

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against PAUL APPLEBAUM,
a Minnesota Attorney,
Registration No. 223098.

**PETITION FOR
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 upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on November 15, 1991. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline, including admonitions, is as follows:

A. On January 15, 1998, respondent was issued an admonition for his conduct in failing to make reasonable efforts to correct a person's misunderstanding that he was representing them in a matter. Respondent's conduct violated Rule 4.3(b), Minnesota Rules of Professional Conduct (MRPC).

B. On November 15, 1995, respondent was issued an admonition for his conduct in depositing unearned retainer funds directly into his business account without a written agreement from the client, for failing to disclose the terms of the fee, for failing to disclose that the funds would not be held in a trust

account, and for failing to communicate with the client the rate or basis of his fee. Respondent's conduct violated Rule 1.15(a) and (b), MRPC, and Lawyers Professional Responsibility Board Opinion No. 15.

C. On October 20, 1994, respondent was issued an admonition for his conduct in using an advertisement that falsely stated he was certified and improperly implied that he had been certified as a specialist, or that he had received other formal recognition as an attorney with special competence or expertise. Respondent's conduct violated Rules 7.1(a) and 7.4(b), MRPC.

FIRST COUNT

Miller Matter

1. Respondent and Sara Miller met on September 30, 2005, to discuss a product liability claim against a pharmaceutical company relating to a May 19, 2003, heart episode Miller had suffered after taking a prescription medication. At that time, respondent reviewed and copied a packet of medical records provided by Miller.

2. Miller emailed respondent three times in October of 2005 with regard to respondent's representation. Respondent and Miller entered into negotiations regarding the terms of respondent's representation, and on October 15, Miller agreed via email to the one-third contingency fee respondent required to represent her.

3. On October 21 and 26, 2005, Miller inquired via email as to whether respondent was interested in her case and why she was not receiving any reply from him.

4. On October 30, 2005, respondent replied and expressed interest in Miller's case, but again inquired as to the one-third contingency fee requirement. Miller responded the same day, noting that she had agreed to the fee weeks ago and wanted to get her case started.

5. The retainer agreement was executed on November 5, 2005. Respondent then had no contact with his client Miller until November 22, 2005, when she emailed him requesting a status update.

6. In his November 22, 2005, email, respondent stated that he would have the lawsuit ready for service within seven days. He also advised Miller that he would meet with her after he had received an answer to the complaint, and informed her that he would provide her with a copy of the papers when they were ready for service.

7. Respondent had no further contact with Miller for approximately six weeks, when Miller again initiated contact. On January 4, 2006, Miller emailed respondent requesting an update and inquiring as to whether the process typically takes so long.

8. On January 4, 2006, respondent replied via email, stating that he had served the complaint and that the opposing party had requested an extension. Respondent's statements were false. Respondent also told Miller to be patient, that he would be in touch, and asked her to consider whether she wanted to "pursue a case that may take years."

9. On January 12, 2006, Miller emailed respondent and agreed to be patient. She also advised respondent that she had recently returned to the emergency room with heart pain, and inquired as to whether respondent wished to continue on with her matter. Respondent answered via email that day, indicating that he "absolutely" wished to continue.

10. At no point during his representation of Miller did respondent prepare, file or serve a summons and complaint on her behalf.

11. Respondent then had no further contact with Miller for two years.

12. On January 5, 2008, Miller sent respondent an email inquiring as to whether he was "still around," providing an updated address, and stating that she would appreciate hearing from respondent. Respondent failed to respond.

13. On November 4, 2008, nearly three years after respondent last communicated with her, Miller sent a certified letter to respondent. Miller stated in her letter that respondent had not replied to her letters, phone calls or emails. She noted that she had not received a copy of the lawsuit yet, and inquired as to whether anything

had actually been done. Miller also advised respondent that she would void the retainer agreement and retain another attorney if she did not receive an answer from respondent, or proof that the lawsuit had been filed, by November 20, 2008.

Respondent failed to respond.

14. Although respondent claims to have written a letter declining to represent Miller after the appellate decision in a Texas case, respondent has no documentation of having done so, and Miller did not receive any such letter.

15. On January 23, 2009, Miller appeared in person at respondent's office to request her records. Respondent agreed to mail them the following day after retrieving them from storage.

16. Respondent failed to mail Miller's records to her as promised.

17. On February 6, 2009, when she still had not received the requested records, Miller left a telephone message for respondent. That same day respondent replied via text message that he thought the file had been sent, and stated that he would follow up that same day and get the file out if it had not already been sent.

18. Respondent again failed to return the records, and did not communicate with his client for nearly three weeks. During that time, Miller left two phone messages for respondent, on February 13 and 20, 2009.

19. On February 26, 2009, respondent sent a text message to Miller in which he stated that he could not locate her file and that it might have been misplaced by his officemates. Respondent also claimed he might have mailed Miller's file to her the previous year and noted that Miller's new lawyer could get started with a lawsuit in the meantime.

20. In April of 2009, respondent admitted that he lost Miller's file in the fall of 2008.

21. At no point during his representation of Miller did respondent attempt to determine the statute of limitations applicable to Miller's claims or discuss that issue

with her. The statute of limitations on Miller's claims expired during the two-year period in which respondent had no contact with Miller.

22. Respondent's conduct in failing to diligently pursue Miller's case resulting in the expiration of the statute of limitations violated Rules 1.1, 1.3, and 8.4(d), MRPC.

23. Respondent's failure to adequately communicate with Miller violated Rules 1.4(a) and (b), MRPC. Respondent's failure to maintain and return Miller's file violated Rules 1.15(c)(4) and 1.16(d), MRPC.

24. Respondent's false statements with regard to the preparation, filing and service of a summons and complaint on Miller's behalf, as well as respondent's prejudicial actions with regard to the administration of justice on Miller's behalf, violated Rule 8.4(c), MRPC.

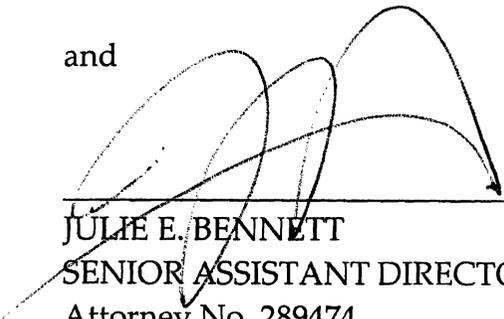
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: August 3, 2011.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



JULIE E. BENNETT
SENIOR ASSISTANT DIRECTOR
Attorney No. 289474