

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against SAMUEL A. McCLOUD,  
a Minnesota Attorney,  
Registration No. 69693.  
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**STIPULATION  
FOR DISCIPLINE**

THIS STIPULATION is entered into by and between Martin A. Cole, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and Samuel A. McCloud, attorney, hereinafter respondent.

WHEREAS, respondent has concluded it is in respondent's best interest to enter into this stipulation,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. Pursuant to the Rules on Lawyers Professional Responsibility (RLPR), the parties agree to dispense with further proceedings under Rule 10(c), RLPR, permitting the Director to submit the matter to Panel and instead, respondent agrees to the immediate disposition of this matter by the Minnesota Supreme Court under Rule 15, RLPR.
2. Respondent understands this stipulation, when filed, will be of public record.
3. It is understood that respondent has certain rights pursuant to Rule 14, RLPR. Respondent waives these rights, which include the right to a hearing before a

referee on the petition; to have the referee make findings and conclusions and a recommended disposition; to contest such findings and conclusions; and to a hearing before the Supreme Court upon the record, briefs and arguments.

4. Respondent unconditionally admits the allegations of the attached petition.

5. Respondent understands that based upon these admissions, this Court may impose any of the sanctions set forth in Rule 15(a)(1) - (9), RLPR, including making any disposition it deems appropriate. Respondent understands that by entering into this stipulation, the Director is not making any representations as to the sanctions the Court will impose.

6. The Director and respondent join in recommending that the appropriate discipline is a 24-month suspension pursuant to Rule 15, RLPR. The suspension shall be effective as of July 5, 2011. The reinstatement hearing provided for in Rule 18, RLPR, is not waived. Reinstatement is conditioned upon: (1) payment of costs in the amount of \$900 plus interest pursuant to Rule 24(d), RLPR; (2) compliance with Rule 26, RLPR; (3) successful completion of the professional responsibility examination pursuant to Rule 18(e); and (4) satisfaction of the continuing legal education requirements pursuant to Rule 18(e), RLPR.

7. This stipulation is entered into by respondent freely and voluntarily, without any coercion, duress or representations by any person except as contained herein.

8. Respondent hereby acknowledges receipt of a copy of this stipulation.

9. Respondent has been advised of the right to be represented herein by an attorney but has freely chosen to appear *pro se*.

IN WITNESS WHEREOF, the parties executed this stipulation on the dates indicated below.

Dated: August 3, 2011.

  
MARTIN A. COLE  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 148416  
1500 Landmark Towers  
345 St. Peter Street  
St. Paul, MN 55102-1218  
(651) 296-3952

Dated: August 3, 2011.

  
CRAIG D. KLAUSING  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 202873

Dated: 8/16, 2011.

  
SAMUEL A. McCLOUD  
RESPONDENT  
P. O. Box 366  
Lindstrom, MN 55045

## MEMORANDUM

As this Court has held in numerous cases, the presumptive penalty for a felony conviction is disbarment. "Generally, felony convictions warrant 'disbarment, unless significant mitigating factors exist.'" *In re Pugh*, 710 N.W.2d 285, 288 (Minn. 2006), citing to *In re Anderley*, 481 N.W.2d 366, 369 (Minn. 1992). "[T]he presumptive discipline for a felony conviction is disbarment." *In re Jones*, 763 N.W.2d 38 (Minn. 2009). Also, "felony convictions for filing false tax returns and evading federal income tax on [the lawyer's] legal earnings is a serious crime reflecting adversely upon [the lawyer's] character." *In re Barta*, 461 N.W.2d 382, 385 (Minn. 1990).

In the present case, respondent pled guilty to a felony level offense, tax evasion for tax year 2005, in violation of 26 U.S.C. § 7201 and 18 U.S.C. § 2. Given respondent's felony conviction, the Director considered whether there was any reason why respondent should not be disbarred. After reviewing other decisions by this Court involving felony convictions involving tax evasion, the Director concludes that discipline less than disbarment is more consistent with past decisions.

First, felony disbarment cases have involved misconduct directly related to the practice of law or have involved more serious misconduct than tax evasion or fraud. For example, in the *Pugh* case, the Director "filed a petition for disciplinary action seeking to have Pugh disbarred based on Pugh's misappropriation of over \$1 million from a real estate closing company he owned. As a result of his misappropriation, Pugh was indicted in federal court on 34 felony counts, including mail fraud, wire fraud, interstate transportation of money obtained by fraud, money laundering, concealment of material facts, and causing the unlawful act of another. A jury found Pugh guilty of 33 of the counts in the indictment." *In re Pugh*, at 286.

In another case where the lawyer was disbarred following a felony conviction, the lawyer "received checks from clients to pay their determined tax liability. However, [the lawyer] did not send to taxing authorities correct returns, and he converted to his

own use proceeds from the checks." *In re Ostfield*, 349 N.W.2d 274, 275 (Minn. 1984). Attorney Ostfield was not only "an attorney at law but also a certified public accountant." Ostfield's guilty plea to two counts for his federal indictment resulted in his disbarment. *Id.* at 275.

Unlike respondent's misconduct, Ostfield's misconduct had a closer nexus to the practice of law and involved direct harm to clients. Ostfield received money from the clients, in part, in his capacity as a lawyer and in a fiduciary capacity to pay those funds to the taxing authorities. By not paying the funds, Ostfield not only displayed a lack of those characteristics relevant to the practice of law, but his conduct directly harmed clients. On the other hand, while respondent's misconduct also displayed a lack of those characteristics relevant to the practice of law, his misconduct did not involve harm to clients and hence is distinguishable from *Ostfield*.

Attorney Loren Barta was also the subject of a federal felony conviction "for tax evasion and filing false returns." *In re Barta*, 461 N.W.2d 382, 385 (Minn. 1990). Like respondent, Barta's misconduct as it concerned the tax evasion and the filing of false returns, did not involve harm to clients. However, unlike respondent's misconduct, Barta's involved trust account violations and misappropriation of client trust funds. Despite this, attorney Barta was not disbarred. Rather, Barta was indefinitely suspended from the practice of law with no leave to apply for reinstatement until he had "successfully complete[d] criminal probation imposed for his federal tax law violations." *Id.* at 385. Given the timing of the Court's decision and the ending of Barta's probation, the resulting minimum suspension was for a period of 20 months.

More recently, an attorney received a 45-day suspension and probation for two years after reinstatement, for a felony failure to file Minnesota income taxes. *In re Hatling*, 793 N.W.2d 139 (Minn. 2011). In that case, the lawyer took a "claim of right deduction" based on an assertion that the value of wages was not taxable because the United States Constitution does not provide for taxation of money earned by United

States citizens. Hatling eventually entered into a plea of guilty to Minn. Stat. § 289A.63, subdiv. 1(b), failure to pay income tax, a felony level offense. Hatling received a stay of imposition for five years and for probation for up to five years. As part of his criminal proceeding, Hatling was incarcerated for 60 days with the court permitting him to participate in work release. As with the *Hatling* case, while the income on which respondent was to pay taxes was derived from the practice of law, his misconduct was outside of the practice of law.

Given these cases, the Director concluded that respondent's misconduct, while serious and warranting a lengthy suspension, does not warrant disbarment. The Director determined that respondent's misconduct warrants an indefinite suspension of his license to practice law with no right to petition to be readmitted for a period of 24 months.