

STATE OF MINNESOTA
IN SUPREME COURT

A05-1772

OFFICE OF
APPELLATE COURTS

JAN 10 2006

FILED

In Re Petition for Disciplinary Action
Against STEVEN WAYNE VAN LIEW,
A Minnesota Attorney,
Registration No. 280793

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

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The above-entitled matter came on for hearing on November 30, 2005, before the undersigned acting as referee by appointment of the Minnesota Supreme Court. Betty M. Shaw, Senior Assistant Director, appeared for the petitioner, the Director of the Office of Lawyers Professional Responsibility, hereinafter "Director." Edward F. Kautzer appeared on behalf of respondent who was personally present throughout and testified during the proceedings.

The proceedings were conducted on the Director's August 29, 2005, petition for disciplinary action. The Director presented testimony from the complainants, Susan Olson and David Duerkop. The Director also presented testimony by telephone from Robert Youngerman. The respondent testified on his own behalf.

Based upon the evidence presented at the hearing the referee makes the following:

FINDINGS OF FACT

1. Respondent was admitted to practice law in Minnesota on November 17, 1997. Respondent currently lives in the Minneapolis area but is not practicing law at this time.

Discipline History

2. Respondent's disciplinary history includes:

a. On May 2, 2000, respondent received an admonition for failing to notify his client that his employment at the public defender's office had terminated and failing to promptly return his client's file to the public defender's office in violation of Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

b. In 2005, at the same Panel hearing authorizing the filing of the petition for disciplinary action in this matter, respondent received a Panel admonition for failing to provide the court with any evident in defense of opposing counsel's motion and failing to communicate with his client in violation of Rules 1.1, 1.3 and 1.4 MRPC.

3. On November 25, 2003, David Duerkop and his long-term partner, Susan Olson, met with respondent regarding representation relating to post-dissolution parenting time issues.

4. Duerkop wanted his ex-wife held accountable for refusing visitation and wanted respondent to handle an anticipated motion by his ex-wife to modify parenting time.

Daphne Martin

Eric Olson

5. Duerkop signed a retainer and Olson gave respondent a \$1,200 check for the representation.

6. By the time of the November 25, 2003, representation, respondent had a copy of the November 21, 2003, letter to Duerkop from the ex-wife's attorney, Robert Youngerman, informing Duerkop that a hearing had been scheduled for December 16, 2003. Duerkop and Olson had not yet received the motion in the mail. Duerkop and Olson provided respondent with file materials regarding previous issues related to this matter.

7. On November 25, 2003, respondent spoke with Youngerman for about 15 minutes. Their conversation was limited to discussing respondent's representation of Duerkop, the motion and upcoming hearing, and whether the matter could be settled. Respondent and Youngerman did not discuss the possibility of a continuance.

8. On December 9, 2003, respondent met with Duerkop. Respondent did not indicate to Duerkop that there was insufficient time to respond to his ex-wife's motion and did not discuss the possibility of a continuance. Respondent told Duerkop he was prepared for the December 16 hearing.

9. On December 9, 2003, respondent spoke with Youngerman and informed him that Duerkop intended to oppose the motion.

10. During the December 16, 2003 hearing, Youngerman stated that it had been 22 days since the motion had been served on Duerkop and he had not received a response from respondent. The judge confirmed there was no response in the court file from the respondent.

11. Shortly after Youngerman's statement that the motion had been served 22 days ago, respondent stated to the court that Duerkop "came and retained me ten days ago". Respondent's statement was a misrepresentation. Respondent was aware that Duerkop retained him on or about the same day the motion was served.

12. In granting opposing counsel's motion, the judge stated, "I understand that [respondent] got into it [sic] late but I - I can't fix that. I mean, - and I understand maybe sometimes the parties don't understand when they get some of the documents they need to talk to an attorney right away and they need to discuss it and move on quick."

13. Respondent's misrepresentation caused the court to believe that Duerkop was late in seeking counsel when, in fact, Duerkop set up an appointment with respondent even before he received the motion and retained respondent on November 25, 2003, the same day he received the motion.

14. On January 13, 2004, respondent wrote the judge requesting permission to file a motion for reconsideration to allow respondent to file additional information. In this letter, respondent again reiterated the false statement that Duerkop hired him "just prior to the hearing". Respondent's statement again intentionally gave the false impression that Duerkop's delay in retaining respondent caused the lack of responsive documents.

15. Duerkop brought a motion for relief from the Court's December 22, 2003, order or in the alternative a new hearing.

16. Judge Benson, who had issued the initial order, reopened the matter and gave Duerkop a new hearing. Judge Benson indicated at the hearing on December 16, 2003, that he believed the lack of response to the motion to restrict parenting visits was because Duerkop delayed in retaining counsel and that respondent "got in late."

17. Respondent's misrepresentation to the court caused harm to his client and to the administration of justice.

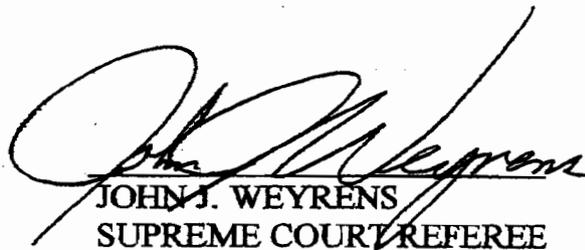
CONCLUSIONS

1. Respondent's statements to the judge both in court and in his January 13, 2004, letter regarding when Duerkop had retained him violated Rules 3.3(a)(1), 4.1, and 8.4(c) and (d), MRPC.

RECOMMENDATION FOR DISCIPLINE

The undersigned referee recommends that respondent be suspended from the practice of law for 90 days and that reinstatement pursuant to Rule 18(a)-(e), Rules on Lawyers Professional Responsibility (RLPR), be conditioned upon payment of Rule 24, RLPR, costs and disbursements and compliance with Rule 26, RLPR.

Dated: January 10, 2006.


JOHN J. WEYRENS
SUPREME COURT REFEREE