

FILE NO. CX-81-1120
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary
Action against HARRY N. RAY,
an Attorney at Law of the
State of Minnesota.

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

This matter came on for hearing pursuant to notice on September 21, 1999,¹ in a Hearing Room at the Minnesota Judicial Center, St. Paul, before Lawrence T. Collins, referee appointed by the Minnesota Supreme Court. The Office of Lawyers Professional Responsibility appeared by Martin A. Cole, Senior Assistant Director. Respondent Harry N. Ray appeared personally, pro se. Testimony was taken, exhibits were received, and leave of time was granted for presentations of briefs and proposed Findings.²

Upon the evidence and being advised in the premises, this referee has applied the clear and convincing standard of proof and makes these

FINDINGS OF FACT

DISCIPLINARY HISTORY

1. That Respondent Harry N. Ray (hereinafter "Ray") was duly suspended from the practice of law for a period of three years by Order of the Minnesota Supreme Court

¹ A hearing on the Petition for Disciplinary Action dated January 11, 1999, was convened on April 22, 1999. This referee encouraged the parties to a stipulation and committed to an extraordinary recommendation to allow Respondent to resign his license in lieu of disbarment. However, while the matter was under advisement this referee was informed of the Director's receipt and pendent investigation of the L.C. disciplinary complaint. Upon filing of the resulting Supplementary Petition for Disciplinary Action dated July 15, 1999, the stipulation was rescinded and this hearing was held on all allegations of unprofessional conduct set forth in both the Petition and Supplementary Petition.

² Proposed Findings and a supporting brief were timely presented by the Office of Lawyers Professional Responsibility on October 14, 1999; nothing was presented by Respondent.

dated June 14, 1985 (In re Ray, 368 N.W.2d 924); and, that the suspension was based upon findings supporting conclusions that Ray appropriated client trust fund monies for loans and investments in which he had substantial personal interest, co-mingling of clients' and personal monies, and failure to maintain adequate records – albeit, as a result of which Ray's clients sustained no direct losses. (Hearing Exhibit Number 1)

2. That by Order of the Minnesota Supreme Court dated March 16, 1990 (In re Ray, 452 N.W.2d 689), Ray's suspension was extended until at least January 1, 1991; and, that this further discipline was based upon findings supporting conclusions that Ray had engaged in unauthorized practice of law while suspended. (Ex. No. 2)

3. That Ray was issued an admonition by the Director of the Office of Lawyers Professional Responsibility (hereinafter "the Director") on July 5, 1994, upon facts supporting the conclusion that Ray had again engaged in unauthorized practice of law. (Ex. No. 3)

4. That since June 14, 1985, Ray has never been reinstated to practice law.

FIRST COUNT

5. That the Director investigated a complaint alleging Ray's representation in two discrete paternity matters in Hennepin County; and, that the Director was duly authorized to review the confidential court files and to obtain information from the Hennepin County Attorney. (Ex. Nos. 4 and 5)

R.M.B. Matter³

6. That on December 31, 1997, the Hennepin County Attorney commenced a paternity action against R.M.B., entitled T.S.R. and Hennepin County vs. R.M.B.; and, that a hearing on an Order to Show Cause therein was set for February 19, 1998. (Ex. No. 6)

³ See Hearing testimony of Theresa Farrell-Strauss, Esq., and Ray; and the cited Hearing Exhibits.

7. That on February 19, 1998, R.M.B., who is deaf, appeared for hearing, accompanied by Ray; that an Order issued compelling paternity blood testing, and further hearing was routinely continued to May 21, 1998; that the Order shows the appearances, noting: "Defendant – Appeared with counsel Harry Ray" (Ex. No. 7); that Ray read the copy of the Order provided to R.M.B.; and, that although Ray had not expressly identified himself as an attorney, Ray did nothing to correct either the notation of his appearance, his capacity, or the clerk's impression upon which the notation was based.

8. That on May 21, 1998, R.M.B. appeared for the scheduled hearing, again accompanied by Ray; that to encourage completion of a stipulation, an order issued continuing the matter to June 25, 1998; that the Order shows the appearances of the parties and notes: "Defendant appeared represented by atty. Harry Ray" (Ex. No. 11); that a copy of the Order was provided to Ray on behalf of R.M.B.; and, that again, although Ray had not expressly identified himself as an attorney, Ray did nothing to correct either the notation of his appearance and representation of R.M.B. or the clerk's impression upon which the notation was based.

9. That during the pendency of the action, the Office of the Hennepin County Attorney corresponded with Ray as attorney for R.M.B.; that on April 6 and April 13, 1998, motion papers intended for R.M.B. were served by mail with letters addressed to "Mr. Harry Ray, Attorney at Law" (Ex. Nos. 8 and 9); and, that by his reply letter dated April 14, 1998, Ray acknowledged receipt of the April 6 letter and said nothing to correct either the reference to his title or the impression of his representative capacity, nor did he reveal his suspended status and disability from acting as an attorney on R.M.B.'s behalf. (Ex. No. 10)

10. That during May 1998 Ray met with Assistant County Attorney Farrell-Strauss at the Hennepin County Attorney's Office to discuss both the R.M.B. matter and the

following T.J.B. matter; and, that in the distinctive manner of an attorney in such case, Ray negotiated on behalf of R.M.B. for a stipulation.

11. That on May 26, 1998, Hennepin County Child Support Officer Susan Morris wrote a letter to Ray enclosing a financial statement for completion by R.M.B. in furtherance of the negotiated stipulation; that the letter was addressed to "Mr. Harry Ray, Attorney at Law" (Ex. No. 12); that on June 2, 1998, Ray replied by returning the completed financial statement; and, that Ray said nothing to correct either the reference to his title or the impression of his representative capacity, nor did he reveal his suspended status and disability from acting as an attorney on R.M.B.'s behalf. (Ex. No. 13)

12. That on June 10, 1998, Farrell-Strauss sent Ray a letter informing him of her discovery that Ray was not a licensed attorney and her decision to terminate communication with Ray on behalf of R.M.B. (Ex. No. 14)

13. That apparently before receipt of said June 10 letter, on June 11, 1998, Ray wrote a letter to Farrell-Strauss proposing resolution of the matter; and, that Ray therein alluded to advice offered to R.M.B. and, in the concluding paragraph, referred to R.M.B., as "our client." (Ex. No. 15)

14. That the paternity matter was heard before a referee in Hennepin County District Court on June 25, 1998; that R.M.B. arrived at the Government Center accompanied by Ray who stayed out of the courtroom; that the referee noted the record of apparent representation of R.M.B. by an attorney and asked, "Is he no longer represented by counsel?", to which R.M.B. responded, "Yes. Harry Ray."; that R.M.B. was unaware of Ray's suspension, because Ray had simply informed R.M.B. that he was retired (Ex. No. 16); and, that supported by the record, the referee made the finding:

Defendant was being represented by attorney Harry Ray. Mr. Ray appeared with Defendant at two prior hearings in this matter. Mr. Ray appeared on this date with the Defendant and provided counsel to the Defendant and

participated in negotiations. The Defendant had no knowledge that Mr. Ray's attorney's license is suspended. Defendant told the court that Mr. Ray told him he was retired.

(Ex. No. 17)

T.J.B. Matter⁴

15. That on March 11, 1998, the Hennepin County Attorney commenced a paternity action against T.J.B., entitled C.L.W.-O. and Hennepin County vs. T.J.B.; and, that a hearing on an Order to Show Cause therein was set for May 21, 1998. (Ex. No. 18)

16. That on May 21, 1998, an Order issued continuing the matter to June 25, 1998, to facilitate settlement; that, as noted in the Order, "Defendant did not appear. Harry Ray, atty, appeared for defendant."; that the Order followed the finding: "This matter should be continued. The parties have reached an agreement and have asked this case be continued one month." (Ex. No. 19); and, that upon receipt of T.J.B.'s copy of the Order, although Ray had not expressly identified himself as an attorney, Ray did nothing to correct either the notation of his appearance and representation of the absent T.J.B. or the clerk's impression upon which the notation was based.

17. That during May, 1998, Ray met with Farrell-Strauss at the Hennepin County Attorney's Office to discuss both the T.J.B. matter and the above R.M.B. matter; that in the distinctive manner of an attorney in such case, Ray argued T.J.B.'s legal position relating to jurisdiction and negotiated on T.J.B.'s behalf for a stipulation; and, that the negotiations continued thereafter by telephone.

18. That on June 2 and June 11, 1998, Ray wrote letters to Farrell-Strauss cast in the distinctive manner of an attorney in such case, initially seeking confirmation of specifics

⁴ See Hearing testimony of Theresa Farrell-Strauss, Esq., and Ray; and the cited Hearing Exhibits.

of a child support proposal (Ex. No. 20), and then detailing his offer of an agreement. (Ex. No. 22)

19. That in the meantime, on June 10, 1998, Farrell-Strauss sent Ray a letter informing him of her discovery that Ray was not a licensed attorney and her decision to terminate communication with Ray on behalf of T.J.B. (Ex. No. 21)

20. That when the paternity matter was called for hearing on June 25, 1998, there was no appearance by or on behalf of T.J.B. (Ex. No. 23); that Ray was at the Government Center, but stayed away from the courtroom; and, that the matter continued thereafter by default without further involvement by Ray.

SECOND COUNT

L.C. Matter⁵

20. That Ray enjoyed a friendly personal relationship with the late J.C. and his wife L.C. over many years; that Ray provided legal services as the attorney for J.C. and L.C. in a variety of personal and business matters prior to his suspension from the practice of law in 1985; that thereafter Ray continued the personal relationships without revealing his suspended status; and, that while Ray continued to provide legal services, L.C. was not aware that Ray was no longer licensed after 1985.

22. That on or about October 23, 1991, Ray drafted a family trust agreement for J. and L.C. (Ex. No. 25)

23. That Ray assisted L.C. preliminary to her making claims arising out of an automobile accident in 1995; that on September 25, 1997, L.C. wrote a letter to Dr. Richard Edwards authorizing the release of information to Ray; and, that on October 8, 1997, Ray himself wrote to Dr. Edwards stating, "We are assisting and representing L.C. in her claim

⁵ See Hearing testimony of Michelle Chicket, Neuman Berger, Esq., and Ray; and the cited Hearing Exhibits.

response within 14 days (Ex. No. 33); that when Ray did not respond the Director sent another letter on June 24, 1999 for immediate response (Ex. No. 34); and, that prior to the filing of the Supplementary Petition herein, Ray had not responded or otherwise contacted the Director.

MISCELLANEOUS

27. That Ray's age is 77; that he described his relationship with R.M.B. as that of "a father"; that R.M.B., who is deaf, characterized Ray as "like my dad" (Ex. No. 101); and, that R.M.B. noted that Ray represented him over a period of six years, giving advice in a variety of matters. (Ex. No. 101)

28. That in relation to T.J.B. and L.C., Ray contends that he acted not in the capacity of an attorney, but rather as a friend.

29. That under the circumstances shown in each of these matters, although Ray emphasizes he never expressly assumed the title of attorney and his letterhead does not identify him as such, had Ray intended to be acting as a non-attorney advocate or in any capacity other than attorney it was reasonably incumbent on him to say so; and, that as to each of these matters the facts do not reasonably support such a conclusion.

30. That Ray does not admit his conduct in any instance herein was either wrong or constituted practice of law.

31. That Ray would likely continue to engage in similar conduct in future similar circumstances.

Upon the facts, this referee reaches these

CONCLUSIONS OF LAW

1. The conduct of Respondent Harry N. Ray in behalf of R.M.B. in a paternity matter, by twice attending court, negotiating directly and through correspondence with the county attorney, and advising R.M.B. as a client, constituted the unauthorized practice of law by a suspended lawyer and violated Rules 5.5(a) and 8.4(d), Minnesota Rules of Professional Conduct.
2. The conduct of Respondent Harry N. Ray in behalf of T.J.B. in a paternity matter, by attending court, negotiating directly and through correspondence with the county attorney, and advising T.J.B. as a client, constituted the unauthorized practice of law by a suspended lawyer and violated Rules 5.5(a) and 8.4(d), Minnesota Rules of Professional Conduct.
3. The conduct of Respondent Harry N. Ray in behalf of L.C. by drafting a trust agreement and a power of attorney, and by the manners in which he directly and indirectly assisted in her representation in a personal injury matter, constituted the unauthorized practice of law by a suspended lawyer and violated Rules 5.5.(a) and 8.4(d), Minnesota Rules of Professional Conduct.
4. The repeated failures of Respondent Harry N. Ray to surrender documents to L.C. or her nieces within a reasonable time upon reasonable requests violated Rule 1.16(d), Minnesota Rules of Professional Conduct.
5. The failure of Respondent Harry N. Ray, who was then the subject of an investigation under the Rules of Lawyers Professional Responsibility, to comply within a reasonable time to demands of the Director of the Office of Lawyers Professional Responsibility for a response to a complaint under investigation constituted non-cooperation

and violated Rule 8.1(a)(3), Minnesota Rules of Professional Conduct, and Rule 25, Rules on Lawyers Professional Responsibility.

Upon all of the foregoing, and supported by prior decisions of the Minnesota Supreme Court in such cases, including In re Jorissen, 391 N.W.2d 822 (Minn. 1986), this referee offers these

RECOMMENDATIONS FOR DISCIPLINE

1. That Respondent Harry N. Ray be disbarred from the practice of law.
2. That Respondent Harry N. Ray be ordered to pay to the Director costs and disbursements pursuant to Rule 24, Rules on Lawyers' Professional Responsibility.

Dated this 10th day of November, 1999.



Lawrence T. Collins
Referee