

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against DONALD B. DAVISON,  
a Minnesota Attorney,  
Registration No. 21568.  
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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 (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 1, 1976. Respondent currently practices law in Grand Marais, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. Respondent was issued a private admonition on December 2, 2002, for failure to exercise diligence in representing a client, failure to communicate with a client, and failure to cooperate with the Director's requests for information, in violation of Rules 1.3, 1.4, and 8.1, Minnesota Rules of Professional Conduct (MRPC).

B. Respondent was issued a private admonition on September 26, 1989, for failure to exercise diligence in representing a client, and failure to communicate with a client, in violation of Rules 1.3 and 1.4, MRPC.

## FIRST COUNT

### Larry Boen Matter

1. On August 23, 2004, Larry Boen was named as defendant in a breach of contract lawsuit. Respondent represented Boen in the litigation. No retainer was paid and no fee agreement was executed.

2. On September 2, 2004, plaintiffs' counsel served upon respondent a set of interrogatories and requests for admission. Responses were not provided within the timeframe required by statute. On or about October 18, 2004, and again on November 10, 2004, plaintiffs' counsel requested the status of plaintiffs' discovery requests. Respondent failed to respond.

3. On November 16, 2004, plaintiffs' counsel filed a motion to compel answers to discovery. Respondent failed to inform Boen that a motion to compel had been filed. Although respondent provided plaintiffs' counsel with some of the requested information, the information provided was "incomplete, inaccurate and inconsistent." In addition, Boen's response was not notarized.

4. On or about December 13, 2004, plaintiffs' counsel served upon respondent a second set of interrogatories and discovery requests.

5. Boen contacted Cook County administration and learned that a hearing was scheduled for sometime in January 2005. Although Boen e-mailed respondent requesting the status of the matter and although respondent and Boen met in late December 2004, respondent failed to inform Boen that the January 2005 hearing pertained to a motion to compel discovery.

6. On January 14, 2005, the court ordered Boen/respondent to comply with the plaintiffs' discovery requests on or before January 25, 2005. The court imposed sanctions against Boen/respondent in the amount of \$350. Respondent failed to inform Boen of either the order or the sanction and failed to submit any finalized answers to discovery, in violation of the January 14 court order.

7. On March 1, 2005, Boen received an e-mail sent directly from one of the plaintiffs asking: "Did you know [your attorney] was sanctioned for not communicating?" This was the first time Boen was made aware of the sanctions.

8. On March 15, 2005, plaintiffs' counsel filed a motion for summary judgment. The court heard plaintiffs' summary judgment motion on April 19, 2005, and by order dated May 23, 2005, summary judgment was granted.

9. The court indicated in its order that the defendant's failure to respond to the plaintiffs' discovery requests would be considered an admission to the basic facts in the suit, or in the alternative, that the failure to answer the discovery requests warranted a sanction that the basic facts of the lawsuit were to be deemed admitted. A copy of the order granting summary judgment was sent to both attorneys on May 25, 2005, the date of filing. Respondent failed to inform Boen that summary judgment had been entered against him.

10. Although respondent did not inform Boen of the summary judgment order, on June 14, 2005, plaintiffs again sent an e-mail directly to Boen informing Boen that the judge had granted them summary judgment and had awarded them the full amount requested, plus attorney's fees. In response, Boen e-mailed respondent asking: "What the hell is this!" Respondent did not reply until June 22, 2005. In that communication, he failed to explain that the summary judgment motion had been granted, why the motion had been granted, what effect the judge's order may have on the lawsuit, or any of Boen's options regarding appeal. Respondent's June 22, 2005, e-mail is the last communication from him to his client.

11. Between June 22, 2005, and September 26, 2005, Boen contacted respondent multiple times via e-mail message. Excerpts from those e-mails read as follows:

- “What does this Temporary mean and why can’t we stop it and have a jury trial?” (June 22, 2005.)
- “Can we stop this process? If not, can we appeal?” “Talk to me.” (June 23, 2005.)
- “Don, are you around?” (June 28, 2005.)
- “Is everything okay with you?” “Please contact me so I know what is going on.” (July 12, 2005.)
- “I really wish I knew what was going on here.” (August 10, 2005.)
- “Is there a problem between you and me.” “Why won’t you return my calls and e-mails?” (August 11, 2005.)
- “I found out from [plaintiffs] that I have a judgment against me. Why didn’t you tell me this. You wouldn’t even answer my calls. I am not sure what is going on.” (September 26, 2005.)

12. On July 19, 2005, judgment was entered and the judge began considering a motion for attorney’s fees. On July 27, 2005, the court made a determination on attorney’s fees, finding in favor of the plaintiffs in the amount of \$3,000, due to Boen’s and/or respondent’s conduct. Respondent failed to explain or inform Boen of the \$3,000 sanction.

13. In October garnishment actions were started against Boen and in December Boen entered into a settlement agreement, *pro se*, with plaintiffs.

14. At no time did respondent inform Boen that motions to compel had been filed, why hearings had taken place or that attorney’s fees had been assessed. At no time did respondent inform Boen about the motion for summary judgment, the order for summary judgment and award, and what it meant. Respondent did not inform Boen of his right to appeal the judge’s orders.

15. Respondent’s conduct, in that he failed to respond to plaintiff’s initial discovery, failed to comply with the court’s order dated January 14, 2005, and failed to promptly inform complainant regarding the motion to compel discovery, the resulting

sanctions, the outcome of the motion for summary judgment, and the award of attorney's fees, violated Rules 1.4(a), as it existed prior to October 1, 2005, 1.3, 3.2, and 3.4(c), MRPC.

16. Respondent's conduct, in knowingly issuing checks without sufficient funds to pay them, to an opposing party in payment of a court-ordered sanction, violated Rule 8.4(d), MRPC.

#### Failure to Cooperate

17. On March 14, 2007, the Director wrote to respondent, requesting information regarding the payment of the sanctions, and timing and content of communications with Boen. Respondent was to provide the information within two weeks. Respondent failed to respond.

18. On May 3, 2007, the Director wrote to respondent requesting a response to the March 14, 2007, letter. Respondent was to provide the information by no later than May 18, 2007. On May 21, 2007, respondent responded, essentially stating that the answers to the questions posed in that letter were not available.

19. On June 27, 2007, the Director wrote respondent requesting records related to the payment of the sanctions, including a request for a copy of the check used to pay the sanctions. Respondent was to provide the requested information within two weeks. Respondent failed to respond.

20. On three occasions the Director called respondent and on July 19, 2007, the Director spoke with respondent. Respondent told an Assistant Director that he had paid the plaintiffs directly the full amount of attorney's fees ordered by the court. Respondent also conceded that some of the checks written to the plaintiffs were returned as non-payable.

21. On July 20, 2007, the Director wrote to respondent requesting records related to the payment of the sanctions, including bank statements for the account from

which the payment was drawn. Respondent was to provide the documents within two weeks. Respondent failed to reply.

22. On August 13, 2007, the Director wrote to respondent requesting records related to the payment of sanctions, including bank statements for the account from which the payment was drawn. Respondent was asked to respond by no later than August 24, 2007.

23. On August 24, 2007, respondent produced photocopies of some, but not all, of the canceled checks used to make payments to the plaintiffs. Two of the checks provided show they had been returned for non-sufficient funds. The checks provided do not add up to the \$3,350 of total sanctions ordered by the court. Respondent did not respond to the remainder of the Director's requests.

24. On August 28, 2007, the Director wrote to respondent requesting clarification of the August 24, 2007, response, as well as requesting bank statements for the account from which the payments were drawn. Respondent was asked to respond by no later than September 10, 2007. Respondent has failed to respond.

25. On September 27, 2007, the Director wrote to respondent requesting clarification of the August 24, 2007, response, as well as bank statements for the account from which the payment was drawn. The Director asked respondent to reply within ten days of the letter. Respondent has failed to respond.

26. On November 14, 2007, the Director wrote to respondent requesting clarification of the August 24, 2007, response, as well as bank statements for the account from which the payment was drawn. The Director asked respondent to reply within ten days of the letter. Respondent has failed to respond.

27. In each of the seven letters from the Director to respondent, dated May 3, 2007, forward, the Director reminded respondent of his responsibilities under Rule 25, RLPR, and that failure to respond to reasonable requests may constitute independent

and separate grounds for discipline. Regardless of those warnings, respondent has failed to cooperate.

28. Respondent did submit an answer to the charges seven days prior to the pre-hearing meeting, did attend the pre-hearing meeting, and did submit a signed pre-hearing statement to the Director.

29. Respondent's conduct, in failing to cooperate with an investigation conducted by the Director, violated Rule 8.1(b), MRPC, and Rule 25(a), 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: May 1, 2008.

  
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and

  
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