

FILE NO. _____
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary
Action against WARREN F. PLUNKETT,
an Attorney at Law of the
State of Minnesota.

PETITION FOR
DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition, upon the parties' agreement, pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent is, and has been, since November 4, 1948, admitted to practice law in Minnesota. Respondent has paid through June 30, 1989, the registration fee required by Rule 2, Rules for Registration of Attorneys. Respondent currently practices law in Austin, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. In October 1986, Renee Larson filed with the Minnesota Department of Human Rights a charge that Mrs. Sharon Spiten had refused to rent a house to her because of her race or color. Respondent represented Mrs. Spiten.

2. The facts and law of this matter are summarized in the opinion State of Minnesota v. Spiten, 424 N.W.2d 815 (Minn. 1988). See Exhibit 1.

3. On August 11, 1987, respondent took the deposition testimony of Renee Larson. During Larson's deposition, respondent posed numerous questions and made certain remarks, which had no substantial objective purpose other than to harass, burden and embarrass Renee Larson. Among these questions and remarks are those noted by the Court of Appeals, Exhibit 1 at 819. Also among these improper questions and remarks were the following,

Q. (By Mr. Plunkett) What I want to know is, was he [Renee Larson's husband] living with you at the time the papers [for dissolution of marriage] were served?

A. Yes.

Q. (By Mr. Plunkett) You were sleeping together?

* * * * *

Q. (By Mr. Plunkett) Okay, What connection do you think the black community has with the fact that they were enslaved in the south?

* * * * *

Q. (By Mr. Plunkett) Race shouldn't be a problem north of the Mason Dixon, should it?

A. It shouldn't be a problem anywhere in the world.

Q. It's less of a problem north of the Mason Dixon, isn't it?

A. It shouldn't be a problem anywhere in the world.

Q. But, I'm asking you, isn't it less of a problem north of the Mason Dixon than it is south?

* * * * *

Q. (By Mr. Plunkett) You don't consider the fact that people north of the Mason Dixon freed the slaves, you don't even consider that, do you?

A. I don't see where it's relevant when that same person freed me and then won't rent to me. That's pretty clever.

Q. Well, you know, I traveled through some of the battle grounds in the Civil War --

MS. KIRCHER: Objection, lack of foundation.

A. I am not up on Civil War history and the slave movement, I'm not up on that. I'm sorry. I'm sorry, I'm not up on that.

Q. You don't give any credit to the people north of the Mason Dixon for freeing the slaves?

A. I'm not up on slave history. I really --

Q. You don't know how many thousands and hundreds of thousands boys north, living north of the Mason Dixon, and including Minnesota, that were killed in the south trying to free the slaves?

A. And Sharon Spiten wouldn't rent to me. I don't know.

Q. What do you hope to accomplish by this whole business?

* * * * *

Q. (By Mr. Plunkett) What you are hoping to do is do away with discrimination by bringing this action and belaboring this woman?

4. During Larson's deposition, respondent on approximately three occasions imitated a female voice in posing questions to Larson which involved statements allegedly made by Larson. This conduct also harassed, burdened and embarrassed Larson.

5. The Court of Appeals affirmed the findings of the administrative law judge and the awards to Larson of \$3,000 for mental anguish and suffering, \$2,600 in punitive damages and a \$2,000 civil penalty. The Court of Appeals found the punitive damage award reasonable in part because,

Further, the nature of relator's defense ratifies the judge's decision to award punitive damages. It is evident in the handling of the litigation that relator premised her defense in part on questions regarding the legitimacy of the discrimination laws. In a deposition

to Larson taken by relator's attorney, he asked her the following questions, among others:

'You think that you're going to do something to promote race relations by bringing this action?'

'You don't give any credit to the people north of the Mason Dixon for freeing the slaves?'

'You don't know how many thousands and hundreds of thousands of boys north, living north of the Mason Dixon, and including Minnesota, that were killed in the south trying to free the slaves?'

'Are you trying to do away with discrimination by suing a Scandinavian girl who * * *'

Exhibit 1, at 819.

6. In a letter to the district ethics committee investigator, explaining why he had made certain of the statements referred to above, respondent stated in part as follows,

The so-called irrelevant questions regarding the civil war and slavery were based on historical fact and respondent was endeavoring to ascertain whether or not the witness was aware of these facts since it might bear on her attitude and credibility in connection with a racial discriminatory action. Referring to that part of the finding which states as follows, 'And you think the enforcement of that law is going to make it any easier for your [sic] to live in Austin, Minnesota and questions asked in Exhibit 'N'' [the deposition transcript] were asked because respondent is of the opinion that discrimination actions such as that brought in this case do not promote good race relations but rather destroy them and respondent feels that this is a good faith argument for the extension, modification or reversal of this law. This endeavor is approved by rule 3.1 of the Minnesota Rules of Professional Conduct.

7. Respondent's conduct in harassing, burdening and embarrassing Renee Larson at her deposition violated the Minnesota

Rules of Professional Conduct (MRPC), including but not necessarily limited to Rules 4.4 and 8.4(d).

8. Respondent's conduct in defending his client Sharon Spiten in part by harassing, burdening and embarrassing Renee Larson and by displaying his view that the Minnesota Human Rights Act is not legitimate, was frivolous, did not constitute a good faith argument for extension, modification or reversal of existing law, and was injurious to Mrs. Spiten, in violation of Rules 1.1 and 3.1, MRPC.

SECOND COUNT

10. The allegations of the first count are hereby restated.

11. During the proceedings before the State Human Rights Department, on behalf of Sharon Spiten, respondent submitted an Answer and Counter-Claim (Exhibit 2). The Answer and Counter-Claim also included a purported "Cross-Claim." The Answer and Counter-Claim sought damages of \$100,000 against the State, a Human Rights Department employee and Renee Larson. The Answer and Counter-Claim also stated:

If the Department of Human Rights in this action will not maintain or recognize this claim, it is respondent's intent to assert a separate cause of action in the Mower County District Court against the parties named for damages.

12. The Administrative Law Judge determined that she had no jurisdiction to hear Spiten's Counter-Claim. The Court of Appeals affirmed that the Counter-Claim and purported Cross-Claim were not within the jurisdiction of the Administrative Law Judge (Exhibit 1 at 820).

13. In or about January 1988 respondent participated in a decision by Spiten and his firm to initiate suit against Renee

Larson in district court. Respondent also drafted a first version of the complaint.

14. Respondent then assigned responsibility for the matter to an attorney in his firm who was admitted to practice in Minnesota in October 1986. Respondent is the senior partner of Warren F. Plunkett and Associates. On January 21, 1988, the junior attorney signed for Warren E. Plunkett and Associates, and Spiten verified, a complaint against Renee Larson (Exhibit 3). Respondent states that he was not thereafter involved in the Spiten v. Larson litigation, and that he did not supervise the junior attorney in that matter.

15. In February 1988, Renee Larson moved to dismiss the Spiten suit. On May 11, 1988, the junior attorney filed an affidavit and appeared in opposition to the motion. On May 20, 1988, the Mower County District Court granted Ms. Larson's motion and dismissed Spiten's suit with prejudice. Pursuant to Minn. Stat. §§ 549.191, 363.03, Subd. 7 and Rule 11, Rules of Civil Procedure, the Court found that the suit was "retaliatory, of a terrorizing and intimidating nature [and] expensive to defend." Exhibit 4.

16. Ms. Larson's counsel and respondent stipulated that Ms. Larson's counterclaim would be dismissed and that the only issue for the court would be attorney fees. On August 11, 1988, the court awarded Renee Larson attorney fees of \$2,000, to be paid by Spiten. Exhibit 5.

17. In November 1988, respondent paid \$2,000 of his own funds to Renee Larson. Respondent also sent Larson a letter of apology, a copy of which is attached as Exhibit 6.

18. Respondent's conduct in helping to initiate a frivolous and burdensome lawsuit against Renee Larson in retaliation for the human rights claim brought by Larson against Sharon Spiten, and in failing to supervise a junior attorney in connection with the lawsuit, violated Rules 3.1, 4.4, 5.1 and 8.4(d), MRPC.

19. Respondent's conduct in helping to initiate a frivolous lawsuit against Renee Larson which did not include a good faith argument for extension modification or reversal of existing law was injurious to his client Sharon Spiten, in violation of Rules 1.1 and 3.1, MRPC.

WHEREFORE, the Director respectfully prays for an order of this court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: November 21, 1988.



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