

FILE NO. C3-97-356

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against ALAN J. ALBRECHT,
an Attorney at Law of the
State of Minnesota.

**PETITION FOR REVOCATION OF
PROBATION AND FOR FURTHER
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility, and pursuant to this Court's April 14, 1998, order in the matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 28, 1988. Respondent currently practices law in Brooklyn Center, Minnesota.

INTRODUCTION

By January 9, 1998, order this Court suspended respondent's license to practice law for 45 days to be followed upon reinstatement by two years' supervised probation. On April 14, 1998, respondent was reinstated to the practice of law and placed on probation for four years. Respondent's additional probation was based upon his failure to diligently pursue matters entrusted to him in regard to seven clients and his failure to pay a judgment against his firm, of which he was the sole shareholder. Among the conditions of respondent's probation was the following:

- a. Respondent shall abide by the Minnesota Rules of Professional Conduct.

DISCIPLINARY HISTORY

In addition to the discipline set forth above, respondent's history of prior discipline, including admonitions, is as follows:

- a. On October 22, 1993, respondent was issued an admonition for negotiating checks which were not made payable to him or his law office and for failure to deposit estate checks into a trust account while he determined where the funds should be disbursed.
- b. On July 15, 1994, respondent was issued an admonition for making a misleading statement to another lawyer about the relationship between respondent and a former shareholder in respondent's firm who had been disbarred.
- c. On July 15, 1994, respondent was issued another admonition for making a misleading statement to the husband of a former client about the relationship between respondent and a former shareholder in respondent's firm who had been disbarred.
- d. On March 21, 1997, respondent was issued an admonition for charging a client a fee greater than the fee he had agreed to charge and failing to fully cooperate with the Director's investigation of the client's complaint.
- e. On March 21, 1997, respondent was issued another admonition for failing to cooperate fully with the Director's investigation of a separate complaint against him.
- f. On July 2, 1997, respondent was publicly reprimanded and placed on two years' supervised probation for a pattern of delay and non-cooperation with the Director's investigation of client complaints, neglect of client matters, non-communication with clients, and failure to deposit a retainer into his trust account.

g. On February 2, 1999, respondent was issued an admonition for failing to pay a judgment entered against him for professionally related indebtedness.

h. On February 2, 1999, respondent was issued another admonition for failing to promptly return the unused portion of a retainer paid to him by a client.

i. On April 11, 2000, respondent was issued an admonition for failing to disclose to the court and opposing counsel the limited scope of his representation.

j. On February 28, 2001, respondent was issued an admonition for making false statements to a client in an effort to collect his fees.

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

FIRST COUNT

1. On July 31, 1998, Greg Arnovich hired respondent to represent him in an employment discrimination claim against Arnovich's former employer, Lil Orbits, Inc.

2. On February 3, 1999, respondent filed a charge of discrimination on behalf of Arnovich with the Minnesota Department of Human Rights.

3. On April 7, 1999, the Department of Human Rights mailed Lil Orbits, Inc.'s response to the charge of discrimination to Arnovich. In the cover letter accompanying the response, the department requested a rebuttal to the response within 30 days and noted, "If within those 30 days you fail to respond and do not request an extended deadline for submitting your rebuttal statement, the department may conclude that you do not disagree with the respondent's position; this could result in the prompt dismissal of your complaint." The department mailed a copy of this letter and the response to respondent.

4. On May 25, 1999, the Department of Human Rights dismissed the charge on the basis that the charging party failed to respond to the department's request for a rebuttal.

5. On June 8, 1999, respondent mailed a rebuttal to Lil Orbits, Inc.'s response to the Minnesota Department of Human Rights. Accompanying that rebuttal was a separate letter from respondent asking the department to, in essence, reopen its consideration of the charge. In that letter respondent stated:

With regard to the timing of the response, please be advised that the response of Greg Arnovich was delayed because of events not in the control of Greg Arnovich.

Frankly, there was some confusion in my office with regard to the specific date that the response was needed and, in addition, I should have contacted your office and sought a continuance or more time to respond to the allegations.

6. On August 6, 1999, the Minnesota Department of Human Rights mailed a letter declining to reopen consideration of Arnovich's charge of discrimination.

7. On July 9, 1999, respondent commenced a civil suit in Hennepin County District Court against Lil Orbits, Inc. alleging employment discrimination. Lil Orbits, Inc. served an answer and counterclaim upon respondent on July 29, 1999.

8. After receipt of the Lil Orbits, Inc.'s answer and counterclaim, other than preparing some drafts of discovery, respondent did nothing further to prosecute Arnovich's employment discrimination claim.

9. Throughout the course of the representation Arnovich regularly called respondent seeking information as to the status of his claims. Respondent failed to return Arnovich's telephone calls and failed to keep him advised as to the status of the matter.

10. In December 2000 Arnovich discharged respondent.

11. On February 15, 2001, Arnovich filed a complaint against respondent with the Office of Lawyers Professional Responsibility (OLPR). That complaint alleged that respondent had neglected his case and failed to adequately communicate with him. In regards to the failure to timely file a rebuttal to the employer's response to the charge of discrimination filed with the Minnesota Department of Human Rights, respondent stated, on three separate occasions:

Lil's [sic] Orbit apparently responded to the human rights charge. We do not have a copy of that document. I presume that we may not have received once [sic] since MDHR sent correspondence and other documents directly to Greg, the charging party. If they sent a copy of the response, they sent it directly to Greg. We must have received or reviewed a copy at some point since we put together a response and mailed it on June 7, 1999.

March 21, 2001, letter from respondent to district ethics committee investigator.

* * *

The entire argument has been well, the deadline was missed and it must have been the attorney's fault. No one has even established that we knew about the deadline. Again, the facts seem to suggest that Mr. Arnovich did not get his responses to us so that we could get them in time.

July 3, 2001, letter from respondent to Director's Office.

* * *

As I stated in my last letter, there is no clear evidence that I knew about the deadline or that I somehow missed the deadline. I still believe that we did not know about the deadline or that materials were not presented to us in a timely fashion so as to allow us to meet that deadline.

July 9, 2001, letter from respondent to Director's Office.

12. Respondent's statements as set forth in the paragraph above were false and deceptive. As noted in paragraph 5 above, respondent's June 8, 1999, letter to the Minnesota Department of Human Rights acknowledged that the failure to submit a timely rebuttal was solely his responsibility.

13. Respondent's conduct violated Rules 1.1, 1.3, 1.4, 8.1(a)(1), and 8.4(c), Minnesota Rules of Professional Conduct (MRPC), and the probation order.

SECOND COUNT

14. Richard Raatz hired respondent to prosecute a civil action enforcing a restrictive covenant regarding the construction of outbuildings on a parcel of real estate.

15. During the course of the litigation, the parties agreed that the question as to whether the restrictive covenant ought to be amended would be put to a vote by the affected homeowners. The majority of the homeowners voted in favor of permitting an amendment to the restrictive covenant.

16. On May 5, 1998, the court issued an order memorializing the vote, amending the restrictive covenant, and directing that the order be filed as an amendment to the declaration of protective covenants with the Hennepin County Recorder's Office. Notice of filing of that order was served on respondent on May 7, 1998.

17. On August 7, 1998, respondent filed a notice of appeal seeking review of the May 5, 1998, order.

18. On September 22, 1998, the Minnesota Court of Appeals dismissed the appeal as untimely, noting that the appeal should have been taken within 30 days after service of the notice of filing.

19. Respondent did not tell Raatz of the dismissal of the appeal until January 19, 1999.

20. On August 20, 1999, respondent initiated a second suit in Hennepin County District Court seeking to enforce the restrictive covenant.

21. On December 15, 1999, the court granted the defendant's motion to dismiss the second suit on the basis of *res judicata* and collateral estoppel.

22. On March 3, 2000, pursuant to motion brought by the defendant, the court issued an order awarding judgment against respondent for costs and reasonable

attorney's fees in the amount of \$2,412. The court, in its memorandum accompanying that order, stated:

In short, the court concludes that having failed to prevail in their argument and case before Judge Carey, and disagreeing with his order, plaintiff elected, rather than making a motion to Judge Carey to vacate the order, to commence a second action in which he sought the very relief denied by Judge Carey. The court concludes that this action was not 'warranted by existing law or a good faith argument for extension, modification or reversal of existing law,' and that it was commenced to harass defendants. The court also concludes that counsel for plaintiff, when judged by an objective standard, did not have a reasonable basis for pursuing this claim, and that the sanction should be imposed against counsel, and not plaintiff.

23. Respondent appealed the dismissal of this second suit and the award of attorney's fees.

24. On January 30, 2001, the Minnesota Court of Appeals affirmed the trial court's dismissal and award of attorney's fees.

25. On June 7, 2001, Raatz filed a complaint against respondent with the OLPR. During the course of investigating that complaint, respondent falsely told the Director's Office that he told Raatz about the September 25, 1998, Court of Appeals' order dismissing his appeal on either the 28th or 29th of September 1998. In fact, respondent did not tell Raatz of that order until January 19, 1999.

26. Respondent's conduct violated Rules 1.1, 1.3, 1.4, 3.1, 8.1(a)(1), and 8.4(c), MRPC, and the probation order.

THIRD COUNT

27. On June 10, 1996, Ella R. Christopherson retained respondent to represent her in an employment discrimination claim. Respondent failed to timely file claims on Christopherson's behalf with the Equal Employment Opportunity Commission or the Minnesota Department of Human Rights and failed to timely serve a summons and complaint on Christopherson's behalf. No later than June 7, 1997, the statute of

limitations expired on Christopherson's potential employment discrimination claims. Respondent's neglect in this regard was one of the subjects of an amended and supplementary petition for disciplinary action that was considered by the Supreme Court in issuing its April 14, 1998, order reinstating respondent to the practice of law and placing him on supervised probation for a period of four years.

28. In July 1997 respondent had drafted a summons and complaint in order to initiate an employment discrimination suit on behalf of Ella Christopherson in Hennepin County District Court. Respondent did not then serve or file the summons and complaint.

29. On April 10, 1998, while his license to practice law was suspended, respondent arranged for Christopherson to come to his office and sign a summons and complaint falsely making it appear that Christopherson was acting as attorney *pro se*. Respondent then arranged for service of the summons and complaint on Christopherson's former employer.

30. Although he led Christopherson to believe he was still working on her case, subsequent to his reinstatement respondent took no further action to either prosecute the civil suit initiated on behalf of Christopherson, dismiss the suit as barred by the statute of limitations, or inform Christopherson that the suit was barred by the statute of limitations.

31. From April 14, 1998, through February 2001, Christopherson repeatedly called respondent attempting to obtain a report as to the status of her employment discrimination claim. Respondent failed to return these calls and failed to keep Christopherson advised as to the status of her case.

32. Respondent's conduct violated Rules 1.1, 1.4, 3.1, 4.1, 5.5, and 8.4(c), MRPC, and the probation order.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, disbaring respondent, suspending his license to practice law or

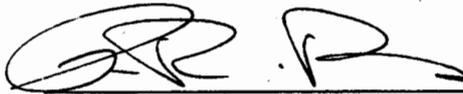
imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: October 10, 2001.



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