

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against WAYDE RUSSELL BROOKS,
a Minnesota Attorney,
Registration No. 29968.

**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 August 12, 2004. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Southwood Shores Townhome Association Matter

1. Diane Pfeifer, in her capacity as president of Southwood Shores Townhome Association (SSTA), retained respondent to update SSTA's governing documents.¹ Respondent provided SSTA with a first draft on June 3, 2008. SSTA originally worked with William Norton, a lawyer with whom respondent worked as an associate. Norton closed his law practice in June 2008 and referred the matter to

¹ SSTA is a Minnesota nonprofit corporation.

respondent. SSTA executed a retainer agreement with respondent on or about August 24, 2008, and provided respondent with the \$600 retainer fee.

2. On August 24, 2008, Pfeifer emailed respondent asking for follow-up on or explanation of several items in SSTA's draft documents. On August 25, 2008, respondent emailed Pfeifer and informed her that he needed to arrange a file transfer from Norton before he could answer SSTA's questions. Respondent further stated he would email or call Pfeifer before the end of business on September 4, 2008, with some answers to her inquiries. Respondent did not follow-up with Pfeifer as promised.

3. On September 9, 2008, Pfeifer emailed respondent and requested the status of the file transfer from Norton. Pfeifer also inquired as to when respondent anticipated continuing work on SSTA's governing documents. Respondent did not respond.

4. On September 15, 2008, Pfeifer emailed respondent and again requested the status of the file transfer from Norton and inquired as to when respondent anticipated continuing work on SSTA's governing documents. Respondent did not respond.

5. On September 24, 2008, Pfeifer emailed respondent and again requested the status of the file transfer from Norton and inquired as to when respondent anticipated continuing work on SSTA's governing documents. Pfeifer further stated she had "not received a reply from [respondent] in one month, please respond."

6. On September 26, 2008, respondent replied to Pfeifer by email, apologized for the delay and informed her that he received SSTA's file from Norton "last Saturday afternoon." Later that evening, respondent emailed Pfeifer and indicated she should "[l]ook for [his] email when [she] return[ed from the weekend]," suggesting that he would provide a response to SSTA's questions over the weekend. Respondent did not email Pfeifer that weekend. As more fully set forth below, respondent failed to follow-up or in any other way communicate with Pfeifer until November 24, 2008.

7. From October 14, 2008, through November 23, 2008, Pfeifer left multiple voicemail messages for and sent multiple email messages to respondent. Pfeifer's email messages requested status updates and answers to SSTA's August 24, 2008, questions. Respondent did not respond until November 24, 2008, at which time he informed Pfeifer that he would answer all questions submitted to him in August and prepare a letter and ballot for Pfeifer's approval. Respondent further stated, "**You WILL receive all four items** (answers, governing document for approval, letter to membership and sample ballot) **by the end of business (4:30pm) this Wednesday.**" Respondent did not provide the documentation and information to SSTA that Wednesday (November 26, 2008). Respondent failed to follow-up or in any other way communicate with Pfeifer until March 4, 2009.

8. On December 1, 10, and 26, 2008, Pfeifer sent email messages to respondent requesting the documents he promised to provide by November 26. Respondent failed to respond.

9. On December 29, 2008, Pfeifer, on behalf of SSTA, submitted a complaint to the Director's Office.

10. On January 1, 2009, respondent's license to practice law in Minnesota was suspended for nonpayment of the annual lawyer registration fee. Respondent remained unauthorized to practice law in Minnesota until June 30, 2009.

11. On January 21, 2009, Pfeifer emailed respondent and stated, "You are now two months past the deadline you set to provide our completed documents. Are you planning to finish this work per the original agreement to provide these documents to our association?" Respondent failed to respond.

12. On March 4, 2009, respondent emailed Pfeifer and, while fee suspended, answered several of the questions she had been asking since August 24, 2008, concerning respondent's earlier draft of SSTA's documents.

13. On March 5, 2009, while fee suspended, respondent emailed to Pfeifer a final draft of SSTA's documents and asked that she call him to discuss arrangements to secure "the 75% of the Association's members" once the board read through and approved the final form of the documents. Respondent recommended that the board prepare a letter to SSTA's members given the complexity of the documents.

14. On March 5, 2009, Pfeifer replied to respondent's email and informed him that the next board meeting was scheduled for March 17, 2009, and that she would provide him with a status update after the meeting. Pfeifer indicated that the board wished respondent to prepare a letter to the homeowners to accompany the final draft and ballots.

15. On March 6, 2009, respondent emailed Pfeifer and, while fee suspended, informed her that the next step was to secure the votes required to have the documents passed by the association as a whole.

16. On March 19, 2009, respondent exchanged email messages with Pfeifer (partially in response to two email messages he received from Pfeifer on March 17, 2009), in which he provided further legal advice and consultation while fee suspended.

17. On April 4, 2009, Pfeifer emailed respondent to inquire when he would be forwarding to her the draft letter to the homeowners and whether he needed additional information from SSTA. On April 5, 2009, respondent emailed Pfeifer and stated he would send a PDF version of the letter later that night or first thing the following morning (April 6, 2009). Respondent further stated, "I'm in hearings from 10am to 1pm tomorrow, then again from 11am to 4pm on Tuesday." Respondent's statement to Pfeifer that he would be in hearings was false, as respondent did not have any hearings scheduled.

18. From April 6 through April 17, 2009, Pfeifer sent to respondent at least five email messages and left respondent one voicemail message. Pfeifer's email messages indicated she was still waiting for respondent's draft letter to the

homeowners, which he had promised to send by April 6, 2009, and that the board was meeting the week of April 20 and wanted to review the draft letter. Pfeifer also expressed her frustration with respondent's unresponsiveness and lack of communication, which she hoped would not continue after SSTA's complaint to the Director's Office. Respondent failed to respond to any of Pfeifer's efforts to contact him.

19. On April 9, 2009, the Minnesota Supreme Court placed respondent on restricted status for noncompliance with continuing legal education (CLE) requirements.

20. In an April 17, 2009, email, Pfeifer stated, "If you cannot hold to the balance of your agreement with us, we request that you return our retainer and we will retain another attorney." Respondent failed to respond.

21. On May 15, 2009, Pfeifer emailed respondent indicating she had not received a response regarding the documents respondent was to furnish. Pfeifer further indicated that SSTA would be retaining another attorney to complete the work. Pfeifer asked that respondent provide her with a Word version of the governing documents and mail the \$600 retainer and file to SSTA's address. Respondent did not respond, did not refund the retainer and did not return the file.

22. On June 15, 2009, respondent paid his delinquent lawyer registration fee. By Court order filed on June 30, 2009, respondent's CLE restricted status was lifted and he was returned to active status.

23. On June 23, 2009, Gretchen Schellhas, an attorney with Thomsen & Nybeck, P.A., emailed respondent and informed him that her firm had been asked to assist SSTA with "completion of an amendment to its Declaration." Schellhas requested a "copy of [respondent's] file, including a copy of the Declaration in Word format, so it can be completed without the necessity of drafting it over again." Respondent did not respond and did not forward a copy of his file to Schellhas.

24. On July 26, 2009, Pfeifer emailed respondent, again requesting that respondent return SSTA's file and retainer and provide a Word version of SSTA's governing documents. Respondent replied via email on July 29, 2009, and simply stated, "Done." This statement was false. Respondent did not refund the retainer or return the file until August 17, 2009, as more fully set forth below.

25. On August 4, 2009, Schellhas wrote a letter to respondent and enclosed a copy of her June 23, 2009, email. Schellhas' letter noted that SSTA had made numerous requests to respondent for its file.

26. On August 17, 2009, respondent provided Schellhas with a \$600 check from his trust account, as a full refund of the fees he received from SSTA, and hard copies of the file. Respondent, in his cover letter to Schellhas, stated that much of his work was in electronic documents and if she wanted copies, she should call him.

27. Sometime between August 17 and 19, Schellhas contacted respondent who indicated he would try to convert his Mac-Book documents into Word format and email them to Schellhas.

28. On August 27, 2009, Schellhas emailed respondent and stated, "I thought by now I'd have the disk. What is the hold up?" Respondent did not respond.

29. On September 2, 2009, Schellhas wrote a letter to respondent and indicated that although she received the physical file on August 17, "thereafter, we spoke and you promised to send me the disk." Schellhas asked that respondent provide the disk as soon as possible.

30. On September 14, 2009, respondent emailed Schellhas the electronic version of SSTA's documents.

31. Respondent's conduct violated Rules 1.3, 1.4, 1.16(d), 4.1, 5.5(a), and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

False Affidavit and Non-Cooperation

32. By notice of investigation dated January 6, 2009, the Director forwarded Pfeifer's complaint to respondent at his last known business address. Respondent was asked to provide the District Ethics Committee (DEC) investigator with a complete response to the complaint within two weeks. The notice of investigation was not returned by the postal service. Respondent failed to respond.

33. On February 11, 2009, the DEC investigator wrote to respondent informing him that his response to the complaint was overdue and asking that he immediately forward his written response.

34. On February 18, 2009, respondent wrote to the investigator indicating that he had moved his practice and "did not read the Notice and the enclosed Complaint until after the 14 day period for a timely response had elapsed." Respondent requested an extension to provide a response "until the end of business on March 1, 2009."

35. On March 1, 2009, the date respondent was to provide his response, the DEC investigator granted respondent's request for an extension and reminded him of his obligation to inform the Director's Office of the new location of his office. On March 8, 2009, respondent provided his response to the complaint.

36. On May 4, 2009, upon receipt of the DEC's report and recommendation, the Director wrote to respondent and afforded him an opportunity to respond to the DEC's findings. The Director also informed respondent that as of January 1, 2009, he had been suspended for nonpayment of his lawyer registration fee and that as of April 9, 2009, the Minnesota Supreme Court had placed him on restricted status for failure to comply with CLE requirements. Respondent was asked to provide within 14 days proof that he had paid his lawyer registration fee and penalty and proof that he had complied with all CLE requirements for reinstatement. Respondent was also asked

to provide an affidavit concerning his practice of law since January 1, 2009. Respondent failed to respond.

37. On June 2, 2009, the Director wrote to respondent again, reminded him of his fee suspended and CLE restricted status, and informed him that, as of that date, the records available to the Director indicated that respondent remained unauthorized to practice law. The Director asked respondent to provide within one week the information requested on May 4, 2009. Respondent failed to respond.

38. On June 10, 2009, respondent called the Director's Office and explained that he was dealing with deaths in his family and would be out of state from June 15 through July 4. Respondent stated he had completed the requisite CLE hours but had not reported them and would go to the CLE board and try to pay his fees. Respondent stated that he only represented one client in Minnesota. Respondent requested until after July 4, 2009, to submit the affidavit the Director requested on May 4, 2009. The Director granted the request.

39. On June 11, 2009, respondent personally appeared at the Director's Office and provided copies of materials he submitted to the CLE board. In closing his letter to the CLE board respondent stated, "Please expedite my request for transfer to active status as I am no longer employed as a land acquisition agent and need to return to the practice of law to fulfill my obligations to a particular Minnesota client."

40. On July 23, 2009, having not received the affidavit requested on May 4, the Director again wrote to respondent, reminding him of his duty to cooperate and asking that he produce the requested information within one week. Respondent failed to respond.

41. On August 7, 2009 (more than three months after the Director's original request), the Director wrote to respondent and requested respondent's response to the Director's May 4, 2009, correspondence. Respondent was informed that failure to cooperate with a disciplinary investigation may serve as an independent basis for

discipline and that if he failed to respond within one week, the Director intended to proceed accordingly.

42. On August 18, 2009, respondent hand-delivered a letter dated August 16, 2009, to the Director's Office. In the letter, respondent explained that "personal circumstances beyond my immediate control have limited my ability to effectively multi-task at a professional level since my return to Minnesota earlier in July." Respondent provided several "exhibits"; however, respondent failed to produce the requested affidavit concerning his practice of law since he became fee suspended in January 2009.

43. On August 20, 2009, the Director attempted to contact respondent by telephone, but could not leave a message as respondent's answering service indicated that respondent was not accepting calls at that time. On August 21, 2009, the Director wrote to respondent informing him that the affidavit requested on May 4, 2009, still had not been received. Respondent was further informed that his failure to produce the requested affidavit on or before August 28, 2009, would leave the Director with no choice but to seek discipline for respondent's non-cooperation.

44. On August 28, 2009, respondent hand-delivered to the Director an "affidavit of compliance." In his affidavit, respondent stated that he was reinstated in June and that "from January 1, 2009 until Affiant's reinstatement--Affiant did not meet with a Minnesota client, write an opinion letter or any pleadings for any such client, or perform any of the prohibitions listed under *Minn. Stat. §481.02, Subd. 1 [entitled Unauthorized Practice of Law]*." Respondent's affidavit was false as he had given legal advice to SSTA in March 2009, as set forth above.

45. Respondent's conduct violated Rules 8.1(a) and (b) and 8.4(c) and (d), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

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.

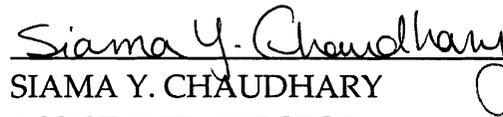
Dated: July 28, 2010.



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