

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against KENT FREDERICK STRUNK,
a Minnesota Attorney,
Registration No. 288391.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement contained in the attached August 28, 2006, stipulation for probation (Exhibit 1) pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 30, 1998. Respondent currently practices law in Brainerd, Minnesota.

INTRODUCTION

On August 28, 2006, respondent and the Director entered into a stipulation for private probation (Exhibit 1). Respondent's probation was based upon an admission that respondent failed to diligently complete a Qualified Domestic Relations Order and failed to adequately communicate with a client in a marital dissolution matter in violation of Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

Among the conditions of respondent's probation was that respondent would abide by the MRPC and commit no further unprofessional conduct, and that if, after giving respondent an opportunity to be heard, the Director concluded that respondent had not complied with the conditions of the probation, then the Director could file this petition without the necessity of Panel proceedings.

The Director, after giving respondent an opportunity to be heard, has concluded that respondent has not complied with the conditions of the probation.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

In addition to respondent's August 28, 2006, private probation, described above, respondent's history of prior discipline is as follows:

(a) On April 3, 2003, respondent was issued an admonition for his failure to diligently pursue a client matter and his failure to communicate with his client in violation of Rules 1.3 and 1.4, MRPC.

(b) On March 2, 2004, respondent stipulated to a two-year private probation for his failure to properly maintain books and records, failure to cooperate with the Director's investigations, and failure to diligently pursue a client's case in violation of Rules 1.3, 1.15, and 8.1(a)(3), MRPC.

(c) On May 24, 2004, respondent was issued an admonition for his failure to communicate with his client and his failure to file a memorandum with the court in violation of Rules 1.3, 1.4, and 3.4(c), MRPC.

FIRST COUNT

Matthew Smoot Matter

1. In September 2005, Joy Smoot retained respondent to represent her son, Matthew Smoot, against numerous criminal charges in state district court in Brainerd, Minnesota. The charges arose out of a July 8, 2005, incident in which the car Matthew Smoot was driving collided with another vehicle, killing the other driver. Joy Smoot also retained respondent to represent her on charges arising out of the fact that Matthew Smoot was driving her car during the July 8, 2005, incident.

2. One of the charges against Matthew Smoot was unintentional murder in the second degree while "committing or attempting to commit a felony offense other than criminal sexual conduct in the first or second degree with force or violence. . . ." In

an order filed on May 11, 2006, the district court certified to the Minnesota Court of Appeals as "important and doubtful" the issue of "whether the offense of felony driving while impaired can serve as the predicate felony for the charge of second-degree felony murder."

3. Although respondent's retainer agreement with Smoot excluded appeals, and although he was inexperienced at handling criminal appeals, respondent agreed to handle the certified question to the Court of Appeals in Matthew Smoot's case.

4. On June 1, 2006, the Clerk of Appellate Courts issued a notice of case filing that directed respondent to file a statement of the case within ten (10) days and pay a \$500 filing fee. Respondent failed to file a statement of the case or pay the filing fee at that time.

5. On June 23, 2006, the Court of Appeals issued an order noting that respondent had failed to file a statement of the case by the deadline and either pay a filing fee or show a basis for exemption from the filing fee requirement. The order required respondent to file a statement of the case and a transcript certificate or brief on the merits, and pay a \$500 filing fee, on or before July 6, 2006. The order further specified that failure to comply may result in the imposition of sanctions, including dismissal of the certified question.

6. On July 6, 2006, respondent filed a statement of the case with the Court of Appeals. Respondent also prepared an application for proceeding *in forma pauperis* (IFP application) and obtained a supporting affidavit from Matthew Smoot. Respondent incorrectly filed the IFP application with the Court of Appeals, however, rather than with the district court.

7. On July 13, 2006, the Court of Appeals issued a second order in Matthew Smoot's case. The order acknowledged that respondent had filed a statement of the case, but that he had also: (1) failed to file a brief; (2) not paid the \$500 filing fee; and (3) filed the IFP application with the wrong court. The order stated that, based on respondent's failure to comply with the court's June 23, 2006, order, dismissal of the

certified question was warranted. However, the order also stated that respondent could, on or before July 27, 2006, serve and file a motion to reinstate the certified question and a brief, and either pay a \$500 filing fee or submit an IFP order from the district court. Respondent failed to comply with the court's July 13, 2006, order.

8. On at least one occasion after receiving the July 13, 2006, order from the Court of Appeals, respondent falsely told Matthew Smoot that he had filed a brief with the Court of Appeals and that Matthew Smoot's case was pending and proceeding in the Court of Appeals.

9. On July 26, 2006, respondent appeared with Joy Smoot at the Crow Wing County courthouse for sentencing in connection with the criminal charges against her (described above). In the presence of several of her family members, Joy Smoot asked respondent about Matthew Smoot's appellate case. Respondent falsely replied that the case was pending, and that he, Matthew Smoot and her would "just have to play a waiting game." In fact, respondent failed to take any action to reinstate the certified question in Matthew Smoot's case following the July 13, 2006, order for dismissal from the Court of Appeals.

10. In August 2006, Joy Smoot attempted to contact respondent about Matthew Smoot's appeal because respondent had earlier told her that a decision would be issued within 90 days. Joy Smoot was unable to reach respondent by phone and was unable to leave a phone message because respondent's telephone message answering system was full.

11. Joy Smoot was finally able to reach respondent by phone on September 14, 2006, and respondent agreed to meet her that day at his office. During this office visit respondent told Joy Smoot, for the first time, that Matthew Smoot's certified question to the Minnesota Court of Appeals was not proceeding and had, in fact, been dismissed. Respondent also told Joy Smoot that he would visit Matthew Smoot in jail to inform him in person of the dismissal of his case by the Court of Appeals. Respondent failed to do so.

12. In October 2006, Smoot terminated respondent's services and retained new legal counsel.

13. Respondent's conduct in falsely stating to Matthew Smoot sometime after July 13, 2006, and to Joy Smoot on July 26, 2006, that Matthew Smoot's certified question case was pending and proceeding in the Minnesota Court of Appeals when it had already been dismissed violated Rules 4.1, 8.4(c), and 8.4(d), MRPC.

14. Respondent's failure to comply with orders of the Minnesota Court of Appeals dated June 23, 2006, and July 13, 2006, violated Rules 3.4(c) and 8.4(d), MRPC.

15. Respondent's failure to competently and diligently handle Matthew Smoot's certified question in the Minnesota Court of Appeals violated Rules 1.1, 1.3, and 8.4(d), MRPC.

16. Respondent's failure to keep Joy Smoot and Matthew Smoot informed about the status of Matthew Smoot's case, and his failure to notify Joy Smoot and Matthew Smoot that Matthew Smoot's case had been dismissed until two months after the dismissal violated Rule 1.3 and 1.4(a), MRPC.

SECOND COUNT

Misrepresentations to the Director

17. On June 26, 2007, respondent appeared at the Director's Office pursuant to Rule 25, RLPR, for a conference to discuss the Matthew Smoot matter.

18. During the June 26, 2007, conference, respondent stated that, after dismissal of Smoot's appellate case on July 13, 2006, he visited with Smoot in jail and informed him of the dismissal of the case. This was a false statement, because respondent did not visit Matthew Smoot in jail after dismissal of the case and did not inform Matthew Smoot of the dismissal of his appellate case until after he had informed Joy Smoot, on September 14, 2006.

19. During the June 26, 2007, conference, respondent stated that he "believed" he informed Joy Smoot of the dismissal of Matthew Smoot's appellate case on or about

August 18, 2006. This was a false statement, because respondent did not notify Joy Smoot of the dismissal of Matthew Smoot's appellate case until September 14, 2006.

20. Respondent's conduct in make the above-described false statements to the Director on June 26, 2007, violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

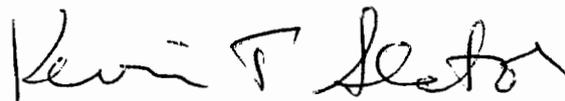
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: Sept. 25, 2007.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



KEVIN T. SLATOR
ASSISTANT DIRECTOR
Attorney No. 204584