 2015, or 14 days after the Court's opinion that was issued on June 10, 2015.

2. On June 24, 2015, while respondent was suspended, he phoned the office of the Wabasha County Attorney's Office regarding the case of *State v. Raphael Heimerman*, Wabasha County District Court File No. 79-CR-15-551. Respondent left a voicemail message when he did not reach anyone. Respondent requested that the county attorney fax discovery to him because he was meeting with his client the next morning.

3. A copy of the complaint was faxed to respondent on the morning of June 25, 2015. Also on that date, respondent phoned the Wabasha County Attorney's Office and spoke with legal secretary Julie Vosen. Respondent said he wished to have police reports from the *State of Minnesota v. Heimerman* case. Ms. Vosen referred respondent's call to Wabasha County Attorney Karrie S. Kelly.

4. Ms. Kelly told respondent she would not be providing police reports to respondent because he was suspended from the practice of law. Respondent denied that he was practicing law and denied that he had left a voicemail message on the previous day saying he was scheduled to meet with a client on June 25.

5. Mr. Heimerman retained attorney William French in place of respondent. Mr. French filed a certificate of representation with the court on June 26, 2015.

6. On June 24, 2015, while respondent was suspended, he wrote to Wabasha County Court Administrator Julie Velt, and also filed documents in the case of *George Wood v. \$738.00 Cash, Guns*, Wabasha County District Court File No. 79-C0-14-63. The

letter improperly referred to respondent as "Attorney at Law" in both the letterhead and in the signature block, and read "KENNEDY LAW OFFICE" at the top of the letter.

7. On June 29, 2015, while respondent was suspended, he wrote to Charles Kjos, Olmsted County Court Administrator, and filed a certificate of representation and defendant's request for disclosure (both also dated June 29, 2015) in the case of *State of Minnesota v. Travis J. Tarr*, Olmsted County District Court File No. 55-CR-15-4101.

Respondent copied Michael Spindler-Krage, opposing counsel, on the letter. The letter improperly referred to respondent as "Attorney at Law" in both the letterhead and in the signature block, and read "KENNEDY LAW OFFICE" at the top of the letter.

8. On June 29, 2015, respondent notified his clients, the courts, and opposing counsel by letter of his suspension pursuant to Rule 26, Rules on Lawyers Professional Responsibility (RLPR) ("Rule 26 letters"). The Rule 26 letters improperly referred to respondent as "Attorney at Law" in both the letterhead and in the signature block, and read "KENNEDY LAW OFFICE" at the top of the letter.

9. Respondent's Rule 26 letters incorrectly stated he was suspended from the practice of law "for 30 days" (instead of for a *minimum* of 30 days), and that "at the end of this [30-day] period" respondent would be "able to appear and handle [the client's] file," rather than notifying clients he would be able to appear and handle the client's file only upon reinstatement by order of the Court.

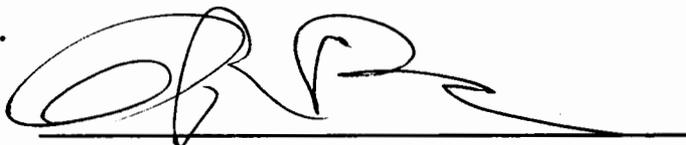
10. On or about July 9, 2015, while respondent was suspended, his nonlawyer assistant, Laurie Nierman, wrote to the Clerk of Appellate Courts regarding the case of *State of Minnesota v. Jason Wyatt Mindrup*, Appellate Case No. A15-0719. The purpose of the letter, which was dated July 9, 2015, was to comply with an order of the court of appeals dated May 13, 2015, to update the court on the status of a related district court proceeding involving Mr. Mindrup. The letter improperly referred to respondent as "Attorney at Law" in both the letterhead and in the signature block, and read "KENNEDY LAW OFFICE" at the top of the letter.

11. On July 15, 2015, respondent wrote to the Clerk of Appellate Courts and filed an affidavit for his reinstatement to the practice of law. The letter improperly referred to respondent as "Attorney at Law" in both the letterhead and in the signature block, and read "KENNEDY LAW OFFICE" at the top of the letter.

12. Respondent's conduct violated Rules 3.4(c), 5.5(a) and (b), and 8.4(d), MRPC, and the probation order.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law or imposing otherwise 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: August 11, 2015.

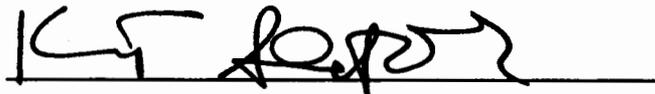


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