

FILE NO. C2-00-2210
STATE OF MINNESOTA
IN SUPREME COURT

OFFICE OF
APPELLATE COURTS
JUL 12 2001
FILED

In Re Petition for Disciplinary Action
against JOHN M. STEELE,
an Attorney at Law of the
State of Minnesota

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

The above-entitled matter came before the undersigned Judge of District Court, appointed as referee by the Minnesota Supreme Court, on June 5, 2001.

Candice M. Hojan, Senior Assistant Director of the Office of Lawyers Professional Responsibility appeared for and on behalf of the Office of Lawyers Professional Responsibility.

Lewis A. Remele, Attorney at Law, appeared with and on behalf of John M. Steele, Attorney at Law and respondent herein.

Shirley Yvonne Harder, complainant herein, was also present.

At the conclusion of the hearing, counsel were directed to submit written arguments and proposed findings of fact and conclusions of law by June 20, 2001. This referee took the matter under advisement on June 20, 2001.

Based upon the file, the record, and all proceedings and submissions herein, including the arguments submitted by counsel, this referee makes the following:

FINDINGS OF FACT

1. Respondent was admitted to practice law in the State of Minnesota on June 7, 1970.

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

a. On April 11, 1984, respondent was issued an admonition for failing to communicate with a client in violation of DR 6-101(A)(3) and DR 7-101(A)(2), Minnesota Code of Professional Responsibility.

b. On March 28, 1986, respondent was issued an admonition for failing to promptly deliver a client file upon request in violation of Rule 1.15(b)(4), Minnesota Rules of Professional Conduct. (MRPC) (1986).

c. On August 13, 1991, respondent was issued an admonition for failing to promptly deliver a client file upon request, communicating with a former client after request to conduct all future communications with client's new attorney, conduct surrounding the filing of a petition for appointment of a guardian ad litem, statements made by respondent in an affidavit regarding the client's pending lawsuit, and for directing his secretary to notarize his stamped facsimile signature on an affidavit which was filed with the court, in violation of Rules 1.6 (a)(2) and (3), 1.8(b), 1.9(a) and (b), 1.15(b)(4), 1.16(d), 4.2, 5.3(b), and 8.4(c) and (d), MRPC, and Lawyers Professional Responsibility Board Opinion No. 13.

d. On September 23, 1998, respondent was issued an admonition for failing to inform his client regarding various motions, failing to inform his client of an adverse ruling, and failing to inform

his client of an assessment of \$800 in costs, in violation of Rule 1.4(a) and (b), MRPC.

3. Respondent currently maintains a law office in Minneapolis, Minnesota.
4. Respondent also maintains a law office in the State of Florida.
5. Florida is respondent's current state of residence.
6. Respondent's Florida and Minnesota offices are connected by telephone, e-mail, and fax.

7. Respondent employs Laura Paine as a legal assistant in his Minneapolis office. Laura Paine is respondent's sole employee.

8. On a prior occasion, respondent represented complainant, Shirley Yvonne Harder, in a personal injury case. That case was resolved by a settlement in complainant's favor.

9. On March 5, 1997, complainant was again injured in a fall.

10. Complainant asked respondent to represent her with respect to a claim arising from her March 5, 1997, fall.

11. Although respondent initially hesitated, he ultimately agreed to represent complainant, and complainant signed a retainer agreement.

12. During respondent's representation of complainant with respect to the March 5, 1997, fall, complainant's primary contact with respondent's office was through Ms. Paine.

13. On October 5, 1998, complainant's claim was submitted to non-binding arbitration. Because, respondent was in Florida and unavailable to

represent complainant at this arbitration, respondent arranged for another attorney to represent complainant at the hearing.

14. The arbitrator's decision was adverse to complainant and was dated October 9, 1998.

15. Complainant testified that she was never informed of the result of the arbitration. Respondent testified that complainant was made aware of the outcome of the arbitration. Based on the totality of the circumstances, this referee finds that respondent failed to explicitly advise complainant of the outcome of the non-binding arbitration. It should be noted, however, that complainant is an intelligent person, had prior experience working in a law office, and no doubt concluded, based on the fact that the case was going to trial, that the arbitration had not resulted in a finding favorable to complainant.

16. Respondent filed a request for a trial de novo with respect to complainant's claim on October 12, 1998.

17. At no time did the defendant in the subject litigation make a settlement offer to complainant.

18. Respondent represented complainant at trial in November 1999. Complainant was present and participated at the trial.

19. Upon conclusion of the presentation of plaintiff's (complainant's) case, the trial judge directed a verdict in favor of defendant.

20. Immediately after the order for a directed verdict was issued from the bench, respondent and complainant discussed the prospect of an appeal, but

made no final decision. This was the last face to face discussion between complainant and respondent regarding the appeal.

21. The written order granting a directed verdict was dated December 21, 1999. Judgment was entered on January 5, 2000.

22. Respondent and complainant did discuss whether to appeal the trial court's directed verdict by telephone on at least one occasion.

23. Respondent testified that he verbally informed complainant of the costs of pursuing an appeal, including the taxation of the adverse party's costs should complainant not prevail. Respondent also testified that complainant informed him that her father would finance the appeal.

24. Complainant requested a written itemization of the anticipated costs associated with an appeal but never received one.

25. Respondent instructed Ms. Paine to prepare a memorandum regarding the deadline for an appeal. Ms. Paine prepared a memorandum dated January 21, 2000, which she faxed directly from her computer screen to respondent at his Florida office. Ms. Paine's January 21 memorandum stated that the order for directed verdict was dated December 12, 1999, that the order was served upon respondent on December 23, 1999, that respondent received service of the order on December 24, 1999, and that the trial court's Notice of Entry of Judgment was dated January 5, 2000. The memorandum then described the provisions of Minnesota Rule of Civil Appellate Procedure 104 regarding the sixty-day time limit for appeal. Ms. Paine's memorandum concluded by asking respondent to determine the date from which to calculate

the sixty-day time period and noted that she would need checks for a bond and a certified copy of the judgment. Ms. Paine did not create a paper copy of the memorandum to place in complainant's file.

26. A copy of the January 21 memorandum produced by respondent and received into evidence as Exhibit 11 includes handwritten notes specifying what appear to be calculations of potential deadlines for appeal, depending upon which date is used as a starting point, as well as a "To Do" list involving complainant's case and several unrelated matters.

27. Complainant sent respondent a letter dated February 2, 2000 (Exhibit 2). In this letter, complainant expressed her desire to have respondent represent her in her appeal and twice stated that the deadline for filing an appeal was February 21, 2000. Further, complainant stated that she needed assurance that the appeal deadline was being met regardless of respondent's desire to carry on with the appeal once the appeal had been filed. Complainant's understanding that February 21, 2000, was the appeal deadline was based upon information that she had received from a staff person in district court administration. This information was neither confirmed nor disputed by respondent at any time.

28. In a letter dated February 17, 2000 (Exhibit 1), prepared by Ms. Paine, the projected costs of an appeal were addressed. This letter was never sent to complainant.

29. On February 17, 2000, Ms. Paine called complainant to discuss the appeal and to give complainant instructions with respect to signing a bond related to the appeal. During this conversation, Ms. Paine advised complainant

of the potential costs of an appeal as set forth in the letter that had been prepared (Exhibit 1).

30. When she learned of these potential costs, complainant told Ms. Paine that her father had suffered a stroke, that his financial assistance for the appeal was no longer available, and that she lacked the ability to pay the costs that she had just been advised of.

31. Immediately after her conversation with complainant, Ms. Paine placed a call to respondent. Ms. Paine was unable to reach respondent, but left a message instructing him to call complainant.

32. Immediately after leaving the message for respondent, Ms. Paine again called complainant. Ms. Paine told complainant that she had left a message for respondent and that she was certain that he would be calling complainant "shortly." Ms. Paine requested that complainant stay home to receive respondent's call and that if she missed respondent's call to be certain to call him back.

33. Respondent received Ms. Paine's message that same day and placed a call to complainant. Respondent was unable to reach complainant and left a call-back message. No return call was received and respondent made no further attempt to contact complainant.

34. On February 17, 2000, complainant wrote and mailed a letter to respondent (Exhibit 3). In the letter, complainant stated: "In response to your phone call of 2/17/00, I am dismissing you from any further representation on my behalf."

35. Complainant's letter of February 17, 2000, was received by mail at respondent's Minneapolis office on February 18, 2000.

36. Respondent made no attempts to contact complainant regarding the letter or complainant's intent with respect to an appeal.

37. In a letter dated February 24, 2000 (Exhibit 4), complainant requested that respondent send her "...my file and Court Order of November 30, as soon as possible."

38. In response to complainant's letter, respondent instructed Ms. Paine to make copies and to provide complainant with her file.

39. Complainant's file was substantial in size. Ms. Paine made copies as her time and workload permitted. Complainant was provided her file on or about March 15, 2000 (it is unclear whether complainant received the original file or a copy of the file).

40. Neither respondent nor Ms. Paine, at the direction of respondent, drafted any appeal-related documents, nor was a certified copy of the district court action to be appealed ever obtained or requested from district court administration.

41. The parties to this disciplinary proceeding appear to agree that the actual appeal deadline for complainant's case was March 6, 2000.

Based upon the foregoing findings of fact, this referee makes the following:

CONCLUSIONS OF LAW

1. Respondent's failure to notify complainant of the arbitrator's decision and failure to furnish her with information regarding the anticipated costs related to an appeal constitute violations of Minnesota Rule of Professional Conduct (MRPC) 1.4 (a) and (b).

2. Respondent's failure to determine the correct deadline for appeal of complainant's case and to thereafter communicate that deadline to complainant constitutes a violation of MRPC 1.4 (b).

3. In view of respondent's lack of certainty as to whether complainant had abandoned her appeal or chosen to pursue her appeal through other counsel, the failure to provide complainant with her file within a time period that would allow her to timely file her appeal constitutes a violation of MRPC 1.16 (d).

4. Respondent's prior disciplinary history and the violations committed in the present matter constitute a pattern of related misconduct pursuant to Rule on Lawyers Professional Responsibility (RLPR) 19 (b)(4)(i), the cumulative effect of which violates MRPC 1.4.

Based upon the foregoing findings of fact and conclusions of law, this referee makes the following:

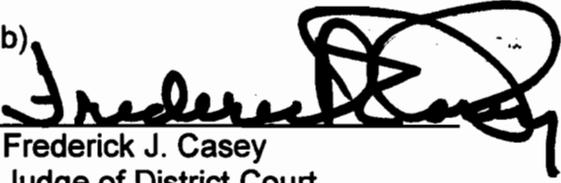
RECOMMENDATION FOR DISCIPLINE

It is the recommendation of the undersigned to the Minnesota Supreme Court:

1. That respondent be publicly reprimanded

2. That respondent be ordered to pay \$900.00 in costs pursuant to RLPR 24 (a) and disbursements pursuant to RLPR 24 (b)

Dated: July 11, 2001


Frederick J. Casey
Judge of District Court

MEMORANDUM

The Director has requested that respondent be subjected to two years of supervised probation. Respondent's shortcomings do not strike this referee as matters that readily lend themselves to supervision. For a supervising attorney to address these issues would seem to require intimate knowledge of every file being handled by respondent, and finding a person to accept such a responsibility would appear difficult at best. Rather than being subjected to supervision, respondent should perhaps be placed on notice that any additional lapses in meeting his professional responsibilities will result in suspension of his license to practice law in the State of Minnesota.

F.J.C.