

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against GARRY D. BARNETT,
a Minnesota Attorney,
Registration No. 4820.

**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 October 5, 1973. Respondent currently practices law in Mankato, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Failure to Cooperate

1. On June 18, 2010, the Director received a complaint against respondent from Jason Kohlmeyer. On June 30, 2010, the Director issued to respondent notice of investigation of the Kohlmeyer complaint. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

2. On July 23, 2010, the Director wrote to respondent to request, for the second time, his written response to the Kohlmeyer complaint. Respondent failed to respond.

3. On August 16, 2010, the Director wrote to respondent to request, for the third time, his written response to the Kohlmeyer complaint. Respondent failed to respond.

4. On August 30, 2010, the Director received a complaint against respondent from Gregory Hawkinson. On September 7, 2010, the Director issued to respondent notice of investigation of the Hawkinson complaint. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

5. On September 2, 2010, the Director received a complaint against respondent from Linda Heine regarding the R.B. matter. On September 15, 2010, the Director issued to respondent notice of investigation of the Heine complaint. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

6. On September 15, 2010, the Director wrote to respondent to request, for the fourth time, his written response to the Kohlmeyer complaint. Respondent failed to respond.

7. On October 6, 2010, the Director wrote to respondent to request, for the second time, his written response to the Hawkinson complaint. Respondent failed to respond.

8. On October 7, 2010, the Director wrote to respondent to request, for the second time, his written response to the Heine complaint. Respondent failed to respond.

9. On January 21, 2011, the Director received a complaint against respondent from Gene Lewis. On January 27, 2011, the Director issued to respondent notice of

investigation of the Lewis complaint. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

10. On January 21, 2011, the Director received a complaint against respondent from W. Paul Beinke. On January 27, 2011, the Director issued to respondent notice of investigation of the Beinke complaint. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

11. On January 31, 2011, the Director wrote to respondent to request his written responses to the Kohlmeyer, Hawkinson and Heine complaints. Respondent failed to respond.

12. On March 11, 2011, the Director wrote to respondent to request, for the second time, his written responses to the Lewis and Beinke complaints. Respondent failed to respond.

13. On May 11, 2011, the Director issued charges of unprofessional conduct alleging that respondent had failed to provide written responses to the Kohlmeyer, Hawkinson, Heine, Lewis and Beinke complaints.

14. In those charges, the Director also alleged that respondent's conduct in failing to cooperate with the Director's investigation of the Kohlmeyer, Hawkinson, Heine, Lewis and Beinke complaints violated Rule 25, RLPR, and Rule 8.1(b), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Lack of Diligence, Inadequate Client Communication and Failure to Return Files Hawkinson Matter

15. On December 9, 2009, Gregory Hawkinson retained respondent to represent him in a marriage dissolution proceeding. On January 22, 2010, Hawkinson paid respondent a \$5,000 retainer.

16. Despite Hawkinson's repeated requests that respondent commence a marriage dissolution proceeding on his behalf, respondent failed to do so.

17. Additionally, respondent failed to communicate with Hawkinson regarding the status of his marriage dissolution proceeding and failed to respond to Hawkinson's multiple email and telephonic attempts to communicate with him.

18. On July 23, 2010, Hawkinson terminated respondent's representation and requested that respondent provide him with his file. Respondent failed to respond. Respondent has failed to respond to multiple requests from Hawkinson and his new lawyer for the return of his file.

R.B. Matter

19. Respondent represented R.B. in a marriage dissolution proceeding. In January 2010, Linda Heine, who represented R.B.'s spouse, served respondent with discovery. Respondent failed to respond to the discovery.

20. On May 12, 2010, following an initial case conference, the court issued an order directing respondent to respond to Heine's discovery requests by June 30, 2010. Respondent failed to do so.

21. On July 7, 2010, following a scheduling conference, the court issued an order directing respondent to respond to Heine's discovery requests by August 1, 2010. The court stated that sanctions would be imposed if respondent failed to provide responses by that date. Respondent failed to respond to the discovery.

22. On August 4, 2010, Heine filed and served a motion to compel discovery responses and for sanctions. The hearing on Heine's motion was scheduled for August 24, 2010.

23. On August 6, 2010, Heine served respondent with notice of R.B.'s deposition, which she had scheduled for August 18, 2010.

24. Respondent failed to inform R.B. of either the motion hearing or the scheduling of his deposition.

25. On or about August 17, 2010, Heine learned that respondent would not be available for either the hearing or the deposition and she cancelled them.

26. On or about August 31, 2010, R.B. terminated respondent's representation and retained substitute counsel.

27. By letters dated August 31 and September 22, 2010, R.B.'s new attorney wrote to respondent to request that respondent provide R.B.'s file. R.B.'s new attorney also made at least one telephonic request for the file. Respondent failed to respond to R.B.'s new attorney and has failed to provide R.B. or his new attorney with R.B.'s file.

Lewis Matter

28. Gene Lewis, Deborah Lewis and Alan Weierke were partners in G.A. Properties of Southern Minnesota, LLP. On August 25, 2009, Weierke initiated a lawsuit against the Lewises and G.A. Properties (the defendants) by serving them with a summons and complaint. Weierke was represented by attorney Thomas DeVincke. The defendants immediately retained respondent to represent them and provided him with copies of the summons and complaint, as well as the discovery documents that Weierke had served on them.

29. DeVincke granted respondent an extension to January 8, 2010, to serve an answer to the complaint. Respondent failed to serve an answer on behalf of his clients, the defendants, by January 8, 2010. He also failed to timely answer the interrogatories and requests for production of documents. Rather, after business hours on January 12, 2010, he faxed an answer and counter-claim to DeVincke.

30. On January 26, 2010, DeVincke filed and served a notice of motion and motion and supporting documents on Weierke's behalf. The motion requested: (a) Weierke be granted leave to serve an amended complaint, (b) that based on the defendants' failure to timely and properly serve the answer and counter-claim, their counter-claim be stricken and default judgment be entered against them, (c) that the court issue an order compelling the defendants to respond to the interrogatories and requests for production of documents, and (d) that the court award \$500 in costs and

attorney's fees to Weierke. The hearing on the motion was scheduled for February 9, 2010.

31. On February 8, 2010, respondent served and filed an affidavit in response to the motion.

32. On February 16, 2010, the court granted Weierke's motion to serve an amended complaint, ordered the defendants to serve responses to the interrogatories and requests for production of documents by February 24, 2010, and awarded Weierke \$500 in costs and attorney's fees "incurred in preparing and presenting [Weierke's] motion to compel discovery responses." The court reserved ruling on the motions to strike the counter-claim and to enter default judgment. During the hearing the court directed respondent to provide DeVincke with all evidence relating to paragraph 17(g) of the counter-claim, which paragraph Weierke adamantly denied.

33. On January 31, 2011, DeVincke served respondent with amended interrogatories and requests for production of documents. These amended discovery requests sought evidence relating to paragraph 17(g) of the counter-claim.

34. On or about March 1, 2010, respondent, or one of the Lewises, provided DeVincke with answers to interrogatories and responses to requests for production of documents.

35. On March 11, 2010, DeVincke served an amended summons and complaint. Respondent failed to timely answer the amended complaint on behalf of his clients.

36. On March 31, 2010, DeVincke wrote to respondent and demanded responses to the amended interrogatories and requests for production of documents. On April 5, 2010, respondent wrote to DeVincke and refused to provide responses to those amended discovery requests.

37. On June 2, 2010, DeVincke filed and served a notice of motion and motion and supporting documentation. The motion requested: (a) that the court issue an order

compelling the defendants to respond to the amended interrogatories and requests for production of documents, (b) that the defendants' counter-claim be stricken and a default judgment entered against them, and (c) the court award \$2,500 in costs and attorney's fees to Weierke. The hearing on the motion was scheduled for June 16, 2010. Respondent failed to serve or file any responsive pleadings.

38. On June 21, 2010, the court ordered the defendants to serve responses to the amended interrogatories and requests for production of documents within ten days. The court also ordered that their counter-claim be stricken and a default judgment be entered against them. Finally, the court awarded Weierke \$2,350 in costs and attorney's fees "incurred in preparing and presenting [Weierke's] motions."

39. Respondent failed to serve responses to the amended interrogatories and requests for production of documents within ten days of the court's June 21, 2010, order. Further, no payment was made on the \$2,350 awarded to Weierke in that order.

40. On July 13, 2010, DeVincke served and filed a notice of motion and motion and supporting memorandum and affidavit. The motion requested that the defendants be found in contempt of court and that Weierke be awarded an additional \$1,700 in costs and attorney's fees. The hearing on the motion was originally scheduled for July 27, 2010, but was apparently rescheduled to August 5, 2010.

41. Also on July 13, 2010, the court issued an order to show cause directing defendants to appear before the court on July 27, 2010 (later rescheduled to August 5, 2010) and show cause why they should not be found in contempt of court for failing to respond to the amended interrogatories and requests for production of documents and pay the \$2,350 in costs and fees awarded to Weierke.

42. Respondent failed to file any pleadings in response to Weierke's motion. Respondent apparently did, however, serve on DeVincke a motion to dismiss, to compel arbitration, for sanctions and for "other relief." At the court's directive,

respondent filed this motion and an affidavit of Gene Lewis during the August 5, 2010, hearing. The court then heard argument on respondent's motions.

43. By order dated September 21, 2010, the court found defendants in contempt of court for failing to comply with the court's June 21, 2010, order. In particular, the court found that the defendants had failed to timely serve responses to Weierke's amended discovery requests and had failed to pay the \$2,350 in costs and attorney's fees as directed in that order. The court directed them to pay Weierke an additional \$4,600 within two days of the court's order and an additional \$100 per day "as a contempt sanction for each day it fails to fully comply with this Order." Finally, the court ordered defendants to respond to the amended interrogatories and requests for production of documents within two days. The court denied all of respondent's motions.

44. Respondent failed to provide his clients, the defendants, with the court's September 21, 2010, order or inform them of the contents of that order. The Lewises learned of the order from Weierke weeks after the court had issued it. On October 11, 2010, they terminated respondent's services and requested that respondent forward to him his files. The Lewises and G.A. Properties subsequently retained new counsel, who filed a motion to vacate the default judgment.

45. As a result of respondent's failure to promptly inform his clients of the September 21, 2010, order, and by virtue of the daily contempt sanction provided for in that order, the Lewises were required to pay Weierke a sanction of a much larger amount than would have otherwise been the case.

Paul Beinke Matter

46. In approximately February 2010, Paul Beinke retained respondent to represent him in a criminal matter and in his marriage dissolution. Beinke paid respondent a \$5,000 retainer.

47. On February 18, 2010, Beinke and respondent attended a mediation session with Beinke's wife and her attorney, Jason Kohlmeyer. On February 19, 2010, the mediator issued a memorandum concerning the agreements reached by the parties. Among other things, the parties agreed to a parenting schedule and that respondent would "prepare a summons and petition for dissolution and forward it to" Kohlmeyer. Respondent failed to do so and, in April 2010, Kohlmeyer filed and served a summons and petition. Kohlmeyer also filed and served an application for temporary relief and supporting documents and scheduled a temporary hearing for May 11, 2010.

48. On April 26, 2010, respondent appeared at an omnibus hearing in Beinke's criminal matter. After the hearing, respondent and the prosecutor arranged to meet on May 4, 2010, to discuss Beinke's case. Beinke appeared for the meeting, but respondent did not. Beinke attempted to reach respondent by telephone to discuss his failure to appear, but was unsuccessful in doing so.

49. Respondent appeared at a subsequent hearing in Beinke's criminal matter and at that time informed the court that he was withdrawing as Beinke's attorney. Respondent had informed Beinke of his intent to withdraw only a few days before the hearing. Beinke retained substitute counsel in the criminal matter. Respondent continued to represent Beinke in the marriage dissolution.

50. On May 6, 2010, respondent wrote to Kohlmeyer and requested his agreement to a continuance of the May 11 temporary hearing in the Beinke marriage dissolution proceeding. Respondent stated, "I am still assembling documents with regarding [sic] to the Petitioner's Motion for Temporary Relief." Respondent apparently appeared at the May 11, 2010, hearing and requested that the court grant a continuance. The temporary hearing was rescheduled to May 17, 2010.

51. Despite the continuance, respondent failed to file or serve any documents on Beinke's behalf prior to the May 17, 2010, temporary hearing. Rather, respondent continued working on those materials until the day of the hearing. Beinke, who was

with respondent in his office, repeatedly stated to respondent that they should leave his office so as to arrive on time for the hearing. Respondent responded to Beinke that it was "no big deal" if they were late. In fact, respondent and Beinke arrived approximately one-half hour late for the hearing. By then, the court had completed the hearing and had directed Kohlmeyer to prepare a proposed default temporary order incorporating the requests in the application for temporary relief.

52. On May 27, 2010, respondent filed a notice of motion and motion and supporting memorandum to reopen the record and vacate the default order for temporary relief. Respondent also filed various affidavits, on which he had been working both prior and subsequent to the May 17, 2010, hearing. On June 3, 2010, the court denied respondent's motion to reopen.

53. Also on June 3, 2010, the court issued the default order for temporary relief that Kohlmeyer had prepared and submitted.

54. In approximately August 2010 Kohlmeyer served respondent with interrogatories. Respondent provided the interrogatories to Beinke and requested that he prepare draft answers. On and after September 1, 2010, Beinke provided respondent with draft answers and other information. Respondent failed to timely serve answers to interrogatories on Beinke's behalf.

55. In November 2010 respondent stated to Beinke that he had "lost" his license to practice law and, for that reason, could no longer represent Beinke in the marriage dissolution proceeding. Respondent's statement was false.

56. Beinke retained a new attorney to represent him in the marriage dissolution proceeding. Beinke requested that respondent provide to him all of his files. Respondent has provided some file materials to Beinke, but has not provided his entire file.

57. Respondent's conduct in neglecting, failing to adequately communicate with the clients and failing to return the clients' files in the Hawkinson, R.B.,

Lewis/G.A. Properties and Beinke matters violated Rules 1.3, 1.4(a)(3) and (4), 1.4(b), and 1.16(d), MRPC.

58. Respondent's conduct in asserting a meritless counter-claim in the Lewis/G.A. Properties matter violated Rule 3.1, MRPC.

59. Respondent's false statement to Beinke regarding the loss of his law license violated Rules 4.1 and 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 11, 2011.



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