

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against ROBERT H. AITKEN, III,
a Minnesota Attorney,
Registration No. 301711.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 23, 2000. Respondent currently works in Bemidji, Minnesota. It is unknown if respondent's current employment entails the practice of law.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Forgery and False Statements

1. Respondent was employed as a public defender in the Ninth Judicial District.
2. In December 2006, Roxanne Chute was charged with trespass and obstruction in Beltrami County, Minnesota. Chute applied for and received appointment of a public defender from the Ninth Judicial District Public Defender. Chute was initially represented by a different public defender. Respondent took over Chute's case sometime in the spring of 2007.

3. In mid-April 2007, the prosecutor conveyed a plea offer to respondent stating that if Chute pled guilty to trespassing then the obstruction charge would be dismissed.

4. On May 24, 2007, respondent sent Chute a letter enclosing a blank plea petition for her to sign. The letter was mailed to Chute's address in Thief River Falls, Minnesota. Chute did not sign or return the document to respondent.

5. Without Chute's knowledge or consent, respondent printed Chute's name on the plea petition and dated it May 24, 2007. Respondent also signed a separate plea petition dated May 24, 2007, in Chute's name. Respondent then signed an acknowledgment of counsel and dated it June 1, 2007, so as to make it appear that Chute had returned the plea petition to him by mail. Respondent filed the plea petition with the district court, which approved it on June 1, 2007.

6. In either late May or early July 2008, Chute contacted Bev Hunt, the Beltrami County Court Administrator, about a letter that she had received advising her to pay a fine. As a result, Hunt faxed a copy of the signed plea petition to Chute.

7. Chute did not recognize the signature purporting to be her signature on the plea agreement and as a result on July 2, 2008, called and spoke with Kristine Kolar, Chief Public Defender for the Ninth Judicial District Public Defender. Chute informed Kolar that the signature was not hers and that she had not returned the plea agreement mailed to her in May 2007. Chute also e-mailed Kolar a copy of a cancelled check with her signature, a second signature sample and handwritten numbers in support thereof.

8. Chute also pointed out that she could not have signed the petition on May 24, 2007, because it was the date respondent mailed it to her from the public defender's office in Bemidji to her home in Thief River Falls.

9. Chute asked Kolar to determine who had signed her name to the plea petition without her consent.

10. That same day, Kolar confronted respondent about the forged signature. Respondent admitted to Kolar that he signed the plea petition in Chute's name without

her permission. Respondent claimed that he signed Chute's name at the suggestion of Chute's brother who is an attorney licensed and practicing in Pennsylvania.

11. Kolar then contacted Chute again who confirmed that she did not recall any discussion with respondent suggesting or authorizing him to sign the plea petition in her name.

12. Later that afternoon, Kolar contacted Chute's brother, Alan Chute, who stated that he had never communicated with respondent regarding his sister's case and that his only involvement had been sending a letter on Chute's behalf to Kristine Cannon, Chute's initial public defender. Alan Chute denied advising respondent to sign his sister's name to the plea petition.

13. Finally, Kolar reviewed the "Register of Actions" for this file on the computer program Odyssey, which at the time was the official court documentation and information tool. According to the register, the district court took Chute's case under advisement on March 21, 2007. The notes for the next three hearings, respectively April 24, 2007, May 9, 2007, and May 23, 2007, indicate the district court was waiting for respondent to submit a plea petition, which respondent first mailed to Chute on May 24, 2007.

14. Kolar subsequently contacted the district court on behalf of Chute. By order dated July 2, 2008, the district court vacated *nunc pro tunc* Chute's conviction order dated June 1, 2007, and scheduled a hearing for continued proceedings on June 23, 2008. Chute was appointed a different public defender from the Ninth District Public Defender to represent her.

15. Kolar contacted Chute and informed her that her conviction was vacated and that a hearing had been scheduled. Kolar and Chute discussed reinstating the plea offer. By letter dated July 3, 2008, Kolar sent Chute a new plea petition to sign and return. Chute signed the plea petition on July 14, 2008, which was entered by the district court.

16. Respondent subsequently left his employment with the Ninth Judicial District Public Defender to become the executive director of the Leech Lake Band of Ojibwe's Administrative Division.

17. Respondent's conduct violated Rules 3.4(a), 4.1, and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Non-Cooperation

18. On July 8, 2008, Kolar filed an ethics complaint with the Director regarding respondent's conduct in the Chute matter.

19. On July 17, 2008, a notice of investigation was mailed to respondent. The matter was assigned to the Fifteenth District Ethics Committee (DEC) for investigation. By letter dated July 22, 2008, respondent was informed that John Dimich was the DEC investigator assigned to investigate the complaint. Respondent failed to respond to the notice of investigation.

20. When respondent failed to respond, Dimich sent respondent a follow-up letter dated August 25, 2008, enclosing a copy of the complaint and again requesting a response by no later than September 15, 2008. Respondent failed to respond.

21. In December 2008, Dimich informed John Udem, Chair of the Fifteenth DEC, that respondent had failed to respond to his communications. Udem attempted to contact respondent twice at his home telephone number of (218) 335-2167 but received busy signals. Udem subsequently referred the matter back to the Director for further investigation noting respondent's non-cooperation.

22. On January 7, 2009, the Director sent a letter to respondent enclosing the DEC report and requesting a response. Respondent failed to respond.

23. On January 29, 2009, the Director sent respondent a second letter requesting his written response to the complaint and an explanation regarding his non-cooperation. Respondent failed to respond.

24. On March 26, 2009, the Director sent respondent a third letter noting his complete failure to cooperate in the Director's investigation, requesting his response to

the complaint, and noting that if he failed to respond, the Director would have no choice but to issue charges of unprofessional conduct. Respondent failed to respond.

25. On April 15, 2009, the Director performed an Internet address search to confirm respondent's telephone number and address. The Director located two numbers for a Robert Aitken in Bemidji, Minnesota. The Director called (218) 759-4812 and spoke with an individual who identified himself as respondent's father. Respondent's father confirmed the mailing address used by the Director and the DEC, namely 2636 Pathway Road, Bemidji, MN, 56601, was respondent's home address. Respondent's father confirmed respondent's telephone number and provided respondent's work number (218) 335-8230. This number is listed as respondent's work number on the website for the administrative division of the Leech Lake Band of Ojibwe.

26. That same day the Director called respondent's work number and was directed to the voicemail of "Robert Aitken." The Director left a message informing respondent that the Director would have no choice but to issue charges of unprofessional conduct for non-cooperation unless respondent contacted the Director. The Director also confirmed that numerous letters had been mailed to respondent with no response. Respondent did not contact the Director.

27. On May 1, 2009, the Director mailed charges of unprofessional conduct along with a notice of pre-hearing meeting and notice of panel assignment to respondent. The notice of pre-hearing meeting stated that a pre-hearing would occur at the Director's Office on May 14, 2009, at two o'clock in the afternoon. Respondent did not attend the pre-hearing meeting. Respondent did not contact the Director to respond to the pre-hearing meeting.

28. Pursuant to Rule 9(b), RLPR, respondent's answer to the charges of unprofessional conduct was due within seven days of the pre-hearing meeting. Respondent failed to submit an answer.

29. Respondent's conduct violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing otherwise 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: May 15, 2009.



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and



CASSIE HANSON
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This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: 5/28, 2009.



ROBERT B. BAUER
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD