

STATE OF MINNESOTA

IN SUPREME COURT

FILE NO. _____

In Re Petition for Disciplinary
Action against JAMES MALCOLM WILLIAMS,
Attorney at Law.

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 Lawyers Professional Responsibility, hereinafter Director, files this petition.

The Panel heard evidence related to Count One and pursuant to Rule 9(i), Rules on Lawyers Professional Responsibility (RLPR), made a finding of probable cause. Pursuant to Rules 9, 10(d), 12 and 19(b)(1), RLPR, the Director also alleges the professional misconduct set forth in Counts Two and Three, which need not under the RLPR be first presented to a panel before inclusion in this petition.

The above-named attorney, hereinafter respondent, is, and has been, since June 10, 1952, admitted to practice law in Minnesota. Respondent has paid through September 30, 1986, the registration fee required by Rule 2, Rules for Registration of Attorneys. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

A. Respondent represented Howard P. Sievert in Sievert v. First National Bank in Lakefield, et al., 358 N.W.2d 409 (Minn.

App. 1984). A copy of the Sievert appellate decision is attached as Exhibit 1.

B. Sievert stated, and the Director hereby alleges, Notwithstanding that we reverse on other grounds, we are compelled to condemn the incessant misconduct by attorney Williams. Throughout the six-week trial he was consistently rude, argumentative and abusive to witnesses and the court. He urged the jury to speculate on matters not before it and made repeated appeals to passion and prejudice. Williams' persistent misconduct made it impossible for the jury to arrive at an impartial verdict. A pattern of repeated attorney misconduct may necessitate a new trial, even where no one incident would be sufficiently prejudicial to require a new trial. Nadeau v. of Ramsey, 277 N.W.2d 520, 524 (Minn. 1979); Wild v. Rarig, 302 Minn. 419, 234 N.W.2d 775 (1975).

Sievert, 358 N.W.2d at 416.

C. Attached as Exhibit 2 is a photocopy of Sievert trial transcript pages 2368-2372, a portion of respondent's cross-examination of attorney Robert J. Sheran. This cross-examination disregarded court rulings, violated evidentiary rules and included irrelevant questions intended to degrade the witness and tribunal.

D. Respondent appealed to the passion and prejudice of the jury and encouraged it to speculate, by alluding to matters unsupported by evidence. One example of such conduct is respondent's argument to the jury that a certain check "said this is an offer to buy North Ridge for \$550,000, and this is a down payment." T. 2797, 2832. Respondent's ". . . analysis of the missing check is contradicted by all of the evidence in the record. . . . There was no testimony that anyone saw terms

written on the check." Sievert at 416. Respondent had no basis for believing his statement was supported by admissible evidence.

E. Throughout the proceedings, and notwithstanding the trial court's repeated rulings and admonishments, respondent repeatedly posed questions of witnesses and made statements in argumentative form. Among the instances of such questions, statements, rulings and admonishments are the following:

- T. 15, 17, 19, 20.
- T. 42, 11. 15-16
- T. 42, 1. 2-5
- T. 57, 11. 1-18
- T. 58, 11. 13-23
- T. 60, 11. 16-25
- T. 68, 11. 5-10
- T. 98, 11. 5-13 (court asks respondent to "try to avoid being argumentative")
- T. 100, 11. 16-23
- T. 106, 11. 1-9
- T. 108, 11. 11-17
- T. 128, 11. 8-15
- T. 132, 11. 4-7
- T. 132-3, 11. 21-2 (in which respondent states, "I admit it's argumentative.")
- T. 133, 11. 11-13
- T. 137, 11. 1-6
- T. 155-6, 11. 19-2
- T. 156-7, 11. 23-4 (in which the court asks respondent to ask questions "without trying to preface it with what you may have or what you may not have testified to previously")
- T. 177, 11. 15-18
- T. 198, 11. 6-12
- T. 198-9, 11. 22-7
- T. 204, 11. 16-18
- T. 233, 11. 20-23
- T. 238, 11. 10-13
- T. 248, 11. 7-24
- T. 249-50
- T. 258, 11. 13-18
- T. 259, 11. 16-19
- T. 291-2
- T. 296
- T. 350, 11. 17-20
- T. 365-6
- T. 368, 11. 24-5 - T. 369, 1. 9,

- T. 374, 11. 17-20
- T. 394, 11. 2-3
- T. 395, 11. 23-5
- T. 397, 11. 17-20
- T. 462
- T. 1984, 11. 8-12
- T. 1985, 11. 8-11
- T. 1986, 11. 13 - T. 1987, 1. 13
- T. 1991, 11. 16-24
- T. 1994, 1. 11 - T. 1995, 1. 2
- T. 1996, 1. 6-14
- T. 1996, 1. 6 - T. 1998, 1. 11
- T. 2001, 11. 5-11 (at which the court states to respondent, "I am going to ask that you attempt to refrain from asking obviously argumentative questions.")
- T. 2001, 11. 21-3
- T. 2002-4 (at which, "The Court will again ask that you refrain from asking obviously argumentative questions.")
- T. 2006, 11. 2-4
- T. 2008, 11. 9 - T. 2009, 1. 21.
- T. 2015, 11. 5-17 (at which the court specifically admonishes respondent again regarding his argumentative questioning)
- T. 2019, 11. 4-19
- T. 2028-30 (at which the court again specifically admonishes counsel regarding argumentative questions)
- T. 2030-1, 11. 22-1
- T. 2168 - 2170
- T. 2427 - 2428

F. Respondent repeatedly interrupted the trial court and engaged in discourteous behavior. See, e.g., T. 208-211, including respondent's statement to the Court, "But the fact that you didn't understand it, I can only apologize for your not understanding it." T. 1285-1286, T. 1320-1322, T. 1463-1465, T. 1839-1842.

G. Respondent repeatedly asserted his personal opinion regarding the merits of the Sievert litigation, credibility of witnesses, and other matters, as well as asserting his own knowledge of certain matters. See, e.g.,

T. 2796, 11. 15 - T. 2797, 1. 23
T. 2800, 11. 9-12
T. 2803, 11. 24 - T. 2804, 1. 7
T. 2806, 11. 15-19
T. 2807, 11. 1-6
T. 2807, 11. 3-4
T. 2813, 11. 24-5
T. 2818, 11. 16-18
T. 2825, 11. 20-24
T. 2828, 11. 7-8
T. 2832, 11. 24-25

H. Respondent's pattern of misconduct in Sievert violated the disciplinary rules, including but not necessarily limited to DR 1-102(A)(5), DR 7-106(A), DR 7-106(C)(1), (2), (3), (4), (6) and (7), Minnesota Code of Professional Responsibility (MCPR).

SECOND COUNT

A. On August 21, 1981, in Jackson, Minnesota, at the deposition of Howard P. Sievert, respondent stated to attorney William Rosen, "Don't use your little sheeny Hebrew tricks on me, Rosen." T. 337, 11. 8-9.

B. On April 9, 1982, the office of the Director of Lawyers Professional Responsibility issued a warning to respondent for his deposition conduct, including the above remark to Mr. Rosen. On September 2, 1982, the warning was withdrawn. Pursuant to Rule 19(b)(1), Rules on Lawyers Professional Responsibility, and in connection with respondent's continuing course of conduct in Sievert, and as alleged in Count Three below, respondent's remark to Rosen is alleged in these proceedings as misconduct.

C. Respondent's conduct violated the disciplinary rules, including but not necessarily limited to DR 7-102(A)(1), DR 7-106(C)(5) and DR 7-106(C)(6), MCPR.

THIRD COUNT

A. On November 20, 1985, respondent appeared for hearing before a Lawyers Professional Responsibility Board Panel.

B. After approximately three hours of hearing, and after approximately 45 minutes of deliberation by the Panel on the Director's motion to determine that probable cause had been established to believe public discipline is warranted, pursuant to Rule 9, RLPR, the Panel determined that there was probable cause. A copy of the Panel hearing transcript reflecting this determination and subsequent colloquies, is attached as Exhibit 3.

C. Respondent repeatedly disrupted the proceedings, verbally abused the Panel members and engaged in conduct prejudicial to the administration of justice. Such unprofessional conduct included, but was not limited to, the following instances.

D. Respondent stated to the Panel, and particularly to the Panel Chairman, Attorney Ronald P. Smith,

So the decision that you have made today to hold me up to public ridicule and scorn in front of my clients, in front of judges, in front of lawyers, without any evidence at all, is a disgrace to the legal profession, and precisely, sir, that is what I consider you to be.

I don't think you are aware of the United States Constitution. I don't think you are aware of due process. I don't think you know the difference between substantive and procedural due process. I don't think you know the right of free speech, and I -- you're smiling because you have, you have, fundamentally deprived me of my rights, and you are proud of it. And that is why I say, I consider you a disgrace to our profession.

(T. 140-141)

D. Thereafter, the following colloquy took place,

THE CHAIRMAN: Mr. Williams, would you say that this is typical of the decorum in the Sievert case in the manner in which --

MR. WILLIAMS: I would say that to compare you to Judge Mann is like comparing the devil to Jesus Christ.

(T. 143)

E. Thereafter, respondent stated to the Panel, and particularly to Panel member Fenita Foley, a minority group member,

I believe that the Constitution applies to everybody.

That's why it's a disgrace to me that you voted the way you did. But apparently you don't respect the fact that people who are in minorities like myself or yourself do not get due process in this country.

* * * *

I don't think Ms. Foley knew what is going on -- still probably doesn't know what is going on.

Ms. Foley: Ms. Foley can speak for herself.

Mr. Williams: Well, first of all, you are a public employee and you have no business sitting on this because it is the establishment that is proceeding against me.

Ms. Foley: You have --

Mr. Williams: You are, you are employed by the County of Ramsey, and you have no business being here.

Ms. Foley: I am here on my own time.

(T. 145-147)

F. Respondent repeatedly interrupted the Panel Chairman during the proceedings. See, e.g., T. 138-142.

G. Respondent's conduct violated the Minnesota Rules of Professional Conduct, including but limited to Rule 3.5(h), Rule 4.4 and Rule 8.4(d).

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: December 3, 1985.



WILLIAM J. WERNZ
DIRECTOR OF LAWYERS PROFESSIONAL
RESPONSIBILITY
Attorney No. 11599X
444 Lafayette Road, 4th Floor
St. Paul, MN 55101
(612) 296-3952