

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 currently practices law in New Richmond, Wisconsin. Respondent previously practiced law in Stillwater, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

In February 2001 respondent was issued an admonition for failing to communicate with a client concerning the status of her legal matter.

FIRST COUNT

Bergeron and Baier Matters

1. Joseph Bergeron retained respondent to file suit against Jesse Riddle and Riddle & Associates, P.C. for alleged violation of the Fair Debt Collection Practices Act. Respondent filed the matter in United States District Court, District of Minnesota.

2. In his answer to the summons and complaint, Riddle put respondent on notice that Riddle would seek attorney's fees and costs should respondent not dismiss the lawsuit. Respondent did not dismiss the case.

3. Riddle filed a motion to dismiss. Respondent failed to timely respond to the motion but then contacted the court and scheduled a telephone conference in the matter. It was to be respondent's responsibility to initiate the call.

4. On the date of the telephone conference, respondent failed to place the call. The court thereby advised Riddle to notice the motion to dismiss. Respondent again failed to respond to Riddle's motion and failed to appear at the motion hearing.

5. On the date of the motion hearing, the court granted the motion to dismiss both on the merits and based upon respondent's failure to appear. Respondent did not appeal the court's decision.

6. Riddle filed a motion seeking sanctions against Bergeron. The court awarded Riddle \$10,193.23 in costs and attorney's fees which respondent paid on November 19, 2003.

7. Respondent also represented Candace Baier in a commercial claim against U.S. Bancorp in the United States District Court, District of Minnesota.

8. Respondent was served with requests for admission. Respondent failed to respond and the requests were deemed admitted.

9. The defendant moved for summary judgment. Respondent failed to appear for an October 24, 2003, hearing on the matter. Judge James Rosenbaum granted the defendant's motion, and issued an order suspending respondent from practice in the federal court and sanctioning respondent \$20,000.

10. Respondent paid the sanction and was reinstated to federal practice.

11. Respondent's failure to pursue the Bergeron and Baier lawsuits and his failure to initiate the telephone conference and appear at scheduled court hearings violated Rules 1.3, 3.2, 3.4(c) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Stockton Matter

12. Melody Ann Stockton contacted respondent in February 2002 to represent her in a dispute with a credit card company. Respondent collected information and on January 16, 2003, filed suit in the United States District Court, District of Minnesota.

13. On March 22, 2003, respondent sent a retainer agreement to Stockton for her to sign. Respondent required the agreement to be returned to him by no later than March 28. Stockton signed the agreement and attached a letter with several questions she wanted respondent to answer. Respondent did not answer Stockton's questions.

14. On April 23, 2003, defendants in the Stockton matter served interrogatories and requests for production of documents upon respondent. Respondent did not inform Stockton of the discovery requests nor did he respond to the discovery.

15. Stockton called respondent several times in April 2003. Respondent did not return her calls. In May 2003 Stockton reached respondent who verbally answered the questions posed in her March 25 letter. Stockton requested the answers in writing. Although respondent agreed to do so, he did not write to Stockton. During their conversation, respondent did not inform Stockton of the pending discovery requests.

16. On June 3, 2003, defendants wrote to respondent confirming a conversation in which respondent stated he would complete responses to the discovery requests by June 4, 2003. Respondent failed to contact Stockton and failed to respond to discovery.

17. On June 19, 2003, defendants wrote to respondent stating that respondent had failed to provide responses to the discovery, had failed to accept or return defendants' telephone calls and, if respondent did not provide the information by June 23, 2003, defendants would file a formal motion. Respondent did not contact Stockton or defendants and did not provide a response to the discovery.

18. On June 24, 2003, defendants spoke with respondent. Respondent stated that he was working on the responses and that he would messenger the documents to defendants by June 27. Respondent failed to do so.

19. On June 26, 2003, Stockton again wrote to respondent asking him to answer her specific questions regarding the retainer agreement. Respondent failed to answer Stockton's questions and failed to inform her that discovery requests had been made and that they were overdue.

20. On July 7, 2003, defendants filed a motion to compel responses to discovery. The court set a hearing date for July 21. Within their motion, defendants sought reimbursement of expenses and fees together with "all other appropriate sanctions." Respondent received notice of the hearing but did not inform Stockton.

21. On July 15, 2003, defendants filed a motion to amend their answer and to add a counterclaim. The court scheduled the hearing for July 29. Respondent did not inform Stockton that defendants intended to file a counterclaim against her.

22. Respondent failed to appear at the July 21 motion to compel hearing. On July 22 the court ordered respondent to produce responses to discovery within 15 days. The order further stated that "if Plaintiff fails to respond to Defendant's discovery within 15 days, she shall pay costs and attorney's fees to Defendant in the amount of \$1,000." Respondent failed to inform Stockton that responses to discovery were due within 15 days and failed to inform her of the \$1,000 sanction should she fail to respond within the time period.

23. By facsimile transaction on July 28, 2003, defendants requested that respondent stipulate to the amended answer. The defendants stated that their request for stipulation was an effort to avoid the expenses associated with the hearing scheduled for July 29. Respondent did not inform Stockton of the motion to amend defendants' answer and to file a counterclaim, did not respond to defendants' letter and did not appear at the scheduled hearing on July 29.

24. On July 29, 2003, the court granted defendants' motion to amend their answer and to add a counterclaim. Respondent did not inform Stockton that a counterclaim had been filed against her.

25. On August 7, 2003, respondent called Stockton on her cellular telephone while she was at the dentist's office. Respondent instructed Stockton to go to a predetermined law office where he would fax to her the answers to interrogatories and requests for production of documents, which she was to sign. Stockton found the law office, signed the documents before a notary and the documents were faxed back to respondent. Respondent then served the documents on defendants that day. This was the first time Stockton was aware of the discovery requests and responses.

26. On November 3, 2003, respondent and defendants discussed settlement. Defendants believed they had reached an agreement and outlined their understanding of that agreement in a letter dated that same day. On November 5, 2003, defendants sent respondent a "corrected Settlement Agreement."

27. On November 6, 2003, respondent spoke with Stockton and told her that he was prohibited from appearing in the United States District Court, District of Minnesota, because he had been suspended in October 2003 by Judge Rosenbaum (*see* ¶ 9 above). Respondent then mailed the settlement agreement to Stockton instructing her to sign the document in the presence of a notary.

28. Upon reviewing the settlement agreement, Stockton noted that respondent had failed to include a provision for the interest payments she had needlessly paid to defendants. Stockton spoke with respondent and told him that she would not sign the agreement unless it provided for the recovery of her interest payments.

29. In a letter dated November 12 respondent stated that Stockton did not owe him any attorney's fees or costs. Respondent enclosed a stipulation of dismissal which he requested Stockton sign. Stockton would not sign any documents until return of her interest payments was addressed.

30. On December 4, 2003, respondent wrote to Stockton and enclosed a \$700 check from his own account. The check was to cover the interest Stockton paid to defendants but which was not included in the settlement agreement. Respondent then asked Stockton to sign and return the settlement agreement. Stockton signed the agreement on December 12, 2003.

31. On December 29, 2003, respondent withdrew as counsel for Stockton and substituted Peter Nickitas. Respondent did not inform Stockton of the withdrawal and substitution, nor had Stockton ever met or agreed to be represented by Nickitas.

32. On January 14, 2004, the court filed the stipulation and order for dismissal with prejudice in the Stockton matter. On that same day, respondent sent Stockton a copy of the substitution of counsel, executed two weeks earlier.

33. On January 16, 2004, Stockton reviewed documents at the clerk of court's office and discovered respondent's failure to appear at the two scheduled court hearings. Stockton also discovered documents pertaining to the motion to compel, amended answer and counterclaim which was filed against her. The discovery of these documents was the first time Stockton was aware of those proceedings.

34. Respondent's lack of diligence in prosecuting the Stockton matter; his failure to communicate with her and failure to provide her with pertinent documents violated Rules 1.3 and 1.4, MRPC. Respondent's failure to comply with the rules of discovery and failure to appear at scheduled court hearings violated Rules 3.4(c) and 8.4(d) MRPC.

THIRD COUNT

Non-Cooperation

35. By notice of investigation dated April 1, 2004, the complaint of Melody Ann Stockton (*see* Stockton matter above) was forwarded to respondent at his last known business address in Stillwater, Minnesota. Respondent was requested to provide a complete written response to the Director's Office within 14 days.

36. By letter dated April 5, 2004, respondent acknowledged receipt of the complaint and stated, "I will forward a response within the required time frame." Respondent also advised the Director that he had relocated his law office to New Richmond, Wisconsin. Respondent did not provide a response.

37. By letter dated May 7, 2004, respondent was reminded that he had not responded to the Stockton complaint and requested to do so immediately.

38. By letter dated June 3, 2004, respondent was again requested to provide a written response. Respondent was also requested to meet with the Director's representative on June 23, 2004, at 9:00 a.m. to discuss the matter.

39. By facsimile transmission of June 22 at 5:43 p.m., respondent informed the Director that he had "not ha[d] the time to respond to Ms. Stockton's allegations," but said he would do so by June 28, 2004. Respondent also proposed to postpone the meeting with the Director's representative until June 30, 2004.

40. Respondent did not provide a written response as promised by June 28, 2004.

41. Respondent did not appear at the Director's Office on June 30 as agreed. The Director's representative called respondent in New Richmond, Wisconsin, at 9:45 a.m. Respondent stated there had been a death in his family the previous week.

42. By facsimile transaction also dated June 30, 2004, respondent apologized and stated, "I still have not had time to respond to Ms. Stockton's allegations," but promised to do so by July 6, 2004, and agreed to meet with the Director's representative on July 8, 2004.

43. Respondent did not provide a written response as promised by July 6, 2004.

44. Respondent did appear and meet with the Director's representative on July 8, 2004, as agreed. Respondent discussed his situation generally and provided some information concerning the Stockton matter. Respondent was specifically informed that a written response (with a copy to the complainant) was still required. He promised to provide one promptly. Respondent failed to do so.

45. By letter dated July 23, 2004, respondent was reminded of his agreement to provide a response and requested to do so immediately. Respondent was advised that no further extensions could be granted, and that there did not appear to be any reason for respondent to be "too busy" to respond.

46. On September 1, 2004, charges of unprofessional conduct were issued against respondent. The pre-hearing meeting was scheduled for October 6, 2004. On September 2, 2004, respondent submitted a written response to the Stockton complaint. Respondent appeared for the pre-hearing meeting.

47. Respondent's failure to timely respond to the Stockton complaint constituted non-cooperation with the disciplinary investigation in violation of Rule 8.1(a)(3), MRPC, and Rule 25, 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: December 13, 2004.



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