

FILE NO. A14-1852
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary Action
against DENNIS JAMES RUTGERS,
a Minnesota Attorney,
Registration No. 0313142.

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

This matter was heard by the undersigned, acting as Referee by appointment of the Minnesota Supreme Court, on April 16, 2015, at the Minnesota Judicial Center in St. Paul, Minnesota.

Craig D. Klausing, Senior Assistant Director, appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director).

Dennis James Rutgers (Respondent) did not appear either in person or by counsel. Other than submitting an untimely Answer to Petition for Disciplinary Action which was thereafter accepted by the Supreme Court's Order dated January 13, 2015, and the submission of an untitled document received by U.S. Mail by the undersigned Referee on May 7, 2015, Respondent has made no appearance in this proceeding and has failed to respond to all efforts by the Director and the undersigned Referee to contact him relative to the conduct of this proceeding.

On February 20, 2015, the Director served discovery demands on Respondent seeking (among other information) the basis for Respondent's denials of various allegations in the Petition for Disciplinary Action. Respondent's responses to the Director's discovery demands were due on March 23, 2015.

On March 5, 2015, the undersigned Referee issued a Scheduling Order requiring that the parties complete discovery by March 27, 2015.

Respondent failed to submit responses to the Director's discovery demands.

On March 30, 2015, the Director brought a motion to compel discovery. In an order dated April 7, 2015, the undersigned Referee granted the Director's motion to compel and ordered Respondent to provide the requested discovery responses by April 13, 2015. The order further informed Respondent that if he failed to provide discovery responses, his answer to the petition would be stricken and the allegations of the petition deemed admitted.

Respondent failed to provide responses to the Director's discovery demands or otherwise respond to them. At the April 16, 2015, hearing in this matter the undersigned Referee ordered Respondent's Answer to Petition for Disciplinary Action stricken and further ordered that the allegations of the Petition for Disciplinary Action be deemed admitted.

At the April 16, 2015, hearing in this matter the Director offered exhibits 1 through 19, inclusive, which exhibits were received in evidence by the undersigned Referee.

The undersigned Referee's March 5, 2015, Scheduling Order required that the parties submit proposed findings of fact and recommendation for discipline by May 4,

2015. The Director, in compliance with the Scheduling Order, submitted the Director's Brief to the Referee along with the [Director's Proposed] Findings of Fact, Conclusions of Law, and Recommendation for Discipline. The undersigned Referee received neither a brief nor proposed findings of fact and recommendation for discipline from Respondent.

This matter was taken under advisement by the undersigned Referee on May 5, 2015.

Based upon the Petition for Disciplinary Action filed herein, the exhibits received in evidence, and the Directors' Brief to the Referee, the undersigned Referee makes the following Findings of Fact, Conclusions of Law, and Recommendation for Discipline.

FINDINGS OF FACT

1. Respondent was admitted to practice law in the State of Minnesota on October 26, 2001, and last practiced law in Wilmont, Minnesota.

2. At all times relevant to these proceedings, Respondent was a licensed attorney in the State of Minnesota.

Johnson Estates Matter

3. Norman Johnson, Esther Johnson, Elmer Johnson, Cora Johnson, and Obert Johnson were all involved in the ownership and operation of a family farm ("Johnson Family Farm").

4. Esther Johnson and Elmer Johnson both died in 2001. Esther Johnson's estate was submitted for probate in October 2001. Elmer Johnson's estate was submitted for probate in 2002. Cora Johnson was appointed personal representative in both estates.

5. Cora Johnson retained the services of Evavold & Rutgers Law Office, LLC, to represent her in her capacity as personal representative of Esther Johnson's estate and Elmer Johnson's estate. Respondent and Dale Evavold were the only two lawyers in the firm at the time the firm was retained. By 2008, Dale Evavold had retired and Respondent had purchased the practice.

6. Norman Johnson was an heir to both Esther Johnson's estate and Elmer Johnson's estate. Following the deaths of Esther Johnson and Elmer Johnson, Norman Johnson apparently refused to allow the Johnson Family Farm to be sold during his lifetime and none of the other heirs chose to challenge Norman Johnson's decision in that regard.

7. Norman Johnson died in 2009. Cathleen Faruque was appointed personal representative of Norman Johnson's estate.

8. The Johnson Family Farm was subsequently sold in two parcels. The closing of the sale of the first parcel occurred on December 30, 2009. The closing of the sale of the second parcel occurred on February 13, 2010.

9. Respondent agreed to receive the sales proceeds from the sale of the Johnson Family Farm, pay the necessary expenses, disburse the net proceeds as appropriate to Norman Johnson's estate, the heirs of Esther Johnson's estate, and the heirs of Elmer Johnson's estate, and provide an accounting of the proceeds.

10. Consistent with his agreement, respondent received the sales proceeds from the sale of the Johnson Family Farm and deposited the said sales proceeds in his trust account.

11. During the time period commencing January 2010, and terminating

December 2013, Respondent made several trust account disbursements from the Johnson Family Farm sales proceeds, including a \$100,000.00 disbursement to Norman Johnson's estate in November 2010, and disbursements totaling approximately \$10,000.00 to Respondent's law firm for fees.

12. Despite repeated demands, Respondent failed to provide an accounting of the Johnson Family Farm sales proceeds and failed to disburse the remaining sales proceeds to Norman Johnson's estate, to the heirs of Esther Johnson's estate, and to the heirs of Elmer Johnson's estate.

13. In July 2013, Cathleen Faruque commenced a lawsuit against Respondent and his law firm on behalf of Norman Johnson's estate. Cathleen Faruque alleged that, despite repeated requests, Respondent and his law firm had failed to release the remaining funds owed to the Norman Johnson estate and had further failed to provide an accounting with respect to the real estate or personal property funds and expenses. Respondent was served with the summons and complaint in that lawsuit on July 14, 2013. Respondent failed to answer the complaint.

14. On September 9, 2013, the Fillmore County District Court issued findings of fact, conclusions of law, and order for judgment in the lawsuit. The court found that Norman Johnson's estate was entitled to judgment against Respondent and his law firm in the amount of \$23,348.53 plus \$602.50 in costs and disbursements.

15. On March 6, 2014, Cathleen Faruque filed a satisfaction of judgment in her capacity as personal representative of the Norman Johnson estate indicating that Respondent had fully satisfied the judgment in the amount of \$23,951.03.

Clairmont Matter

16. In March 2008, Carrie Clairmont retained Respondent to represent her in a bankruptcy. Clairmont paid Respondent \$1200.00 as a retainer.

17. Respondent informed Clairmont that she must complete an online financial course and provide him with the certificate of completion of that course. Clairmont completed the course, for which she paid \$75.00, and, in April or May 2008 provided Respondent with the certificate of completion.

18. After providing Respondent with the certificate of completion of the online financial course, Clairmont made repeated telephone calls to Respondent's office inquiring as to the status of her bankruptcy and leaving multiple messages for Respondent. Respondent failed to return any of Clairmont's telephone calls.

19. In October or November 2008, Clairmont finally spoke to Respondent by telephone. Respondent apologized to Clairmont, stated that his partner had left the law firm, and stated that, as a result, he had fallen behind in his work. Respondent asked Clairmont about the online financial course and Clairmont responded that she had completed the course and provided Respondent with the certificate of completion. Respondent assured Clairmont that he would begin working on her bankruptcy but failed to do so.

20. Following the October or November 2008, telephone conversation with Respondent, Clairmont made repeated additional telephone calls to Respondent's office regarding the status of her bankruptcy and left multiple messages for Respondent. Respondent failed to return any of Clairmont's telephone calls.

21. At the end of 2009, Clairmont again spoke with Respondent by telephone.

Respondent again apologized to Clairmont. Respondent stated that he had been in a serious motorcycle accident, had been hospitalized, and had since been recuperating. Respondent further stated that he had just returned to work but that he had lost his law office and was at that time working from his home. Respondent again assured Clairmont that he would begin working on her bankruptcy case but again failed to do so.

22. Following the telephone conversation at the end of 2009, Clairmont made repeated telephone calls to Respondent's office regarding the status of her bankruptcy and again left multiple messages for Respondent. Again, Respondent failed to respond to any of Clairmont's telephone calls or messages.

23. Respondent has failed to file Clairmont's bankruptcy or to take any other meaningful action on her behalf. Respondent has not refunded any portion of Claremont's \$1200.00 retainer.

Failure to Cooperate

24. In March 2013, a cousin of Cora Johnson and Obert Johnson submitted a complaint to the Director regarding Respondent's failure to disburse the sales proceeds from the sale of the Johnson Family Farm to the heirs of Esther Johnson's estate and Elmer Johnson's estate. On April 2, 2013, the Director sent Respondent a notice of investigation of the complaint. The notice of investigation informed Respondent that the complaint was being referred to the Tenth District Ethics Committee ("DEC") for investigation and instructed Respondent to provide a complete written response to the complaint within 14 days. Respondent failed to respond.

25. On April 25, 2013, the DEC investigator wrote to Respondent and requested Respondent's response to the complaint.

26. On August 2, 2013, the DEC investigator again wrote to Respondent and again requested Respondent's response to the complaint.

27. On August 19, 2013, Respondent transmitted an e-mail to the DEC investigator. Respondent represented that he would submit his response to the complaint on August 20, 2013. On August 21, 2013, respondent transmitted an e-mail to the DEC investigator to which Respondent attached his response to the complaint.

28. On September 10, 2013, the Director received a copy of the findings of fact, conclusions of law, and order for judgment issued by the Fillmore County District Court on September 9, 2013.

29. On October 24, 2013, the Director mailed a notice of investigation to Respondent with respect to the findings of fact, conclusions of law, and order for judgment issued by the Fillmore County District Court on September 9, 2013. The notice of investigation requested that Respondent provide his written response within two weeks. Respondent failed to respond.

30. On October 28, 2013, Clairmont submitted a complaint against Respondent to the Director.

31. On October 31, 2013, the Director mailed the a notice of investigation to Respondent with respect to the complaint submitted by Clairmont. The notice of investigation requested that Respondent provide his written response within 14 days. Respondent failed to respond.

32. On November 1, 2013, the Director wrote to Respondent requesting that Respondent appear for a meeting in the Director's office on November 15, 2013. The Director further requested that Respondent bring with him to the November 15, 2013,

meeting certain information and documents regarding the sale of the Johnson Family Farm and his failure to cooperate with the Director's investigation of the complaints relating to that sale, including his trust account books and records and the files he maintained for the Esther Johnson estate and the Elmer Johnson estate. The Director further directed Respondent to bring his written response to the Clairmont complaint to the meeting, as well.

33. Respondent neither appeared for the November 15, 2013, meeting at the Director's office nor informed the Director that he was unable to attend.

34. The Director thereafter proceeded, pursuant to Rule (c), Rules on Lawyers Professional Responsibility (RLPR), to obtain an investigatory subpoena directed to Respondent's bank for Respondent's trust account records. A letter dated December 10, 2013, from the Director to Respondent's bank and the investigatory subpoena were personally served on Respondent's bank on December 12, 2013. The Director provided Respondent with copies of the December 10, 2013, letter and the investigatory subpoena. Respondent neither contacted the Director nor provided any information or documents to the Director at any time after being provided with these materials.

35. On March 19, 2014, the Director mailed a letter to Respondent requesting Respondent's written response to the Clairmont complaint. Respondent failed to respond to the Director's letter.

36. On March 19, 2014, the Director mailed a letter to Respondent requesting Respondent's written response to the findings of fact, conclusions of law, and order for judgment issued by the Fillmore County District Court on September 9, 2012. Respondent failed to respond to the Director's letter.

37. On April 8, 2014, the Director again wrote to Respondent requesting his written responses to the Clairmont complaint and to the findings of fact, conclusions of law, and order for judgment issued by the Fillmore County District Court on September 9, 2012. Respondent again failed to respond.

38. On August 28, 2014, the Director served charges of unprofessional conduct on Respondent ("charges").

39. Pursuant to Rule 9(a)(1), RLPR, Respondent's answer to the charges was due by September 15, 2014. Respondent did not provide an answer to the charges nor otherwise communicate with the Director regarding the charges within the permitted time.

40. On November 19, 2014, the Director filed a motion for summary relief with the Supreme Court.

41. On November 26, 2014, Respondent mailed his answer to the charges to the Clerk of Appellate Courts and mailed a copy of his answer to the Director. In his transmittal letter Respondent acknowledged "that the Answer is past due and respectfully request that the [sic] accepted for filing."

42. By Order dated and filed January 13, 2015, the Supreme Court granted Respondent an extension of time in which to file his answer and accepted Respondent's Answer to Petition for Disciplinary Action as having been timely filed.

43. On February 20, 2015, the Director served Respondent with interrogatories and requests for production of documents. Respondent's responses to these interrogatories and requests for production of documents were due on March 23, 2015. Respondent did not provide answers to the interrogatories nor did respondent respond

to the request for production of documents.

44. On March 24, 2015, the Director wrote to Respondent advising Respondent that answers to the interrogatories and a response to the request for production of documents had not been received. The Director informed Respondent that if the Director did not receive full and complete answers to all of the interrogatories and the requested documents by the close of business on March 27, 2015, the Director intended to bring a motion to compel. The Director's letter was sent both by US Mail (to the address Respondent maintained with Lawyer Registration and set forth in Respondent's Answer to Petition for Disciplinary Action: PO Box 93, Wilmont, MN 56185) and by e-mail (dennis@drutgerslaw.com). The letter sent by US Mail was not returned to the Director nor did the Director receive any indication that the e-mail was not delivered. The Director received no response from Respondent.

45. The Director subsequently brought a motion to compel and on April 7, 2015, the undersigned Referee granted the Director's motion and ordered that if Respondent failed to provide the requested discovery responses by April 13, 2015, Respondent's Answer to Petition for Disciplinary Action would be stricken and the allegations of the Petition for Disciplinary Action deemed admitted.

DISCIPLINARY HISTORY

46. On July 31, 2008, Respondent was issued an admonition for removing a provision from his clients' purchase agreement at the request of a third-party lender without disclosing the removal to his clients, failing to discuss the removal of the provision from the purchase agreement with his clients, and improper notarization practices, in violation of Rules 1.4, 1.7(b), and 8.4(d), Minnesota Rules of Professional

Conduct (MRPC).

47. On October 24, 2011, Respondent was issued an admonition for falling asleep during a client's criminal trial, in violation of Rule 8.4(d), MRPC.

AGGRAVATING FACTOR

Respondent failed to answer the Director's Petition for Disciplinary Action in a timely manner. Respondent's Answer to Petition for Disciplinary Action was filed only after the Director had filed a Motion for Summary Relief. Respondent clearly was aware of the pendency of this proceeding but nevertheless failed to respond to any and all communications directed by the undersigned Referee and the Director to Respondent regarding this proceeding, failed to participate in telephone conference calls regarding the status of this proceeding, and failed to appear for the hearing of this proceeding.

CONCLUSIONS OF LAW

1. Respondent's conduct in failing to account to Norman Johnson's estate or to the heirs of Esther Johnson's estate and Elmer Johnson's estate regarding the Johnson Family Farm sales proceeds, failing to respond to the efforts of Cathleen Faruque and others to communicate with Respondent regarding the Johnson Family Farm sales proceeds, failing to provide notice of his payment of attorney fees, failing to timely disburse the net proceeds to Norman Johnson's estate and to the heirs of Esther Johnson's estate and Elmer Johnson's estate, failing to answer Cathleen Faruque's complaint, and failure to timely pay the judgment against Respondent violated Rules 1.3, 1.15(b), 3.4(c), and 8.4(d), MRPC.

2. Respondent's conduct in the Clairmont matter violated Rules 1.3 and

1.4(a)(3) and (4), MRPC.

3. Respondent's conduct in failing to cooperate in the investigation of matters related to the Johnson Family Farm and the Clairmont complaint violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

RECOMMENDATION FOR DISCIPLINE

1. That Respondent be indefinitely suspended from the practice of law with no right to petition for reinstatement for a minimum of one year.
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(a), RLPR; and
 - e. Proof by Respondent by clear and convincing evidence that Respondent has undergone the necessary moral change to demonstrate that respondent is fit to practice law and that future misconduct is not apt to occur.

Dated: May 12, 2015



Frederick J. Casey
Referee/Retired Judge of District Court

MEMORANDUM

I cannot emphasize enough my recommendation that the reinstatement hearing provided for in Rule 18, RLPR, not be waived. I have been serving as a Referee in lawyer discipline proceedings for many years and have never handled a matter in any manner similar to this proceeding. It is clear from the contents of the file that Respondent was aware of the pendency of this proceeding. Respondent provided an address and telephone number in his Answer to Petition for Disciplinary Action and an e-mail address in the transmittal letter which accompanied the filing of that document. Nevertheless, Respondent failed to respond to all efforts made by this Referee and the Director to communicate with Respondent throughout this proceeding. This Referee attempted contacts with Respondent by telephone, by US Mail, and by e-mail, all without success. Respondent failed to participate in a telephone scheduling conference, failed to participate in a telephone hearing of the Director's motion to compel, and failed to appear for the hearing of this matter at the Minnesota Judicial Center. The date set for final submissions by the parties to this proceeding was May 4 2015. On May 7, 2015, this Referee received a handwritten but untitled document from Respondent with a Nobles County Jail return address. In that document Respondent represented that he had been in treatment, then in a half-way house, then homeless, and now in jail. Because of these circumstances he claimed to be unaware of the status of this proceeding. Respondent made no effort to contact the Director and advise him of these circumstances. Respondent further claimed to have suffered a traumatic brain injury as a result of a June 2012, motorcycle accident and to suffer from

“alcohol and chemical dependency” but to be “in recovery.” Respondent offered no explanation as to why he is now serving time in jail. There is a great deal about Respondent and his fitness to practice law that is unknown and that should be inquired into prior any reinstatement.

F.J.C.