

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against KENNETH M. BOTTEMA,
a Minnesota Attorney,
Registration No. 263795.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 10, 1996. Respondent's current address is in Alexandria, Minnesota. On February 27, 2012, respondent was placed on restricted status for failing to comply with continuing legal education requirements.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On January 16, 2001, respondent was issued an admonition for failing to properly supervise a subordinate lawyer, improperly withdrawing from representation, and failing to attend hearings on behalf of his client.

B. On September 10, 2010, respondent was issued an admonition for failing to promptly file a motion and failing to surrender his client's file at the termination of representation.

FIRST COUNT

Teschendorf Matter - Lack of Diligence and Communication
and False Statements to Client

1. In or about December 2009 Timothy Teschendorf retained respondent to represent him in criminal proceedings in Hennepin County alleging that he was unlawfully in possession of a firearm, due to a prior conviction which prohibited him from possessing firearms ("Hennepin County matter").

2. When Teschendorf was arrested and charged in Hennepin County, the guns in his possession were confiscated and held by the Hennepin County Sheriff's Department ("gun return matter").

3. Teschendorf paid \$4,000 for respondent to represent him in the Hennepin County and gun return matters. Teschendorf paid the retainer in two installments, \$2,500 in December 2009 and \$1,500 in February 2010.

4. Previously, in 2000, Teschendorf had been charged with a felony in Dakota County. Teschendorf pled guilty pursuant to a plea agreement under which there was a stay of imposition of the sentence and a reduction of the charge to a misdemeanor under certain conditions. Teschendorf met the conditions. As a result, in 2003 the charge was reduced to a misdemeanor. Because the conviction was for a misdemeanor, not a felony, Teschendorf believed he was thereafter eligible to possess firearms as he would no longer be considered a felon in possession.

Hennepin County Matter

5. Respondent presented the information from Teschendorf's previous Dakota County criminal matter to the court in the Hennepin County matter, and the matter was thereafter dismissed.

Gun Return Matter

6. After the charges were dismissed, Teschendorf's guns were not returned to him. Respondent told Teschendorf that he would prepare the necessary paperwork to request the return of his guns.

7. On multiple occasions in 2010 and early 2011, Teschendorf telephoned respondent, seeking information on the status of the gun return matter. On some occasions, Teschendorf left voice mail messages for respondent. On other occasions, respondent's voice mail was full and Teschendorf could not leave a message.

8. Respondent failed to respond to many of Teschendorf's calls and otherwise failed to communicate adequately with Teschendorf.

9. In January 2011, respondent stated that he would mail to Teschendorf paperwork in the gun return matter. Respondent failed to do so.

10. On or about January 18, 2011, respondent stated that he had mailed the paperwork to Teschendorf on January 16. This statement was false. Teschendorf did not receive any paperwork from respondent, and respondent had not mailed it to Teschendorf.

11. On or about February 1, 2011, respondent told Teschendorf that he would mail to Teschendorf the papers on the gun return matter that he previously told Teschendorf he had already mailed to Teschendorf. Respondent failed to do so. This statement was false and/or misleading. It implied respondent was taking action on the matter. In fact, he was not. *See*, paragraphs 13 and 14, below.

12. In May 2011, Teschendorf spoke with respondent, who stated he would proceed with the gun return matter. Respondent promised to call Teschendorf on May 26 after speaking with the judge. This statement was false and/or misleading. It

implied respondent was taking action on the matter. In fact, he was not. *See*, paragraphs 13 and 14, below.

13. Respondent did not file any paperwork to pursue the gun return matter, did not speak with a judge, and did not call Teschendorf on May 26 or at any time thereafter.

14. Respondent has never taken any action on Teschendorf's behalf regarding the gun return matter.

Dakota County Matter

15. In May 2010, Teschendorf retained respondent to resolve the issue that Teschendorf had previously been convicted of a misdemeanor but was nevertheless still identified as a felon unable to possess firearms ("Dakota County matter"). When Teschendorf retained respondent, Teschendorf paid a \$1,000 flat fee for the representation. Teschendorf and respondent agreed to defer pursuing action on the Dakota County matter until Teschendorf completed probation in June 2011.

16. After Teschendorf was successfully released from probation in June 2011, respondent failed to take any action on the Dakota County matter until September 2011. At that time, respondent filed a notice of motion and motion to restore Teschendorf's ability to possess firearms and proceeded with the matter.

17. Respondent's conduct violated Rules 1.3, 1.4, 4.1, and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Failure to Cooperate and False Statement During Disciplinary Investigation

18. In February 2011, Teschendorf filed a complaint against respondent. The matter was assigned for investigation to a district ethics committee (DEC).

19. On February 25, 2011, notice of investigation of Teschendorf's complaint was mailed to respondent. The notice requested respondent to provide his complete written response within 14 days of the date of the notice. Respondent failed to respond.

20. By letter dated March 2, 2011, the Chair of the DEC advised respondent of the name and address of the assigned investigator.

21. By letter dated March 9, 2011, the investigator informed respondent that she had been assigned to handle the matter and requested respondent to provide his complete written response to the complaint, plus certain additional documentation, by March 24, 2011. Respondent failed to respond.

22. By letter dated March 30, 2011, the investigator again asked respondent to provide the requested information and documents.

23. On April 7, 2011, respondent contacted the investigator and stated that he had received the investigator's March 30 letter but had not received the notice of investigation or the March 9 letter.

24. By letter dated that same day, the investigator sent to respondent copies of the complaint and additional information furnished by Teschendorf and requested respondent to provide his complete written response, together with certain additional documentation, by April 25, 2011.

25. On or about April 26, 2011, the investigator had a telephone conversation with respondent. The investigator advised respondent that she had not yet received the response to the complaint. Respondent stated that the response had been mailed on April 22, 2011. This statement was false. Respondent did not mail his response on that date.

26. On May 13, 2011, the investigator received the response. Next to respondent's signature was the handwritten date "5/12/11." Respondent claimed in his response that he had changed his address approximately a year previously.

27. By letter dated May 18, 2011, the investigator requested respondent to provide copies of his files regarding his representation of Teschendorf and to schedule a meeting with the investigator. Respondent failed to respond.

28. By letter dated July 7, 2011, the investigator informed respondent that she had not received his response to her May 18 letter. The investigator noted that she had attempted to reach respondent by telephone, but was unable to leave a message.

29. On July 29, 2011, respondent spoke with the investigator. Respondent stated that he had been hospitalized for five days in May 2011, had surgery in July 2011, and agreed to meet with the investigator on August 3, 2011.

30. On July 31, 2011, respondent sent an email to the investigator stating that he was unavailable for the meeting on August 3 and would call on August 8.

31. The investigator replied, stating that respondent should call by August 9, 2011. Respondent failed thereafter to contact the assigned investigator.

32. By letter dated February 16, 2012, the Director advised respondent that further handling of the matter would be conducted by the Director's Office.

33. By letter dated February 17, 2012, the Director requested respondent to provide certain information and documents no later than March 1, 2012. Respondent failed to respond.

34. By letter dated March 6, 2012, the Director advised respondent that the Director had received no response to the Director's February 17 letter and requested respondent to provide at that time the information and documents requested in that February 17 letter. Respondent failed to respond.

35. Respondent's conduct violated Rule 8.1(a) and (b), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent from the practice of 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.

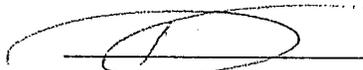
Dated: June 28, 2012.



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