

STATE OF MINNESOTA
IN SUPREME COURT

C5-91-670

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LAWYERS PROF. RESP. BOARD

Supreme Court

Per Curiam

In Re Petition for Disciplinary
Action against T. Jay Salmen,
an Attorney at Law of the
State of Minnesota.

Filed May 8, 1992
Office of Appellate Courts

O P I N I O N

Per Curiam.

This matter comes to us on the petition of the Director of the Lawyers Professional Responsibility Board for disciplinary action against respondent T. Jay Salmen, who was admitted to the practice of law in 1973. Having considered allegations of professional misconduct arising out of Salmen's representation of a client who was also Salmen's investment partner, the referee concluded that Salmen was guilty of unprofessional conduct justifying suspension.

Over a period of several years Salmen and John Bartz entered into a number of joint real estate investments. In 1985 Bartz withdrew from their general partnership which owned and operated a building in Minnesota City. Bartz conveyed his interest in the property to Salmen and Salmen gave Bartz a promissory note in the amount of \$27,736. Both Bartz and Salmen aver that, in conformity with their customary practice, when Bartz withdrew from the partnership he promised to pay Salmen one-half of the loss if the investment turned sour.

In June 1989 Bartz retained Salmen to represent him in a marital dissolution proceeding. In September 1989 Bartz claimed in answers to interrogatories that he owed

Salmen \$83,750 in connection with the Minnesota City investment, and copies of a letter to that effect from Salmen to Bartz dated May 3, 1988 and of a promissory note dated December 15, 1988 in the amount of \$83,750 were attached as evidence of the debt. Mrs. Bartz had not previously been aware of the existence of such a debt, which amounted to one and one-half times Bartz's annual income. Her lawyer repeatedly but unsuccessfully asked for verification of the debt and for the original of Salmen's letter. Except for the mortgage on the Bartz residence the debt to Salmen was the largest single debt involved in the proceeding, and its size constituted an obstacle to agreement concerning division of the marital property.

When it became apparent that the matter would be tried and that Salmen would be called as a witness, Salmen's firm withdrew as counsel and referred Bartz to other counsel. Salmen was served with a subpoena duces tecum, but when he first appeared to testify, he did not bring with him any record of the transactions concerning the Minnesota City investment property. He testified that the \$83,750 promissory note and his letter dated May 3, 1988 were both genuine, but the copy of the letter which Salmen produced on his second day of testimony prompted an offer of proof that two of the attorneys whose names were partially legible on that copy had not been admitted to the practice of law until October 1988, some five months after the letter was purportedly written. The trial court refused Salmen's request to return to the witness stand to clarify his testimony. Subsequently, the parties entered into a stipulated property division in which Bartz received no credit for the alleged indebtedness to Salmen.

The referee found by clear and convincing evidence that the letter could not have been written on May 3, 1988 because the printer had not delivered the stationery on which it was typed until sometime the following November. He also found that although the letter was not originally designed to defraud Mrs. Bartz or the court, Salmen's testimony with respect to the letter was false and constituted a fraud on both. The referee concluded

that Salmen's conduct violated Minnesota Rules of Professional Conduct 3.3(a)(1), 3.3(a)(4), 3.4(b), 8.4(c) and 8.4(d), and he recommended that Salmen be suspended for six months.

We have on numerous occasions remarked that the purpose of disciplinary action is not to punish but rather is to guard the administration of justice and to protect the courts, the legal profession and the public and that the nature of the misconduct, the harm to the public and to the legal profession must be considered when determining the appropriate discipline. See, e.g., In re Shaughnessy, 467 N.W.2d 620 (Minn. 1991). Our legal system depends on the truthfulness of the testimony of witnesses and false testimony strikes at the very heart of the administration of justice. Therefore, we look on Salmen's misconduct as a serious breach of the rules of professional conduct and we are of the opinion that a longer period of suspension than that recommended by the referee is required.

It is, therefore, the judgment of this court:

(1) That commencing ten (10) days from the date of issuance of this opinion respondent T. Jay Salmen is indefinitely suspended from the practice of law for a period not less than one year.

(2) That the reinstatement hearing provided in Rule 18, Rules on Lawyers Professional Responsibility, is not waived and reinstatement shall be conditioned upon the following:

(a) Respondent's successful completion of the professional responsibility portion of the bar examination pursuant to Rule 18(e), Rules on Lawyers Professional Responsibility;

(b) Respondent's satisfaction of the continuing legal education requirements contained in Rule 18(e), Rules on Lawyers Professional Responsibility; and

(c) Respondent's compliance with Rule 26, Rules on Lawyers Professional

Responsibility.

(3) That the respondent shall pay to the Director the sum of \$750.00 in costs pursuant to Rule 24, Rules on Lawyers Professional Responsibility.

IT IS SO ORDERED.