

STATE OF MINNESOTA
IN SUPREME COURT
A23-1890



In re Petition for Disciplinary Action against
Susan S. Smith, a Minnesota Attorney,
Registration No. 0340467.

O R D E R

The Director of the Office of Lawyers Professional Responsibility filed a petition for disciplinary action alleging that respondent Susan S. Smith committed professional misconduct warranting public discipline—failing to conduct adequate pre-suit inquiry into her clients’ wishes to be represented by respondent or to be in a lawsuit, failing to consult her clients regarding their individual objectives and how those objectives could be pursued, failing to communicate with her clients regarding the risks and advantages relating to being a party in a lawsuit, failing to keep her clients reasonably informed as to the progress of the litigation, failing to ensure that her clients wished to be represented by respondent and to be parties in a lawsuit, failure to pay a law-related debt of \$25,000 in court-ordered sanctions imposed against her, and noncooperation with the Director’s investigation. *See* Minn. R. Prof. Conduct 1.1, 1.2(a), 1.4(a)(3), 1.4(b), 8.1(b), 8.4(c), 8.4(d); Rule 25(a), Rules on Lawyers Professional Responsibility (RLPR).

After respondent filed an answer, we referred the matter to a referee, who conducted a hearing and subsequently submitted proposed findings of fact, conclusions of law, and a recommendation for discipline. The referee concluded that respondent committed the

alleged rule violations and made findings about aggravating and mitigating factors. The referee recommended a minimum three-month suspension, with respondent permitted to be reinstated by affidavit, but with reinstatement conditioned upon payment of previous court-ordered monetary sanctions imposed against respondent or entry into a satisfactory payment plan, and with one year of probation following any reinstatement.

Because no party ordered a transcript of the proceedings before the referee, the referee's findings and conclusions are conclusive. *See* Rule 14(e), RLPR. We issued an order setting a briefing schedule. In her brief, the Director recommended that the court impose a minimum six-month suspension. Like the referee, the Director recommended that respondent be permitted to be reinstated by affidavit, but with reinstatement conditioned upon payment of the monetary sanctions or entry into a satisfactory payment plan. The Director recommended that upon reinstatement, respondent be placed on probation until the monetary sanctions imposed against her are fully satisfied. Respondent did not file a brief.

Although we give “significant weight” to a referee’s recommendation for a sanction, we bear the “final responsibility” for imposing discipline on Minnesota attorneys, *In re Riehm*, 883 N.W.2d 223, 233 (Minn. 2016) (quoting *In re Singer*, 541 N.W.2d 313, 315 (Minn. 1996)), and we serve as “the sole arbiter of the discipline to be imposed.” *Id.* (quoting *Singer*, 541 N.W.2d at 315). We consider four factors when determining appropriate discipline: the nature of the misconduct, the cumulative weight of the violations of the rules of professional conduct, the harm to the public, and the harm to the legal profession. *Id.* (citing *In re Nelson*, 733 N.W.2d 458, 463 (Minn. 2007)). We also

“consider aggravating and mitigating circumstances” and “look to similar cases for guidance” and to ensure consistent discipline. *In re Capistrant*, 905 N.W.2d 617, 620 (Minn. 2018).

Respondent’s misconduct centers on her representation of the Minnesota Election Integrity Team (MNEIT), a group founded after the 2020 election, that sought to challenge the results of the 2020 Minnesota elections. MNEIT distributed an affidavit, drafted by respondent, to an email list, soliciting recipients to “join[] with other voters across MN to contest Minnesota election results.” Several individuals returned the affidavits. The day after the email was sent, in early December 2020, respondent filed five election contests in Ramsey County District Court. These five lawsuits challenged election results for five different offices and were brought by respondent in the names of 14 individual plaintiffs whom respondent had selected from the individuals who had returned the affidavits, without obtaining their consent to do so. Four of the five election matters were assigned to a judge of the Ramsey County District Court, and the fifth matter (challenging a United States Senate election) was assigned to a three-judge panel. Eventually all the matters were dismissed, and the defendants moved for taxation of costs and disbursements, totaling approximately \$18,000 across the five matters. The motions were granted, and monetary judgments were entered against the 14 plaintiffs.

Filing an unsuccessful election challenge is, of course, not attorney misconduct—but respondent’s treatment of the plaintiffs in these lawsuits was. She neither sought their permission prior to making them plaintiffs in a lawsuit nor informed them that she had done so. Indeed, at no time either prior to or during the litigation did respondent have any

conversations or communications, of any kind, with any of the 14 plaintiffs, none of whom even knew respondent's name. Only in late February 2021, after respondent was contacted by one of the 14 plaintiffs who had fortuitously discovered through other means that she had been made a party in a lawsuit and that a monetary judgment had been entered against her, did respondent communicate with any of the 14 plaintiffs. Later, that plaintiff reported to both local law enforcement and to the district court judge that her name had been improperly used in the election contest lawsuits. The judge conducted a hearing and concluded that respondent perpetrated a fraud on the court and the named plaintiffs by filing the lawsuits without confirming that the plaintiffs were knowingly seeking relief from the courts. The district court judge sanctioned respondent \$10,000 for this conduct. Similarly, the three-judge panel concluded that respondent had committed a fraud on the court and sanctioned respondent an additional \$15,000. Respondent did not pay the sanctions. Ultimately, 9 of the 14 plaintiffs asked to be removed from the proceedings. Respondent also failed to cooperate with the investigations by the Director of this misconduct.

Respondent's misconduct is serious. Her misconduct involved not just lack of competence and failure to communicate with clients, but dishonesty to the courts and disregard for the discipline process. The cumulative weight of her violations is substantial: respondent's misconduct was not a brief lapse in judgment but occurred throughout the litigation matters; over a year of non-cooperation with the Director's investigations; and over multiple years, continuing to date, with respect to her failure to pay the sanctions judgments. Respondent caused harm to the individual plaintiffs, by filing a lawsuit in their

name without their knowledge or consent which resulted in judgments being entered against them; to the courts; and to the reputation of the legal profession.

The referee opined that the monetary sanctions already imposed against respondent “should be considered,” possibly in mitigation of her misconduct. But the Director argues that the amount of those monetary sanctions reflects the seriousness of respondent’s misconduct, and that the imposition of those sanctions supports more, rather than less discipline. We agree with the Director that the monetary sanctions imposed against respondent are not a mitigating factor. The referee also concluded that respondent “has accepted responsibility that an attorney client relationship exists and that she is bound by the Minnesota Rules of Professional conduct,” and he stated that “the referee believes [respondent] has learned her lesson.” But the referee also concluded that respondent “has not exhibited true remorse.” Lack of remorse is an aggravating factor. *In re Igbunugo*, 989 N.W.2d 310, 331 (Minn. 2023). Accordingly, these findings by the referee do not diminish the seriousness of the offense or mitigate the appropriate discipline to impose.

Both the referee and the Director agree that the most relevant prior case law is *In re Greenman*, 860 N.W.2d 368 (Minn. 2015). We also agree. In *Greenman*, we suspended a lawyer for six months, and required the lawyer to petition for reinstatement, for making misrepresentations during an arbitration proceeding, engaging in client neglect and incompetence, failing to attend court hearings and conferences, failing to pay court-ordered sanctions and a law-related debt, pursuing frivolous claims, failing to timely return a client file, and failing to cooperate in the disciplinary process. *Id.* at 371. Although we recognize that there are distinctions between this case and *Greenman*, we agree that *Greenman* is

relevant. We conclude that the sanction imposed in that matter—including the requirement that the lawyer must petition for reinstatement, and that they make full payment of court-ordered sanctions before being allowed to do so, *see id.* at 379—is an important guideline for the appropriate sanction to impose on respondent.

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

IT IS HEREBY ORDERED THAT:

1. Respondent Susan S. Smith is indefinitely suspended from the practice of law, effective 14 days from the date of the filing of this order, with no right to petition for reinstatement for 180 days from the effective date of the suspension.

2. Respondent must comply with Rule 26, RLPR (requiring notice of suspension to clients, opposing counsel, and tribunals), and must pay \$900 in costs pursuant to Rule 24, RLPR.

3. Prior to seeking reinstatement, respondent must pay the \$10,000 in court-ordered sanctions imposed in the Ramsey County District Court's April 9, 2021 order in *Smith v. Simon*, No. 62-CV-20-5602, and the \$15,000 in court-ordered sanctions imposed in that court's June 22, 2021 order in *Quist v. Smith*, No. 62-CV-20-5598.

4. Respondent may petition for reinstatement pursuant to Rule 18(a)–(d), RLPR. Reinstatement is conditioned on 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, *see* Rule 18(e)(2), RLPR; *see also* Rule 4.A.(5), Rules for Admission to the Bar (requiring evidence that an applicant has successfully

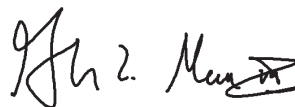
completed the Multistate Professional Responsibility Examination); and satisfaction of continuing legal education requirements, *see* Rule 18(e)(4), RLPR.

5. Upon reinstatement to the practice of law, respondent will be placed on probation for a period of two years, subject to terms and conditions that will include the following:

- a. Respondent must abide by the Minnesota Rules of Professional Conduct.
- b. Respondent must cooperate fully with the Director's Office in its efforts to monitor compliance with this probation. Respondent must promptly respond to the Director's correspondence by its due date. Respondent must provide to the Director a current mailing address and must immediately notify the Director of any change of address. Respondent must cooperate with the Director's investigation of any allegations of unprofessional conduct that may come to the Director's attention. Upon the Director's request, respondent must provide authorization for release of information and documentation to verify compliance with the terms of this probation.

Dated: June 5, 2025

BY THE COURT:

A handwritten signature in black ink, appearing to read "Gordon L. Moore, III", with a stylized flourish at the end.

Gordon L. Moore, III
Associate Justice