

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DONALD BEDELLE FULLER,
an Attorney at Law of the
State of Minnesota.

**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 June 5, 1990. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

a. On April 12, 1993, respondent was issued an admonition for instituting suit against a former client in violation of Rule 1.9(a), Minnesota Rules of Professional Conduct (MRPC).

b. On May 20, 1996, respondent was issued an admonition for failing to pay court-ordered fees assessed against him in violation of Rules 3.4(c) and 8.4(d), MRPC.

FIRST COUNT

Imprint Technologies, Inc. and Brett Hanson Matters

A. Improper Withdrawal From Representation.

1. Respondent has represented Brett Hanson personally and several business entities owned by Hanson since at least 1990.

2. Imprint Technologies, Inc. (Imprint) was a corporation operated by Hanson. Hanson was the sole shareholder, officer and director of Imprint.

3. In September 1995 respondent prepared and filed petitions for the personal bankruptcies of Hanson and his wife.

4. In September 1995 respondent prepared and filed a Chapter 11 bankruptcy petition for Imprint.

5. Respondent subsequently withdrew from representing Hanson and his wife in the personal bankruptcies because of a conflict of interest with his role as attorney for Imprint.

6. On May 2, 1996, the United States Bankruptcy Court issued an order requiring Imprint to file objections to proofs of claim within 30 days of the date of the order. On that same date, a separate order was entered requiring Imprint and respondent to file, within ten days, a report regarding payments to be made under the reorganization plan.

7. Respondent represented Imprint in an unlawful detainer action that was commenced on May 23, 1996. A hearing in the unlawful detainer matter was scheduled for June 4, 1996.

8. On June 3, 1996, respondent withdrew from representing Imprint.

9. Respondent now asserts that he withdrew from the representation because he learned of allegations that Hanson had misappropriated funds from the Imprint 401(k) plan. In his letters to Hanson and others, however, he does not mention the 401(k) allegations until after Hanson filed his complaint with the Office of Lawyers Professional Responsibility (OLPR).

10. Prior to withdrawal, respondent had not filed a notice of objection to claims of creditors in the Imprint bankruptcy matter or obtained an extension of time in which to file a notice of objection.

11. Prior to withdrawal, respondent had not filed the report regarding payments to be made under the reorganization plan as required by the May 2, 1996, court order.

12. Prior to withdrawal, respondent did not obtain permission of the court to withdraw from the representation of Imprint in the bankruptcy matter as required by Rule 9010-3, Local Rules of Bankruptcy Court for the District of Minnesota.

13. Prior to withdrawal, respondent did not take steps to the extent reasonably practicable to protect Imprint's interests in the unlawful detainer matter. Respondent did not allow sufficient time for Imprint to obtain substitute counsel or obtain a continuance of the unlawful detainer hearing.

B. Improper Disclosure of Client Confidences and Secrets, False Statements, and Harassment.

14. On June 6, 1996, after withdrawing as attorney for Imprint, respondent wrote to Randall Seaver, attorney for the committee of unsecured creditors, stating, in part:

At the time of my retention Brett Hanson gave me his solemn word that he would go through treatment. That has not occurred although I am told that he has now scheduled himself in for the required treatment. The ride since September has been too rough to bear given that the treatment did not occur. On Monday I advised Brett that I could no longer endure the abusive conduct nor the failed promises. I resigned from further representation and asked him to obtain replacement counsel.

Hanson's treatment plans were a client secret as that term is defined in Rule 1.6(d), MRPC. Disclosure of Hanson's treatment plans to Seaver was not required or permitted by any exception to the general rule of confidentiality contained in Rule 1.6(a), MRPC.

15. On June 11, 1996, respondent wrote to Art Benson, attorney for Imprint's landlord. The letter stated, in part:

On last Monday evening I had suffered an auto accident. Earlier that day I had received the most recent of a series of worthless checks either from Brett Hanson personally or from Imprint Technologies, Inc. A matter of public record would confirm that Brett had, within the prior two weeks, escaped from a jail sentence by informing a Hennepin County Judge that he would never write another worthless check.

On Monday evening, after enduring far too much abuse from an impaired Brett, which was witnessed by my own CPA, I was first advised to and then did withdraw, forever, from any further representation on any matter for Brett Hanson, Cindy Hanson and or Imprint Technologies. I could not stand the incongruence of his impaired words versus his harmful actions.

Respondent's knowledge of the bad check charges against Hanson arose out of his representation of Hanson in those charges. Hanson's bad check criminal proceedings, the disposition of those charges and his issuance of bad checks to respondent, and the circumstances of respondent's withdrawal from representation were all client secrets as that term is defined in Rule 1.6(d), MRPC. Disclosure of these secrets to Benson was not required or permitted by any exception to the general rule of confidentiality contained in Rule 1.6(a), MRPC.

16. On June 11, 1996, respondent wrote a letter to attorney Richard Saliterman, an attorney that had previously represented Hanson. Saliterman was not then involved in any of the proceedings involving Hanson or Imprint. That letter stated, in part:

Until recently, I could never have known the anger which you rightly bore against Brett Hanson which evidenced itself against me.

During the past few weeks, I received the most recent of a series of worthless checks either from Brett Hanson personally or from Imprint Technologies, Inc. A matter of public record would confirm that Brett had, within the prior two weeks, escaped from a jail sentence by informing a Hennepin County Judge that he would never write another worthless check.

On Monday evening, after enduring far too much abuse from an impaired Brett, which was witnessed by my own CPA, I was first advised to and then did withdraw, forever, from any further representation on any

matter for Brett Hanson, Cindy Hanson and or Imprint Technologies. I could not stand the incongruence of his impaired words versus his harmful actions.

Hanson's bad check criminal proceedings, the disposition of those charges, the issuance of bad checks to respondent and the circumstances of respondent's withdrawal from representation were all client secrets as that term is defined in Rule 1.6(d), MRPC. Disclosure of these secrets to Saliterman was not required or permitted by any exception to the general rule of confidentiality contained in Rule 1.6(a), MRPC.

17. On June 19, 1996, in response to a request from the court for a letter explaining why no stipulation for assumption of a lease by Imprint had been submitted, respondent wrote to Judge Robert J. Kressel at the United States Bankruptcy Court. That letter stated, in part:

A fundamental premise of the representation was that Mr. Hanson would begin and complete treatment for alcohol dependency - prior to the confirmation of the Debtor's plan. That representation was also made to Mr. Fadlovich who had serious concerns about serial filings. The reason for the treatment was to assure that commitments were kept and some slight evidence of a conscience was created. Attorneys Richard Saliterman and Tom Miller previously had serious concerns about Mr. Hanson after having suffered similar abusive conduct.

My own professional responsibility to my client does not permit me to divulge to the court whether the treatment has yet been completed; however, it is a matter of public record in other tribunals that the question of restoration of conscience and acceptance of responsibility remains unresolved. The completion of treatment, in my opinion, was required to restore the dignity of the process and to insure the integrity of the plan and it was fundamental to my retention and continuation.

Throughout, the landlord was facilitative as was the landlord's attorney. It was not possible, given the Debtor's leadership impairment, to present the stipulation for assumption of the lease in good faith. It was withheld - pending Mr. Hanson's completion of treatment. It was painful to watch the landlord continue to suffer from repetitive late payments, chaos, and abusive treatment.

Hanson's treatment plans were a client secret as that term is defined in Rule 1.6(d), MRPC. Disclosure of Hanson's treatment plans to Judge Kressel was not required or

permitted by any exception to the general rule of confidentiality contained in Rule 1.6(a), MRPC.

18. Respondent's statement to Judge Kressel that he could not present the stipulation because of Hanson's "leadership impairment" was false. In fact, on June 2, 1996, respondent had written to Hanson regarding the lease and the stipulation for assumption stating, in part:

Due to my own press of time, I asked Art Benson to draft the Stipulation. Both the Court and I am still waiting. . .

* * *

It appears that Art Benson and Ed Schmidt don't want to adhere to their commitment which was approved and is awaiting the Court's Order wherein Imprint assumed the lease and your guarantee remained valid, that they don't want to submit that Stipulation as often requested by the Court, and they want you to sign a new agreement without first doing what the Court has asked to be done.

19. The Internal Revenue Service and the Minnesota Department of Revenue were creditors in the Imprint bankruptcy. Respondent had also represented Hanson's wife, Cindy, in negotiations with the IRS concerning her personal tax liabilities. On July 17, 1997, respondent wrote to the Internal Revenue Service and the Minnesota Department of Revenue. That letter, in part, falsely stated:

Last night I received information which confirms that Brett for sure and Cindy Hanson withheld information concerning substantial assets when they submitted either offers in compromise or requests for installment agreements. Specifically, I was told that Brett sold assets of Imprint Technologies Inc. to E. D. Bullard of near Paducah Kentucky for an amount up to \$700,000.00 and instead of running the money through the company converted it to his own use and put some of the money into upgrades in the homestead premises, bought more than \$6,500.00 worth of furniture from Ethan Allen alone and a \$10,000.00 stereo/TV component system, took a \$14,000.00 cruise, and acquired \$60,000.00 worth of Suburbans and Vans, and made shopping trips to Nordstroms and other expensive stores to completely redo the house. I don't believe the receipt of those monies personally was disclosed in the offers or requests for installment payments. Pam Jordan provided the information

last night and it also demonstrates that the value of the home was completely understated.

20. In fact, Hanson and Imprint had received only \$148,650 from the E. D. Bullard sale. Respondent was aware of the actual sale price because he provided legal services to Imprint in connection with the sale that included review of offers and proposals and drafting of the sale documents. Additionally, respondent had drafted and filed with the bankruptcy court disclosure statements setting forth the terms of the E. D. Bullard sale. The disclosure statements stated, in part:

The Debtor received a payment from E. D. Bullard in the amount of \$70,000.00 on March 30, 1994, which represented payment for goodwill and customer lists. On November 2, 1994, Mr. Hanson did personally receive an actual payment of \$66,150.00 from E. D. Bullard as payment to Mr. Hanson for the personal non-compete provisions of the E. D. Bullard agreement. Solely to improve the cash position of the Debtor, Mr. Hanson then loaned the sum of \$66,150.00 to the Debtor subject to the terms of the first position security agreement and financing statement previously filed by Mr. Hanson.

21. Respondent had no reasonable basis to believe that the allegations in his July 17, 1997, letter were true.

22. On July 28, 1998, respondent wrote to Judge Kressel, Judge Dreher, and the Director. In that letter respondent stated, in part:

In order to assure my independent efforts in representing Imprint Technologies and to assure my best efforts towards protecting the bankruptcy estate, protecting the creditors, and assuring a good faith effort towards tax authorities, I agreed to forgo attorney's fees.

* * *

The terms of my retention, designed to assure maximum protection of the bankruptcy estate, were that Hanson would quit drinking, that Hanson would go through resident chemical dependency treatment, that there would be no more costly and detrimental extra-marital affairs, and that Hanson as CEO of Imprints would deal in good faith with the Court, creditors, the landlord, and the tax authorities.

The letter also falsely stated and implied that Hanson was responsible for the death of two people, that Hanson had threatened to kill respondent, and that Hanson had committed a variety of fraudulent actions in the conduct of his various businesses.

23. Respondent sent a copy of this letter to at least twelve persons other than the addressees, including at least two of Hanson's and Imprint's creditors.

24. Respondent's statement in his July 28, 1998, letter that he agreed to forgo attorney's fees in the Imprint bankruptcy was false. In fact, pursuant to an agreement with respondent, Hanson personally paid respondent \$290 per week for his representation of Imprint in the bankruptcy.

25. The terms of respondent's representation of Imprint and Hanson were a client secret as that term is defined in Rule 1.6(d), MRPC. Disclosure of these terms was not required or permitted by any exception to the general rule of confidentiality contained in Rule 1.6(a), MRPC.

26. Respondent had no reasonable basis to believe that the statements in his letter alleging that Hanson had killed two persons, threatened to kill him, and that Hanson had committed a variety of fraudulent actions in the conduct of his various businesses were true.

27. In 1994 and 1995 respondent represented Imprint in proceedings before the Department of Economic Security.

28. On May 2, 1994, a second hearing was held on the matter then pending before the Commissioner of Economic Security. Neither Hanson nor respondent attended that hearing. The reemployment insurance judge ruled against Imprint at this hearing.

29. Respondent represented Imprint before the Court of Appeals in the appeal of the adverse ruling of the Commissioner of Economic Security. During the course of that appeal, respondent falsely told the Court that he advised his client not to attend the second hearing because its presence would have served no purpose. In fact, respondent had not advised Hanson not to attend the hearing.

30. On October 2, 1996, respondent wrote to Hanson's attorney, David Jon Hoiland, stating in part:

There is a complete Imprint appellate case concerning successor liability that is factually flawed but in that matter I protected his drinking as he missed a scheduled hearing and failed to protect his rights. I covered for him and said that I told him not to attend the meeting he missed due to alcohol so that he would not look as if he was inattentive to important matters. He had that case won at the early level and then gave it up due to his missing the scheduled hearing. He then made up a whole appellate case to try to mask his human frailty.

31. On April 6, 1998, in a letter to the Director, respondent also admitted that his statement to the Court of Appeals was false, stating in part:

Brett Hanson had me say that I had advised him not to go to the hearing when in fact I had resigned as the corporation's attorney, he had put me in the hospital, and I did not even represent the corporation when he was too drunk and forgetful to go [sic] the scheduled hearing. We compromised on saying that Brett's presence at the hearing would have served no useful purpose; i.e., the truth is he was drunk.

However it is a lie to say that I advised him not to go to the hearing. After that fiasco, I informed Brett Hanson, as the CEO for Imprints that I would not help perpetuate or facilitate any lie to any Court.

(Emphasis and italics in original).

32. From June 3, 1996, through March 15, 1999, respondent wrote at least 25 letters to various individuals and government agencies accusing Hanson of various crimes, frauds, and other misconduct. The letters from respondent included allegations of murder, conspiracy, theft, fraud, perjury, gambling, "womanizing," alcoholism, and tax evasion. The recipients of the various letters included: Vice President Al Gore, Janet Reno, the IRS, the Minnesota Department of Revenue, the Minnesota Department of Economic Security, the U.S. Attorney's Office, Judge Kressel, Judge Dreher, the Minnesota Supreme Court, the Hennepin County Attorney's Office, the U.S. Trustee, the FBI, the Minnesota Attorney General's Office, various creditors of Imprint and

Hanson, Judge Wexler, the Plymouth City Attorney, Judge O'Brien, and Hanson's probation officer.

33. Respondent's letters served no substantial purpose other than to harass and burden Hanson.

34. Included in various letters sent as a part of the pattern of harassment were allegations that Hanson had misappropriated 401(k) funds from Imprint. While Hanson was, in fact, convicted of failing to transfer withheld 401(k) funds from Imprint to the 401(k) trust, respondent's letters in this regard went well beyond any applicable exception to the general rule of confidentiality, Rule 1.6(a), MRPC.

C. Failure to Disclose Source of Imprint Attorney Fees.

35. On October 19, 1995, respondent filed an Application By Debtor For Leave To Retain Attorney (Application) and Statement of Compensation in the Imprint Technologies, Inc. bankruptcy matter seeking to have himself appointed as attorney for Imprint. That same date the court issued an order approving employment of respondent as Imprint's attorney.

36. Rule 2014, Federal Rules of Bankruptcy Procedure, requires that applicants for employment in bankruptcy matters set forth in their application, *inter alia*, "any proposed arrangement for compensation."

37. The Application falsely recited that respondent would be paid compensation by Imprint. In fact, as a condition of representation, respondent required that Hanson personally pay him \$290 per week for representation of Imprint in the bankruptcy proceedings.

38. Respondent's affidavit accompanying the Application falsely stated that respondent was not connected with any party in the proceeding or to any of Imprint's creditors and that he did not have any interest adverse to Imprint. In fact, the agreement that Hanson would be responsible for payment of Imprint's attorney's fees constituted a connection with a party in the proceeding and a creditor of Imprint.

39. Rule 2016, Federal Rules of Bankruptcy Procedure, requires that an attorney for a debtor in a bankruptcy case file with the court a statement of compensation setting forth, *inter alia*, the source of attorney's fees payments, whether or not the attorney applies to the court for compensation. Attorney's fees paid in Chapter 11 bankruptcy cases are subject to review by the court for reasonableness.

40. Hanson, pursuant to his agreement with respondent, made the requested weekly payments from October 1995 through June 1996. Imprint also directly paid respondent \$800 in fees. Respondent neither informed the court of the payments from Hanson and Imprint nor applied for approval of his fees.

41. Respondent's conduct in withdrawing from the representation of Imprint without giving reasonable notice, allowing time for the employment of other counsel, and without obtaining the permission of the court violated Rule 1.16(c) and (d), MRPC.

42. Respondent's conduct in revealing confidences and secrets gained during his representation of Imprint and Hanson violated Rule 1.6, MRPC.

43. Respondent's conduct in knowingly making false statements to the court and other government agencies regarding Hanson's activities and engaging in a course of harassment against Hanson violated Rules 3.3(a), 4.1, 4.4, 8.4(c) and 8.4(d), MRPC.

44. Respondent's conduct in making false statements to the court regarding the source of the payment of his fees, failing to disclose to the court the source of his fee payments, and in charging and collecting fees for his representation of Imprint in the Chapter 11 bankruptcy without court approval of those fees violated Rules 1.5(a), 3.3(a), 3.4(c), 8.4(c) and 8.4(d), MRPC.

SECOND COUNT

Submission of False Evidence in a Disciplinary Investigation

45. On December 17, 1997, the Director wrote to respondent's counsel asking for, amongst other things, copies of any letters in which respondent disclosed information regarding Hanson or Imprint.

46. On December 18, 1997, respondent replied to this request by providing the Director with a copy of a facsimile transmission to his attorney. In that facsimile transmission respondent stated, in part:

Paul, I do not keep records about former clients who have committed serious crimes. I don't document who I talk to about any former client or the substance of what was said.

* * *

I have kept no records concerning Brett Hanson since I quit representing him . . .

* * *

I have no copies of letters to the IRS or to anyone else and am not aware of any responsibility to keep letters concerning former clients.

* * *

I am not keeping a copy of Mr. Burns letter, your FAX, or of this FAX since Mr. Hanson has made it known that he is around people who can have people killed or harmed and so I returned all his records, provided all records to the Hennepin County Ethics examiner and have kept nothing concerning Mr. Hanson or Imprint technologies Inc. since the termination of the representation.

47. On August 6, 1998, in response to follow-up inquiries from the Director regarding the death threat allegations, respondent hand-delivered a letter to the Director enclosing a copy of a letter purportedly written on September 4, 1996, to Judge Kressel. That same day respondent mailed to the Director a copy of a letter enclosing a copy of a letter purportedly written on July 14, 1997, to Michael Fadlovich of the U. S. Trustee's Office.

48. Neither Judge Kressel nor Michael Fadlovich are able to confirm receipt of the letters purportedly addressed to them.

49. On July 15, 1998, respondent wrote to the Director in response to a request for information. In that letter he made reference to and enclosed a copy of a letter he purportedly sent to Vance Bushay on July 3, 1998.

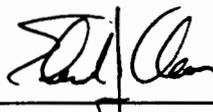
50. Vance Bushay is unable to confirm receipt of the July 3, 1998, letter.

51. Respondent has either fabricated documents for submission to the Director in the course of a disciplinary investigation or falsely stated he did not keep copies of writings to others regarding Hanson and Imprint when, in fact, he did.

52. Respondent's conduct in submitting false evidence in the course of a disciplinary investigation and/or falsifying evidence violated Rules 3.3(a)(4), 3.4(b), 8.1(a), and 8.4 (c), 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: November 12, 1999.



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