

FILE NO. C2-96-2024
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary
Action Against LEWIS M. KOSS,
an Attorney at Law of the
State of Minnesota.

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

The above-entitled matter came on for hearing on October 21, 1999, before the undersigned, acting as referee by appointment of the Minnesota Supreme Court.

Kenneth L. Jorgensen, First Assistant Director, and Mary L. Galvin, Assistant Director, appeared for and on behalf of the Director of the Office of Lawyers Professional Responsibility. Lewis M. Koss, the respondent herein, appeared pro se.

The evidence received at the hearing consisted of respondent's testimony and Director's Exhibits 1 - 10.

At the conclusion of the hearing the parties were directed to submit any proposed findings on or before November 1, 1999.

Based upon the file, the record, and all proceedings and submissions herein, including the oral arguments made on October 21, 1999, the undersigned makes the following:

FINDINGS OF FACT

1. Respondent graduated from the University of Minnesota Law School in 1968.

2. Respondent was admitted to practice law in the State of New York in December 1968.

3. Respondent was admitted to practice law in the State of Minnesota in February 1969.

4. Respondent was admitted to practice law in the State of California in 1976.

5. Following his admission to the bar respondent initially practiced law in the State of New York.

6. After being admitted to practice in the State of California respondent practiced law in the State of California.

7. Respondent has never engaged in the practice of law in the state courts of the State of Minnesota.

8. On June 25, 1991, respondent was convicted in the United State District Court for the Southern District of California of three felony counts of mail fraud and one felony count of racketeering for his involvement as an attorney in a network of attorneys in Southern California which was referred to as the "Alliance." The Alliance defrauded insurance companies of millions of dollars in legal fees by manipulating and prolonging complex civil litigation. Alliance members, including respondent, defrauded insurance companies by engaging in a conspiracy in which plaintiffs' lawyers and defense lawyers resisted the settlement of lawsuits until the insurers were either unable or unwilling to continue paying the fees of defense counsel and further by representing adverse interests, financing litigation opponents, sharing litigation and office expenses, and paying kick-backs to each other and to the clients whom they represented.

9. In September 1991 respondent was sentenced to serve concurrent prison sentences of 46 months on each of the four felony charges of which he had been convicted and further was sentenced to pay a fine of \$100,000.00.

10. Following his conviction respondent was allowed to remain at liberty on bail pending the determination of his appeal to the Ninth Circuit Court of Appeals. Respondent's convictions were affirmed in June 1994.

11. Respondent commenced service of his prison sentence in June 1995 and was released in October 1998.

12. Respondent is currently on supervised release status until October 2001.

13. On February 14, 1996, the California State Bar Court recommended respondent's disbarment in accordance with Cal. Bus. & Prof. Code § 6102(c), California's summary disbarment statute. The statute mandates disbarment of an attorney convicted of a felony perpetrated within the course of the practice of law which involves the specific intent to deceive, defraud, steal, or make a false statement. The Supreme Court of California ordered respondent's summary disbarment on May 1, 1996.

14. In February 1999 a petition seeking respondent's disbarment was filed in the State of New York. In April 1999 that petition was granted.

15. In October 1996 the Director filed a petition with the Minnesota Supreme Court seeking the reciprocal disbarment of respondent pursuant to Rule 12(d), Rules on Lawyers Professional Responsibility. The petition is predicated upon the May 1, 1996, order of the Supreme Court of California and alleges that the conduct which

resulted in respondent's criminal convictions violates Rules 8.4(b), (c), and (d), Minnesota Rules of Professional Conduct.

16. Respondent has filed an answer to the Director's petition attacking both California's disbarment procedures and the underlying criminal convictions.

17. By its order filed December 11, 1997, the Minnesota Supreme Court declined to impose reciprocal discipline because the provisions under which respondent had been disbarred in California did not afford respondent the opportunity for a disciplinary hearing and did not allow the consideration of mitigating circumstances. Respondent was immediately but temporarily suspended from the practice of law in Minnesota pending final determination of disciplinary proceedings and was afforded the opportunity to move the Minnesota Supreme Court to schedule a disciplinary hearing as contemplated by Rule 14, Rules on Lawyers Professional Responsibility.

18. Respondent made the permitted motion within the time period allowed him and by its order filed May 11, 1999, the Minnesota Supreme Court granted respondent a hearing pursuant to Rule 14, Rules on Lawyers Professional Responsibility.

19. By its order filed May 24, 1999, the Minnesota Supreme Court referred this matter to the undersigned to hear, and to make and report findings of fact and recommendations for the disposition of the matter.

20. Respondent's testimony at the hearing before the undersigned can be summarized as follows:

A. Respondent claims to have suffered from a "manic-depressive bi-

polar” mental disorder at the time of the conduct which resulted in his criminal convictions and maintains that “but for” this disorder the conduct would not have occurred. It should be noted that respondent’s claim of a mental disorder was not supported by any proffered evidence ruled to be admissible by the undersigned.

B. Respondent continues to deny the criminality of his conduct.

Asserting that he was exposed to more money than he had previously seen in his life, respondent maintains that his conduct was “greedy” but not “criminal.” Respondent protests that he lacked sufficient knowledge to make his actions criminal and acknowledges no culpability on his own part.

C. Respondent continues to focus on claimed inadequacies on the part of his trial counsel and his general lack of respect for the trial judge. Specifically, respondent claims that his conviction resulted from a coercive instruction given by the trial judge.

D. In his testimony respondent stated, “I was wronged by the system” and indicated that this is an opportunity to give him a break without hurting anybody.

E. Respondent indicated that his suspension/disbarment has and will result in substantial economic adversity for him. He stated that he is presently employed as a paralegal and is unable to adequately support himself on the income afforded by that employment status.

F. Respondent concluded by indicating that he was appealing to the “humanity” of the court.

21. No character evidence was offered in mitigation.

22. Respondent offered no expressions of contrition.

Based upon the foregoing findings of fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Respondent's criminal convictions violate Rules 8.4(b), (c), and (d), Minnesota Rules of Professional Conduct.
2. There are no mitigating factors which warrant imposition of discipline less than disbarment.

Based upon the foregoing findings of fact and conclusions of law, the undersigned makes the following:

RECOMMENDATION FOR DISPOSITION

The undersigned referee recommends that respondent be disbarred from the practice of law in Minnesota.

Dated: November 11, 1999.

COPY

Frederick J. Casey
Judge of District Court Acting as
Referee Pursuant to Order of the
Minnesota Supreme Court

MEMORANDUM

In its order filed December 11, 1997, the Minnesota Supreme Court stated:

We reject respondent's challenge to the underlying convictions. Conviction of a crime in any American jurisdiction is conclusive evidence that the attorney committed the conduct for which he or she was convicted. Rule 19(a), RLPR.

In re Disciplinary Action Against Koss, 572 N.W.2d 276, 278 (Minn. 1997). This determination was totally ignored by respondent at the hearing before the undersigned.

In that same order the Minnesota Supreme Court stated:

We caution respondent that he bears a heavy burden in demonstrating that he should not be disbarred from the practice of law in Minnesota. A felony conviction generally warrants disbarment unless significant mitigating factors exist. *In re Anderley*, 481 N.W.2d 366, 369 (Minn. 1992). This court has typically imposed disbarment in cases where attorneys have been convicted of mail fraud, racketeering or conspiracy. (Citations omitted).

Id. at 278. Respondent has not only failed to demonstrate the existence of "significant" mitigating factors, respondent has, in the opinion of the undersigned, failed to demonstrate the existence of any mitigating factors.

Further, respondent refuses to acknowledge any guilt or responsibility for his conduct and demonstrates a total lack of contrition.

F.J.C.