

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against ERIC LEIGHTON CRANDALL,
a Minnesota Attorney,
Registration No. 189492.

**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 May 12, 1988. Respondent is currently suspended from the practice of law. *In re Crandall*, 699 N.W.2d 769 (Minn. 2005).

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

As indicated above, respondent is currently suspended from the practice of law. Respondent was indefinitely suspended from the practice of law, with no right to apply for reinstatement for at least three months, based upon respondent's neglect of three client matters, failure to communicate with those clients, and failing to timely and completely cooperate with the Director's Office. *Id.* Respondent has not sought to be readmitted to the practice of law in Minnesota.

FIRST COUNT

Koltes Matter

1. In June of 2002, respondent began representing Ronald and Barbara Koltes in a dispute they had with Beal Bank and Golden Oaks Mortgage Company (Golden Oaks). The Koltes allege that Golden Oaks had arranged for a loan to the Koltes from Superior Bank, in spite of the fact that Superior Bank had been seized by federal regulators.

2. On August 23, 2002, respondent filed a complaint and demand for jury trial in United States District Court naming Beal Bank and Golden Oaks as defendants. On behalf of the Koltes, respondent alleged that the defendants had violated various federal statutes.

3. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, respondent was to serve the defendants with the complaint and summons within 120 days of filing the complaint, *i.e.*, by December 21, 2002. On December 10, 2002, respondent made service on Golden Oaks. Respondent failed to serve Beal Bank and failed to file a certificate of service concerning Golden Oaks with the court.

4. Rule 4(m) also provides that if service is not made within 120 days after the filing of a complaint, the court is to dismiss the matter or direct that service be made within a specified time. On January 6, 2003, unaware that respondent had effectuated service on one of the parties, a federal magistrate directed respondent to show good cause, in writing, within 20 days whether an extension of time within which service could be made should be granted. In his order, the magistrate also informed respondent that in the absence of good cause, he would recommend that the action be dismissed for failure to effect proper service upon the defendants and for failure of prosecution.

5. Despite the magistrate's order, respondent did not provide the court with a certificate of service by the required deadline, *i.e.*, by January 27, 2003. Accordingly, on February 18, 2003, the magistrate made his report and recommendation to the district court. In that report, the magistrate noted that respondent had "failed to abide by the

terms of our Order of January 6, 2003. As of this date, well-over a month after the issuance of our Order, we have not received any submission from the Plaintiffs [respondent] which would constitute a showing that good cause exists not to recommend that this action be dismissed for the reasons stated in our prior Order."

6. As part of the February 18, 2003, report and recommendation, the magistrate also noted that any party could object to the report and recommendation "by filing with the Clerk of Court, and by serving upon all parties **by no later than March 6, 2003**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals." (Emphasis in original.)

7. Respondent failed to file any objection to the report and recommendation by the deadline. Rather, respondent filed the certificate of service with the court on March 7, 2003, more than a month after the original deadline and a day after the deadline for an objection to the magistrate's report and recommendation. Respondent also filed a stipulation of dismissal concerning Beal Bank. Respondent undertook these actions without consulting with or notifying his clients.

8. On March 14, 2003, the district court issued its order dismissing the Koltes' complaint for "failure to effect proper service, and for lack of prosecution."

9. On March 21, 2003, respondent wrote to the Koltes providing an update on the status of their case. In his letter, respondent told the Koltes that while the defendants had been served "for some reason, the affidavits of service were not filed with the court until after I received a letter from Magistrate Judge Erickson questioning whether we had served the complaint within the 120-day deadline."

10. Respondent did not explain to the Koltes that the reason the certificate of service (there was only one) was not filed was that respondent had failed to file it. Respondent did not inform his clients that he had failed to file the certificate of service despite being notified by the court on January 6, 2003, that the certificate of service had

not been filed and despite being given further warning on February 18, 2003, that he must file the certificate by March 6, 2003. Respondent also failed to inform the Koltes that he had stipulated to the dismissal of Beal Bank.

11. Respondent falsely represented to the Koltes that he had promptly filed the affidavits of service and notified District Court Judge Magnuson of this fact, but that Judge Magnuson had ignored his notice and dismissed the lawsuit. Respondent indicated that they could appeal the judge's order to the Eighth Circuit Court of Appeals without informing them that the magistrate's report and recommendation indicated that a failure to cooperate with the court's procedure "shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals." Respondent recommended refiling the action.

12. On March 29, 2003, the Koltes wrote to respondent posing a number of specific questions regarding their case. For example, the Koltes asked respondent when the defendants were served and they requested copies of all correspondence and submissions to the court. The Koltes asked about the status of settlement negotiations. They informed respondent that they wanted to be kept informed of all negotiations. The Koltes indicated that they expected a response within one week of the date of their letter.

13. On April 28, 2003, a month later, respondent wrote to the Koltes. Respondent did not provide a written response to the Koltes' letter, nor did he provide copies of the requested documentation. Respondent told the Koltes that if they "decide to continue with my services, please contact me no later than the close of business Friday, May 16, 2003." The Koltes had not indicated that they were discharging respondent, nor did they have any intent of discharging respondent.

14. The Koltes continued to follow-up with respondent with the understanding that respondent would be working on their file. However, respondent did no further work on the file and eventually the Koltes filed a complaint with the Director.

15. Respondent's conduct in failing to diligently pursue the Koltes representation violated Rules 1.3, 1.4 and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Non-Cooperation

16. On August 15, 2005, Ronald and Barbara Koltes filed a complaint with the Director's Office concerning respondent's conduct in representing them. On August 22, 2005, the Director issued a notice of investigation to respondent. The notice informed respondent that a written reply to the notice was due within 14 days. Respondent failed to reply within the required time.

17. On September 19, 2005, the Director sent respondent a follow-up letter. The Director informed respondent that he had not yet received respondent's reply and if respondent had not already done so, his reply should be sent immediately. Respondent was also reminded that the information was being requested pursuant to the Minnesota Rules of Professional Conduct (MRPC). Respondent failed to reply.

18. On October 21, 2005, the Director again wrote to respondent concerning the Koltes' complaint. Respondent was instructed to appear at the Director's Office for a meeting to take place on October 28, 2005. Respondent was also informed that he should bring with him to the meeting "the written response to the Koltes' complaint." Respondent was advised that if he was unable to attend the meeting, he should telephone the Assistant Director to schedule a more convenient time.

19. The Director's October 21, 2005, letter was sent both regular mail and certified mail with receipt. Respondent signed for the letter on October 24, 2005. On October 27, 2005, at 5:44 p.m. (the evening before the scheduled meeting), respondent sent a facsimile transmission to the Director's Office. In his fax, respondent contended that he was "unable to meet with you on the 4 days notice." However, respondent did not explain why he was unable to meet on the scheduled date, nor did respondent indicate why he had not responded earlier. Respondent also did not provide a response to the Koltes' complaint. Rather, respondent proposed several meeting dates in November.

20. On October 28, 2005, the date of the scheduled meeting, the Director telephoned respondent to find out why respondent was unavailable to meet and to ask him about his response to the Koltes' complaint. Respondent did not answer his telephone and did not return the voicemail message left by the Director.

21. Later that same day, the Director wrote to respondent by facsimile transmission and by U.S. Mail. The Director informed respondent that his response to the Koltes' complaint was nearly two months overdue and respondent must provide a response by November 7, 2005. The Director further instructed respondent that if he did not provide the written response by that date, the Director would issue charges of unprofessional conduct.

22. On November 7, 2005, respondent did fax a response to the August 22, 2005, notice of investigation. However, the response did not acknowledge any of respondent's delays in handling the Koltes matter. Specifically, respondent did not acknowledge the magistrate's February 18, 2003, report and recommendation. Respondent also failed to address a number of the other questions raised by the complaint.

23. On September 26, 2006, after the Director had obtained additional information bearing on the matter, the Director wrote to respondent. The Director posed a number of specific questions to respondent regarding his handling of the Koltes representation.

24. On October 10, 2006, respondent wrote to the Director. However, respondent did not address the specific questions raised by the Director. Rather, respondent simply replied that he stood by his earlier position that he had fully and fairly represented the Koltes.

25. On October 24, 2006, the Director wrote to respondent. The Director informed him that his letter did not provide the information being sought and he should respond within 10 days. Respondent did not reply.

26. On December 13, 2006, the Director wrote to respondent, again requesting a response. When respondent again failed to reply, the Director wrote scheduling a meeting for January 30, 2007.

27. When respondent failed to appear for the January 30, 2007, meeting, the Director telephoned respondent asking why he had not appeared for the meeting. Respondent represented that he would provide the information sought by the Director's September 26, 2006, letter within seven days.

28. Respondent did not provide the requested information and has not contacted the Director.

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

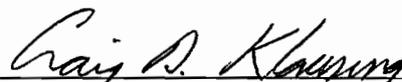
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: Nov. 15, 2007.



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