

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against WILLIAM F. POST, JR.
a Minnesota Attorney,
Registration No. 15443X.

**STIPULATION FOR DISPENSING
WITH PANEL PROCEEDINGS,
FOR FILING PETITION FOR
DISCIPLINARY ACTION,
AND FOR DISCIPLINE**

THIS STIPULATION is entered into by and between Kenneth L. Jorgensen, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and William F. Post, Jr., 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. It is understood that respondent has the right to have charges of unprofessional conduct heard by a Lawyers Professional Responsibility Board Panel prior to the filing of a petition for disciplinary action, as set forth in the Rules on Lawyers Professional Responsibility (RLPR). Pursuant to Rule 10(a), RLPR, the parties agree to dispense with Panel proceedings under Rule 9, RLPR, and respondent agrees to the immediate filing of a petition for disciplinary action, hereinafter petition, in the Minnesota Supreme Court.

2. Respondent understands that upon the filing of this stipulation and the petition, this matter 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. Respondent hereby admits service of the petition.

4. Respondent waives the right to answer and unconditionally admits the allegations of the petition which may be summarized as follows:

a. On April 30, 2004, respondent entered a guilty plea to first degree driving while intoxicated (DWI), a felony offense. This is respondent's fourth DWI conviction.

b. Respondent's conduct violated Rule 8.4(b), Minnesota Rules of Professional Conduct (MRPC).

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 sanction the Court will impose. Respondent acknowledges that if he uses alcohol he is unfit to practice law.

6. The Director and respondent join in recommending that the appropriate discipline is a six-month stayed suspension pursuant to Rule 15, RLPR, and unsupervised probation for a period of five years provided that respondent not engage in similar misconduct and abides by the conditions of probation as set forth in paragraph 7(a) through (g) below. Respondent agrees to the imposition of \$900 in costs pursuant to Rule 24(a), RLPR.

7. Respondent shall be placed on probation for a period of five years with 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. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may

come to the Director's attention. 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 comply with the terms of his criminal probation, which include the following:

i. Respondent shall maintain total abstinence from alcohol and other mood-altering chemicals, except that respondent may use prescription drugs in accordance with the directions of a prescribing physician who is fully advised of respondent's chemical dependency before issuing the prescription.

ii. Respondent shall complete treatment for chemical dependency and any aftercare that may be recommended or prescribed by the treating facility.

iii. Respondent shall attend bi-weekly meetings of Alcoholics Anonymous or any other out-patient alcohol treatment program required by respondent's criminal probation.

iv. Respondent shall wear a Secure Continuous Remote Alcohol Monitor (SCRAM) bracelet, which is an alcohol monitoring device worn on the ankle, while serving the electronic home monitoring portion of his sentence.

v. Respondent shall complete a 30-day period of wearing a SCRAM bracelet each year, as required by his criminal probation.

vi. Respondent shall submit to random drug screening.

d. Upon completion of respondent's 30-day period of incarceration and/or work release, if eligible, respondent shall wear a SCRAM bracelet for a one-year period. Respondent shall not be required to wear the SCRAM bracelet any time during this one-year period if he is subject to the electronic home

monitoring and alcohol sensor requirements of his criminal probation.

Respondent agrees to pay the costs associated with the use of the SCRAM device and home monitoring. Respondent shall provide the Director with authorizations to monitor and receive reports regarding his compliance with the SCRAM device and home monitoring. Any positive read for ingested alcohol will be grounds for revoking the stay of execution of respondent's six-month stayed suspension.

e. Upon completion of wearing a SCRAM bracelet for a one-year period, respondent shall, at his own expense, no more than six times per month, submit to random urinalysis for drug screening at a facility approved by the Director. These drug screenings shall be in addition to any required through respondent's criminal probation. Respondent shall direct the drug screening facility to provide the results of all urinalysis testing to the Director's Office. If, after six months, all such tests have been negative, then the frequency of the random tests may be reduced or terminated at the Director's discretion. Respondent shall cooperate with the phone-in program established by the Director for the random tests. Any failure to phone-in in accordance with the random test program shall be considered the same as receipt of a positive test result. Any positive test will be grounds for revoking the stay of execution of respondent's six-month stayed suspension.

f. Respondent shall, by the tenth day of each month, without a specific reminder or request, submit to the Director an attendance verification for Alcoholics Anonymous, or any other treatment program required under the terms of his probation, on a form provided by the Director, which provides the name, address and telephone number of the person personally verifying the attendance.

g. Should respondent be discharged from his criminal probation earlier than the five-year period imposed in the district court's June 16, 2004,

sentencing order, the Director may, in his discretion reduce the duration of respondent's disciplinary probation in accordance with respondent's discharge by community corrections.

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

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

10. Respondent has been advised by the undersigned counsel concerning this stipulation and these proceedings generally.

11. The attached memorandum is made a part hereof.

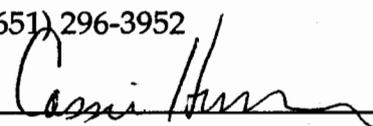
IN WITNESS WHEREOF, the parties executed this stipulation on the dates

indicated below.

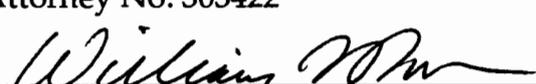
Dated: July 16, 2004.


KENNETH L. JORGENSEN
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
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1500 Landmark Towers
345 St. Peter Street
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(651) 296-3952

Dated: July 16, 2004.


CASSIE HANSON
ASSISTANT DIRECTOR
Attorney No. 303422

Dated: 7/16, 2004.


WILLIAM F. POST, JR.
RESPONDENT

Dated: 16 July, 2004.


RICHARD F. KOCH
ATTORNEY FOR RESPONDENT
Attorney No. 5723X
3109 Hennepin Avenue South
Minneapolis, MN 55408

MEMORANDUM

Respondent's misconduct poses a case of first impression in Minnesota. While there have been cases of attorney misconduct involving multiple misdemeanor convictions for Driving While Intoxicated (DWI), respondent is the first lawyer with a felony DWI conviction.

Traditionally, the Court has disbarred or suspended attorneys convicted of felony conduct. *See e.g., In re Ray*, 408 N.W.2d 583 (Minn. 1987); *In re Daffer*, 344 N.W.2d 385 (Minn. 1984); *In re Olkon*, 324 N.W.2d 192, 196 (Minn. 1982); *In re Scallen*, 269 N.W.2d 834, 841 (Minn. 1978).

While alcoholism in and of itself is not a defense to professional misconduct, the Court has considered it as a mitigating circumstance, especially where the misconduct was caused by alcoholism. *In re Johnson*, 322 N.W.2d 616 (Minn. 1982). The Director is convinced that respondent's alcoholism is the cause of his misconduct. Nevertheless, the protection of the public is the paramount purpose of lawyer discipline. Respondent's history of alcohol abuse and inability thus far to effectively address his alcohol abuse is cause for concern over whether respondent continues to pose a threat to the public. At this juncture the Director believes that the probationary conditions which include use of the SCRAM bracelet (explained below) will adequately protect the public by closely monitoring respondent's alcoholism recovery. The frequency of the SCRAM Reports and the ability to execute the stayed suspension will also provide an expedient de-licensing remedy in the event respondent's recovery is unsuccessful.

SCRAM alcohol-monitoring bracelet. Respondent's criminal probation requires wearing of an alcohol-monitoring device called SCRAM. Both Ramsey and Hennepin Counties use SCRAM for monitoring repeat drunk driving offenders. Respondent's lawyer discipline probation recommended herein will require him to wear a SCRAM bracelet for a one-year period upon his discharge from incarceration or work release, if eligible.

A SCRAM bracelet is an automated alcohol testing ankle bracelet. SCRAM is a non-invasive alcohol detection system that provides hourly monitoring of an individual's alcohol consumption. SCRAM tests every hour, 24 hours a day, for the presence of alcohol and the SCRAM stores the data. The data is then transmitted to a modem located in the individual's home, which sends date and time stamped information to a central website, which analyzes and stores compliance readings. The Director's Office will receive reports, as needed, regarding respondent's abstinence from alcohol. If SCRAM detects alcohol consumption, the Director's Office will receive an emergency report.¹

The SCRAM bracelet appears to be an effective way to monitor respondent's alcohol abstinence. Use of SCRAM appears to be superior to random urinalysis testing in that SCRAM tests continuously, detecting and recording every alcohol ingestion, and just whether alcohol is in the individual's system at the time of testing.

K.L.J.

¹ See the SCRAM website at <http://www.alcoholmonitoring.com>