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FILE NO. CX-96-859

STATE OF MINNESOTA

IN SUPREME COURT

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Appellate Court

In Re Petition for Disciplinary Action against ALFRED MILTON STANBURY, an Attorney at Law of the State of Minnesota.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION FOR DISCIPLINE

The above-captioned matter came on for hearing on November 19, 1999, before the undersigned acting as referee by appointment of the Minnesota Supreme Court. The matter was fully submitted on December 10, 1999. Timothy M. Burke, Senior Assistant Director, appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Respondent Alfred Milton Stanbury appeared *pro se* and was personally present throughout the proceedings.

The hearing was conducted on the Director's July 20, 1999, petition for disciplinary action. During the hearing both parties submitted exhibits, and respondent testified.

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

FINDINGS OF FACT

1. Respondent was admitted to practice law in Minnesota on May 12, 1988. Respondent currently practices law in Minneapolis, Minnesota.

2. On December 31, 1997, the Director sent notice to respondent of a complaint filed against him by Joan and Ralph Larson and Mark Mathews. The notice of investigation requested respondent to provide his complete written response within 14 days of the notice. Respondent failed to do so. In mid-January 1998 respondent requested the Director to assign a

different investigator. At some point, he began working on a written response addressed to the original investigator.

3. On January 20, 1998, the Director sent notice to respondent of reassignment of the investigation. The notice of reassignment again requested respondent to provide his complete written response within 14 days. Respondent failed to do so.

4. On January 16, 1998, respondent was involved in a car accident. On January 22, 1998, respondent informed the investigator of the accident. The accident did not impair respondent's ability to respond to the complaint. On February 3, 1998, respondent worked on the written response but did not complete it.

5. By letter dated March 2, 1998, respondent requested the matter be reassigned again. By letter dated March 5, 1998, the Director denied respondent's request.

6. On August 12, 1998, the district ethics committee (DEC) notified respondent that a hearing would be held on the complaint on October 2, 1998. At that point, respondent concluded that he had nothing to gain by submitting a written response. Respondent appeared at the October 2 hearing and responded to the allegations for the first time, ten months after the original notice of investigation was mailed to respondent.

7. Respondent never requested and never received an extension of the time in which to respond to the complaint.

8. By letter dated October 20, 1999, the Director sent to respondent the DEC investigator's report and the minutes of the DEC's consideration of the matter. The minutes reflected the DEC recommendation that respondent violated multiple Minnesota Rules of Professional Conduct (MRPC) and should be disbarred. The Director's October 20 letter also asked and encouraged respondent to respond to the allegations and advised respondent of the potential consequences of failing to cooperate. By letter dated November 4, 1999, respondent responded in writing for the first time.

9. Respondent has a disciplinary history as follows:

a. On May 29, 1991, respondent received an admonition for twice executing false proofs of service and obtaining subpoenas based on those proofs of service.

b. On August 29, 1994, respondent received an admonition for refusing to return a former client's file after withdrawing from representation, insisting that she come to his home office alone to retrieve the file, and asserting a claim for fees against her for work that respondent withheld.

c. On October 9, 1996, respondent was issued an admonition for serving a garnishment summons on the employer of a person who was not the debtor.

d. On April 3, 1997, respondent was publicly reprimanded for refusing to satisfy a professionally related judgment against him and was suspended from the practice of law for a period of 30 days, effective 14 days from the date of that order, for stopping payment on a court filing fee. *In re Stanbury*, 561 N.W.2d 507 (Minn. 1997). On May 16, 1997, respondent was reinstated to the practice of law. *In re Stanbury*, 562 N.W.2d 655 (Minn. 1997).

e. On May 22, 1997, respondent was issued an admonition for stating "Up your ass" to a social services employee during the course of judicial proceedings and for failing to cooperate with the investigation of the matter.

f. On July 13, 1999, respondent was issued an admonition for failing to communicate a client's settlement offer to the opposing party. The complaint that began this public discipline proceeding (*see* ¶ 1, above), contained the allegation which formed the basis of this admonition. Respondent has appealed this admonition, and the Supreme Court has the matter under advisement.

Respondent's current misconduct is substantially similar to conduct for which he received an admonition previously. Respondent's disciplinary history shows a pattern of misconduct. Respondent's disciplinary history shows a pattern of disdain for his obligations under the

MRPC and the Rules on Lawyers Professional Responsibility (RLPR). Respondent's current misconduct is consistent with this pattern.

10. Respondent's practice is limited to trials and appeals. Respondent is familiar with rules of procedure and the obligations such rules impose on him. Respondent believes it is important for lawyers to follow rules of procedure. Respondent is familiar with the procedural rules governing the lawyer discipline process.

11. Respondent acknowledges that he had an obligation to respond to the complaint. However, respondent believes that the investigator should have made more attempts to contact him to obtain his response to the allegations.

12. Respondent offered the explanation that he was involved in demanding litigation throughout the course of the investigation as an excuse for not providing a timely written response.

13. Respondent offered no evidence that he regretted, or was sorry or remorseful for, the wrongful nature of his conduct.

14. Respondent offered no evidence that he has instituted measures to prevent misconduct from occurring again in the future.

CONCLUSIONS OF LAW

1. Respondent's conduct violated Rules 8.1(a)(3), and 8.4(a) and (d), MRPC, and Rule 25, RLPR.

2. Respondent's failure to cooperate was intentional and was not the product of lack of knowledge of his obligation to cooperate or of excusable neglect.

3. The referee has considered respondent's explanations. None of them, alone or in any combination, excuse or mitigate his misconduct.

4. Respondent's disciplinary history, which includes public discipline, recent misconduct and misconduct similar to that found above, evidences a disdain for respondent's professional obligations and substantially aggravates respondent's current misconduct.

5. Respondent's failure to acknowledge the wrongful nature of his misconduct, his lack of regret or remorse for his misconduct and his failure to undertake efforts to ensure such misconduct does not recur, all aggravate respondent's current misconduct.

RECOMMENDATION FOR DISCIPLINE

The undersigned recommends that respondent Alfred Milton Stanbury:

a. Be publicly reprimanded.

b. Be placed on unsupervised probation for a period of two years upon the following conditions:

i. Respondent shall abide by the Minnesota Rules of Professional Conduct.

ii. 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.

c. Pay $900 in costs pursuant to Rule 24(a), RLPR, and disbursements pursuant to Rule 24(b), RLPR.

Dated: Dec 21, 1999.

John J. Weyrens
Supreme Court Referee

MEMORANDUM

It is unusual for an attorney to receive a public reprimand solely for failure to cooperate with the disciplinary authority. However, the Minnesota Supreme Court has repeatedly stated that failure to cooperate constitutes "serious professional misconduct." In re Walker, 461 N.W.2d 219, 223 (Minn. 1990); In re Grzybek, 552 N.W.2d 215, 217 (Minn. 1996); In re Randall, 562 N.W.2d 679, 684 (Minn. 1997). In cases where an attorney has completely failed to provide requested information, the Court found that suspension was warranted. In re Sigler, 512 N.W.2d 899, 900-01 (Minn. 1994); In re Cartwright, 282 N.W.2d 548, 550 (Minn. 1979). The referee notes that respondent's failure to cooperate was not as egregious as the conduct in Cartwright and Sigler. However, respondent's disciplinary history, the fact that respondent shows no remorse and has not accepted full responsibility for his conduct, and the lack of mitigating factors all support the recommended discipline in this matter.

J.J.W.