

FILE NO. A10-694

OFFICE OF
APPELLATE COURTS

APR 25 2011

STATE OF MINNESOTA

FILED

IN SUPREME COURT

In Re Petition for Disciplinary Action
against STANLEY H. NATHANSON,
a Minnesota Attorney,
Registration No. 144046.

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

The above-captioned matter was heard on April 1, 2011, by the undersigned acting as referee by appointment of the Minnesota Supreme Court. Kevin T. Slator appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Respondent Stanley N. Nathanson notified the Court by letter dated March 22, 2011, that he did not plan to appear at the evidentiary hearing but was not withdrawing his answer to the Director's April 15, 2010, petition for disciplinary action or the motions he submitted to the Court. Mr. Nathanson did not appear at the April 1, 2011, evidentiary hearing in person or by counsel.

The hearing was conducted on the Director's petition for disciplinary action. The Director presented the live testimony of Tiffany Rainer and Demiteras Cooper and submitted exhibits. The Director submitted proposed findings of fact, conclusions of law and recommendation for appropriate discipline and a legal argument. Mr. Nathanson made no post-hearing submissions. The referee's findings of fact, conclusions of law and recommendation are due to the Supreme Court no later than April 26, 2011.

In his answer to the petition for disciplinary action ("R. ans."), respondent admitted certain factual allegations, denied others, and denied any rule violations. The findings and conclusions made below are based upon respondent's admissions, the

documentary evidence the Director submitted, the testimony presented, the demeanor and credibility of the witnesses as determined by the undersigned and the reasonable inferences to be drawn from the documents and testimony.

If respondent admits a particular factual finding made below, then even though the Director may have provided additional evidence to establish the finding, no other citation will necessarily be made. For each factual finding made below, the undersigned evaluated the relevant documents and testimony, accepted as credible the testimony consistent with the finding and did not accept the testimony inconsistent with the finding.

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

1. Respondent was admitted to practice law in Minnesota on October 15, 1982. Respondent resides in Arizona and does not currently practice law in Minnesota.
2. On December 8, 1993, respondent received an admonition for withdrawing from representation in a criminal matter without providing sufficient advance notice to his client and without taking reasonable steps to protect the client's interests in violation of Rule 1.16(d), Minnesota Rules of Professional Conduct (MRPC). (R. ans.)
3. On September 19, 2007, respondent received an admonition for failing to communicate with a criminal defense client until less than one week before the client's trial, and for failing to appear for the client's trial, in violation of Rules 1.3, 3.2, and 8.4(d), MRPC. (R. ans.)
4. Respondent's license to practice law in Minnesota was restricted on January 4, 2010, for failure to comply with Continuing Legal Education rules of the

Minnesota Supreme Court. On July 1, 2010, respondent's license was suspended for failure to pay his Minnesota lawyer license fees.

5. On August 10, 2010, respondent filed a motion with the undersigned referee to dismiss counts two, three, and four of the petition. Respondent argued that "the allegations . . . arose from an unauthorized investigation [by the Director] into matters outside the scope of the Ethics Complaint of Demiteras Cooper"

6. On October 5, 2010, the Minnesota Supreme Court approved a stipulation between respondent and the Director under which respondent was temporarily suspended from the practice of law pending completion of the disciplinary proceedings.

7. On October 25, 2010, respondent filed a motion with the Minnesota Supreme Court to amend the October 5, 2010, order and lift respondent's suspension (Ex. 92). The basis for respondent's motion was that the Director mischaracterized respondent's suspension as a disciplinary suspension in a press release. On November 16, 2010, the court denied respondent's motion.

Demiteras Cooper Matter

8. In February 2005, Demiteras Cooper retained respondent to represent him in lawsuits against three police officers and the Spring Lake Park and Minneapolis police departments. Cooper claimed that excessive force was used against him by the officers during a pursuit and arrest on February 26, 2005. (R. ans., ¶ 2; Ex. 1.)

9. Respondent failed to keep Cooper reasonably informed about his case; for example, respondent did not inform Cooper that in February 2006 a Minneapolis Police Department Internal Affairs investigation sustained Cooper's complaint alleging excessive use of force, injury, use of racial slurs, and failure to provide medical attention. (Cooper test.; Ex. 2.)

10. In January 2007, respondent filed a lawsuit in Hennepin County District Court on behalf of Cooper. Respondent named two Minneapolis police officers and the Minneapolis Police Department as defendants. (R. ans., ¶ 2.)

11. On September 5, 2007, an arbitrator awarded Cooper \$25,000. The arbitration was handled by respondent's co-counsel, Donald Nemer. (R. ans., ¶ 5; Ex. 3.) Neither Nemer nor respondent informed Cooper of the arbitration award and it was not accepted. (Cooper test.)

12. A jury trial in Cooper's case was held from January 8-11, 2008. On January 11, 2008, the jury found for the defendants and against Cooper. (Ex. 5.) During trial, Cooper noticed the arbitrator's award in respondent's file and asked respondent why he never told him about it. Respondent told Cooper the reason he did not inform him of the arbitration award was that he felt the award was insufficient and he wanted to take Cooper's case to trial. (Cooper test.)

13. On May 29, 2008, respondent filed an appeal with the Minnesota Court of Appeals (Ex. 6). Respondent did not consult with Cooper before filing the appeal. Cooper did not want respondent to represent him in an appeal because Cooper was dissatisfied with respondent's representation at trial. (Cooper test.)

14. Respondent failed to file a certified copy of the judgment from which Cooper was appealing, and failed to pay a \$500 filing fee or submit an IFP order (Ex. 6). A statement of the case filed by respondent stated that a transcript was necessary. Respondent failed to order a transcript within 10 days after the appeal was filed, as required by the Rules of Civil Appellate Procedure. (R. ans., ¶ 3.)

15. On June 3, 2008, the clerk of appellate courts issued a notice directing respondent to correct the filing deficiencies within ten days. Respondent failed to do so and failed to inform Cooper of the notice. (R. ans., ¶ 3, Ex. 6.)

16. On June 19, 2008, the Court of Appeals ordered respondent to file a certified copy of the judgment from which he was appealing and either a \$500 filing fee or an IFP order by June 30, 2008, or face dismissal of his appeal. (Ex. 6.) Respondent failed to comply with the court's order, failed to notify Cooper of the order, and took no further action on the case. (R. ans., ¶ 3; Ex. 7.)

17. On July 9, 2009, the Court of Appeals dismissed the case. (R. ans., ¶ 2; Ex. 7.)

18. In January 2007, respondent filed a lawsuit in Anoka County District Court against another police officer involved in Cooper's arrest and the Spring Lake Park Police Department. (R. ans., ¶ 2; Cooper test.)

19. A court trial was held in Anoka County District Court on October 15, 2008. The Honorable Nancy J. Logering presided. (R. ans., ¶ 2; Cooper test.)

20. Prior to trial, respondent failed to file witness and exhibit lists in violation of the court's scheduling order. Respondent also failed to respond to the officer's discovery requests. As a consequence, at trial Judge Logering allowed Cooper to present only witnesses and testimony that were previously disclosed to the defendants in order "to avoid trial by ambush." (R. ans., ¶ 2; Ex. 9.)

21. At the conclusion of trial, in an order dated January 14, 2009, Judge Logering dismissed all of Cooper's claims. (R. ans., ¶ 2; Ex. 8.)

22. In a second order dated January 14, 2009, Judge Logering found that respondent had no valid excuse for his failures to file witness and exhibit lists and respond to the police officer's discovery requests. (R. ans., ¶ 2; Ex. 9.) In an order dated April 24, 2009, Judge Logering sanctioned respondent and ordered him to pay attorney fees, costs, and disbursements to the police officer totaling \$4,883.60 within 60 days. Respondent has not appealed and has not satisfied the judgment. (R. ans., ¶ 2; Ex. 10.)

23. On March 16, 2009, respondent filed an appeal in Cooper's case. (R. ans., ¶ 6; Ex. 12.) Respondent did not consult with Cooper before filing the appeal. (Cooper test.) Cooper did not want respondent to represent him in an appeal because Cooper was dissatisfied with respondent's representation. (Cooper test.)

24. Respondent failed to file a statement of the case and certified copies of the judgment from which Cooper was appealing, and failed to pay a \$500 filing fee or submit an IFP order. (R. ans., ¶ 3; Ex. 12.) On March 23, 2009, the clerk of appellate

courts issued a notice directing respondent to correct the filing deficiencies within ten days. Respondent failed to do so. (R. ans., ¶ 3; Ex. 12.)

25. On March 25, 2009, respondent returned Cooper's file to him at his request. Respondent did not maintain any copies from the file. (R. ans., ¶ 2; Cooper test.)

26. On April 9, 2009, the Court of Appeals dismissed Cooper's appeal, but allowed respondent an opportunity to file a motion to reinstate the appeal on or before April 20, 2009, accompanied by copies of the judgments from which Cooper was appealing, a statement of the case, and either a \$500 filing fee or an IFP order. (Ex. 12.) Respondent did not communicate with Cooper about the deadline to reinstate the appeal and took no further action in Cooper's case. (R. ans., ¶ 2.)

Tiffany Rainer Matter

27. On May 29, 2007, Tiffany Rainer was convicted of possession of a firearm by an ineligible person and sentenced to prison for 60 months. She was not represented by respondent at the time. (R. ans., ¶ 8; Rainer test.)

28. Rainer retained respondent in or about July 2007 to file an appeal to obtain a new trial or reduced sentence. Respondent presented Rainer with a written retainer agreement, which she signed and paid an advance retainer fee of \$2,000. (R. ans., ¶ 8; Rainer test.; Ex. 14.) Respondent also provided Rainer with an application for IFP status (for waiver of the filing and transcript fees) which she completed and returned to him. (R. ans., ¶ 8; Rainer test.; Ex. 96.)

29. Respondent filed an appeal on July 30, 2007 (R. ans., ¶ 8; Ex. 15). The only issue respondent raised on appeal was whether the trial court abused its discretion in refusing to suppress certain evidence. (R. ans., ¶ 8; Rainer test.; Ex. 16.)

30. Respondent failed to file a statement of the case and did not submit Rainer's IFP application or pay a filing fee. On August 3, 2007, the appellate court clerk

issued a notice to respondent directing him to remedy the filing deficiencies within 10 days. Respondent failed to respond. (R. ans., ¶ 9; Rainer test.; Ex. 15.)

31. On August 22, 2007, the Court of Appeals issued an order directing respondent to remedy the filing deficiencies by September 4, 2007, or face sanctions, including dismissal of the appeal. (Ex. 15.) Respondent filed a statement of the case, but failed to submit Rainer's IFP application or pay a filing fee. (R. ans., ¶ 9; Rainer test.)

32. In an order dated September 12, 2007, the Court of Appeals questioned whether it had jurisdiction to consider an appeal of a pre-trial evidence ruling when Rainer's trial counsel had her plead guilty rather than following the procedure for preserving issues for appeal contained in *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980) (Ex. 16). The court ordered the parties to submit memoranda on the issue by September 24, 2007. The court ordered respondent to immediately dismiss the appeal if respondent determined, after researching the issue, that the court lacked jurisdiction to consider the appeal. The court also ordered respondent to pay a \$500 filing fee or submit an IFP order by September 24, 2007. (R. ans., ¶ 8; Rainer test.)

33. The State of Minnesota filed a memorandum of law, but respondent did not (Ex. 17). Respondent also failed to pay a filing fee or submit an IFP order. On October 5, 2007, the court dismissed Rainer's appeal. (R. ans., ¶ 9; Rainer test.; Ex. 17.)

34. Respondent later filed a motion in district court to convert Rainer's guilty plea into a Lothenbach plea (Ex. 18). Respondent submitted only a three-paragraph memorandum of law in support of the motion. On February 26, 2008, the district court denied the motion. (R. ans., ¶ 8; Rainer test.; Ex. 19.)

35. On April 26, 2008, respondent filed an appeal (Exs. 19, 20). Respondent submitted a statement of the case stating that a transcript was necessary, but failed to file a transcript certificate. (R. ans., ¶ 9; Rainer test.; Ex. 20.)

36. On June 19, 2008, the Court of Appeals ordered respondent to file a transcript certificate by June 30, 2008, or face possible sanctions, including dismissal of the appeal (Ex. 20). Respondent failed to comply with the court's order. (R. ans., ¶ 9; Rainer test.) On July 9, 2008, the court dismissed the appeal. (R. ans., ¶ 9; Rainer test.; Ex. 21.)

37. Respondent failed to inform Rainer of the dismissal of her appeal. (R. ans., ¶ 9; Rainer test.) In September 2008 Rainer wrote to the state public defender's office to inquire about the status of her appeal. It was at this time that Rainer learned, for the first time, that her appeal had been dismissed. (R. ans., ¶ 9; Rainer test.)

Other Appellate Matters

38. In eleven other cases, respondent failed to competently and diligently file appeals on behalf of his clients and failed to timely respond to orders of the Minnesota Court of Appeals, or ignored the orders, often resulting in sanctions or dismissal of the appeal.

Michael Akkouche Appeal

39. Respondent represented Michael Akkouche in a vehicle forfeiture matter in Anoka County District Court. Respondent failed to respond to the prosecution's requests for admissions and failed to appear at a hearing on the prosecution's motion to compel discovery, so the district court deemed the requests admitted and determined that Akkouche's vehicle was subject to forfeiture. (R. ans., ¶ 9; Ex. 22.)

40. On July 14, 2006, respondent filed an appeal (Ex. 23). Respondent failed to file a certified copy of the May 16, 2006, judgment from which Akkouche was appealing and failed to pay a filing fee or submit an IFP order. On July 19, 2006, the clerk of appellate courts notified respondent that the filing deficiencies must be corrected within ten days. Respondent failed to do so. (R. ans., ¶ 9.)

41. On August 9, 2006, the Court of Appeals ordered respondent to remedy the filing deficiencies by August 21, 2006, or face possible sanctions, including dismissal

of the appeal (Ex. 24). Respondent failed to comply with the court's order, although he submitted a letter stating that he was in the process of obtaining an IFP order. (R. ans., ¶ 9.)

42. On August 30, 2006, the Court of Appeals ordered respondent to remedy the filing deficiencies by September 11, 2006, or face possible sanctions, including dismissal of the appeal (Ex. 25). The court denied respondent the right to present oral argument as a result of his failure to file a brief by the August 17, 2006, deadline. (R. ans., ¶ 9; Ex. 25.)

43. Respondent failed to file a brief (Ex. 26). Instead, respondent filed a request to file "informal briefs" and an IFP order. On September 21, 2006, the Court of Appeals allowed respondent to file informal briefs and ordered respondent to do so by October 3, 2006, or face possible sanctions, including dismissal of the appeal. (R. ans., ¶ 9; Ex. 26.)

44. Respondent failed to file an informal brief until October 6, 2006, after the court's deadline (Ex. 27). Respondent's brief was nonconforming, however, because it failed to include an appendix. On October 17, 2006, the court ordered respondent to file a conforming brief by October 30, 2006, or face possible sanctions, including dismissal of the appeal. Respondent filed a conforming brief, as ordered. (R. ans., ¶ 9; Ex. 27.)

45. On September 11, 2007, the Court of Appeals affirmed the district court's decision in Akkouche's case (Ex. 22).

Gregg Allen 2003 Appeal

46. September 8, 2003, respondent filed an appeal on behalf of Gregg Erling Allen, who pled guilty to assault and burglary in January 2003 and was sentenced in March 2003 (Ex. 28). Respondent failed to file a statement of the case and pay a filing fee or submit an IFP order. On September 9, 2003, the clerk of appellate courts notified respondent that the filing deficiencies must be corrected within ten days. Respondent failed to do so. (R. ans., ¶ 9; Ex. 28.)

47. On October 2, 2003, the Court of Appeals ordered respondent to remedy the filing deficiencies by October 14, 2003, or face possible sanctions, including dismissal of the appeal (Ex. 28). Respondent failed, in part, to comply with the court's order. (R. ans., ¶ 9; Ex. 28.)

48. On October 20, 2003, respondent filed a statement of the case indicating that no transcript was required (Ex. 29). Respondent also requested oral argument. (R. ans., ¶ 8; Ex. 29.). Respondent failed to file a brief by the November 7, 2003, deadline or request an extension of time in which to do so. On November 19, 2003, the Court of Appeals ordered respondent to file a brief by December 1, 2003, or face possible sanctions, including dismissal of the appeal. The court denied respondent the right to present oral argument as a result of his failure to file a brief by the November 7, 2003, deadline. (R. ans., ¶ 8; Ex. 29.)

49. Respondent failed to file a brief. On December 10, 2003, the court dismissed Allen's appeal. (R. ans., ¶ 9; Ex. 30.)

Gregg Allen 2005 Appeal

50. On April 12, 2005, respondent filed an appeal with the Court of Appeals (Ex. 32). According to respondent, he did so "to preserve Allen's right to be considered for a sentence reduction in the event the Minnesota Supreme Court interpreted the application of *Blakely v. Washington* decision to be retroactive to the time of [Allen's] sentence" (R. ans., ¶ 9; Ex. 31.) Respondent added that he "ceased activity on this appeal" after learning that *Blakely* would not be applied retroactively (Ex. 31).

51. In a statement of the case, respondent indicated that a transcript was necessary (Ex. 33). Respondent failed to file a transcript certificate. (R. ans., ¶ 9; Ex. 33.)

52. On June 2, 2005, the Court of Appeals ordered respondent to file a transcript certificate by June 13, 2005, or face possible sanctions, including dismissal of the appeal (Ex. 33). Respondent failed to comply with the court's order. (R. ans., ¶ 9; Ex. 34.)

53. On June 22, 2005, the Court of Appeals ordered respondent to file a transcript certificate by July 5, 2005, or face dismissal of the appeal (Ex. 34). Respondent failed to comply with the court's order (Ex. 35). On July 14, 2005, the Court of Appeals dismissed Allen's appeal. (R. ans., ¶ 9; Ex. 35.)

54. On August 18, 2005, the Minnesota Supreme Court ruled that the Blakely decision did not apply retroactively. *State v. Houston*, 702 N.W.2d 268 (Minn. 2005); (R. ans., ¶ 8).

Gregg Allen 2008 Appeal

55. On October 7, 2008, respondent filed an appeal of a district court's June 20, 2008, denial of Allen's request for expungement. Respondent failed to file a copy of the district court's order from which Allen was appealing and a statement of the case (Ex. 38). Respondent also failed to pay a filing fee or submit an IFP order, but submitted a letter dated November 4, 2008, filing a statement of the case and indicating that a motion for an IFP order was being presented to the district court and that an IFP order was forthcoming along with a statement of the case (Exs. 36, 37). Respondent failed to submit an IFP order (Ex. 38).

56. On November 6, 2008, the Court of Appeals dismissed Allen's appeal, subject to a motion for reinstatement by November 19, 2008, and by remedying the filing deficiencies (Ex. 38). Respondent failed to file a motion for reinstatement of Allen's appeal until November 21, 2008, after the court's deadline (Ex. 39, 40, 41). Respondent also filed an IFP order and a copy of the June 20, 2008, district court order from which Allen was appealing. (R. ans., ¶ 9; Ex. 41.)

57. On December 4, 2008, the Court of Appeals reinstated Allen's appeal despite respondent's untimely filing of a motion for reinstatement (Ex. 41). On December 31, 2008, respondent filed an informal brief along with a motion for acceptance of it by the Court of Appeals. On January 8, 2009, the court accepted respondent's informal brief. (R. ans., ¶ 8; Ex. 42.)

58. On May 27, 2009, the Court of Appeals considered Allen's appeal on its non-oral calendar. On August 18, 2009, the Court of Appeals affirmed the district court. (R. ans., ¶ 8; Ex. 43.)

Raymundo Barrios-Roblero Appeal

59. In March 2003, Raymundo Barrios-Roblero was convicted of criminal sexual conduct in Hennepin County District Court. Barrios-Roblero was sentenced on July 21, 2003. (R. ans., ¶ 8; Ex. 44.)

60. On October 15, 2003, respondent filed an appeal (Ex. 44). Respondent requested oral argument. However, respondent failed to file a certified copy of the judgment from which Barrios-Roblero was appealing and failed to pay a \$500 filing fee or submit an IFP order. (R. ans., ¶ 9; Ex. 44.)

61. On November 13, 2003, the Court of Appeals ordered respondent to either pay a \$500 fee or submit an IFP order by November 24, 2003, or face possible sanctions, including dismissal of the appeal (Ex. 44). Respondent failed to comply with the court's order. (R. ans., ¶ 9; Ex. 45.)

62. On December 4, 2003, the Court of Appeals issued an order "affording [Barrios-Roblero] a final opportunity to correct this deficiency before dismissing the appeal" (Ex. 45). The court ordered respondent to either pay a \$500 fee or submit an IFP order by December 15, 2003, or the appeal would be dismissed. Respondent did not file an IFP order until December 19, 2003, after the court's deadline. (R. ans., ¶ 8; Ex. 46.)

63. A brief was due in Barrios-Roblero's case on December 19, 2003 (Ex. 46). Respondent failed to file a brief or request an extension of time in which to do so. On January 7, 2004, the court ordered respondent to submit a brief by January 20, 2004, or face possible sanctions, including dismissal of the appeal (Ex. 46). Respondent failed to comply with the court's order. (R. ans., ¶ 9; Ex. 47.)

64. On January 30, 2004, the Court of Appeals dismissed Barrios-Roblero's appeal subject to a an opportunity to file a motion to reinstate the appeal on or before February 9, 2004, accompanied by a brief and an affidavit of service of the brief (Ex. 47). Respondent failed to file a motion to reinstate Barrios-Roblero's appeal or take any further action on the case. (R. ans., ¶ 9; Ex. 48.)

Curtis Batton Appeal

65. In March 2003, Curtis Batton was convicted of theft and robbery in Hennepin County District Court. Batton was sentenced on February 19, 2004. (R. ans., ¶ 8.)

66. Respondent filed an appeal in Batton's case on April 23, 2004 (Ex. 48). On April 27, 2004, the clerk of appellate courts notified respondent that a transcript must be ordered within 30 days of the date the appeal was filed and a transcript certificate filed within 10 days thereafter. Respondent failed to do so. (R. ans., ¶ 8; Ex. 48.)

67. On June 17, 2004, the Court of Appeals ordered respondent to file a transcript certificate by June 28, 2004, or face possible sanctions, including dismissal of the appeal (Ex. 48). Respondent failed to do so (R. ans., ¶ 9; Ex. 49).

68. On July 8, 2004, the Court of Appeals dismissed the case, but allowed Batton an opportunity to file a motion to reinstate the appeal on or before July 19, 2004, accompanied by a transcript certificate (Ex. 49). On July 15, 2004, respondent filed a motion for an extension of time in which to obtain a transcript certificate (Exs. 50, 51). On July 29, 2004, the Court of Appeals granted respondent's motion and ordered respondent to file a motion to reinstate the appeal and a transcript certificate by August 9, 2004. (R. ans., ¶ 8; Ex. 52.)

69. Respondent failed to file a motion to reinstate the appeal until August 10, 2004, after the court's deadline (Exs. 53, 54, 55). Respondent also filed a transcript certificate. On September 14, 2004, the court granted respondent's motion to reinstate

Batton's appeal, and ordered respondent to file a brief by November 5, 2004. (R. ans., ¶ 9; Ex. 55.)

70. Respondent failed to comply with the court's order. Respondent moved for an extension of time in which to file a brief because he was "unable to locate his copy of the trial and sentencing transcripts" (Ex. 56). On November 10, 2004, the court granted respondent's motion and ordered him to file briefs by November 19, 2004, and either pay a \$500 filing fee or submit an IFP order by November 22, 2004, or face possible sanctions, including dismissal of the appeal (Ex. 57). Respondent filed briefs and an IFP order. (R. ans., ¶ 8; Ex. 58.)

71. Oral argument was scheduled in Batton's case for April 13, 2005. Respondent filed a motion to continue oral arguments because he had a conflicting trial date in another case in February 2005. Respondent indicated that if his motion was denied, he intended to waive oral argument. (R. ans., ¶ 8; Ex. 58.)

72. On April 12, 2005, the court denied respondent's motion, noting that respondent's scheduling conflict was foreseeable (Ex. 58). The court struck the case from the oral argument calendar. (R. ans., ¶ 8; Ex. 58.)

73. On June 15, 2005, the Court of Appeals remanded Batton's case to the district court for resentencing in accordance with the *Blakely* decision. (R. ans., ¶ 8; Ex. 59.)

Ekkarath Rattanasitthi Petition

74. In August 2005, Ekkarath Rattanasitthi was convicted of a controlled substance crime in Dakota County District Court. (R. ans., ¶ 8.)

75. On December 27, 2005, respondent filed a petition for discretionary review of a November 8, 2005, district court order in Rattanasitthi's case (Ex. 60). The petition was not filed within the 30-day deadline, however, so respondent also filed a motion to accept the late petition. (R. ans., ¶ 8; Ex. 60.)

76. On December 29, 2005, the clerk of appellate courts notified respondent that he was required to either pay a \$500 filing fee or submit an IFP order and copies of the order from which Rattanasitthi was petitioning (Ex. 61). The notice mailed to respondent was returned to the clerk's office by the postal service. (R. ans., ¶ 8; Ex. 61.)

77. Respondent failed to remedy the filing deficiencies (Ex. 61). On January 23, 2006, the Court of Appeals dismissed Rattanasitthi's petition, noting "substantive and procedural deficiencies in the petition." (R. ans., ¶ 9; Ex. 61.)

Antonio Beasley Appeal

78. In February 2006, Antonio Beasley was convicted of a felony drug crime in Winona County District Court. Beasley was sentenced on April 20, 2006. (R. ans., ¶ 8.)

79. On June 19, 2006, respondent filed an appeal (Ex. 62). However, respondent failed to file a statement of the case and failed to either pay a filing fee or submit an IFP order. On July 13, 2006, the Court of Appeals ordered respondent to correct the filing deficiencies by July 24, 2006, or face possible sanctions, including dismissal of the appeal. (R. ans., ¶ 9; Ex. 62.)

80. On July 20, 2006, respondent filed two statements of the case, one stating transcripts were required and one stating that transcripts were not required. The clerk of courts accepted the latter statement (Ex. 64). However, respondent failed to pay the \$500 filing fee or submit an IFP order (Ex. 62). On August 3, 2006, the Court of Appeals issued an order "affording [Beasley] a final opportunity to correct this deficiency before dismissing the appeal" (Ex. 62). The court ordered respondent to either pay a \$500 filing fee or submit an IFP order by August 14, 2006, or face possible sanctions, including dismissal of the appeal. Respondent did not comply with the court's order, although on August 11, 2006, respondent submitted a letter indicating that he was attempting to obtain an IFP order in Beasley's case. (R. ans., ¶ 9; Ex. 63.)

81. Respondent failed to file a brief by the August 21, 2006, deadline, or request an extension of time in which to do so (Ex. 63). On August 30, 2006, the Court

of Appeals extended the time in which to file a brief (and pay a filing fee or submit an IFP order) to September 11, 2006 (Ex. 63). The court denied respondent the right to present oral argument as a result of his failure to file a brief by the August 21, 2006, deadline. Respondent did not comply with the court's order. (R. ans., ¶ 9; Ex. 64.)

82. On September 12, 2006, respondent filed a motion for an order for Beasley to proceed *in forma pauperis*, to extend the time to file a brief until 15 days after transcripts were delivered, and to allow oral arguments (Exs. 64, 65). On October 5, 2006, the court granted respondent's motion. The court also required respondent to submit by October 17, 2006, a statement from the state public defender's office that Beasley was financially eligible for payment of transcript expenses (Ex. 64). Respondent did not provide a statement until October 23, 2006. (R. ans., ¶ 8; Ex. 66.)

83. On October 25, 2006, the court issued an order noting that the time to order transcripts had passed (Ex. 66). However, the court ordered respondent to submit a transcript certificate by November 6, 2006, or face possible sanctions, including dismissal of the appeal. (R. ans., ¶ 8; Ex. 66.)

84. Respondent did not comply with the court's order. Instead, on November 6, 2006, respondent filed a motion for an extension of time to file a transcript certificate (Ex. 67). The court granted the motion. (R. ans., ¶ 8; Ex. 68.)

85. Respondent failed to file a brief by the January 24, 2007, deadline (Ex. 69). On February 1, 2007, the Court of Appeals ordered respondent to file a brief by February 12, 2007, or face possible sanctions, including dismissal of the appeal (Ex. 69). The court denied respondent the right to present oral argument as a result of his failure to file a brief by the January 24, 2007, deadline. (R. ans., ¶ 9; Ex. 69.)

86. Respondent did not comply with the court's order and did not submit a brief until February 20, 2007 (Ex. 70). Respondent also submitted a motion to accept his late brief. The basis for respondent's motion was that his "ability to prepare the brief

was impaired due to family issues." The court granted respondent's motion and accepted the brief. (R. ans., ¶ 8; Ex. 71.)

87. On December 11, 2007, the Court of Appeals affirmed Beasley's conviction. (R. ans., ¶ 8; Ex. 72.)

88. On February 14, 2008, respondent filed a petition for review of the decision of the Court of Appeals with the Minnesota Supreme Court. Respondent also filed a motion to have the late petition accepted based on "excusable neglect" (Ex. 73). On February 14, 2008, the Minnesota Supreme Court accepted the petition and waived the filing fee in Beasley's case. (R. ans., ¶ 8; Ex. 74.)

89. On March 18, 2008, the Minnesota Supreme Court denied Beasley's petition for further review. (R. ans., ¶ 8.)

Patrick Takuanyi Appeal (Criminal Matter)

90. In August 2007, Patrick Takuanyi was convicted of malicious punishment in Dakota County District Court. He was sentenced on October 25, 2007. (R. ans., ¶ 8.)

91. On December 24, 2007, respondent filed an appeal (Ex. 75). Respondent failed to file a statement of the case and either pay a \$500 filing fee or submit an IFP order. On December 31, 2007, the clerk of appellate courts notified respondent that the deficiencies must be corrected within ten days. Respondent failed to do so. (R. ans., ¶ 9; Ex. 75.)

92. On January 17, 2008, the Court of Appeals ordered respondent to remedy the filing deficiencies within 10 days or face possible sanctions, including dismissal of the appeal. (R. ans., ¶ 8; Ex. 75.)

93. On or about February 1, 2008, respondent filed a statement of the case but failed to pay a filing fee or submit an IFP order (Ex. 76). Respondent also failed to file a transcript certificate. On February 6, 2008, the Court of Appeals ordered respondent to either pay a filing fee or submit an IFP order along with a transcript certificate by

February 19, 2008, or face possible sanctions, including dismissal of the appeal (Ex. 76). Respondent failed to comply with the court's order. (R. ans., ¶ 9.)

94. On February 27, 2008, the Court of Appeals granted Takuanyi "a final opportunity to correct the filing deficiencies before dismissing the appeal." The court ordered respondent to pay a filing fee and submit a transcript certificate by March 10, 2008, or face dismissal of the appeal. (R. ans., ¶ 8; Ex. 77.)

95. On February 29, 2008, the state public defender's office notified the Court of Appeals that it was reviewing whether Takuanyi was eligible for representation by the public defender (Ex. 77). On March 14, 2008, the Court of Appeals extended the deadline to March 26, 2008. (R. ans., ¶ 8; Ex. 77.)

96. The state public defender's office notified the Court of Appeals that Takuanyi had not responded or returned the intake forms (Ex. 78). Respondent failed to take any further action and failed to comply with the Court of Appeals' February 27, 2008, order, including the extensions of time contained in the court's March 14, 2008, order. On March 27, 2008, the Court of Appeals dismissed Takuanyi's appeal. (R. ans., ¶ 9; Ex. 78.)

97. On April 2, 2008, the state public defender's office notified the Court of Appeals that Takuanyi was determined to be indigent and that a transcript had been ordered (Ex. 80). On April 21, 2008, respondent filed a motion to reinstate Takuanyi's appeal, stating that the state public defender's office never received eligibility forms respondent sent on March 20, 2008 (Ex. 79). On May 6, 2008, the Court of Appeals reinstated Takuanyi's appeal and ordered respondent to file a brief by June 20, 2008, or face possible sanctions, including dismissal of the appeal. (R. ans., ¶ 8; Ex. 80.)

98. Respondent failed to comply with the order and did not file a brief (Ex. 81). On July 2, 2008, the Court of Appeals again dismissed Takuanyi's appeal. (R. ans., ¶ 9; Ex. 81.)

Patrick Takuanyi Appeal (Civil Harassment Matter)

99. Respondent also represented Patrick Takuanyi in a civil harassment matter against Sandra Martinez and Julio Cesar Solis in Ramsey County district court. (R. ans., ¶ 8.)

100. On January 20, 2009, respondent filed an appeal (Ex. 82). However, respondent failed to file a statement of the case and certified copy of the order from which Takuanyi was appealing. Respondent also failed to pay a filing fee or submit an IFP order. (R. ans., ¶ 9; Ex. 82.)

101. On January 26, 2009, the clerk of appellate courts notified respondent that the deficiencies must be corrected within ten days (Ex. 82). On February 5, 2009, respondent filed a statement of the case, but failed to correct the other filing deficiencies. In the statement of the case, respondent indicated that the transcript was necessary, but he failed to order a transcript. (R. ans., ¶ 9; Ex. 82.)

102. On February 11, 2009, the Court of Appeals ordered respondent to file a copy of the order from which Takuanyi was appealing and either pay a \$500 filing fee or submit an IFP order by February 23, 2009, or face possible sanctions, including dismissal of the appeal (Ex. 82). Respondent complied with the court's order. (R. ans., ¶ 8.)

103. Respondent was required to file a brief in Takuanyi's appeal by April 14, 2009 (Ex. 83). Respondent failed to file a brief until April 17, 2009, and failed to file a motion to accept a late brief, as required. The clerk of appellate courts notified respondent that such a motion must be filed. Respondent failed to respond or file a motion to accept his late brief. (R. ans., ¶ 9.)

104. On May 6, 2009, the Court of Appeals ordered respondent to serve and file a motion "with a showing of good cause" by May 15, 2009, as to why the court should accept his late brief or face possible consequences, including dismissal of the appeal (Ex. 83). Respondent filed a motion on May 15, 2009. On May 20, 2009, the court

granted the motion and accepted respondent's late brief, but denied respondent the right to tax the cost of the brief to the opposing party in the event Takuanyi prevailed on appeal. On December 1, 2009, the Court of Appeals issued an unpublished order affirming the district court's order. *Martinez v. Takuanyi*, 2009 WL 4251094 (Minn. Ct. App., Dec. 1, 2009), (R. ans., ¶ 8).

Sean Dugan Appeal

105. On September 20, 2007, Sean Dugan was convicted of a felony drug possession. Dugan was sentenced on November 20, 2007 (Ex. 87).

106. On December 26, 2007, respondent filed an appeal. Respondent failed to pay a \$500 filing fee or submit an OFP order. (R. ans., ¶ 9; Ex. 84.)

107. On January 3, 2008, the clerk of appellate courts issued a notice directing respondent to correct the filing deficiency within ten days (Ex. 84). Respondent failed to do so. (R. ans., ¶ 9.)

108. On January 23, 2008, the Court of Appeals ordered respondent to either pay a \$500 fee or submit an IFP order by February 4, 2008, or face possible sanctions, including dismissal of the appeal (Ex. 84). Respondent did not file an IFP order until February 5, 2008. (R. ans., ¶ 8; Ex. 85.)

109. Respondent failed to file a transcript in Dugan's appeal, as required (Ex. 85). On February 27, 2008, the Court of Appeals noted that Dugan was represented by private counsel and had been determined to be indigent, and that transcript requests in such cases were to be submitted to the state public defender. The court ordered respondent to "ensure that a transcript certificate is filed by March 12, 2008" or face possible sanctions, including dismissal of the appeal (Ex. 85). A transcript certificate was submitted (by the intervention of the state public defender's office) on or about April 9, 2008. (R. ans., ¶ 9; Ex. 86.)

110. On March 3, 2009, the Court of Appeals issued an unpublished opinion affirming Dugan's conviction. (R. ans., ¶ 8; Ex. 87.)

Failure to Cooperate with Discipline Investigation

111. On June 24, 2009, respondent voluntarily appeared at the Director's Office to discuss the discipline investigation (Ex. 88). Respondent was unable to bring his client files related to the Demiteras Cooper and Tiffany Rainer matters with him to the meeting. (R. ans., ¶ 8.)

112. On June 25, 2009, the Director's Office wrote to respondent with several follow-up questions related to the Cooper, Rainer, and other matters under investigation (Ex. 88). On July 9, 2009, respondent faxed a request for an extension of time to July 20, 2009, in which to respond to the Director's June 25, 2009, letter. (R. ans., ¶ 8; Ex. 89.)

113. Respondent did not submit a response to the Director's June 25, 2009, letter, so the Director's Office wrote to respondent again on November 23, 2009, requesting a response by December 1, 2009 (Ex. 90). Respondent did not respond until January 27, 2010, at which time he stated he had "nothing to add" beyond what he had previously provided to the Director's Office. (R. ans., ¶ 8.)

114. On July 19, 2010, counsel for the Director's Office left voicemail for respondent about the status of his response to the Director's June 25, 2009, letter (Ex. 91). By letter dated July 23, 2010, respondent stated he did not intend to respond to questions other than those concerning Demiteras Cooper because he did not "recognize the validity" of the Director's investigation into other matters (Ex. 91).

115. In a letter to respondent dated September 9, 2010, the Director asked questions about attorney fees respondent charged to Tiffany Rainer (Ex. 94). In a response dated September 20, 2010, respondent refused to respond to the questions (Ex. 93).

Aggravating/Mitigating Factors

116. After the petition for disciplinary action was served, respondent's failure to cooperate with the Director's investigation continued.

117. Respondent's misconduct constitutes a pattern of misconduct warranting public discipline.

118. Respondent's misconduct is serious and occurred over an extended period of time and across multiple matters.

119. Respondent's misconduct was intentional.

120. Respondent admitted his history of prior discipline, which is (1) a December 8, 1993, admonition for withdrawing from representation in a criminal matter without providing sufficient advance notice to his client and without taking reasonable steps to protect the client's interests in violation of Rule 1.16(d), MRPC, and (2) a September 19, 2007, admonition for failing to communicate with a criminal defense client until less than one week before the client's trial, and for failing to appear for the client's trial in violation of Rules 1.3, 3.2, and 8.4(d), MRPC.

121. Respondent offered no evidence that he regretted, or was sorry or remorseful for, the wrongful nature of his conduct.

122. Respondent submitted some evidence of his representation of low income clients and his volunteer and civic work.

123. Respondent offered no evidence to suggest that similar misconduct will not occur again in the future.

CONCLUSIONS OF LAW

1. Respondent's conduct in the Cooper matter violated Rules 1.1, 1.3, 1.4(a)(1) and (3), 3.1, 3.4(c), and 8.4(d), MRPC

2. Respondent's conduct in the Rainer matter violated Rules 1.1, 1.3, 1.4(a)(1) and (3), 3.1, 3.4(c), and 8.4(d), MRPC.

3. Respondent's conduct in the other appellate matters violated Rules 1.3, 3.4(c), and 8.4(d), MRPC.

4. Respondent's conduct during the disciplinary investigation violated Rules 8.1(b), MRPC, and Rule 25, RLPR.

5. Respondent's disciplinary history aggravates the sanction for respondent's misconduct.

6. Respondent's failure to acknowledge the wrongful nature of his misconduct, his lack of regret or remorse for his misconduct, and his steadfast claim that his misconduct was proper and/or justified or, at most, was the result of inadvertence or clerical error, aggravates the sanction for respondent's misconduct.

7. There is no factor which significantly mitigates the sanction for respondent's misconduct.

RECOMMENDATION FOR DISCIPLINE

Respondent Stanley H. Nathanson has committed substantial, intentional misconduct which has caused harm to the administration of justice, parties, counsel and clients. Respondent's misconduct reveals a pattern of mistreating in a variety of ways those with whom respondent disagrees. Much of respondent's misconduct was burdensome, was harassing and/or substantially harmed others.

Based on the foregoing findings and conclusions, the undersigned recommends:

1. That respondent Stanley H. Nathanson be suspended from the practice of law, ineligible to apply for reinstatement for a minimum of 90 days.

2. That the reinstatement hearing provided for in Rule 18, RLPR, not be waived.

3. That reinstatement be conditioned upon:

a. compliance with Rule 26, RLPR;

- b. payment of costs, disbursements and interest pursuant to Rule 24, RLPR;
- c. successful completion of the professional responsibility examination pursuant to Rule 18(e), RLPR;
- d. satisfaction of continuing legal education requirements pursuant to Rule 18(e), RLPR; and
- e. proof by respondent by clear and convincing evidence that he has undergone moral change, that he is fit to practice law and that future misconduct is not apt to occur.

Dated: APRIL 22nd, 2011.

BY THE COURT:



DAVID E. CHRISTENSEN
SUPREME COURT REFEREE

MEMORANDUM

This matter was originally set on for a hearing on September 17, 2010. Prior to the scheduled hearing respondent requested that the hearing be continued for six months because of his financial hardship. Pursuant to a stipulation with the Director his license to practice law was suspended until further order of the court. At the time, he was already suspended for failure to complete required continuing education and for failure to pay his registration fees.

In early March this matter was again set on for a hearing, this time on April 1, 2011, a date which was agreed to by both parties. On March 22, 2011 respondent sent to this referee and to the Director a fax indicating that he would not be appearing at the April 1st hearing, but that his decisions not to appear should not be construed to be a withdrawal of either his Answer or his Motion.

The hearing on April 1, 2011 took place as scheduled without the presence of Respondent, testimony taken from two witnesses and exhibits introduced in regard to the other counts in the petition. Having heard the witnesses, reviewed the exhibits and there being no evidence to the contrary submitted by Respondent this court has adopted the proposed findings and recommendations of the Director.

DEC