

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against VANCE O. BUSHAY,
a Minnesota Attorney,
Registration No. 13675.

**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 (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 5, 1979. Respondent last practiced law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

July 2005: Criminal Conviction for Repeating Phone Calls

1. In January 2005, respondent was charged in Hennepin County District Court with several crimes arising out of numerous obscene phone calls he placed to his ex-wife, Marie Bushay, in December 2004.
2. On July 7, 2005, respondent was convicted of violating Minn. Stat. § 609.79, subd. 1(1)(b), a misdemeanor, for repeatedly making telephone calls, whether or not conversation ensued, with intent to abuse, disturb, or cause distress to Marie Bushay.
3. Respondent was placed on unsupervised probation until July 7, 2007. Among the terms of probation was that respondent was required to remain law abiding and not commit the same or similar offenses.

4. Pursuant to Rule 19(a), RLPR, respondent's criminal conviction is conclusive evidence that respondent committed the conduct for which he was convicted.

5. Respondent's conduct violated Rule 8.4(b) and (d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

February 2008: Alcohol-Related Careless Driving Criminal Conviction

6. On July 21, 2007, respondent was arrested and charged in Washington County District Court with misdemeanor careless driving and driving while intoxicated.

7. On February 4, 2008, respondent pled guilty to one count of misdemeanor careless driving and the DWI charge was dismissed. Respondent's sentence included 30 days in jail (stayed), one year of supervised probation, undergo a chemical dependency evaluation and follow treatment recommendations, commit no same or similar offenses, remain law-abiding, and attend a MADD Impact Panel.

8. In October 2008, the district court issued an order revoking the stay of sentence in respondent's case based on the August 17, 2008, incident at his home (*see below*). In February 2009, respondent appeared for a probation violation hearing. The court terminated respondent's probation and closed the case based on the time respondent was incarcerated in the Hennepin County jail.

9. Pursuant to Rule 19(a), RLPR, respondent's criminal conviction is conclusive evidence that respondent committed the conduct for which he was convicted.

10. Respondent's conduct violated Rule 8.4(b) and (d), MRPC.

THIRD COUNT

April 2008: Criminal Convictions for Assault and Interfering with a 911 Emergency Call

March 2007

11. On March 17, 2007, Edina police were called to respondent's home that he shared with S.P.W. The police observed that S.P.W.'s right eye was black and blue and

nearly swollen shut, she had cuts under her eyes, and had bruises on her arms. S.P.W. told the police that the injuries were the result of respondent punching and stomping on her.

12. S.P.W. was transported to the hospital. An exam revealed that she had suffered "significant facial contusions" and "multiple body contusions."

13. On October 15, 2007, respondent was charged with felony terroristic threats, misdemeanor domestic assault, and gross misdemeanor obstruction of legal process or arrest, arising out of the incident that occurred on March 17, 2007. On October 31, 2007, the complaint was amended to include a charge of felony third degree assault.

May 2007

14. On May 15, 2007, Edina police were called to respondent's home. According to a criminal complaint, respondent began drinking alcohol in the morning and continued drinking vodka throughout the day. At 9:00 p.m., respondent pushed S.P.W. backwards in a corner of the kitchen. S.P.W. fell and hit her head on a doorway and began to bleed. While S.P.W. was lying on the floor, respondent began kicking her repeatedly. When S.P.W. reached for her cell phone, respondent threw it to the floor, smashing it.

15. S.P.W. was transported to the hospital where she was given stitches for the cut on her forehead. A treating physician told S.P.W. that she would likely have a permanent scar from the head wound.

16. On May 18, 2007, respondent was charged with one count of felony third degree assault. On October 15, 2007, the charges were amended to include one count of felony terroristic threats based on respondent's commission of a crime of violence for the purpose of terrorizing S.P.W.

17. The district court released respondent from custody on June 4, 2007. On July 20, 2007, the district court revoked respondent's release and issued a bench warrant based on respondent's violation of the conditions of his release from custody, specifically the provision that respondent was to have no contact with S.P.W. The order

found that respondent contacted S.P.W. by cell phone on July 17, 2007, and said to S.P.W., "you f----- bitch."

18. On January 2, 2008, the district court dismissed the terroristic threats counts related to both the incident of March 17, 2007, and the incident of May 15, 2007.

19. On March 3, 2008, respondent agreed to plead guilty to one count of misdemeanor assault that occurred on March 17, 2007. The underlying facts, as admitted to in court by respondent, were that he: (1) got into an argument with S.P.W. at his home; (2) yelled and screamed at S.P.W.; and (3) caused S.P.W. fear of imminent bodily harm. Respondent also pleaded guilty to one count of gross misdemeanor interfering with a 911 emergency call that occurred on May 15, 2007. The underlying facts, as admitted to in court by respondent, were that he got into an argument with S.P.W. and prevented S.P.W. from making a 911 call by taking the phone and throwing it on the floor. The court approved the plea agreement.

20. On April 23, 2008, respondent was sentenced to serve 365 days in jail with 353 days stayed for the conviction of interfering with a 911 call, and a sentence to serve 90 days in jail with 75 days stayed for the conviction on fifth degree assault.

21. Respondent's sentence also included being placed on probation for two years. Respondent was required to pay restitution, use no alcohol or non-prescribed drugs, complete a chemical dependency evaluation and follow treatment recommendations, undergo alcohol and controlled substance testing, participate in anger management, and have no contact with S.P.W.

22. Pursuant to Rule 19(a), RLPR, respondent's criminal conviction is conclusive evidence that respondent committed the conduct for which he was convicted.

23. Respondent's conduct violated Rule 8.4(b) and (d), MRPC.

FOURTH COUNT

August 2008: Criminal Charges for Assault and Terroristic Threats

24. On August 17, 2008, Edina police were called to respondent's home. According to a criminal complaint, the officers observed that respondent was "very intoxicated." Respondent yelled at the officers, including, "I'm going to kill you," and

"Don't worry, I am just going to shoot you," as respondent held his fingers in the air to represent a gun.

25. Respondent turned up the volume on his television and refused the officers' request to come out of the house. The officers grabbed respondent and attempted to pull him out of the house through a large window during which respondent cut himself on a piece of glass. Respondent wiped blood from his face and threw it at one of the officers.

26. Respondent was charged with one count of felony assault in the fourth degree and one count of felony terroristic threats. Respondent failed to appear in Hennepin County District Court for a hearing on November 19, 2008, at which time a bench warrant was issued. Thereafter, respondent was jailed and ordered to undergo a chemical dependency evaluation.

27. Respondent was released from jail on or about January 20, 2009. Respondent's case was scheduled for trial on March 24, 2009.

28. On March 26, 2009, after jury selection but prior to beginning trial, respondent pled guilty to gross misdemeanor obstructing the legal process in violation of Minn. Stat. § 609.50, subd. 1(2), in lieu of pleading guilty to assault. The underlying facts, as admitted to in court by respondent, were that: (1) police officers were summoned to respondent's house; (2) respondent was intoxicated; (3) the officers attempted to remove respondent from his home, using force; (4) respondent physically resisted the officers' attempt to remove him; and (4) respondent made threats toward the officers, including a threat to shoot them. The charge of terroristic threats was dismissed.

29. Respondent was sentenced to one year in jail, with 75 days to be served and 290 days stayed for two years. Respondent was given credit for the time he was incarcerated from November 2008 to January 2009, so he was not required to serve any additional jail time.

30. Respondent was also placed on probation for two years, with the right to petition to end his probation after one year. Respondent's probation terms include the following: (1) supply a DNA sample; (2) remain law-abiding and commit no same or

similar offenses; (3) no alcohol/controlled substance use; (4) alcohol and controlled substance testing; and (5) anger management counseling.

31. Pursuant to Rule 19(a), RLPR, respondent's criminal conviction is conclusive evidence that respondent committed the conduct for which he was convicted.

32. Respondent's conduct violated Rule 8.4(b) and (d), MRPC.

FIFTH COUNT

October 2008: Positive Breathalyzer Test Results and Relapse to Alcohol Use

33. On October 7, 2008, respondent submitted to a "Breathalyzer" breath alcohol analyzer test in connection with his criminal probation. The test results were positive for alcohol. Respondent admitted to his probation supervisor, Kimii Porter, that he drank alcohol prior to submitting to the test.

34. Respondent's conduct violated Rule 8.4(b) and (d), MRPC.

SIXTH COUNT

Violation of Conditions of Probation

35. Respondent's conduct in committing an assault on March 17, 2007, and in interfering with a 911 emergency call on May 15, 2007, was a violation of the terms and conditions of his July 7, 2005, Hennepin County probation, including the requirement that respondent remain law abiding until the expiration of his probation in July 2007.

36. Respondent's alleged criminal conduct on August 17, 2008, and his positive Breathalyzer test and admission that he relapsed to alcohol use October 7, 2008, were violations of the terms and conditions of his February 2008 probation in Washington County, and of his April 2008 probation in Hennepin County, including the requirements that respondent remain law abiding until the expiration of his probation.

37. On February 26, 2009, respondent appeared for a probation violation hearing in Washington County District Court. Based on credit received for his incarceration in the Hennepin County jail, respondent's Washington County probation was terminated.

38. Respondent also appeared for a probation violation hearing in Hennepin County District Court on March 24, 2009. No action was taken on respondent's probation violation.

39. Respondent's conduct violated Rule 8.4(b) and (d), MRPC.

SEVENTH COUNT

Alice Black Matter

40. On November 13, 2008, Alice Black retained respondent to represent her in a Chapter 7 bankruptcy matter. Black signed a retainer agreement and paid respondent a retainer fee of \$1,100.

41. On or about November 20, 2008, respondent was jailed at the Hennepin County jail, as described above.

42. After respondent's initial meeting with Black, respondent had no further contact with her. Black and her niece, Martha Smith, left several phone messages for respondent. Respondent did not return the calls.

43. On December 11, 2008, Black and Smith wrote to respondent regarding respondent's lack of communication and progress in Black's case. Black requested an immediate refund of the \$1,100 she paid respondent if he did not intend to proceed with her case.

44. On December 16, 2008, respondent wrote to Black to inform her that "due to current circumstances," respondent was not able to continue representing Black. Respondent invited Black to contact his counsel, Mitchell Hadler, and make arrangements for the return of Black's file. Black contacted Hadler and received a copy of her file.

45. Respondent's December 16, 2008, letter to Black also stated the following: "Also, though your representation agreement with my office makes any payment made to me my exclusive property, I will review your file to determine whether a refund of funds that were paid to me should be made under the circumstances as soon as I am able to do so."

46. Respondent was released from jail on or about January 20, 2009. On February 5, 2009, respondent wrote to Black and included a cashier's check in the amount of \$1,100.

47. Black retained other legal counsel and filed a Chapter 7 bankruptcy petition on or about January 19, 2009.

48. Respondent's failures to communicate with Alice Black, diligently handle Black's bankruptcy matter or promptly withdraw from representing her, and to promptly refund Black's unused retainer fee violated Rules 1.3, 1.4(a)(4), and 1.15(c)(4), MRPC.

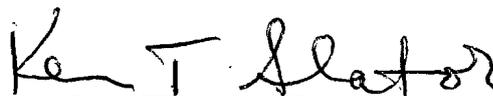
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: June 3, 2009.



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