

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against JENNIE CATHERINE M. BROWN,  
a Minnesota Attorney,  
Registration No. 166637.  
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**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 18, 1985. Respondent currently practices law in Eden Prairie, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Bleichner Matter

1. Respondent represented Cindy and James Bleichner as plaintiffs in a civil litigation matter. In the fall of 2009, respondent caused the amended complaint to be served on the defendants, the City of Excelsior (the City) and Kristin Dowell.

2. The complaint alleged violations of equal protection. State action is an essential element of such a claim.

3. In a previous unrelated matter, respondent had brought a claim pursuant to 42 U.S.C. § 1983 against, among others, individuals who were not state actors; the court had dismissed the claim against the individuals because they were not state actors. *Parent ex rel. J.M. v. Hopkins Sch. Dist.*, No. Civ. 01-2124, 2003 WL 41639, at \*5 (D. Minn. 1/3/03).

4. On November 3, 2009, counsel for Dowell served on respondent a notice of intent to claim attorney's fees pursuant to Minn. Stat. § 549.211 and Minn. R. Civ. P. 11. The notice stated that, should respondent not withdraw the claim against Dowell within 21 days, then Dowell would seek sanctions. Respondent did not withdraw the claim against Dowell.

5. On or about December 8, 2009, Dowell served and filed a motion for summary judgment, together with supporting paperwork.

6. By order filed on February 16, 2010, the court granted Dowell's motion for summary judgment. (The court also granted the City's motion and dismissed the claims against the City on separate grounds.) In that order the court stated:

Plaintiffs fail to allege facts sufficient to establish that Defendant Dowell acted on the state's behalf, at the state's direction, or in exercise of any state-created right or privilege. State action is a necessary element of an equal protection claim.

\* \* \*

Defendant Dowell may bring a Rule 11 motion for sanctions.

7. On or about April 29, 2010, Dowell served and filed a motion requesting sanctions, together with supporting paperwork.

8. By order filed May 26, 2010, the court granted the motion for sanctions. In that order the court stated:

Attorney Brown failed to meet the requirements of Rule 11 certification with respect to the legal basis for Plaintiffs' claim against Ms. Dowell. Ms. Dowell's only involvement was to complain to the city of ordinance

violations. The facts as alleged provide no reasonable legal basis to implicate Ms. Dowell in any alleged violation of Plaintiffs' right to equal protection under the law.

Plaintiffs' response to Defendant's Motion for Summary Judgment reveals the lack of legal support for the claim against Ms. Dowell. Plaintiffs cited no case, statute, or other legal basis to support their theory that an individual citizen's complaints to a municipality can constitute a denial of equal protection, a cause of action that requires an element of state action. *Parker v. Boyer*, 93 F.3d. 445, 447-48 (8th Cir. 1996). Plaintiffs made no argument that Ms. Dowell acted on the state's behalf, at the state's direction, or in exercise of any state-created right or privilege. In fact, Plaintiffs made no legal argument to support any cause of action whatsoever against Defendant Dowell.

The Court concludes that naming Ms. Dowell as a defendant in Plaintiffs' action was not warranted by existing law or by any nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law.

\* \* \*

The Court further concludes that Attorney Brown did not perform the legal research reasonably necessary to certify that Ms. Dowell was a proper defendant.

9. In that May 26, 2010, order, the court directed respondent (and not her client) to pay Dowell \$3,570.75 within 30 days of the date of the order. Respondent failed to do so.

10. Respondent requested and received from Dowell an extension to June 30, 2010, to pay the sanction. Respondent then failed to do so.

11. In or about July 2010, respondent paid \$500 to Dowell. In September 2010, respondent paid \$250 to Dowell.

12. By letter dated December 3, 2010, Dowell requested respondent to pay the \$2,870.75 balance by December 10, 2010. Respondent failed to do so.

13. On or about December 21, 2010, respondent agreed to pay Dowell \$500 by January 15, 2011, \$1,101 by February 15, 2011, and \$1,101 by March 15, 2011.

Respondent paid \$500 to Dowell in January 2011, but after January 15.

14. Respondent failed to make any additional payments to Dowell.

15. During the period after the May 26, 2010, order imposing sanctions was issued, respondent failed to respond to multiple communications from Dowell about payment of the sanction.

16. Respondent's conduct violated Rules 3.1, 3.4(c) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

## SECOND COUNT

### *Fitzpatrick v. Hennepin County Matter*

17. Respondent represented the plaintiff in *Fitzpatrick v. Hennepin County*.

18. On July 28, 2009, respondent filed the complaint and an application to proceed *in forma pauperis* ("IFP"). On August 3, 2009, the court granted the IFP application.

19. On August 4, 2009, the court (through a letter from the clerk's office) advised respondent that the IFP application had been granted and requested respondent to "complete the enclosed U.S. Marshall Service Form(s) . . . and return [them]" to the clerk's office. The court also stated, "service cannot be performed until these completed forms have been received by the Clerk's Office." Respondent failed to respond.

20. Fed. R. Civ. P. 4(m) requires the complaint be served within 120 days after the complaint was filed.

21. On December 7, 2009, the court issued an order requiring respondent to show cause on or before December 28, 2009, why the action should not be dismissed for failing to effect service within the required period.

22. By letter dated December 23, 2009, respondent replied to the order to show cause. Respondent stated that the "case became lost in the matters because of my workload and personal health matters," including the illness of several family members, a busy case load and a medical procedure.

23. By order filed December 29, 2009, the court gave respondent an additional 30 days to have service effected. Respondent then had the complaint served, though service was not timely.

24. On or about January 14, 2010, the defendant served and filed a motion to dismiss, based on respondent's failure to have the complaint served timely. Respondent's response to the motion was due on March 18, 2010.

25. On March 16, 2010, respondent contacted the court's calendar clerk and requested an extension of the time in which to respond to the motion. Respondent stated that her brother had recently passed away and she had been unable to prepare her response timely. The court granted the request and rescheduled the hearing on the motion to May 5, 2010, so that respondent's response to the motion was due on or before April 14, 2010 (21 days before the hearing date; *see* Fed. R. Civ. P. 56C(1)(b) and D. Minn. LR 7(b)(2)).

26. Respondent failed to serve or file any papers in opposition to the motion.

27. By order filed April 21, 2010, the court dismissed the complaint, ordered respondent to mail a copy of the April 21 order to her client within five days of that order, and ordered respondent to file an affidavit and proof of said mailing on or before May 3, 2010.

28. Respondent failed to comply with the April 21 order. Respondent did not send the order to her client and failed to file the required affidavit until June 5, 2010.

29. Respondent's conduct violated Rules 1.3, 1.4(a)(1) and (3), 3.2, 3.4(c) and 8.4(d), MRPC.

### THIRD COUNT

#### Villafranca v. Nor-ell Matter

30. Respondent represented the plaintiff in *Villafranca v. Nor-ell, Inc.*

31. On or about October 15, 2009, respondent filed the complaint and an application to proceed IFP.

32. On or about December 2, 2009, the court notified respondent that the IFP application had been granted and requested respondent to "complete the enclosed U.S. Marshall Service Form(s) (1 per defendant) and return to the office indicated at the top of this form. Service cannot be performed until these completed forms have been received by the Clerk's Office."

33. Respondent returned the completed forms. On or about January 14, 2010, the court issued to respondent a summons, for service to be accomplished.

34. As noted above, Fed. R. Civ. P. 4(m) requires the complaint be served within 120 days after the complaint is filed. Respondent did not effect service.

35. By order filed February 23, 2010, the court directed respondent to:

- (1) Notify defense counsel immediately that he/she is required to make an appearance or move for an extension of time to do so;
- (2) File an application for entry of default unless the required pleading is filed within 10 days; or
- (3) Advise the court in writing of any good cause to the contrary.

The February 23, 2010, order also stated that the matter would be dismissed for failure to prosecute unless respondent complied with that February 23 order within 20 days.

36. Respondent failed to comply with the February 23 order. Respondent did not notify defense counsel, did not file an application for entry of default, and did not advise the court of good cause otherwise.

37. On March 19, 2010, the assigned magistrate judge filed a report and recommendation that the court dismiss the claim for failure to prosecute.

38. As noted in the March 19 report and recommendation, respondent's response and/or objection to the report and recommendation was due on or before April 2, 2010. Respondent did not serve or file any objection or response to the report and recommendation.

39. By order filed April 13, 2010, the court dismissed the matter for lack of prosecution.

40. Respondent thereafter told Villafranca that she would attempt to have his case reopened. Respondent failed thereafter to make any request to the court or to communicate with Villafranca.

41. Respondent's conduct violated Rules 1.3, 1.4(a)(1) and (3), 3.2, 3.4(c) and 8.4(d), MRPC.

#### FOURTH COUNT

##### *Finn v. Hennepin County Matter*

42. Respondent represented the plaintiff in *Finn v. Hennepin County*.

43. Respondent filed the complaint and had the complaint served timely.

44. On or about June 2, 2008, the defendant served and filed a motion for partial dismissal. On or about August 1, 2008, the defendant served and filed a supporting memorandum.

45. The hearing on the motion was scheduled for September 18, 2008. Pursuant to Fed. R. Civ. P. 56C(1)(b) and D. Minn. LR 7(b)(2), respondent's response to the motion was due 21 days before the hearing date (i.e., it was due on August 21, 2008).

46. Respondent failed to serve or file a response to the motion. By letter dated September 3, 2008, respondent stated to the court: "My work schedule has been brutal and I confused nondispositive motion response time (7 days) with dispositive motion response time (20 days)."

47. By order filed September 4, 2008, the court directed respondent to file her memorandum in opposition to the motion to dismiss on or before September 8, 2008.

48. Respondent failed to comply with the September 4 order. Respondent failed to file a memorandum or otherwise communicate with the court. By order filed December 16, 2008, the court granted the motion for partial dismissal.

49. Respondent's conduct violated Rules 1.3, 3.2, 3.4(c) and 8.4(d), MRPC.

#### FIFTH COUNT

##### *David v. Cretex Companies Matter*

50. Respondent represented the plaintiff in *David v. Cretex Companies*.

51. On or about June 8, 2009, respondent filed the complaint.

52. As noted above, Fed. R. Civ. P. 4(m) requires the complaint to be served within 120 days after the complaint is filed.

53. Respondent failed to effect service of the complaint.

54. By order filed December 28, 2009, the court ordered respondent to file no later than January 8, 2010, proof of proper service or a letter showing good cause why service was unable to be effected. The court advised respondent that if the order was not complied with, "this action will be dismissed . . . ."

55. Respondent failed to comply with the December 28, 2009, order. Respondent did not file proof of service and did not file a letter showing good cause why she could not effect service.

56. By order filed January 12, 2010, the court dismissed the lawsuit.

57. Respondent's conduct violated Rules 1.3, 3.2, 3.4(c) and 8.4(d), MRPC.

#### SIXTH COUNT

##### *Fox v. Zumbro House Matter*

58. Respondent represented the plaintiff in *Fox v. Zumbro House*.

59. On or about August 14, 2008, respondent filed the complaint. Respondent had the complaint served timely.

60. In June 2009, respondent's client passed away. On June 22, 2009, opposing counsel served and filed a Suggestion of Death Upon the Record, noting that respondent's client had died. Fed. R. Civ. P. 25(a)(1) requires counsel for a party who has died during litigation to make a motion for substitution of a party within 90 days after service of the statement noting the death. Respondent failed to make such a motion.

61. During a September 15, 2009, hearing, the court ordered respondent to file a stipulation substituting a new party as plaintiff within 10 days.

62. Respondent failed to comply with the September 15 order.

63. On September 17, 2009, respondent emailed opposing counsel a proposed stipulation for substitution. The next day, opposing counsel returned to respondent by email an amended stipulation.

64. Respondent failed to respond to the amended stipulation, failed to file a stipulation for substituting a new party as plaintiff, and failed to file a motion for substitution.

65. On or about October 13, 2009, opposing counsel served and filed a motion to dismiss based on respondent's failure to comply with Fed. R. Civ. P. 25(a)(1).

66. By order filed November 13, 2009, the court dismissed the case.

67. Respondent's conduct violated Rules 1.3, 3.2, 3.4(c) and 8.4(d), MRPC.

#### SEVENTH COUNT

##### *Johnson v. Navitor/Costco Companies Matter*

68. Respondent represented the plaintiff in *Johnson v. Navitor/Costco Companies*. Respondent filed the complaint.

69. Respondent failed to timely effect service of the complaint.

70. On or about March 10, 2010, opposing counsel served and filed a motion to dismiss or alternatively for summary judgment.

71. On March 19, 2010, opposing counsel served and filed an amended notice of hearing scheduling the motion hearing for May 3, 2010.

72. As noted above, pursuant to Fed. R. Civ. P. 56C(1)(b) and D. Minn. LR 7(b)(2), respondent's response to the motion was due 21 days before the hearing date (i.e., it was due on April 12, 2010). Respondent failed to serve or file any response to the motion.

73. By order filed April 21, 2010, the court, because respondent did not serve or file any opposition to the motion, cancelled the hearing on the motion and stated that it would decide the motion upon the submissions from opposing counsel.

74. By letter dated May 3, 2010, respondent requested an extension to May 6, 2010, to submit paperwork in opposition to the motion.

75. Respondent did not submit paperwork by May 6 or at any time thereafter.

76. During the matter, respondent failed to respond to requests for communication from Johnson and otherwise failed to communicate adequately with Johnson.

77. On September 15, 2010, the Magistrate Judge issued a report and recommendation that the court dismiss the claim for failure to timely effect service.

78. As noted in the September 15 report and recommendation, respondent's response and/or objection to the report and recommendation was due on or before September 29, 2010. Respondent did not serve or file any objection or response to the report and recommendation.

79. By order filed October 7, 2010, the court dismissed the lawsuit for failure to timely effect service.

80. Respondent's conduct violated Rules 1.3, 1.4(a)(3) and (4), 3.2, 3.4(c) and 8.4(d), MRPC.

EIGHTH COUNT

Trust Account Overdraft Matter

81. On May 17, 2010, respondent's US Bank trust account no. x-xxx-xxxx-9290 became overdrawn. US Bank reported the overdraft to the Director pursuant to Rule 1.15(j) through (o), Minnesota Rules of Professional Conduct (MRPC).

82. By letter dated May 25, 2010, the Director requested respondent to explain, and to provide various trust account books and records related to, the overdraft. In particular, the Director requested copies of respondent's March through May 2010 trust account bank statements, checkbook register, client subsidiary ledgers, trial balances and reconciliations.

83. By letter dated June 3, 2010, respondent explained to the Director that the overdraft had apparently been caused by the unavailability of certain funds deposited into the account. Respondent provided copies of various trust account bank statements and cancelled checks and a deposit slip. Respondent did not, however, provide the requested checkbook register, client subsidiary ledgers, trial balances or reconciliations. Respondent stated, "There are none. I have no need to reconcile anything."

84. By letter dated June 6, 2010, respondent provided to the Director copies of various additional trust account bank statements, cancelled checks and deposit slips. Again, respondent did not provide the requested checkbook register, client subsidiary ledgers, trial balances or reconciliations.

85. By letter dated July 2, 2010, the Director again requested respondent to provide copies of her March through May 2010 trust account checkbook register, client subsidiary ledgers, trial balances and reconciliations. The Director enclosed a copy of an informational trust account brochure for respondent's use in preparing these trust account books. Respondent failed to respond.

86. By letter dated July 21, 2010, the Director advised respondent that the Director had received no response to that July 2 letter and requested respondent to provide her response to that July 2 letter.

87. By letter dated July 23, 2010, respondent stated to the Director, "I do not have a ledger, because, to my knowledge, I have never needed one." Respondent described her method of handling of settlements and retainers, apparently as justification for her failure to maintain trust account books. Respondent did not provide the requested trust account checkbook register, client subsidiary ledgers, trial balances or reconciliations.

88. On July 26, 2010, respondent spoke with an Assistant Director, who referred respondent to Rule 1.15, MRPC, and Appendix 1 thereto, and stated that those authorities required respondent to maintain the trust account books that the Director had requested respondent to provide. The Assistant Director told respondent that she must reconstruct and produce those books.

89. By letter dated July 27, 2010, the Director confirmed the matters discussed during the July 26 telephone conversation and requested respondent to provide her March through July 2010 trust account bank statements, checkbook register, client subsidiary ledgers, trial balances and reconciliations and enclosed another copy of the informational trust account brochure. Respondent failed to respond.

90. By letter dated August 24, 2010, the Director wrote to respondent and advised respondent that the Director had received no response to that July 27 letter and requested respondent to provide her response to that July 27 letter.

91. On August 27, 2010, respondent telephoned the Director's Office and stated that she would provide her trust account books and records, "by the end of next week."

92. By letter dated September 1, 2010, respondent provided to the Director various trust account bank statements and cancelled checks. Respondent stated, "I am working on designing a ledger, which I hope to send shortly."

93. On September 16, 2010, the Director mailed to respondent notice of investigation. The notice requested respondent to provide, among other things, her complete March through August 2010 trust account books and records. Respondent failed to respond.

94. By letter dated October 5, 2010, the Director advised respondent that the Director had received no response to the notice of investigation and requested respondent to provide at that time the information and documents requested in the notice. Respondent failed to respond.

95. By letter dated October 12, 2010, the Director advised respondent that the Director had received no response to the notice of investigation and again requested respondent to provide the information and documents requested in the notice.

96. By letter dated October 13, 2010, respondent stated that her assistant was "working with Quicken application software to get acquainted with it in order to set up my account." Respondent failed to include any trust account books or records with her letter.

97. By letters dated October 19 and 27, 2010, the Director again requested respondent to provide the information and documents requested in the notice of investigation. Respondent failed to respond.

98. On October 28, 2010, respondent spoke with an Assistant Director. During that conversation, respondent confirmed that she has not been maintaining a trust account checkbook register, client subsidiary ledgers, trial balances or reconciliations.

99. Respondent did not provide any of the documents requested in the notice of investigation.

100. Respondent's conduct violated Rules 1.15(c)(3) and (h) and 8.1(b), MRPC, Appendix 1 to the 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: May 23, 2011.



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