

FILE NO. A14-1589

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against RICHARD LEE SWANSON,
a Minnesota Attorney,
Registration No. 173423.

**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 Richard Lee Swanson, 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 withdraws the answer filed herein and unconditionally admits the allegations of the petition.

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:

a. The appropriate discipline is a 90 day suspension pursuant to Rule 15, RLPR, effective 14 days from the date of the Court's suspension order.

b. The reinstatement hearing provided for in Rule 18(a) through (d), RLPR, be waived;

c. Respondent be required to successfully complete the professional responsibility portion of the state bar examination within one year of the date of this Court's order;

d. Respondent comply with Rule 26, RLPR;

e. Respondent pay \$900 in costs pursuant to Rule 24(a), RLPR;

f. The term of respondent's supervised probation shall be two years and the conditions shall include:

i. 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 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.

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

iii. 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 three attorneys who have agreed to be nominated as respondent's supervisor within two weeks from the date of the Court's order. 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 described in paragraph d below. Respondent shall make active client files available to the Director upon request.

iv. Respondent shall cooperate fully with the supervisor in his/her efforts to monitor compliance with this probation. Respondent shall contact the supervisor and schedule a minimum of one in-person meeting per calendar quarter. Respondent shall submit to the supervisor an inventory of all active client files by the first day of each month during the probation. With respect to each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date. Respondent's supervisor shall file written reports with the Director at least quarterly, or at such more frequent intervals as may reasonably be requested by the Director.

v. Within thirty days from the filing of the Court's order, respondent shall provide to the Director and to the probation supervisor, if any, a written plan outlining office procedures designed to ensure that respondent is in compliance with probation requirements. Respondent shall provide progress reports as requested.

vi. Respondent shall maintain total abstinence from alcohol and other mood-altering chemicals, except that respondent may use prescription drugs in accordance with the directions of a prescribing physician who is fully advised of respondent's chemical dependency before issuing the prescription.

vii. Respondent shall attend weekly meetings of Alcoholics Anonymous or other abstinence-based recovery support group or program acceptable to the Director. Respondent shall, by the tenth day of each month, without a specific reminder or request, submit to the Director an attendance verification on a form provided by the Director, which provides the name, address and telephone number of the person personally verifying the attendance. Such attendance verification shall also, upon request, be provided to the respondent's supervisor, if any.

viii. Respondent shall initiate or continue current treatment by a licensed consulting psychologist or other mental health professional acceptable to the Director, and shall complete all therapy programs recommended by the therapist.

ix. Respondent shall maintain law office and trust account books and records in compliance with Rule 1.15, MRPC, and Appendix 1 to the MRPC. These books and records include the following: client subsidiary ledger, checkbook register, monthly trial balances, monthly trust account reconciliation, bank statements, canceled checks, duplicate

deposit slips and bank reports of interest, service charges and interest payments to the Minnesota IOLTA Program. Such books and records shall be made available to the Director within 30 days from the filing of the Court's order and thereafter shall be made available to the Director at such intervals as he deems necessary to determine compliance.

g. Respondent be reinstated following the expiration of the suspension provided that at least 15 days before the expiration of the suspension period, respondent files an affidavit with the Clerk of Appellate Courts and the Director's Office establishing that respondent is current with Continuing Legal Education, has fully complied with Rules 24 and 26, RLPR, and has satisfactorily completed all other conditions imposed by the Court in its decision.

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

8. The attached memorandum is made a part of this stipulation.

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: January 21, 2015.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

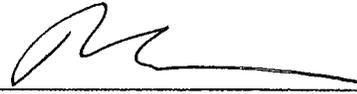
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Dated: Jan. 21, 2015.



CRAIG D. KAUSING
SENIOR ASSISTANT DIRECTOR
Attorney No. 012

Dated: 1/21/15, 2015.



RICHARD LEE SWANSON
RESPONDENT

Dated: January 29, 2015.



ERIC T. COOPERSTEIN
ATTORNEY FOR RESPONDENT

MEMORANDUM

Given respondent's misconduct in this matter (four client complaints and his failure to maintain the required trust account books and records) coupled with his disciplinary history (five admonitions and a public reprimand), the Director recognizes that a suspension of more than 90-days would not be unreasonable. However, there are several mitigating factors leading the Director to recommend a 90-day suspension.

First, respondent has acknowledged his misconduct and has expressed his remorse for his conduct. The Court has held that remorse is an important issue in determining the appropriate discipline. "Whether an attorney is remorseful for his misconduct is an important issue in an attorney discipline case . . ." *In re Albrecht*, 779 N.W.2d 530, 538 (Minn. 2010).

Second, respondent has asserted that his misconduct was caused in whole or part by chronic alcoholism or mental health issues for which respondent is seeking treatment. The Court has held that "[i]t is clear that alcoholism in and of itself is not a defense to professional misconduct." *In re Johnson*, 322 N.W.2d 616, 618 (Minn. 1982). However, if certain factors are met, including a showing that "the alcoholism caused the misconduct . . . that the accused attorney is recovering from alcoholism . . . [and] that recovery has arrested the misconduct and the misconduct is not apt to reoccur" the alcoholism may be considered a mitigating factor. *Id.*

Similarly, the Court has held that psychological disabilities can serve as mitigation. "The criteria in Johnson related to disability caused by alcoholism and therefore are not directly applicable to the respondent's claim of mitigation in this case. Nevertheless, we hold that in a case where a respondent attorney raises psychological disability as a mitigating factor, he must prove that he indeed has a severe psychological problem, that the psychological problem was the cause of the

misconduct, that he is undergoing treatment and is making progress to recover from the psychological problem which caused or contributed to the misconduct, that the recovery has arrested the misconduct, and that the misconduct is not apt to recur. Finally, the accused attorney must establish these criteria by clear and convincing evidence." *In re Weyhrich*, 339 N.W.2d 274, 278-79 (Minn. 1983).

While it is not clear to the Director that respondent could meet his burden of proving each of the elements set out in *Johnson* and *Weyhrich*, the Director nonetheless factors the claimed disabilities into his determination regarding the appropriate discipline.

In another attorney disciplinary matter the referee found that the respondent lawyer's psychologist "lacked credibility and that [respondent] failed to prove by clear and convincing evidence that he had made sufficient recovery from his psychological problems; that his recovery had arrested the misconduct; and that the misconduct was not apt to recur." *In re Bergstrom*, 562 N.W.2d 674, 677 (Minn. 1997). The Court upheld the referee's findings, but in determining the appropriate sanction in that case nonetheless factored in Bergstrom's disability, noting that it sought "to balance the need to protect the public, which is primary, with consideration of the role that Bergstrom's psychological disability has played in his past misconduct and is likely to play in his future conduct." *Id.* at 678.

In balancing those two concerns, the Court concluded "that, while it is not completely certain that Bergstrom's misconduct has been arrested and will not recur, there is evidence showing that Bergstrom has made improvement in both his psychological condition and his legal practice." *Id.* Similarly, the Director has attempted to balance those concerns in the resolution of this matter.

The Director notes that there has been no evidence of misconduct involving clients since the M.M. complaint, which was received in April of 2013. Further, the

conditions of respondent's probation, i.e., that he maintain total abstinence from alcohol and other mood-altering chemicals, that he attend weekly meetings of an abstinence-based recovery support group or program, and that he receive treatment by a licensed consulting psychologist or other mental health professional, will provide the necessary protection to the public.

Based upon these facts, the Director and respondent believe that a 90 day suspension, followed by supervised probation for a period of two years under the conditions set out above, is the appropriate discipline.