

FILE NO. A06-2254  
STATE OF MINNESOTA  
IN SUPREME COURT

OFFICE OF  
APPELLATE COURTS

SEP 24 2007

**FILED**

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In Re Petition for Disciplinary Action  
Against **SCOTT E. SELMER**,  
A Minnesota Attorney,  
Registration No. 156024  
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**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATIONS**

The above-entitled matter came on for hearing on August 21, 2007 before the Honorable John Weyrens, the duly appointed Referee. Timothy M. Burke, Senior Assistant Director, Office of Lawyers Professional Responsibility, 1500 Landmark Towers, 345 St. Peter Street, St. Paul, MN 55102-1218 appeared on behalf of the Director. Respondent appeared in person represented by Allen H. Gibas, ALLEN H. GIBAS, P.A., 1422 West Lake Street, Suite 320, Minneapolis, MN 55408. The hearing commenced at 8:30 a.m. and concluded at approximately 2:30 p.m.

Based upon all the pleadings and the evidence adduced at said hearing, and based upon the legal memoranda and arguments of counsel and the entire record herein, the Court makes the following:

FINDINGS OF FACT

1. Respondent was reinstated to the practice of law and placed on supervised probation for five years by the order of the Supreme Court dated November 30, 2001 [Ex. 83].
2. The Supreme Court's order was based upon the Recommendation of the Panel of the Board of Professional Responsibility appointed to hear this matter [Ex. 163].
3. The Order placing the respondent on probation required that respondent cooperate with the Director in the Director's efforts to monitor his probation.
4. Over the course of his probation the respondent has furnished some, but not all, of the information requested by the Director.

5. Respondent failed to provide information showing compliance with the financial requirements of his probation having to do with progress toward payment of certain tax liens and judgments and the filing of certain tax returns.

6. On October 21, 2002, respondent served and filed a motion for permission to file Chapter 7 bankruptcy. The Supreme Court in denying respondent's motion stated in part:

Because respondent is not required by state or federal law to obtain permission of this court to file for bankruptcy, there is no basis on which to grant the motion. It appears that the underlying purpose of the bankruptcy and the motion before the court is to amend the condition of probation to relieve respondent of his obligation to satisfy outstanding liens and judgments. Whether and under what circumstance petitioner might be relieved of that obligation as a condition of probation will be addressed only on a motion to modify the condition of probation and based on an adequate record.

7. At no time has respondent filed a motion for relief from the terms of his probation.

8. Respondent claims that he did not receive some of the requests sent to him from the Director's office.

9. Respondent's basic defense in this matter is that he has never been able to provide for his family and basically is destitute. He has relied on family and friends to get by.

10. There is nothing to be gained by adding a long list of findings stating which of the Director's requests for documents were complied with and to what extent.

11. Respondent's financial exhibits confirm his claims that he has had no ability to comply with the financial terms of his probation because his practice has amounted to little or nothing and he has no income.

12. Respondent claims that the Director has engaged in tactics that are unreasonable and deceptive and misleading. The respondent believes that Supreme Court should authorize the initiation of an inquiry into the Director's handling of the various disciplinary matters involving respondent.

13. In January 2006 respondent was charged with assault in the fifth degree and on May 8, 2006 respondent pled guilty to that charge.

14. The Director has failed to prove by clear and convincing evidence that respondent's statement in his October 6, 2006 letter that "I have been negotiating with the Wisconsin disciplinary agency" was, in fact, false.

15. Respondent's history of prior discipline is as follows:

a. On April 14, 1995, the Supreme Court publicly reprimanded respondent and ordered respondent placed on probation for two years for failing to promptly provide an accounting to a client, charging and suing to collect an unreasonable fee, abusing the discovery process in litigation against his client, failing to maintain proper trust account books and records, commingling personal and client funds in his trust account, and false certification to the Supreme Court. *In re Selmer*, 529 N.W.2d 684 (Minn. 1995) (Ex. 84).

b. On April 14, 1995, the Supreme Court affirmed an admonition issued to respondent for improperly charging a client the costs of copying a file before returning the file to the client after respondent was discharged from representation. *In re Admonition Issued to X.Y.*, 529 N.W.2d 688 (Minn. 1995) (Ex. 85).

c. On September 11, 1997, the Supreme Court suspended respondent from the practice of law for engaging from 1983 through 1995 in a pattern of harassing and frivolous litigation, making false and misleading statements in response to discovery requests in pretrial proceedings, and failing to comply with proper discovery requests. *In re Selmer*, 568 N.W. 2d 702 (Minn. 1997) (Ex. 82).

#### CONCLUSIONS OF LAW

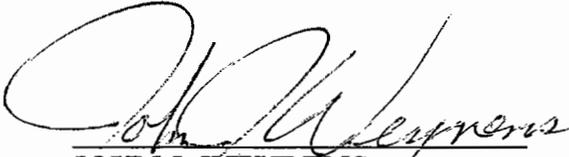
1. Paragraph 62 of Director's Petition is dismissed for lack of proof.
2. Respondent has failed to abide by the terms of his probation and has never requested relief from those provisions.
3. Respondent's failure to abide by the rules of his probation violates the rules of professional responsibility.
4. Respondent's criminal conduct violated Rule 8.4(b), MRPC.

5. Respondent's conduct is aggravated by his past history of discipline.
6. Respondent's conduct is mitigated by the fact that he has absolutely no income and was not able to even begin to plan for payment of tax liens and judgments.
7. This referee is troubled by the fact that this probation went on so long when it appeared from the very start that the respondent either would not, or could not, follow the rules of his probation. I am also troubled by the fact that respondent, at no time, requested relief from the terms of his probation or the requests of the Director.

### **RECOMMENDATIONS**

If the respondent is ever to be permitted to move on with the practice of law a further suspension from practice will certainly end it. The current violations have hurt no clients. In fact they have hurt only the respondent and his family. I therefore recommend that the respondent receive a public reprimand and that he be released from probation.

Dated: September 24, 2007

  
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JOHN J. WEYRENS  
SUPREME COURT REFEREE