

FILE NO. A05-755

STATE OF MINNESOTA

IN SUPREME COURT

-----  
In Re Petition for Disciplinary Action  
against DENNIS R. LETOURNEAU,  
a Minnesota Attorney,  
Registration No. 62443.  
-----

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

The above-captioned matter was heard on July 14, 2005, by the undersigned acting as Referee by appointment of the Minnesota Supreme Court. Timothy M. Burke, Esq., appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Edward F. Kautzer, Esq., appeared on behalf of respondent Dennis R. Letourneau, who was personally present throughout the proceedings.

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

**FINDINGS OF FACT**

**I.**

Respondent was admitted to practice law in Minnesota on October 16, 1970.

Respondent currently practices law in St. Louis Park, Minnesota.

**II.**

Respondent has substantial experience in the practice of law. Respondent was admitted to practice law in the State of Minnesota in 1970. Respondent practices primarily in personal injury matters in the Twin Cities of Minnesota. Respondent is familiar with the law governing the statute of limitations on personal injury cases and is familiar with the Minnesota Rules of Professional Conduct and the Minnesota Rules of Professional Responsibility.

**FILED**

AUG 18 2005

### III.

Respondent's history of prior discipline is a February 20, 2001 private admonition for providing financial assistance to a client, failing to cooperate with the Director's investigation and practicing law while suspended for nonpayment of the attorney registration fee. Respondent loaned a client \$200 for Christmas gifts.

### IV.

Further, Respondent agreed to an April 21, 2003, stipulation for private probation for a period of two years based upon Respondent's admission that he had improperly loaned funds to a client and failed to cooperate with the Director's investigation. The April 21, 2003 stipulation involved two separate allegations of misconduct involving two different clients. Respondent agreed that he had improperly loaned funds to a client in 1999 and failed to cooperate with the investigation. Respondent also agreed he had failed to cooperate with a separate investigation involving a different client in 2002. Said probation conditions included provisions that Respondent comply with the Minnesota Rules of Professional Conduct and cooperate in the investigation of any further complaints. As noted in Finding of Fact IX below, the April 21, 2003 discipline occurred after the time of the incident for which this Petition has been brought.

### V.

In July 24, 1996, Respondent was retained to represent Darcie Sutherland in a personal injury matter. At the time of the accident, Ms. Sutherland was 15 years old. Ms. Sutherland had been injured in June 1996 when boxes of bubble gum machines fell off a store shelf and landed on her shoulder and arm. Ms. Sutherland's parents retained Respondent on her behalf. When Ms. Sutherland reached the age of majority, Respondent continued to represent her on the claim. Respondent had represented Ms. Sutherland's parents in earlier unrelated legal

proceedings to their apparent satisfaction based on their subsequent retention of Respondent for this matter.

## VI.

Prior to June of 2002, Respondent undertook numerous activities on the file, including the hiring of a private investigator, calculating Ms. Sutherland's wage loss and absences as a result of the shoulder injury, various correspondence and telephone communication with Ms. Sutherland, correspondence and telephone communication with the prospective defendant's insurance company, Royal and Sun Alliance, obtaining medical records from medical providers, drafting of a proposed summons and complaint and contacting Ms. Sutherland's medical providers regarding repayment issues.

## VII.

Respondent failed to commence an action on Ms. Sutherland's behalf before the six year expiration of the statute of limitations. Respondent did state at hearing there may be some legal possibility of reviving the claim due to difficulties in serving the prospective defendant. However, the file did not contain any research on this legal possibility and it therefore appears this is a legal theory that Respondent has developed since the commencement of this Petition. Respondent conceded the six year statute of limitations expired without filing a summons or complaint. It is not clear, based on the evidence submitted, whether Respondent knew that the statute of limitations had expired or, rather, whether his office procedures implemented on this matter simply failed to provide the appropriate reminder for the statute of limitations expiration date.

## VIII.

During the last three years, Respondent had met with Ms. Sutherland approximately four to five times in furtherance of the case. The most recent meeting was in the summer of 2004, when Respondent met with Ms. Sutherland and her father. Respondent did cancel approximately two meetings with Ms. Sutherland in the past three years.

## IX.

Respondent failed to inform Ms. Sutherland the statute of limitations had expired, upon its expiration in June 2002. Ms. Sutherland became aware the statute of limitations had expired on her claim from another attorney in early 2005. After learning of the expiration of the statute of limitations on her claim, Ms. Sutherland complained to the Director. The Director filed the Petition for disciplinary action, based on the complaint by Ms. Sutherland, on April 14, 2005. Respondent never informed Ms. Sutherland the statute of limitations had expired on her claim. Respondent conceded that he never informed Ms. Sutherland the statute of limitations had expired on her claim.

## X.

Ms. Sutherland had also retained Respondent in 2003 to represent her in a nursing licensure matter. Respondent represented her in this matter in August 2003 and negotiated an agreement for corrective action in this matter allowing Ms. Sutherland to maintain her LPN license. Respondent told Ms. Sutherland that he would deduct his legal fees for the licensure matter from Ms. Sutherland's personal injury recovery. As noted in Finding of Fact VII, it is not clear that Respondent knew the statute of limitations had expired at that time. Therefore, it is not clear whether Respondent knew this his statement to Ms. Sutherland was false.

## **XI.**

On March 22, 2005, Ms. Sutherland informed Respondent that he was discharged and requested Respondent to return her file to her. On March 23, 2005, the Director mailed to Respondent and his counsel, Edward F. Kautzer, notice of investigation of the Sutherland complaint requesting Respondent's response within seven (7) days. On March 24, 2005, Respondent's counsel stated that he would be meeting with Respondent the following Monday, March 28, 2005 and that counsel would contact the Director's Office after the meeting.

## **XII.**

On March 29, 2005, Respondent's counsel stated that he had met with Respondent on March 28, that the Sutherland client file was being copied, and when copying was completed counsel would provide Respondent's written response and a copy of Sutherland's client file. After several conversations between Respondent's counsel and the Director's Office, on April 18, 2005, Respondent provided to the Director a copy of Respondent's Sutherland client file, 26 days after the Director had requested the file.

## **XIII.**

Respondent admitted that he was aware there was a six year statute of limitations on the Sutherland case. Respondent admitted that he failed to commence an action in the case prior to the expiration of the six year statute of limitations.

## **AGGRAVATING FACTORS**

## **XIV.**

On February 20, 2001, Respondent was privately admonished for providing financial assistance to a client, failing to cooperate with the Director's investigation and

practicing law while suspended for nonpayment of the attorney registration fee. However, the Referee finds this prior discipline of minimal aggravation as it relates to an unrelated violation.

### **MITIGATING FACTORS**

#### **XV.**

Attorney Michael Doshen testified at the hearing as a character witness for the Respondent. Mr. Doshen graduated law school with Respondent in 1970. Mr. Doshen and Respondent shared an office together from 2000-2002. Mr. Doshen testified that Respondent is one of the best personal injury attorneys in the state and that Respondent has a high reputation for honesty and good character. The Court finds the testimony of Mr. Doshen credible.

#### **XVI.**

Finally, Respondent expressed regret to the Sutherland family and indicated that he would take personal responsibility for his error. Respondent has stated he has installed a case management program on his computer so that he will not make a similar error on any case in the future. In his 35 years of practice Respondent has never before been sued for malpractice and has received no other disciplinary action except for that which is mentioned in this Order. There is no evidence the Respondent has ever missed a statute of limitations. The Court finds the testimony of the Respondent credible.

### **NEUTRAL FACTORS**

#### **XVII.**

As stated in Finding of Fact IV, on April 21, 2003, Respondent signed a stipulation for private probation. However, the facts that gave rise to the allegation of this Petition, Respondent's lack of diligence regarding the expiration of the statute of limitations, occurred in June 2002, prior to the date of Respondent's stipulation for his previous violation of

the Minnesota Rules of Professional Conduct on April 21, 2003. Therefore, Respondent had not been disciplined when this incident occurred. This discipline is, thus, a neutral factor for purposes of disposition.

### CONCLUSIONS OF LAW

1. A lawyer shall act with reasonable diligence and promptness in representing a client. Minnesota Rule of Professional Conduct 1.3. The Director has established, by clear and convincing evidence, Respondent violated Minnesota Rule of Professional Conduct 1.3 in failing to commence an action on the Sutherland file prior to the expiration of the statute of limitations, as described in Findings of Fact VII, IX, X, XIII.

2. A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. Minnesota Rule of Professional Conduct 1.4(a). The Director has established, by clear and convincing evidence, Respondent violated Minnesota Rule of Professional Conduct 1.4(a) in failing to inform Ms. Sutherland of the expiration of the statute of limitations upon its expiration, as described in Finding of Fact VII, IX.

3. It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Minnesota Rule of Professional Conduct 8.4(c). A lawyer violates professional responsibility rule prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation by making false representations with an *intent to deceive*. In re Petition for Disciplinary Action Against Westby, 639 N.W.2d 358 (Minn. 2002) (emphasis added).

4. The Director has failed to establish, by clear and convincing evidence, Respondent misrepresented Ms. Sutherland by informing her that he would deduct his legal fees for the licensure matter from Sutherland's personal injury recovery after the statute of limitations had expired upon such claim, as described in Finding of Fact VII, X.

5. An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not knowingly fail to

respond to an admissions or discipline authority's lawfully authorized demand for information by either providing the information sought or making a good faith challenge to the demand.

Minnesota Rule of Professional Conduct 8.1(a)(3). The Director has failed to establish, by clear and convincing evidence Respondent violated Minnesota Rule of Professional Conduct 8.1(a)(3) as Respondent provided the information requested by the Director 26 days after it was requested, as described in Finding of Fact XII. The Rule in question does not establish a timeline for when such a response is required.

6. It shall be the duty of any lawyer who is the subject of an investigation or proceeding under these Rules to cooperate with the District Committee, the Director, the Director's staff, the Board, or a Panel, by complying with reasonable requests. Minnesota Rule of Professional Responsibility 25(a). The Director has failed to establish, by clear and convincing evidence, Respondent violated Minnesota Rule of Professional Responsibility 25(a), as Respondent provided the information requested by the Director 26 days after it was requested, as described in Finding of Fact XII. The Rule in question does not establish a timeline for when such a response is required.

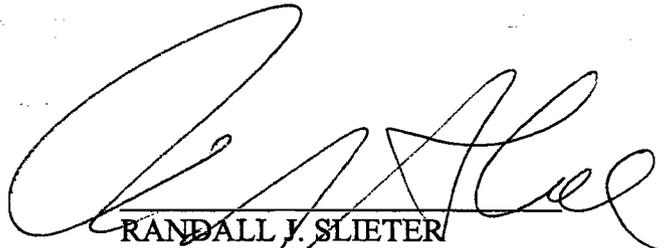
7. Once misconduct is established, aggravating and mitigating factors should be considered in determining appropriate discipline. In re Boyd, 430 N.W.2d 663, 664-65 (Minn.1988). A lawyer's prior disciplinary history is relevant to determining appropriate sanctions, and we review the discipline to be imposed in light of the earlier misconduct. In re Ruffenach, 486 N.W.2d 387, 390 (Minn.1992); In re Getty, 452 N.W.2d 694, 698 (Minn.1990). This court has imposed more severe sanctions when the current misconduct is similar to misconduct for which the attorney has already been disciplined. In re Thedens, 602 N.W.2d 863, 867 (Minn.1999). *Once disciplined*, this court expects a renewed commitment to comprehensive ethical and professional behavior from attorneys. In re Hart, 445 N.W.2d 836, 839 (Minn.1989) (emphasis added). A finding in previous disciplinary proceedings that a lawyer committed conduct warranting discipline is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct. Lawyers Professional Responsibility Rule 19(b)(3).

**RECOMMENDATION FOR DISCIPLINE**

The undersigned recommends that Respondent Dennis R. Letourneau:

1. Be publicly reprimanded.
2. Pay \$900 in costs pursuant to Rule 24(a), Rule on Lawyers Professional Responsibility (RLPR), and disbursements pursuant to Rule 24(b), RLPR.

Dated: August 18, 2005.



RANDALL J. SLIETER  
SUPREME COURT REFEREE

