FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against PAUL ARTHUR EGTVEDT, a Minnesota Attorney, Registration No. 282194.

PETITION FOR DISCIPLINARY ACTION

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 8, 1998. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

L.B. Matter

1. In December 2009, L.B. retained respondent to represent him regarding a claim against his former employer. Specifically, L.B. had allegedly failed a random drug test and was terminated on that basis. L.B. believed the termination was improper.

2. On December 28, 2009, respondent wrote to L.B.'s former employer, identifying himself as L.B.'s attorney. In his letter, respondent also set out the basis for

L.B.'s position that the termination was in violation of both state and federal statutes, as well as the employer's employment policies.

3. In late June or early July 2010, respondent served on the former employer a summons and complaint.

4. On July 26, 2010, the attorney for the former employer answered the complaint and served on respondent various discovery requests, including requests for admission. Respondent failed to respond.

5. As a result of respondent's failure to respond to the requests for admission, the requests were deemed admitted.

6. Respondent failed to inform L.B. that he had served the lawsuit and failed to keep L.B. otherwise informed about the status of the matter.

7. On April 28, 2010, L.B. emailed respondent asking about the status of the lawsuit. Respondent failed to respond.

8. Over the course of the next several months, L.B. made numerous efforts to contact respondent. On or about October 13, 2010, L.B. attempted to leave a voicemail message for respondent, but he reached a recording indicating that respondent's voicemail box was full.

9. On October 13, 2010, L.B. emailed respondent stating that respondent's voicemail box was full and requesting an update on the case. Respondent failed to respond.

10. Respondent scheduled a meeting with L.B. for November 12, 2010. Respondent failed to appear for the meeting and L.B. twice emailed respondent, asking him to call and reschedule the meeting. Respondent failed to respond.

11. On April 26, 2011, L.B. emailed respondent regarding the status of his case. L.B. threatened to "go to the attorney general if I do not hear from you soon with a plan or settlement."

12. On April 27, 2011, respondent sent L.B. a responsive email stating that he was "working on a deposition scheduled for May on this and will have a schedule within the next week or so." Respondent also stated that he was "continuing the research on this and will get [employers] employees in for deposition soon. You will know the schedule within a week or so."

13. Respondent thereafter failed to schedule any depositions or to follow-up further with L.B. regarding the status of his case.

14. On May 18, 2011, L.B. emailed respondent informing him that he had "not received the deposition schedule as of yet." L.B. also observed that "it will be 18 months since I came to your office and you accepted the case and said it was a slam dunk." Respondent failed to respond.

15. L.B. emailed respondent again on June 1, July 25, July 28 and August 25, 2011, all without response. As of the date of this petition, respondent has had no further contact with L.B.

16. Respondent's conduct in the L.B. matter violated Rules 1.3, 1.4(a)(1), (3) and (4), and 3.2, Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Sprite Matter

17. In April 2008, Sprite Development, LLC ("Sprite Development"), Sprite Solutions, LLC ("Sprite Solutions"), and H.M. and R.B., the principals of both those entities, retained respondent to represent them in a contract dispute with Medrad, Inc. ("Medrad").

18. In September 2008, Medrad commenced a lawsuit in the federal district court for the northern district of Illinois ("Illinois court") against Sprite Development, Sprite Solutions and their principals. In January 2009, the Illinois court dismissed the case without prejudice for lack of subject matter jurisdiction. The Illinois court allowed

Medrad until February 10, 2009, to file an amended complaint that properly alleged its jurisdiction. Medrad filed and served an amended complaint on February 3, 2009.

19. In January 2009, Sprite Development, Sprite Solutions and their principals commenced a lawsuit against Medrad in the federal district court for the district of Minnesota. The Minnesota proceeding was stayed pending resolution of the Illinois proceeding, and was dismissed without prejudice in May 2011.

20. On February 11, 2009, respondent requested *pro hac vice* admission to the Illinois court to represent Sprite Development, Sprite Solutions and their principals in Medrad's lawsuit. Attorney Michael Johnson of Chicago, Illinois, was identified as local counsel on respondent's request. On February 26, 2009, the Illinois court granted respondent *pro hac vice* admission.

21. Respondent thereafter served on Medrad and filed with the Illinois court a motion to dismiss. In his motion, respondent apparently sought dismissal of Medrad's claims against Sprite Development, H.M. and R.B.

22. The Illinois court ordered that Medrad's response to the motion to dismiss was due on July 17, 2009, and that the reply to Medrad's response was due from Sprite Development, Sprite Solutions and their principals on July 31, 2009. Medrad filed and served its response to the motion to dismiss on July 17, 2009.

23. On August 5, 2009, respondent served and filed with the Illinois court a stipulation to extend the deadline for a reply from Sprite Development, Sprite Solutions and their principals to August 5, 2009. On that same date, respondent served and filed with the Illinois court his reply memorandum in support of the motion to dismiss.

24. By opinion and order dated September 8, 2010, the Illinois court dismissed Sprite Solutions as a defendant and directed the remaining defendants, *i.e.*, Sprite Development, H.M. and R.B., to answer Medrad's amended complaint by September 21, 2010.

25. Respondent did not serve or file an answer to Medrad's amended complaint by September 21, 2010.

26. At a status hearing on September 28, 2010, Medrad asked the Illinois court to direct Sprite Development and its principals to serve and file an answer to the amended complaint by October 12, 2010, which the court did.

27. On October 14, 2010, respondent served and filed with the Illinois court an answer to the amended complaint and a counterclaim.

28. On December 3, 2010, Medrad moved for dismissal of the counterclaim. The Illinois court directed Sprite Development and its principals to serve and file its response to the motion to dismiss by December 30, 2010.

29. In early 2011, one or both of Sprite Development's principals made multiple efforts by telephone and email to contact respondent regarding the response to the motion to dismiss. Respondent did not respond. Eventually, one of Sprite Development's principals contacted respondent's wife, which prompted a response from respondent.

30. On January 19, 2011, respondent served and filed an unopposed motion to extend the time to respond to Medrad's motion for dismissal of the counterclaim. Respondent's motion sought an extension to January 25, 2011.

31. On January 25, 2011, respondent served and filed with the Illinois court a memorandum in opposition to the motion to dismiss, together with an amended answer and counterclaim.

32. At a February 22, 2011, status hearing, the Illinois court granted respondent's unopposed motion to extend the time to respond to Medrad's motion for dismissal of the counterclaim. The court struck the amended answer and counterclaim served and filed by respondent, however, "because it was filed without leave of court."

33. By opinion and order dated September 6, 2011, the Illinois court dismissed the counterclaim of Sprite Development and its principals without prejudice, and allowed Sprite Development and its principals until September 23, 2011, to serve and file an amended counterclaim. Respondent failed to inform Sprite Development or its principals of these developments.

34. On September 7, 2011, Johnson attempted to contact respondent regarding the deadline for the filing of an amended counterclaim. Respondent did not respond.

35. On September 15, 2011, Johnson emailed respondent regarding the deadline for the filing of an amended counterclaim. Respondent did not respond.

36. Respondent failed to file an amended counterclaim by the September 23, 2011, deadline.

37. During this period, one or both of Sprite Development's principals were also attempting to contact respondent by telephone and email to learn the status of the lawsuit. Respondent failed to respond to these communications.

38. At a status hearing on October 4, 2011, which respondent failed to attend, the counterclaim of Sprite Development and its principals was dismissed with prejudice.

39. On October 13, 2011, Johnson informed the Illinois court of the lapses in respondent's Minnesota licensure (*see* paragraphs 46 to 49, below), and requested time for Sprite Development and its principals to retain successor counsel. The Illinois court continued the matter to November 10, 2011.

40. On November 7, 2011, successor counsel for Sprite Development and its principals served and filed with the Illinois court a motion to vacate the October 4, 2011, opinion and order, or to extend the deadline for the filing of an amended counterclaim. (Successor counsel served and filed an *amended* motion to vacate or to extend the deadline for the filing an amended counterclaim on November 21, 2011.)

41. By opinion and order dated April 30, 2012, the Illinois court denied successor's counsel's motion, thus affirming the dismissal of the counterclaim.

42. On October 14, 2011, R.B. wrote to respondent terminating his representation and requesting the files of Sprite Solutions, Sprite Development and their principals within five business days. Respondent failed to respond to R.B.'s letter.

43. On November 4, 2011, R.B. sent to respondent an affidavit describing the events that had led to the decision to terminate respondent's representation. R.B.'s affidavit constituted another request to respondent to provide the files of Sprite Solutions, Sprite Development and their principals. Respondent failed to respond.

44. To date, respondent has not provided the files of Sprite Solutions, Sprite Development and their principals.

45. Respondent's conduct in the Sprite matter violated Rules 1.3, 1.4(a)(1), (3) and (4), 1.16(d), 3.2 and 8.4(d), MRPC.

THIRD COUNT

Unauthorized Practice of Law

46. Respondent failed to pay his annual lawyer registration fee when it came due on January 1, 2011. Respondent did not pay the fee until April 6, 2011.

47. During the period January 1 to April 6, 2011, as a result of his failure to pay his annual lawyer registration fee, respondent's license was suspended. While he was suspended, respondent was not authorized to engage in the practice of law.

48. On May 16, 2011, respondent was placed on involuntary restricted status for failing to submit the required affidavit of continuing legal education (CLE) compliance. Respondent was reinstated from CLE restricted status on October 18, 2011. While respondent was on CLE restricted status, he was not authorized to engage in the practice of law.

49. During the periods of time in which he was either suspended for failing to pay his annual lawyer registration fee, or on CLE restricted status, L.B. and Sprite continued to believe that respondent was representing them in the matters described above.

50. Respondent's conduct in failing to inform L.B. and Sprite that he was fee-suspended and on CLE restricted status violated Rule 1.4(a)(1), MRPC.

FOURTH COUNT

Failure to Cooperate with the Director's Investigations

51. On October 3, 2011, the Director received from L.B. a complaint against respondent.

52. On October 17, 2011, the Director issued a notice of investigation assigning L.B.'s complaint to a district ethics committee investigator ("DEC investigator") and requiring respondent to provide a written response to the complaint within 14 days.[1] The Director mailed the notice to 2915 Wayzata Boulevard, Minneapolis, MN 55405 ("Wayzata Boulevard address), which was the address appearing for respondent in the lawyer registration records. Respondent failed to respond to the Director's notice of investigation of L.B.'s complaint.

53. Also on October 17, 2011, the Director wrote to respondent at the Wayzata Boulevard address requesting information concerning respondent's compliance with his CLE obligations and his practice of law since being placed on CLE restricted status.

54. On November 3, 2011, respondent provided the Director with a copy of the Supreme Court's October 18, 2011, order reinstating respondent to an active status. (The Wayzata Boulevard address appeared on respondent's letter.) Respondent did

[1] The DEC investigator originally assigned was unable to undertake the investigation. The Director issued a notice of reassigned investigation assigning a replacement investigator on October 24, 2011.

not, however, provide the requested information regarding his practice of law during the period in which he was on CLE restricted status.

55. On November 2, 2011, the DEC investigator left a message for respondent at the telephone number appearing on L.B.'s complaint, (612) 767-1846, asking respondent to contact him. Respondent failed to respond.

56. On November 4, 2011, the DEC investigator left a second message at that same telephone number, asking respondent to contact him. Again, respondent failed to respond.

57. Also on November 4, 2011, the Director wrote to respondent at the Wayzata Boulevard address acknowledging receipt of his November 3, 2011, letter, and again requesting information regarding respondent's practice of law during the period in which he was on CLE restricted status. Respondent failed to respond.

58. On November 7, 2011, the DEC investigator attempted to reach respondent at the telephone number appearing on respondent's law office's website, (507) 434-0505. The DEC investigator reached a recording stating that respondent's law office telephone had been disconnected.

59. Also on November 7, 2011, the DEC investigator emailed respondent at the email address appearing on his law office's website, paul@egtvedtlaw.com. On November 12, 2011, the investigator's email was returned to him as a "failed delivery."

60. Also on November 7, 2011, the DEC investigator left a voicemail message on respondent's cellular telephone, (612) 501-3076. In the message, the DEC investigator provided his own cellular telephone number and asked respondent to call him.

61. On November 9, 2011, respondent left a voicemail message on the DEC investigator's cellular telephone acknowledging that he had received L.B.'s complaint

and stating that he would respond by November 10, 2011. Respondent failed to respond.

62. On November 14, 2011, the DEC investigator left a voicemail message on respondent's cellular telephone, asking respondent to contact him. Respondent failed to do so.

63. On November 16, 2011, the DEC investigator wrote to respondent at the Wayzata Boulevard address. Respondent failed to respond.

64. On November 22, 2011, the DEC investigator left a voicemail message on respondent's cellular telephone, asking respondent to contact him. Again, respondent failed to do so.

65. Also on November 22, 2011, the Director wrote again to respondent at the Wayzata Boulevard address to request information regarding respondent's practice of law during the period in which he was on CLE restricted status. Respondent failed to respond.

66. On December 19, 2011, the Director received the Sprite Development complaint against respondent.

67. On December 29, 2011, the Director issued to respondent a notice of investigation regarding respondent's fee-suspended and CLE restricted statuses. The notice, which was sent to the Wayzata Boulevard address, directed respondent to provide a written response addressing the question of whether his conduct as it pertained to his fee-suspended and CLE restricted statuses was in compliance with the Minnesota Rules of Professional Conduct. Respondent failed to respond.

68. On January 6, 2012, the DEC investigator provided the Director with his investigative report regarding the L.B. complaint.

69. On January 11, 2012, the Director issued to respondent a notice of investigation regarding H.M.'s complaint against him. The notice, which was sent to

the Wayzata Boulevard address, requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

70. On January 17, 2012, respondent telephoned the Director and left a message for the Senior Assistant Director assigned to his disciplinary matters stating that he wanted to "set up a meeting." In his message, respondent left his cellular telephone number, the (612) 501-3076 number.

71. On January 18, 2012, the Senior Assistant Director telephoned respondent at that number and left a voicemail message stating that he was willing to meet with respondent. Respondent did not respond.

72. On February 2, 2012, the Director wrote to respondent at the Wayzata Boulevard address, 2915 Wayzata Boulevard, reiterating that the assigned Senior Assistant Director was willing to meet with him. The Director asked respondent to telephone him immediately to schedule a meeting. If respondent no longer wished to meet with the Director, the Director asked respondent to provide his written responses to the three outstanding notices of investigation (regarding the L.B. complaint, respondent's fee-suspended and CLE restricted statuses, and the H.M. complaint).

73. On March 12, 2012, the postal service returned the Director's February 2, 2012, letter to respondent as undeliverable. Notations on the envelope indicated that the letter was "not deliverable as addressed" and that the postal service was "unable to forward" the letter.

74. On March 30, 2012, the Director received a facsimile transmission from respondent that included a letter dated March 29, 2012. In that letter, respondent stated that he was writing to "request a meeting with you the latter part of the week of April 9, 2012." Respondent also stated that he was available either April 12 or 13 and that he was "re-contacting Lawyers Concerned for Lawyers as well." Respondent invited the Director to contact him at the telephone number and address reflected on the letter. The

telephone number was respondent's cellular telephone number, and the address was 4236 Upton Avenue South, #101, Minneapolis, MN 55410 ("Upton Avenue address").

75. On April 4, 2012, a Senior Assistant Director left a voicemail message on respondent's cellular telephone. The Senior Assistant Director stated that he was willing to meet with respondent, but that it was necessary for respondent to provide his written responses to the three outstanding notices of investigation. Respondent failed to respond.

76. On April 9, 2012, the Director wrote to respondent at the Upton Avenue address. The Director again stated that "while I am willing to meet with you, we still need you to respond to the three pending complaints against you." The Director also stated that if there "is some reason that you are unable to provide written responses to the complaints, please telephone me so that we can discuss this matter further." Respondent failed to respond.

77. The Director wrote again to respondent at the Upton Avenue address on May 9, 2012. Respondent failed to respond.

78. Through an Internet search the Director discovered an address for respondent at 220 South Sixth Street, Suite 2000, Minneapolis. The Internet search also indicated a telephone number for that address of (612) 605-4098. On February 13, 2013, a representative of the Director's Office called that number in an effort to reach respondent. The person who answered the phone stated that respondent was not at that number, she did not recognize respondent's name, and the address associated with (612) 605-4098 was not 220 South Sixth Street.

79. On February 15, 2013, the Director wrote again to the Upton Avenue South address (the last address the Director had written to without the correspondence being returned). This time the Director's correspondence was returned as "undeliverable" and "unable to forward."

80. Respondent's conduct in failing to cooperate with the DEC investigator and Director's investigation of the L.B., Sprite and fee-suspended/CLE restricted matters, violated Rule 25, RLPR, and Rule 8.1(b), 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: August 28, 2013.

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