

FILED

January 5, 2021

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

A19-1117

In re Petition for Disciplinary Action against
Joseph Kaminsky, a Minnesota Attorney,
Registration No. 0053351.

ORDER

On December 17, 2019, we suspended respondent Joseph Kaminsky for a minimum of 30 days, effective December 31, 2019. *In re Kaminsky*, 936 N.W.2d 476, 476 (Minn. 2019) (order). We stated that by December 17, 2020, Kaminsky was required to file proof of his successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility and that failure to do so would result in automatic suspension, as provided in Rule 18(e)(3), Rules on Lawyers Professional Responsibility (RLPR). *Kaminsky*, 936 N.W.2d at 476.

We conditionally reinstated Kaminsky on February 13, 2020. *In re Kaminsky*, 938 N.W.2d 842, 842 (Minn. 2020) (order). Our order reinstating Kaminsky repeated the requirement from our earlier order regarding the deadline for filing proof of successful completion of the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility. *Id.* We again stated that failure to do so would result in automatic suspension, pending successful

completion of the examination, as provided in Rule 18(e)(3), RLPR. *Kaminsky*, 938 N.W.2d at 843.

Rule 18(e)(3), RLPR, provides that, unless waived by this court, a lawyer who has been suspended for 90 days or less “must, within one year from the date of the suspension order, successfully complete such written examination as may be required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility.” The written examination referred to in Rule 18(e)(3) is the Multistate Professional Responsibility Examination (MPRE). *See* Rule 4.A(5), Rules for Admission to the Bar. “Except upon motion and for good cause shown, failure to successfully complete this examination shall result in automatic suspension of the lawyer effective one year after the date of the original suspension order.” Rule 18(e)(3), RLPR.

Kaminsky did not file proof of successful completion of the MPRE by December 17, 2020. Instead, on December 10, 2020, Kaminsky filed a motion seeking additional time, until May 1, 2021, to provide proof of successful completion of the MPRE. Kaminsky argues there is good cause for an extension of time to successfully complete the MPRE. Kaminsky took the August and October 2020 MPRE but did not receive a passing score. Kaminsky contends he did not receive a passing score because the exam was administered on a computer and, having never worked on one before, he was unable to properly operate the computer. Kaminsky has also filed a letter from his doctor stating he has a physical condition that makes it difficult for him to take a test using a computer. Kaminsky states that he realized he would need an accommodation for the MPRE only

after taking the August exam, but by then it was too late to request an accommodation for the October exam.

The Director of the Office of Lawyers Professional Responsibility opposes Kaminsky's motion.

During 2020, the MPRE was offered in March, August, and November. Kaminsky could have taken the exam in March. He has provided no information about why he did not do so.

Kaminsky could have learned that the MPRE would be administered on a computer before he took the August exam. Publicly available information states that the exam is taken on a computer. This same information also contains detailed information about how and when to apply for an accommodation because of a physical disability. In light of this information, Kaminsky could have requested an accommodation in a timely manner.

Kaminsky is similar to attorneys whose requests for additional time to provide proof of having passed the MPRE were denied when they failed to timely register for or take the exam. *See In re Pendleton*, No. A15-1996, Order at 2–3 (Minn. filed Jan. 3, 2017) (denying motion for additional time to pass the MPRE when attorney failed to take exam due to mistaken belief about when the exam was offered); *In re Swanson*, 877 N.W.2d 190, 190–91 (Minn. 2016) (order) (same); *In re Michael*, 855 N.W.2d 543, 543–44 (Minn. 2014) (order) (denying motion for additional time to pass the MPRE when attorney claimed she lacked knowledge about when the exam was offered, lacked financial resources to take the exam within the required time, and had registered for the next available test); *In re Ruhland*, 833 N.W.2d 401, 401 (Minn. 2013) (order) (denying motion for additional time to pass the

MPRE when attorney failed to register in a timely fashion for the last exam he could take and said caring for his aging parents contributed to his failure to timely register). Kaminsky has not established good cause for his failure to successfully complete the MPRE.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The motion of respondent Joseph Kaminsky to extend the time to successfully complete the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility is denied.

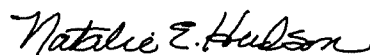
2. Respondent's conditional reinstatement is revoked and he is indefinitely suspended, effective 14 days from the date of this order.

3. Respondent shall comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals).

4. Respondent may apply for reinstatement under Rule 18(f), RLPR, by filing with the Clerk of the Appellate Courts and serving upon the Director of the Office of Lawyers Professional Responsibility proof that he has successfully completed the written examination required for admission to the practice of law by the State Board of Law Examiners on the subject of professional responsibility.

Dated: January 5, 2021

BY THE COURT:



Natalie E. Hudson
Associate Justice