

STATE OF MINNESOTA

IN SUPREME COURT

FILE NO. A04-215

In Re Petition for Disciplinary
Action Against Yvonne B. Moore
An Attorney at Law of the
State of Minnesota

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

The above matter came before the Court on May 19, 2004 at the courtroom of the Office of Lawyer's Professional Responsibility in St. Paul, Minnesota. The Director was represented by Attorney Timothy Burke. The Respondent appeared with her attorney, Mark Stafford. Based on the evidence submitted at trial, the Court makes the following:

FINDINGS OF FACT

I.

Respondent was admitted to practice law in the State of Minnesota on May 24, 1963. Respondent currently practices law in Burnsville, Minnesota.

II.

Respondent has substantial experience in the practice of law. Respondent practices primarily in Family Law. Respondent is familiar with Rules of Civil Procedure and the obligations such Rules impose on her. Respondent is familiar with the procedural rules governing the scheduling of Family Court motions and hearings in Ramsey County.

III.

On September 17, 2001, David VanSickle retained Respondent to represent him in marital dissolution proceedings involving child custody and visitation issues. According to

the testimony of the Respondent, she indicated that her agreement with Mr. VanSickle was that she would not represent him at any hearings. However, she acknowledges that her letter of engagement (there exists no formal retainer agreement) dated September 17, 2001 identifies her representation of Mr. VanSickle and indicates, after her signature line, "includes a hearing, but not possible trial." There is no limiting language in this letter clarifying that she would attend no hearings. There is a copy of this letter which is the Court's exhibit and which includes a handwritten parenthetical portion which inserts the work "pre-trial" after the words "includes a hearing." Respondent contends this in support for her contention that she agreed with Mr. VanSickle that she will attend no hearing except a "pre-trial" hearing which, she contends, the February 8, 2002 hearing was not. The Court does not find this testimony credible as it relates to Petitioner's allegations, specifically, Rule 1.3 and 8.4(d).

IV.

Respondent's letter to Mr. Glendenning dated September 17, 2001 states, *inter alia*, "At the present time I represent David VanSickle in his dissolution. Please let me know if you have any concerns to be immediately addressed. . . . *communication of any sort should be only thru me.*" (Emphasis added.) At no time during the course of representation did Ms. Moore inform either the Court or Mr. Glendenning that her representation is limited to non court proceedings.

Respondent testified that it is her belief this withholding of information from either opposing counsel or the Court is appropriate "strategic" decision as part of her representation of a client.

The Court finds these facts particularly critical as it relates to the Petitioner's allegation that Respondent has violated Rule 8.4 (d).

V.

As part of her representation of Mr. VanSickle, the Respondent prepared a document entitled "Notice and Motion" which she prepared and signed dated October 26, 2001. She testified, which the Court finds credible, that she gave this document to her client who, without direct knowledge of the Respondent, filed it with the Ramsey County District Court on November 5, 2001. Pursuant to the Respondent's signature on this filed document, she became the attorney of record regarding the VanSickle dissolution proceeding as far as the District Court and its Administration is concerned.

VI.

The Respondent requested Ramsey County District Court Administration Office schedule a hearing in regard to this filed motion. The hearing was scheduled for December 26, 2001. It is not clear from the Court Administrator's Activity Summary or from the testimony whether Ms. Moore called directly to the Court Administrator's Office. In any event, it is clear from the facts that as a result of her preparing and signing a motion of behalf of Mr. VanSickle, the Court scheduled a hearing consistent with said motion for December 26, 2001.

VII.

Also as part of her representation of Mr. VanSickle, the Respondent took part in a telephone Scheduling Conference with opposing counsel, Gordon Glendenning, and the District Court Judge assigned to the matter. Although it is not clear from the testimony when the telephone conference occurred, the transcription of the court record presented as an exhibit indicates that a Scheduling Conference Hearing occurred on December 7, 2001. The Court presumes that was the relevant telephone conference. The parties agreed that both counsel took

part in the telephone conference. As a result of this Scheduling Conference Hearing and at the request of the Respondent, the December 26, 2001 Motion was rescheduled to February 8, 2002.

VIII.

On either February 5 or 6, 2002, Respondent contacted Mr. Glendenning and informed him that she would not be attending the hearing on February 8, 2002 because she was to be out of town that date. Mr. Glendenning therefore requested that Respondent agree the matter be continued. However, Respondent refused this request. The Court considers this Finding particularly critical as it relates to Petitioner's claim that Respondent has violated Rule 1.3 and 8.4(d).

IX.

On February 6, 2002, Respondent telephoned VanSickle and informed him that she would not be attending the hearing on February 8, 2002. VanSickle inquired whether he needed to attend the hearing and Respondent advised him that he did not have to attend the hearing. Respondent did not advise VanSickle about the repercussions for failing to attend a hearing. Based upon Respondent's advice, VanSickle did not attend the hearing.

X.

As expected, Respondent failed to attend the hearing on February 8, 2002. Respondent did not notify the Court that she would not be attending the hearing nor did she seek to obtain a continuance of said hearing (as noted above, despite her unavailability to attend the hearing, she refused to consider opposing counsel's request for a continuance.).

XI.

Attorney Glendenning prepared for, and appeared at, the hearing. The Court dismissed Mr. VanSickle's motion and ordered him to pay \$540 in attorney fees for the legal

costs incurred by his wife. The Court further ordered that Mr. VanSickle pay the amount in full before he would be permitted to file any further pleadings or motions.

XII.

On February 28, 2002, Respondent withdrew from representation of Mr. VanSickle.

XIII.

On May 13, 2002, Mr. VanSickle filed a Conciliation Court Claim against Respondent seeking reimbursement for the costs and attorney fees entered against him. After hearing testimony from both parties, the Court found that Mr. VanSickle was "more credible in his testimony that he had every intention to appear for the hearing on February 8, 2002, but for [respondent] telling [VanSickle] his appearance [was] unnecessary."

The Court in the Conciliation Court proceeding held that Mr. VanSickle was entitled to judgment in the amount of \$540 against Respondent. Respondent then paid VanSickle \$500 the matter was settled.

XIV.

Respondent has argued, both in testimony and in her counsel's Proposed Order, that her client gave permission to her to be absent from the February 8, 2002 hearing. However, this allegation is contrary to the evidence. Respondent makes reference to a letter dated January 30, 2002 from her client, David M. VanSickle, to Ramsey County Deputy Court Administrator Mary Lee F. Nelson as evidence that Mr. VanSickle so consented to her absence. However, the full content of the letter is absent such language and states as follows:

"Please file this. My attorney got a date change from the Court and made plans and will not attend the hearing (copy of notice attached)."

There is no information in that letter to the Court, nor copied to any other party, that Mr. VanSickle informed his attorney that she need not be present. Nor does this letter explain to the Court or opposing counsel that he (Mr. VanSickle) would not be present. Further, there is no continuance request made in this letter. Respondent simply failed to appear at a hearing that the District Court scheduled pursuant to her request and based on the motion she drafted on behalf of her client. The Court considers finding particularly critical as it relates to Petitioner's claim that Respondent has violated Rule 8.4(d).

XV.

Although Respondent denied telling Mr. VanSickle not to appear at the hearing, the Court does not find this response credible. It is the Court's belief that since Mr. VanSickle had previously been representing himself, and he is a licensed and practicing attorney in the State of Minnesota and had a very personal interest in the outcome of the hearing on February 8, 2002, he would not have failed to attend but for this advice of counsel.¹

XVI.

Regarding the issue of notifying the Court and/or counsel of her intention not to represent a party at hearings, Respondent indicated that in her experience practicing Family Law in Ramsey County the "Judges don't care" whether a lawyer is representing a party or whether they (lawyers) appear in court. Further, it was her opinion that Mr. Glendenning "should have known" that she was not necessarily representing Mr. VanSickle though she provided no evidence supporting this contention.

¹ While this Court is also sympathetic to the argument that Mr. VanSickle should have known better because he is an attorney, it seems clear that he relied on the advice and counsel of the Respondent who was experience in Family Law, an area to which Mr. VanSickle had very minimal legal experience. Also, whether Mr. VanSickle acted prudently does not affect the evidence presented against the Respondent.

Also, Respondent did not believe the fact that she had taken part in a Scheduling Conference with opposing counsel and the Judge, had contacted the Court for scheduling and re-scheduling of a hearing, had signed her name on a Notice of Motion that was filed with the Court, that she was necessarily the attorney of record. Respondent also did not believe that the Court and opposing counsel might rely on these representations by her.

The court finds all of these statements of Respondent incredible. As a result of these statements the undersigned finds that Respondent has offered no evidence she has initiated measures to prevent similar misconduct from occurring in the future.

XVII.

Respondent has a disciplinary history as follows:

- a. On November 20, 1997, the Minnesota Supreme Court affirmed an admonition issued to Respondent for failing to attend a hearing, obtain a continuance or inform a client of the consequences of not attending a hearing in violation of Rules 1.1, 1.3, and 1.4, Minnesota Rules of Professional Conduct (MRPC).
- b. On April 14, 1995, Respondent agreed to be placed on private probation for failing to place an advance fee payment into her client trust account, failing to return an unearned fee to a client, failing to provide an accounting of her billing, and failing to provide a client with a copy of a temporary restraining order in violation of Rules 1.4(a), 1.15(a), 1.15(b)(3) and (4), MRPC, as further interpreted by Lawyers Professional Responsibility Board Opinion No. 15 and Rule 1.16(d), MRPC.
- c. On June 1, 1993, Respondent was issued an admonition for demanding and receiving a \$300 fee without first securing approval or consent from the Social Security Administration, failing to promptly return client property, and non-communication in violation of Rules 1.4(a), 1.5(a), and 1.15(b)(4), MRPC.

Respondent's current misconduct is similar to conduct for which she received an admonition previously. Respondent's disciplinary history shows a pattern of misconduct.

CONCLUSIONS OF LAW

1. The Petitioner has failed to establish by clear and convincing evidence the Respondent violated Minnesota Rules of Professional Conduct 1.1.
2. Findings of Fact III, VIII-X, XIII-XIV, and XVI establish by clear and convincing evidence the Respondent violated Minnesota Rules of Professional Conduct 1.3.
3. Findings of Fact III, V, IX, and XIV-XV establish by clear and convincing evidence the Respondent violated Minnesota Rules of Professional Conduct 1.4(b).
4. Findings of Fact III-VIII, X, XIII, and XVI establish by clear and convincing evidence the Respondent violated Minnesota Rules of Professional Conduct 8.4(d).

RECOMMENDATION FOR DISCIPLINE

The undersigned recommends that Respondent Yvonne B. Moore:

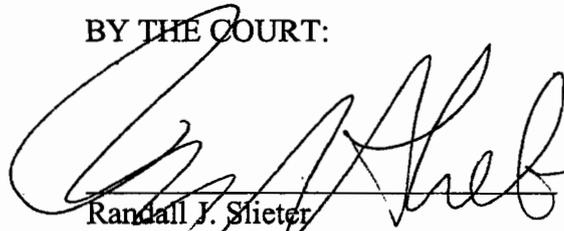
1. Be publicly reprimanded.
2. Be placed on supervised probation for a period of two years upon the following conditions:
 - a. Respondent shall cooperate fully with the Director's Office in its efforts to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Upon the Director's request, Respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.
 - b. Respondent shall abide by the Minnesota Rules of Professional Conduct.
 - c. Respondent shall be supervised by a licensed Minnesota attorney, appointed by the Director to monitor compliance with the terms of this probation. Respondent shall provide to the Director the names of four attorneys who have agreed to be nominated as Respondent's supervisor within two weeks from the date this stipulation is executed. If, after diligent effort, Respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, the Respondent shall on the first day of each month provide the Director with an inventory of active

client files described in paragraph d, below. Respondent shall make active client files available to the Director upon request.

- d. Respondent shall cooperate fully with the supervisor in his/her efforts to monitor compliance with this probation. Respondent shall contact the supervisor and schedule a minimum of one in-person meeting per calendar quarter. Respondent shall submit to the supervisor an inventory of all active client files by the first day of each month during the probation. With respect to each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Respondent's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as may reasonably be requested by the Director.
- e. Respondent shall initiate and maintain office procedures which ensure that there are prompt responses to correspondence, telephone calls, and other important communications from clients, courts and other persons interested in matters which Respondent is handling, and which will ensure that Respondent regularly reviews each and every file and completes legal matters on a timely basis.
- f. Within thirty days from the appeal, if any, by the Supreme Court of Appeals of this Recommendation, Respondent shall provide to the Director and to the probation supervisor, if any, a written plan outlining office procedures designed to ensure that Respondent is in compliance with probation requirements. Respondent shall provide progress reports as requested.
- g. Pay \$900 in costs pursuant to Rule 24(a), Rules on Lawyers Professional Responsibility (RLPR), and disbursements pursuant to Rule 24(b), RLPR.

Dated: June 24, 2004

BY THE COURT:



Randall J. Slieter
Judge of District Court and Referee by Supreme
Court Appointment for this proceeding