

FILE NO. C5-02-1203

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against ELIZABETH JANE SUNDBY,  
a Minnesota Attorney,  
Registration No. 206283.  
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**STIPULATION  
FOR DISCIPLINE**

THIS STIPULATION is entered into by and between Martin A. Cole, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and Elizabeth Jane Sundby, attorney, hereinafter respondent.

WHEREAS, respondent has concluded it is in respondent's best interest to enter into this stipulation,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. Pursuant to the Rules on Lawyers Professional Responsibility (RLPR), the parties agree to dispense with further proceedings under Rule 14, RLPR, and respondent agrees to the immediate disposition of this matter by the Minnesota Supreme Court under Rule 15, RLPR.
2. Respondent understands this stipulation, when filed, will be of public record.
3. It is understood that respondent has certain rights pursuant to Rule 14, RLPR. Respondent waives these rights, which include the right to a hearing before a referee on the petition; to have the referee make findings and conclusions and a recommended disposition; to contest such findings and conclusions; and to a hearing before the Supreme Court upon the record, briefs and arguments.

4. Respondent unconditionally admits the allegations of the original petition for disciplinary action and the two supplementary petitions for disciplinary action, which may be summarized as follows:

Failure to Cooperate with Overdraft Inquiry

a. After receiving notice of an overdraft on respondent's trust account, the Director wrote to respondent requesting an explanation for the overdraft. The Director's initial letter, sent in December 2001, was mailed to the address respondent used for the trust account. In a follow-up letter, sent in January 2002, the Director wrote to the address respondent maintained with Minnesota Attorney Registration. Respondent did not reply to those letters, or to follow-up letters.

b. As the result of respondent's failure to respond, the Director commenced a formal disciplinary investigation and mailed respondent a notice of investigation. Respondent did not respond to the notice or to subsequent correspondence from the Director's Office.

c. In April 2002, respondent telephoned the Director's Office, leaving a message for an Assistant Director assigned to her disciplinary file. However, respondent failed to return a subsequent call from the Director's Office.

d. In May 2002, the Director issued charges of unprofessional conduct. Respondent failed to appear for the pre-hearing meeting or otherwise communicate with the Director's Office regarding the charges.

Drinnin Matter

e. In August 1997, Christopher and Deborah Drinnin retained respondent to represent them in pursuing a federal fair housing claim. In the fall of 1998, respondent filed the Drinnins' claim with the Department of Housing and Urban Development. The Drinnins also retained respondent to represent them in filing a Chapter 7 bankruptcy, which respondent did in December 1998. However, respondent did not include the fair housing claim on the bankruptcy schedule. In January 1999, the first meeting of creditors was held, with another

lawyer in respondent's office appearing with the Drinnins. The bankruptcy trustee informed the Drinnins that they had to notify him if the claim resulted in any recovery.

f. In May 2000, respondent settled the Drinnins' fair housing claim for \$75,000, but failed to notify the trustee of the settlement or amend the Drinnins' bankruptcy petition to disclose it. In August 2000, after learning of the claim settlement, the trustee reopened the bankruptcy to recover the \$75,000 in proceeds from respondent and the Drinnins. Eventually a settlement was reached regarding repayment to the bankruptcy estate. Respondent signed a confession of judgment under which she was to repay the estate \$3,000 on or before January 31, 2002.

g. Respondent failed to make the \$3,000 payment as required and judgment was thereafter entered against her. Respondent has not satisfied the judgment.

h. In September 2002, the Director received a complaint against respondent regarding her handling of the Drinnin bankruptcy. Respondent failed to respond to the notice of investigation.

#### North Dakota Misconduct

i. Respondent was admitted to practice law in North Dakota on October 6, 1987. On December 11, 2002, respondent was placed on interim suspension by the North Dakota Supreme Court. *Disciplinary Board v. Sundby*, 654 N.W.2d 391 (N.D. 2002).

j. On July 18, 2005, the North Dakota Supreme Court issued its order suspending respondent from the practice of law for six months and one day, retroactive to December 11, 2002. Respondent's discipline was based upon her conduct in failing to diligently pursue multiple representations, failing to communicate with her clients, failing to safe keep property, and improperly terminating a representation in violation of North Dakota Professional Responsibility Rules 1.3, 1.4, 1.5(b), and 1.16(e).

### Failure to Maintain Minnesota Trust Account

k. The Director's investigation of respondent was prompted by a \$30 overdraft of her Minnesota trust account on December 11, 2001. The initial petition for disciplinary action was based upon respondent's failure to cooperate with the trust account inquiry and subsequent disciplinary investigation. While the petition was based upon respondent's failure to cooperate with the Director's inquiry, the purpose of the inquiry was to determine whether respondent was maintaining the necessary books and records pertaining to attorney trust accounts and the cause of the overdraft.

l. During the pendency of these matters respondent was hospitalized. While she was hospitalized, respondent's landlord moved her belongings to her home. In the summer of 2004, there was a fire in respondent's home and a number of her belongings were moved to storage or thrown away. Accordingly, respondent is unable to determine the exact cause of the \$30.00 overdraft. However, respondent did not maintain the necessary books and records pertaining to attorney trust accounts.

5. Respondent understands that based upon these admissions, this Court may impose any of the sanctions set forth in Rule 15(a)(1) - (9), RLPR, including making any disposition it deems appropriate. Respondent understands that by entering into this stipulation, the Director is not making any representations as to the sanctions the Court will impose.

6. The Director and respondent join in recommending that the appropriate discipline is indefinite suspension. Respondent's suspension is retroactive to the date of her temporary suspension, April 4, 2003. Respondent agrees to the imposition and payment of \$900 in costs and \$27.00 in disbursements pursuant to Rule 24, RLPR.

7. The reinstatement hearing provided for in Rule 18(a) through (d), RLPR, is not waived.

8. This stipulation is entered into by respondent freely and voluntarily, without any coercion, duress or representations by any person except as contained herein.

9. Respondent hereby acknowledges receipt of a copy of this stipulation.

10. Respondent has been advised by the undersigned counsel concerning this stipulation and these proceedings generally.

IN WITNESS WHEREOF, the parties executed this stipulation on the dates indicated below.

Dated: March 8, 2007



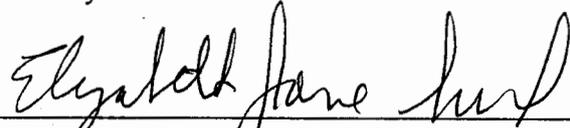
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Dated: March 8, 2007



CRAIG D. KLAUSING  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 202873

Dated: 4/23/07



ELIZABETH JANE SUNDBY  
RESPONDENT

Dated: April 3, 2007



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