

FILE NO. A15-0139
STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS
JUN 24 2015

FILED

In Re Petition for Disciplinary Action
against KEVIN KENNETH SHOEBERG
a Minnesota Attorney,
Registration No. 0204535.

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

The above-captioned matter was heard on May 20, 2015, by the undersigned acting as Referee by appointment of the Minnesota Supreme Court. Kevin T. Slator appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Richard F. Koch appeared on behalf of Respondent Kevin Kenneth Shoeberg, who was personally present throughout the proceedings.

Prior to receiving evidence the Parties made arguments to the Referee in regard to Respondent's objections to Director's Exhibits and Respondent's Motions In Limine.

1. Respondent's first objection in regard to exhibits was GRANTED.
2. Respondent's second objection in regard to exhibits was DENIED.
3. In response to Respondent's third objection to exhibits, The Director withdrew proposed exhibits 20, 21, 22, 28 and 29.
4. Respondent's Motions In Limine are Denied.

The hearing was conducted on the Director's January 12, 2015, petition for disciplinary action ("petition") and February 16, 2015, supplementary petition for disciplinary action ("supplementary petition").

The Director presented the live testimony of Richard A. Erickson, Ph.D., Moka Soun, Kristie Lewis, Diane Lewis, and JoAnne Alexander. Respondent testified at the hearing and did not present other witnesses. The Director submitted exhibits marked as Exs. 1-19, 23-27, 30, 30.1, 30.2, 31-37, 37.1, 38-49, 51, 56, 58-86, 87-98, 98.1, and 99-100, which were received into evidence. Respondent submitted exhibits marked as Exs. 101-132, which were received into evidence.

The parties were directed to mail any desired proposed findings, recommendations and conclusions, and a brief to the Referee no later than June 5, 2015. The Referee's findings of fact, conclusions of law, and recommendation are due to the Supreme Court no later than June 23, 2015.

Respondent admitted certain factual allegations contained in the petition and supplementary petition, denied others, and denied any rule violations.

The findings and conclusions made below are based upon Respondent's admissions, the documentary evidence the parties submitted, the testimony presented, the demeanor and credibility of Respondent and the other witness as determined by the undersigned, and the reasonable inferences to be drawn from the documents and testimony.

Based upon the evidence as outlined above, and all of the files, records and proceedings herein, the Referee makes the following:

FINDINGS OF FACT

1. Respondent was licensed to practice law in Minnesota on October 27, 1989. Respondent is also licensed in federal district court for Minnesota, the Eighth Circuit Court of Appeals, and the United States Supreme Court.

2. Respondent has practiced law continuously since October 27, 1989. Respondent practiced with a law firm from 1989 until 1997 and has been a solo practitioner since 1997.

3. Respondent has practiced in the family law area since 1989 and has handled "hundreds" of family law cases. Respondent has practiced in the bankruptcy law area since 1991 and has handled "hundreds" of bankruptcy matters, mostly individual Chapters 7 and 13 cases.

4. Respondent's current law practice consists of approximately twenty percent family law matters, ten percent bankruptcy matters, and other civil and criminal matters.

Sambo Sou Matter

5. The late Sambo Sou ("Sambo") and her husband, Pound Soun ("Pound"), are natives of Cambodia. Pound and Sambo moved to the United States in 1992 settling in Minnesota.

6. Richard A. Erickson, (Erickson) Ph.D., was a school social worker and as such he worked with the Soun family, which had three children, as an advocate to help them adjust to the United States and learn the school system. Erickson does not know the Cambodian language.

7. When Sambo and Pound arrived in the United States, they spoke only Cambodian and no English. Sambo could not read or write.

8. In about 2009 Sambo began suffering from cancer and incurred substantial medical bills. At some point in time, Erickson suggested that Sambo file bankruptcy and provided the name of an attorney. Moka Soun (Moka), currently age 24, one of Sambo's daughters, used the internet and found an attorney who was offering a lower rate, that being the Respondent. Moka exchanged email with Respondent, using Sambo's name, about the possibility of Respondent representing Sambo. Moka told Respondent that the debts consisted of past due medical bills and that she would contact Respondent when she was ready to proceed.

9. At the time Sambo retained Respondent in 2011, Sambo's and Pound's English skills were minimal. Sambo relied on Moka Soun to translate for her. Sambo also relied on Moka to handle email for her because Sambo was not familiar with email and computers. Initially, Moka signed Sambo's name on email with Respondent, with Sambo's permission. Beginning in March 2012, Moka began emailing Respondent under her own name.

10. Sambo was not planning to file a joint bankruptcy petition with Pound.

11. Sambo, Pound, Moka, and Erickson met with Respondent on March 19, 2011. Sambo told Respondent he could communicate about her case with Moka and Erickson.

12. Sambo agreed to pay Respondent a "flat fee" retainer of \$1,800 that was to include a court filing fee of \$299 and the cost of obtaining credit reports, under a fee agreement Respondent presented to her. Sambo signed the fee agreement and gave Respondent a check for \$1,800.

13. The fee agreement included the following provisions:

I have agreed to pay my attorney \$1,800 as a flat fee for representation in filing a Chapter 7 Bankruptcy. The flat fee includes the bankruptcy filing fee of \$299.00.

My attorney has also advised me that his office has a policy of returning telephone calls and responding to the client generally within twenty-four hours (24) unless he is in trial or some hearing...

14. Respondent did not hold the \$299 from Sambo for a filing fee in a trust account pending the filing of Sambo's bankruptcy petition, which did not occur until December 2012.

15. Prior to the first meeting with Respondent on March 19, 2011, Pound transferred the titles to his and Sambo's motor vehicles into his name to try to keep them out of Sambo's bankruptcy proceeding petition.

16. Sambo took pre-filing credit counseling as required by bankruptcy law. Moka sent Respondent Sambo's certificate of completion of counseling on April 26, 2011. Respondent did not acknowledge receipt of the certificate, so Sambo emailed Respondent and repeated her request for confirmation that Respondent had received the certificate on May 3, May 10, and July 27, 2011. Respondent did not confirm receipt of the certificate or otherwise respond until July 27, 2011.

17. Also in an email dated May 10, 2011, Sambo told Respondent she was travelling to Cambodia and would be away from June 21, 2011 until July 28, 2011. In fact, Sambo returned to the United States early, on July 11, 2011.

18. Erickson filed a complaint against Respondent with the Director's Office on July 26, 2011. Erickson alleged Respondent failed to return phone calls from

Erickson and failed to communicate with Sambo and Pound. Erickson withdrew his complaint the following day.

19. On August 13, 2011, Sambo, Pound, and Moka met with Respondent in his office about Sambo's bankruptcy case. Respondent agreed to meet in response to the concerns expressed by Erickson in his complaint to the Director's Office dated July 16, 2011, about Respondent's lack of communication. Following the meeting, Sambo provided additional financial information to Respondent. Respondent said he would prepare a bankruptcy petition and send it to Sambo for review.

20. On August 15, 2011, Respondent emailed Moka and enclosed a list of debts to be included in the schedules to the bankruptcy filing. Respondent asked Moka to review the list for accuracy and also said he was planning to make changes to the petition and schedules and send them to Moka and Sambo for their review. Moka emailed Respondent with the additional information on August 30, 2011.

21. On September 14, 2011, Sambo emailed Respondent and asked, "What is the update on the bankruptcy case? Just wondering if you would like us to transfer the car titles back to the way it was before. Please let us know." Respondent did not respond.

22. Respondent had no contact with Sambo or Moka after August 15, 2011, until November 8, 2011. On November 7, 2011, Sambo emailed Respondent and said, "Haven't heard from you in a while. I was wondering what was the update on the bankruptcy case? Please let me know." Respondent replied on the following day and said he had "all of the information put in the petition." Respondent also told Sambo to add her name back to the titles to the vehicles. Sambo emailed Respondent and said, "Let us know what the next step is." Moka also sent Respondent photos of the titles showing the vehicles were back in joint ownership of Pound and Sambo. Respondent did not reply.

23. On January 25, 2012, Sambo took another credit counseling course because her previous certificate was more than 180 days old and was no longer valid. Sambo

emailed a certificate of completion to Respondent on the same day with the following message: "Here is my certificate. Also, we transferred the car titles back to the original names: Pound Soun and Sambo Sou. Is there anything else that I am supposed to do? When will you be filing the bankruptcy? Please let me know." Respondent did not respond.

24. Moka, using Sambo's name emailed Respondent again on February 2, 2012, and said, "I was wondering if you need me to do anything else? I have already taken my pre-bankruptcy course and I was wondering if you've received the email with the attachment of the certificate Did you submit the bankruptcy papers?" Respondent did not respond.

25. Moka emailed Respondent again on February 8, 2012. She wrote: "I was wondering what's the update on the bankruptcy case? Please let me know; I've been sending you multiple e-mails with no response." Respondent responded on the same day and wrote: "Sambo, I got the information organized and will provide you with a draft in the next couple of days. Please review and let me know if I have not included a creditor or something is incorrect."

26. Respondent did not provide Sambo with a draft of the bankruptcy petition for six more weeks, until March 27, 2012. Moka and Respondent exchanged emails on March 27 and 31, 2012, regarding subjects that included Pound's income and the vehicle titles. Moka told Respondent the titles were changed and Sambo's name was added back.

27. Respondent had no contact with Sambo or Moka after March 31, 2012 for a lengthy period of time. On June 12, 2012, Moka emailed Respondent and said, "Is there an update on the bankruptcy case? Please let me know." Respondent did not respond.

28. On June 27, 2012, Erickson submitted a complaint against Respondent to the Director's Office regarding Respondent's handling of Sambo's bankruptcy matter. A copy of the complaint and a notice of investigation were mailed to Respondent's counsel on June 29, 2012.

29. Respondent did not reply to Moka's June 12, 2012, email until July 5, 2012. Respondent wrote, "Moka, has the transaction with the vehicles been completed? I think we should file if everything is ready," even though Moka told Respondent in March 2012 that her parents had changed the vehicle titles back to joint ownership earlier. Moka replied on the same day and said, "Everything is ready. Please file away. Let me know when you file it. Thanks! If you need anything, please call 952-426-9265."

30. Respondent did not send an updated bankruptcy petition to Sambo and Moka for review, or otherwise communicate with them, until over four months later, on November 20, 2012. Sambo was in the hospital at that time, however, and was not released until approximately November 28, 2012.

31. Because of the delay in filing Sambo's bankruptcy, she was required to take credit counseling for a third time, on November 1, 2012. Moka forwarded the certificate of completion to Respondent on the same day.

32. Respondent filed a bankruptcy petition in Sambo's case on December 19, 2012. The court issued a "discharge of debtor" on March 26, 2013. Sambo died on June 9, 2014.

33. Respondent testified that he always responded to inquiries by Sambo, usually by phone, and further that Sambo was conversant in English. Respondent's testimony is not supported by any evidence other than his testimony. The testimony of Moka is supported both by numerous emails set forth in the exhibits, evidence that Sambo had to take credit counseling class on three occasions and the testimony of Erickson.

34. The testimony of Moka is more credible than that of Respondent.

Diane Lewis and Kristie Lewis Matters

35. Diane Lewis and her daughter Kristie Lewis together had an initial consultation with Respondent on March 29, 2012. Diane Lewis and Respondent

discussed obtaining an easement on real property she owns in Pine County, Minnesota, so that she could sell it. Kristie Lewis asked Respondent to file a Chapter 7 bankruptcy petition for her. The Chapter 7 bankruptcy petition was filed for the purpose of delaying a foreclosure action on Kristie Lewis' house.

36. Diane Lewis left an abstract of title and a certificate of survey with Respondent. Respondent gave Diane Lewis a receipt for the abstract of title.

37. Diane Lewis did not pay Respondent anything for her legal matter, but paid Respondent \$1,800 on behalf of Kristie Lewis for her bankruptcy. Diane Lewis told Respondent to give priority to Kristie Lewis's bankruptcy case over her real estate matter.

38. On May 11, 2012, Respondent filed a Chapter 7 bankruptcy petition in Kristie Lewis' case.

39. The meeting of creditors in Kristie Lewis' bankruptcy case occurred on June 12, 2012. No action was required of Respondent in the case after the meeting of creditors, other than to forward Kristie Lewis' certificate of debtor education to the bankruptcy court on or about August 9, 2012.

40. Kristie Lewis has M.S. and is on disability. It appears that this disability has affected her memory and thus has reduced her credibility.

41. Beginning in June 2012, Diane Lewis began calling Respondent approximately every other week. Diane Lewis was unable to get through to Respondent and left messages to return her calls. Diane Lewis wished to discuss her own easement matter and a possible error in listing a mortgagee in Kristie Lewis' bankruptcy filings.

42. Respondent did not return the calls Diane Lewis made or otherwise communicate with her. Respondent's testimony that he never received any phone messages from Diane Lewis was not credible. Diane Lewis and Kristie Lewis also visited Respondent's office on one occasion during business hours when Respondent

would not return Diane Lewis' phone calls. The office was closed. Eventually Diane Lewis began asking for the return of her abstract and survey.

43. On August 14, 2012, the bankruptcy court issued a discharge of debtor and closed Kristie Lewis' case.

44. Diane Lewis submitted a complaint against Respondent to the Director's Office on October 24, 2012 alleging that she had called Respondent multiple times asking that the abstract and survey be returned to her so she could retain another attorney. The complaint further alleged that Respondent was not returning calls inquiring about an alleged failure to include a second mortgage on Kristie Lewis' home.

45. The Director mailed a copy of the complaint and a notice of investigation to Respondent's counsel on November 1, 2012. Upon the advice of counsel, Respondent did not immediately contact Diane Lewis or return her abstract of title or certificate of survey.

46. Respondent phoned both Diane Lewis and Kristie Lewis for the first time in several months on November 26 or 27, 2012. Respondent hand-delivered Diane Lewis' abstract of title and certificate of survey to her on November 29, 2012. Respondent also hand-delivered numerous items from Kristie Lewis' file and a letter dated November 29, 2012, addressing her concern about the way her mortgage was listed in her bankruptcy filings.

JoAnne Alexander Matter

47. JoAnne M. Alexander (Alexander) retained Respondent on September 10, 2012, for representation in a dissolution of marriage against Allan J. Woloskie. Alexander was then known as JoAnne M. Woloskie. In a written retainer agreement that both Respondent and Alexander signed, Alexander agreed to pay \$2,500.00 as a retainer fee; that Respondent's fees would be based on an hourly rate of \$250.00 per hour and that Alexander would be billed in tenth hour increments for all services

(including telephone conferences). Respondent, with some qualifications, agreed to return Alexander's phone calls and respond to her "generally within in 24 hours" unless respondent "was in trial or some hearing."

48. Alexander and Woloskie were married on July 16, 2004 and separated on September 2, 2012. Respondent prepared a summons and petition for dissolution of marriage on September 21, 2012. Respondent had the summons and petition served on Woloskie in Indiana, where Woloskie had relocated, on September 29, 2012.

49. Woloskie worked for Ford Motor Company before and during the marriage and is still employed there. Among the marital assets were Woloskie's pension and a 401(k) retirement savings plan with Ford, and Alexander's 401(k) retirement savings plan with Fidelity.

50. The Woloskies' marital home in Woodbury was in Alexander's name only, as were the two mortgages against the home. Before the dissolution was final, Woloskie moved to Indiana and purchased a home in his name alone.

51. In May 2013, Alexander gave Respondent \$400 to pay for an actuarial calculation of Woloskie's pension. Alexander told Respondent she wanted to know what the value of the pension was in order to help her decide how to settle the division of assets. Respondent agreed and said he would have the pension valued.

52. Respondent filed the summons and petition with the court on October 14, 2013. Woloskie retained attorney Jeffrey Fenske. The court held an initial case management conference on December 31, 2013, and issued a scheduling order on April 24, 2014. Trial was scheduled for July 2, 2014. Discovery was required to be completed by May 30, 2014.

53. On occasion, Respondent failed to respond to Alexander's requests for information about her case. For example, on May 13, 2014, Alexander emailed Respondent and asked "Any updates?" Respondent replied on the same day, "JoAnne waiting to hear from his attorney about the 410(k). As soon as I have that I will let you know." A week later, on May 20, 2014, Alexander emailed Respondent and asked,

“Anything in yet – it’s been another week?” Respondent did not respond. Alexander emailed Respondent again on May 27, 2014, and said, “I hope you had a good holiday weekend, just wondering where we stand.” Alexander also left phone messages for Respondent during this period of time. Respondent did not respond until June 18, 2014, nearly one month after Alexander’s initial request for information.

54. Alexander, Woloskie, Respondent, and Fenske (Woloskie’s counsel) signed a stipulated judgment and decree to settle the dissolution case on July 2, 2014. Respondent filed the stipulated judgment and decree on July 10, 2014. Judgment was entered by the court on July 15, 2014.

55. Respondent obtained a copy of the judgment and decree from the court shortly after it was filed but did not notify Alexander of it, even though Respondent knew she needed a copy of the judgment promptly. Alexander needed a copy of the judgment and decree in order to change her name and obtain a \$1,000.00 contribution from her employer to her Health Savings Account. Respondent told Alexander he would send a copy of the judgment and decree to her. When Respondent failed to do so, Alexander stopped by Respondent’s office on September 4, 2014, and picked up a copy.

56. Alexander and Woloskie were each awarded their own 401(k) plans in the judgment and decree. Alexander was also awarded a \$22,500 property settlement from Woloskie that was to be paid through funds from Woloskie’s 401(k) plan within 30 days of entry of the judgment and decree. If necessary, a separate order was to be used. It is not clear if Woloskie was to withdraw the funds from the 401(k) and pay Alexander or if the funds were to be paid directly to Alexander from the 401(k). Substantial income taxes are accrued by the person withdrawing the funds.

57. Alexander was also awarded her choice of either an additional \$10,000 from Woloskie’s 401(k) plan or one-half of the value of his pension that accrued from the date of the marriage through June 20, 2014. If necessary, a Qualified Domestic Relations Order (QDRO) was to be used to make the transfer to Alexander. However,

without a present value calculation of Woloskie's pension, Alexander could not make an informed and intelligent choice.

58. Other than advising Alexander that property settlements are generally not taxable, Respondent did not communicate with or advise Alexander about tax and penalty consequences of receiving a property settlement payment from Woloskie's 401(k).

59. After the dissolution became final, Woloskie's 401(k) plan administrator notified Respondent that distributions from the plan to Alexander would be taxed and possibly incur a penalty. Prior to this time, Respondent and Alexander were unaware of possible tax consequences associated with the property settlement provisions of Alexander's judgment and decree.

60. Because of tax consequences, in order for Alexander to net \$22,500 from Woloskie's 401(k) after taxes and a probable penalty, approximately \$33,500 would have to be disbursed. Woloskie declined to pay any portion of the taxes and penalty and asserted that they were Alexander's responsibility. As of the date of the evidentiary hearing, Alexander had not received any property settlement payments from Woloskie or his 401(k) plan.

61. On at least 20 occasions in 2013 and 2014, Alexander asked or reminded Respondent to obtain an actuarial present value calculation of Woloskie's pension (or asked about the status of it), including on October 30, 2013; January 31, 2014; February 5, 2014; June 19, 2014; June 23, 2014; and July 2, 2014. Alexander continued to raise the subject with Respondent after the dissolution was final, including on July 25, 2014; August 6, 2014; August 18, 2014; September 5, 2014; September 18, 2014; September 19, 2014; September 23, 2014; September 30, 2014; October 2, 2014; October 3, 2014; October 6, 2014; and October 8, 2014.

62. Respondent promised Alexander on several occasions to have Woloskie's pension valued. One such occasion was December 20, 2013, when Respondent told

Alexander he was “working on the pension valuation and expected to have the information to [Woloskie’s] lawyers within the next week.”

63. Respondent failed to have Woloskie’s pension valued until February 20, 2015, when it was valued by Jill M. Urdahl, FSA . Respondent’s testimony that he diligently searched for an actuary in 2013 and 2014 was not credible.

64. Early in Respondent’s representation of Alexander, he agreed to help her resolve a judgment against her in favor of Citibank, who foreclosed a second mortgage on the Woloskies’ home in Woodbury. Citibank had sued Alexander and obtained a judgment against her in the amount of \$37,533.38 on November 1, 2012. Although Citibank agreed to forgive the debt in December 2012, the judgment was still filed in court and was affecting Alexander’s credit rating.

65. At Respondent’s suggestion, Alexander considered filing bankruptcy but discovered it was not feasible because the debt to Citibank was her only debt. Alexander reported this to Respondent.

66. Alexander reminded Respondent on a few occasions about the Citibank judgment against her, including on February 5, 2014, and April 10, 2014, but Respondent took no action. Alexander got tired of waiting for Respondent to take action. In October 2014, Alexander took time off from work and went to the courthouse and county recorder’s office to see about removing the judgment against her from the records. She was unable to do so.

67. On or just before October 17, 2014, Alexander mailed a complaint against Respondent to the Director’s Office. Among Alexander’s allegations was that she had paid Respondent \$1,100 to handle the Citibank judgment but that he failed to do so. On November 3, 2014, the Director mailed a copy of Alexander’s complaint along with a notice of investigation to Respondent’s counsel.

68. On January 9, 2015, Respondent faxed a letter to Sarah Daley, who was counsel for Citibank. Respondent requested that Daley sign and return a stipulation to

satisfy Citibank's judgment against Alexander. Thereafter, Citibank filed a satisfaction of its judgment against Alexander.

69. The memorandum attached hereto is incorporated herein by reference.

Aggravating Factors

70. Respondent's prior discipline consists of (1) an admonition on November 14, 2000, for failing to clarify the basis and rate of his fee at the commencement of the representation and for failing to promptly pay to his client the portion of settlement monies to which there was no dispute the client was entitled, in violation of Rules 1.5(b) and 1.15(c)(4), MRPC; and (2) an admonition on July 11, 2012, for negligently misappropriating \$1,300 in client funds by withdrawing fees prior to deposit of the involved clients' retainers into his trust account, in violation of Rule 1.15(c)(5), MRPC, and/or additional provisions of Rule 1.15, MRPC.

71. Respondent has substantial experience in the practice of law in general, and in bankruptcy and family law matters in particular.

72. Respondent committed multiple acts of professional misconduct across multiple matters over an extended period of time.

73. Respondent neither acknowledges nor recognizes his misconduct or the harm it caused.

74. Respondent has no remorse for his misconduct.

75. There is no evidence of any factor that mitigates the sanction for Respondent's misconduct.

CONCLUSIONS OF LAW

1. Respondent's conduct in the Sambo Sou matter violated Rules 1.3, 1.4(a)(3) and (4), and 1.15(a), Minnesota Rules of Professional Conduct (MRPC).

2. Respondent's conduct in the Diane Lewis matter violated Rules 1.4(a)(4), and 1.15(c)(4) MRPC.

3. Respondent's conduct in the JoAnne Alexander matter violated Rules 1.1, 1.3, and 1.4(a)(3), MRPC.

4. Respondent's prior discipline is an aggravating factor.
5. Respondent's substantial experience in the practice of law in general, and in the representation of clients in dissolution of marriage and family law matters and debtors in bankruptcy matters in particular, aggravates the sanction for Respondent's misconduct.
6. Respondent's commission of multiple acts of professional misconduct across multiple matters over an extended period of time aggravates the sanction for Respondent's misconduct.
7. Respondent's failure to acknowledge or recognize his misconduct or the harm it caused aggravates the sanction for Respondent's misconduct.
8. Respondent's lack of remorse for his misconduct aggravates the sanction for Respondent's misconduct.
9. There is no factor that mitigates the sanction for Respondent's misconduct.

RECOMMENDATION FOR DISCIPLINE

Respondent Kevin Kenneth Shoeberg has committed multiple acts of professional misconduct across multiple matters over an extended period of time. As a result, a client (JoAnne Alexander) suffered a significant monetary loss. All clients mentioned herein except Kristie Lewis experienced delays in their cases. In all of the there was a lack of communication from Respondent and in the Diane Lewis matter delays in receiving her papers upon the conclusion of Respondent's representation. Multiple factors exist to aggravate, and no factor exists to mitigate, the sanction for Respondent's misconduct.

Accordingly, the undersigned hereby recommends that:

1. Respondent, Kevin Kenneth Shoeberg, be publicly reprimanded.
2. Respondent be on supervised probation for two years, under 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 provide to the Director a current mailing address and shall immediately notify the Director of any change of address. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct that 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 be supervised by a licensed Minnesota attorney appointed by the Director to monitor compliance with the terms of this probation. Respondent shall provide to the Director the names of four attorneys who have agreed to be nominated as Respondent's supervisor within two weeks from the date this stipulation is executed. If, after diligent effort, Respondent is unable to locate a supervisor acceptable to the Director, the Director will seek to appoint a supervisor. Until a supervisor has signed a consent to supervise, the Respondent shall on the first day of each month provide the Director with an inventory of active client files. Respondent shall make active client files available to the Director upon request.
- d. Respondent shall initiate and maintain office procedures that ensure that there are prompt responses to correspondence, telephone calls, and other important communications from clients,

courts and other persons interested in matters that Respondent is handling, and which will ensure that Respondent regularly reviews each and every file and completes legal matters on a timely basis.

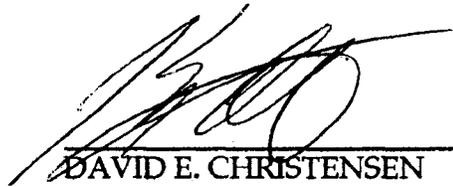
- e. Respondent shall provide the Director, within 30 days of the date of filing of this order, and the probation supervisor, once one has been appointed, a written plan outlining office procedures designed to ensure that Respondent is in compliance with probation requirements. Respondent shall provide progress reports as requested.

3. If at any time during the period of probation, after giving Respondent an opportunity to be heard by the Director, the Director concludes that Respondent has violated the conditions of the probation or engaged in further misconduct, the Director may file a petition for disciplinary action against Respondent in the Minnesota Supreme Court without the necessity of submitting the matter to a Panel or Panel Chair. Respondent waives the right to such consideration by the Panel or Panel Chair.

4. If Respondent complies with all the conditions of the probation as set forth above over the two year probationary period, the probation will be terminated. Pursuant to Rule 8(d)(3), Rules of Lawyers Professional Responsibility (RLPR), the Director will maintain a permanent disciplinary record of this stipulation and probation file..

5. Respondent shall pay the Director \$900 in costs, plus disbursements, pursuant to Rule 24, RLPR.

Dated: June 22, 2015.



DAVID E. CHRISTENSEN
SUPREME COURT REFEREE

MEMORANDUM

This memorandum is written to clarify the decisions denying the motions to dismiss the Sambo Sou and the Diane and Kristie Lewis matters, the issue of credibility and the Recommendation for Discipline. Each of these matters is discussed separately.

MOTION TO DISMISS

The record before the Referee reflects that a fee agreement for a bankruptcy petition in the Sambo matter was signed on March 19, 2011, and that Dr. Erickson, an advocate on behalf of Sambo, filed a complaint with the Director dated June 20, 2012. The complaint was file stamped by the Director on June 27, 2012 and a Notice of Investigation was sent to Respondent's counsel on June 29, 2012. Sambo was discharged in the bankruptcy proceeding on March 26, 2013. A Petition For Disciplinary Action was filed with the Supreme Court in early January of 2015. The Petition to the Supreme Court notes that it was being filed at the direction of the Lawyers Professional Responsibility Board Panel. The Diane Lewis matter reflects that Diane Lewis left an abstract of title with Respondent on March 29, 2012 and that it was not returned until after Diane Lewis filed a complaint with the Director in late October of 2012. The Director's investigation was commenced in early November of 2012, and the matter was included as count 2 in the Petition to the Supreme Court noted above.

Although the time between the complaints and the filing of a Petition seems to be long, there is nothing in the record reflecting the process that occurred during this time period and, without something in the record, this Referee does not believe that dismissal is appropriate. Even if dismissed, much of the evidence in these two matters

should be admissible to support the Director's position in regard to credibility and the aggravating factor of multiple acts over a period of time.

CREDIBILITY

Respondent is well spoken, appeared to be intelligent and to had a very good understanding of Bankruptcy Law. He insisted in his testimony that he had done nothing wrong and that, although he did not always return emails, he did respond by phone. For a variety of reasons his testimony was found not to be credible. First and foremost was the Sambo matter. Moka Soun was an excellent witness. Her testimony was supported by numerous emails that repeatedly asked what was happening and, in addition, was supported by the testimony of Dr. Erickson, the complainant on this count.

Respondent's defense to the Sambo count is that it was inappropriate to file a bankruptcy earlier because of Sambo's ongoing medical expenses. He may well have been right in regard to this, but there is no evidence he communicated this to Sambo. In fact, the opposite is indicated by the fact that she took the credit counseling course on three separate occasions.

The Referee has not given any credibility to Kristie Lewis in making his decision. Kristie has a medical condition that clearly has affected her ability to know and relate facts. Accordingly, the Referee has not made any Conclusions of Law in regard to the Kristie Lewis matter.

The testimony of Diane Lewis is not supported by any written evidence other than the receipt Respondent signed for the abstract of title. She did, however make a credible witness. The fact that Respondent returned her documents soon after a complaint was filed supports her position.

The testimony of Alexander was very credible and is supported by numerous exhibits that are part of the record. Her testimony was much more credible than that of Respondent.

RECOMMENDATION FOR DISCIPLINE

This Referee has no strong opinion about the need for a Public Reprimand but does feel that a period of probation is necessary to insure that Respondent adequately communicates with his clients and completes their legal work in a timely manner.

MITIGATING FACTORS

Respondent did not testify to any mitigating factors. The only reference to mitigating factors in the record is an email from Respondent to Alexander (see Director's Exhibit 74) and emails from Alexander to Respondent acknowledging that Respondent had referenced personal problems as a reason for his delay. See Director's Exhibit 75 and 79.

DEC