

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against RAGNHILD A. WESTBY,
an Attorney at Law of the
State of Minnesota.

PETITION FOR
DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on April 22, 1976. Respondent was suspended from the practice of law on December 9, 1997, and has not been reinstated to practice.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

a. **Private Admonition.** On December 9, 1993, respondent was issued a private admonition for neglect and failing to communicate adequately with a client in violation of Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

b. **Suspension.** On December 4, 1997, respondent was suspended from the practice of law for sixty days for conduct involving failure to deposit retainers in her trust account, failure to maintain proper trust account books and records, failure to communicate with clients, failure to respond to notices of investigation, failure to pay a debt secured by property and failure to timely file and pay federal and state individual

income tax returns and employer withholding tax returns. *See In re Westby*, 572 N.W.2d 278 (Minn. 1997). Respondent has not been reinstated since her suspension¹.

FIRST COUNT

A. Wyttenback Matter

1. On or about May 28, 1998, Shirley Wyttenback paid respondent a \$1,900 retainer to represent her in her divorce. At the time, respondent was suspended from the practice of law and not authorized to represent clients in legal matters. Respondent did not tell Wyttenback of her suspension. Respondent did not enter into a written fee agreement with Wyttenback and did not deposit the \$1,900 retainer into a trust account. Instead, respondent directed the retainer to be electronically deposited into her personal account by Wyttenback's brother who was paying the retainer on Wyttenback's behalf (Exhibit 1).

2. Sometime prior to June 9, 1998, respondent drafted the dissolution summons and complaint based upon limited information that respondent had obtained from Wyttenback over the telephone. Respondent identified herself as counsel for the petitioner (i.e., Shirley Wyttenback) in paragraph II of the petition. Respondent then forwarded the petition and verification to Wyttenback for her signature. Respondent did not tell Wyttenback that she was suspended and could not represent her.

3. After Wyttenback returned the executed verification to respondent's office, respondent changed the signature page of the petition to reflect that Tom Rowe, respondent's ex-husband and also a lawyer, was counsel for Wyttenback² (Exhibit 2). Respondent then convinced Rowe to sign the petition so that it could be served by

¹ Respondent has twice (May 26, 1998 and August 31, 1999) filed affidavits with the Supreme Court seeking reinstatement. Neither affidavit provided the information (e.g., proof of tax compliance) required by the Court as a condition of respondent's reinstatement to the practice of law. With respect to the last affidavit, the Court issued a formal order on September 27, 1999, denying respondent's request to be reinstated.

² Respondent failed however, to change paragraph II of the petition which identified respondent as Wyttenback's counsel. *See* Exhibit 2, paragraph II.

falsely stating to Rowe that she was about to be reinstated to the practice of law. In fact, respondent was not about to be reinstated. When Rowe signed the Wyttenback divorce petition, he had never met or talked with Wyttenback nor did he have any knowledge of the facts pled in the dissolution petition.

4. After Rowe signed the petition, respondent caused the petition to be personally served upon Wyttenback's husband. On July 13, 1998, respondent caused the summons and petition to be filed in Ramsey County. Thereafter, respondent took no further action on the matter and did not respond to calls from Wyttenback concerning the matter. Because Rowe had signed the divorce petition, notices from the court were sent to Rowe.

5. At some point in late 1998 or early 1999, Rowe assumed responsibility for the Wyttenback dissolution matter. Respondent did not obtain Wyttenback's authorization to transfer the matter to Rowe, nor did she inform Wyttenback that Rowe was taking over responsibility for the matter. Wyttenback learned of Rowe's involvement when she received a phone call from Rowe in March 1999. Rowe has since neglected Wyttenback's divorce petition and the case remains pending but dormant in the Ramsey County District Court.

6. Respondent did not transfer any portion of Wyttenback's \$1,900 retainer to Rowe, nor did she refund any of the retainer to Wyttenback. In October 1999, Wyttenback wrote respondent requesting the return of her \$1,900 retainer (Exhibit 3). Respondent has not responded to Wyttenback's refund request.

7. Respondent's conduct in the Wyttenback matter violated Rules 1.4, 1.15 (a), 3.4(c), 5.5(a) and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC) and Opinion 15 of the Lawyers Professional Responsibility Board (LPRB).

SECOND COUNT

Heyen Matter

8. On May 29, 1998, Sheila Heyen met with respondent in her office concerning a family law matter involving Sheila's minor son. At the time, respondent was suspended from the practice of law and did not disclose to Heyen that she was unable to represent her.

9. On June 8, 1998, Heyen issued respondent a \$500 check as a retainer (Exhibit 4). Respondent deposited Heyen's check without informing Heyen that she was not licensed to practice and could not represent her at an upcoming June 19, 1998, hearing. Respondent did not deposit the retainer funds into a trust account nor did she have Heyen sign a retainer agreement indicating that the funds would not be deposited into a trust account or be held until earned.

10. On June 18, 1998, Heyen learned that respondent had not filed any affidavits in response to the motion which was scheduled for the next day. When Heyen called respondent, respondent informed her that she would be unable to appear on the nineteenth because she was not licensed to practice. Heyen was forced to obtain new counsel. Respondent did not refund Heyen's \$500 retainer until June 25, 1998.

11. Respondent's conduct in the Heyen matter violated Rules 1.4, 1.15 (a), 5.5(a) and 8.4(c) and (d), MRPC and Opinion 15, LPRB.

THIRD COUNT

Jeness Matter

12. Prior to respondent's suspension from the practice of law she was representing Linda Jenness in a custody proceeding involving her minor daughter. In November or December of 1997, Jenness' daughter became involved in a juvenile delinquency matter. The representation of Jenness and her daughter in the juvenile delinquency proceeding was referred to respondent's ex-husband, who is also a lawyer.

The custody dispute and the file pertaining to the custody dispute remained with respondent.

13. When respondent was suspended from the practice of law on December 4, 1997, she was ordered to notify her existing clients of her suspension. Respondent did not notify Jenness of her suspension even though Jenness was an existing client and the custody issues were still pending.

14. In February 1998, Jenness began providing respondent's law office with information for a March 5, 1998, hearing in the custody matter. Neither respondent or the associate who was working in respondent's office informed Jenness that respondent was suspended from the practice of law.

15. On March 5, 1998, respondent told Jenness that she had been suspended from the practice of law, but that the suspension period had ended and she was waiting for a court order to be formally reinstated. This statement was false. Respondent called the court and obtained a continuance of the March 5, 1998, hearing to March 19, 1998. In fact, respondent had not complied with the conditions for reinstatement nor had she filed the required affidavit asking to be reinstated. Respondent did not inform either Jenness or the court that she was still suspended from the practice of law when she requested the continuance.

16. Between March 5 and 19, 1998, Jenness was unable to contact respondent by telephone. On the morning of the March 19, 1998, hearing, Jenness contacted respondent who told her that there would be another continuance of the hearing and that she was contacting the family court referee to obtain another continuance. In fact, respondent obtained no such continuance and the matter proceeded by default due to Jenness' failure to appear.

17. A few days after the hearing, Jenness learned from her daughter that the hearing had taken place and that she had failed to appear. Jenness immediately

attempted to contact respondent and left messages on her answering machine.

Respondent failed to return Jenness' calls.

18. On March 31, 1998, Jenness received a copy of a proposed order stating that the March 19, 1998, hearing had taken place and that neither she nor respondent had attended. Jenness again tried to contact respondent and eventually contacted Rowe on March 31, 1998. Rowe advised Jenness to get another lawyer.

19. Jenness obtained substitute counsel who was forced to bring a motion to vacate the decision resulting from the March 19, 1998, hearing.

20. Respondent's conduct in the Jenness matter violated Rules 1.3, 1.4, 3.4(c), 4.1, 5.5(a) and 8.4(c) and (d), MRPC.

FOURTH COUNT

Yang Matter

21. In 1994 respondent represented Mr. Sa Yee Yang in the adoption of his daughter in Ramsey County. In March or April 1998, Yang asked respondent to handle the name change for his adopted daughter.

22. Respondent did not tell Yang that she was suspended and could not represent him. Instead, respondent merely told Yang that the name change application and proposed name change order would be prepared by an associate lawyer who was working in respondent's office.

23. The name change was completed by the associate lawyer in respondent's office on June 1, 1998. Shortly after the name change order was issued, Yang provided respondent with his daughter's original birth certificate from California and asked respondent to obtain an amended birth certificate reflecting his daughter's name change.

24. Thereafter, Yang and his wife made numerous calls to respondent concerning the amended birth certificate because Yang's daughter's school was

requesting it. Despite repeated assurances that she would obtain the amended birth certificate and return the original, respondent failed to do so.

25. In October 1999 Yang consulted with attorney Linda Miller who is the Executive Director of the Civil Society. On October 25, 1999, Miller called respondent. Respondent stated that she would bring the original certificate to Miller's office within two days. When respondent failed to do so, Miller wrote respondent and left telephone messages. Respondent did not respond or return the original birth certificate for Yang's daughter.

26. In January 2000, Miller filed an ethics complaint on Yang's behalf with the Director, alleging respondent's failure to return the birth certificate. Respondent has not responded to the complaint. *See* paragraph 26 below. In March 2000, respondent returned Yang's file to Miller. The file includes only a copy of the birth certificate.

27. Respondent's conduct in the Yang matter violated Rules 1.3, 1.4, 5.5(a), 1.16(d) and 8.4(c) and (d), MRPC, and Opinion No. 13, LPRB.

FIFTH COUNT

Non-Cooperation

28. On October 1, 1999, respondent was notified of the Wyttenback ethics complaint and was requested to respond in writing to the complaint and include an explanation for the disposition of Wyttenback's \$1,900 retainer and respondent's failure to refund the retainer. Respondent submitted a written response to the complaint on October 12, 1999, but did not address the disposition of Wyttenback's retainer or respondent's failure to refund the retainer.

29. On October 19 and November 3, 1999, the Director wrote respondent again requesting an explanation for the disposition of Wyttenback's retainer and the failure to refund the retainer. Respondent did not respond.

30. On February 3 and 29, 2000, respondent was requested to submit a written response to the Yang complaint. Respondent did not respond.

31. Respondent's failure to cooperate with the investigation of the Wyttenback and Yang complaints violated Rules 8.1(a)(3), and 8.4(d), MRPC.

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

Dated: September 19, 2000.



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