

STATE OF MINNESOTA
COUNTY OF KANDIYOHI

IN DISTRICT COURT
EIGHTH JUDICIAL DISTRICT
File No. CX-99-2061

In Re Petition for:

Disciplinary Action Against

Donald Bedelle Fuller
an Attorney at Law
of the State of Minnesota

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

A disciplinary hearing was held at the Minnesota Judicial Center, St. Paul, Minnesota, on April 4 and 5, 2000, before the Honorable John C. Lindstrom, Judge of the District Court.

Patrick R. Burns, Senior Assistant Director, appeared for the petitioner, the Director of the Office of Lawyers Professional Responsibility (Director). The Respondent appeared pro se. Testimony was received from; Michael Fadlovich, Judge Robert J. Kressel, Vance Bushay, Randall Seaver, David Hoiland, Nick Katko, Brett Hanson, Sylvia Schmidt, Pam Jordan, and the Respondent.

Based upon the evidence adduced and all the files and records herein, and the testimony received, the Court makes its:

FINDINGS OF FACT:

A. Improper Withdrawal From Representation.

1. The Respondent, Donald Bedelle Fuller (Fuller) has represented Brett Hanson (Hanson) personally and through several business entities owned by Hanson since 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 Fuller prepared and filed a Chapter 11 bankruptcy petition for Imprint.

4. 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 Fuller to file, within ten days, a report regarding payments to be made under the reorganization plan.
5. Fuller also represented Imprint in an unlawful detainer action in Hennepin County that action was commenced on May 23, 1996. A hearing in the unlawful detainer matter was scheduled for June 4, 1996.
6. On June 3, 1996, Fuller withdrew from representing Imprint and did not notify Hanson or the court prior to his withdrawal.
7. Fuller now asserts that he withdrew from the representation because he learned of allegations that Hanson had misappropriated funds from the Imprint 401(k) plan. Fuller did not raise the 401(k) allegations until after Hanson filed his complaint with the Office of Lawyers Professional Responsibility (OLPR). Fuller's letters to Hanson and others cite as the reasons for withdrawal; Hanson's chemical dependency and Hanson's failure to honor his financial obligations.
8. Prior to withdrawal, Fuller 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.
9. Prior to withdrawal, Fuller had not filed the report regarding payments to be made under the reorganization plan as required by the May 2, 1996 bankruptcy court order.
10. Prior to withdrawal, Fuller 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 the Bankruptcy Court for the District of Minnesota.
11. Prior to withdrawal, Fuller did not take steps to the extent reasonably practicable to protect Imprint's interests in the unlawful detainer matter. Fuller did not allow sufficient time for

Imprint to obtain substitute counsel or attempt to obtain a continuance of the unlawful detainer hearing.

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

12. On June 6, 1996, after withdrawing as attorney for Imprint, Fuller wrote to Randall Seaver, attorney for the committee of unsecured creditors in the Imprint bankruptcy, 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.

13. Hanson's chemical dependency and plans for treatment was information Fuller gained during his representation both of Hanson personally and of the various business entities owned by Hanson.
14. Hanson never authorized Fuller to disclose to anyone his plans for chemical dependency treatment.
15. Hanson's chemical dependency and his plans for treatment were not relevant to the Imprint bankruptcy proceeding.
16. Hanson's treatment plans were a client secret as that term is defined in Rule 1.6(d), Minnesota Rules of Professional Conduct (MRPC).
17. On June 11, 1996, Fuller wrote to Art Benson, attorney for Imprint's landlord in the unlawful detainer action. 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.

18. Hanson's issuance of bad checks to Fuller, and the circumstances of Fuller's withdrawal from representation were all client secrets as that term is defined in Rule 1.6(d), MRPC.
19. On June 11, 1996, Fuller 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.

20. Fuller's June 11, 1996 letter to Saliterman constituted an unauthorized disclosure of client secrets as that term is defined in MRPC 1.6(d).
21. On June 11, 1996, Hanson wrote to Fuller specifically reminding him that he considered his treatment plans to be confidential information.
22. 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, Fuller 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.

23. Hanson's treatment plans were a client secret as that term is defined in Rule 1.6(d), MRPC.
24. Hanson's treatment plans were not relevant to the issue of why no stipulation for assumption of the lease had been submitted to the court.
25. Fuller's statement to Judge Kressel that he could not present the stipulation because of Hanson's "leadership impairment" was false.
26. On June 2, 1996, Fuller had written to Hanson regarding the stipulation for assumption of the lease 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.

27. The Internal Revenue Service (IRS) and the Minnesota Department of Revenue (MDOR) were creditors in the Imprint bankruptcy. Fuller had also represented Hanson and his wife, Cindy, in negotiations with the IRS concerning their personal tax liabilities.
28. On July 17, 1997, Fuller wrote to the IRS and the MDOR. 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 Nordstrom's 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.

29. Hanson and Imprint had received only \$148,650 from the E. D. Bullard sale. This was confirmed by the testimony at trial of Nick Katko, Chief Information Officer of the E. D. Bullard Company.
30. Fuller was aware of the actual sale price paid by Bullard 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, Fuller had drafted and filed with the bankruptcy court disclosure statements setting forth the terms of the E. D. Bullard sale. Both the sale documents and the disclosure statements accurately reflected the sale price as \$148,650.
31. Fuller was unable to identify any documents he had seen or reviewed which supported his allegation that Hanson had received \$700,000 from the E. D. Bullard sale.
32. Fuller was unable to identify any documents he had seen or reviewed prior to July 17, 1999, which supported his allegation that Hanson had improperly converted corporate funds to his personal use.
33. On July 28, 1998, Fuller wrote to Judge Kressel, Judge Dreher, and the Director. In that letter Fuller 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 stated and implied that Hanson was responsible for the death of two people, that Hanson had threatened to kill Fuller, and that Hanson had committed a variety of fraudulent actions in the conduct of his various businesses.

34. Fuller sent a copy of this letter to a number of Imprint's creditors as well as to the addressees.

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

36. Fuller 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.

37. In 1994 and 1995 Fuller represented Imprint in proceedings before the Department of Economic Security.

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

39. Fuller 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, Fuller falsely told the Court that he advised his client not to attend the May 2, 1994 hearing because his presence would have served no purpose.

40. Fuller admitted in an October 2, 1996, letter to attorney David Jon Hoiland and in an April 6, 1998, letter to the Director that he had lied to the Court of Appeals.
41. From June 3, 1996, through March 1, 2000, Fuller wrote more than 25 letters to various individuals and government agencies accusing Hanson of various crimes, frauds, and other misconduct. The letters from Fuller 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 Robert Kressel, Judge Nancy 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 Thomas Wexler, the Plymouth City Attorney, Judge Dennis O'Brien, Hanson's probation officer, and Judge Ann Montgomery.
42. On September 10, 1999, Fuller filed an adversary complaint in the U.S. Bankruptcy Court on behalf of himself and, a client, Pamela Jordan, objecting to the discharge of Hanson's debts in his personal bankruptcy. This complaint was ultimately dismissed as untimely when the court found that Fuller did not file the complaint by the deadline of July 17, 1998, even though he was aware of the bankruptcy proceeding since May 22, 1998.
43. On September 20, 1999, Fuller wrote to Hanson threatening to involve the IRS in the proceedings unless Hanson accepted an offer of settlement that included, amongst other things, a payment to Fuller of \$2,000 on the \$580 claim asserted by Fuller on his own behalf.
44. The various letters described in paragraph 41 included allegations that Hanson had converted 401(k) funds from Imprint to his personal use.
45. Fuller was unable to identify at trial any documents in support of his allegation that Hanson had improperly diverted corporate funds to his personal use.

46. While Hanson was, in fact, convicted of failing to transfer withheld 401(k) funds from Imprint to the 401(k) trust, the charging documents and plea agreement both clearly specify that Hanson was charged with converting the funds to the benefit of Imprint.

47. Fuller's letters served no legitimate purpose.

C. Failure to Disclose Source of Imprint Attorney Fees.

48. On October 19, 1995, Fuller 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 Fuller as Imprint's attorney.

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

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

51. Fuller's affidavit accompanying the Application falsely stated that Fuller 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.

52. 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 and 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.

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

D. Submission of False Evidence in a Disciplinary Investigation.

54. Fuller fabricated documents for submission to the Director in the course of a disciplinary investigation.

55. On August 6, 1998, in response to inquiries from the Director regarding the death threat allegations, Fuller 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 Fuller 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.

56. Neither Judge Kressel nor Michael Fadlovich are able to confirm receipt of the letters purportedly addressed to them. Both conducted an extensive search for the letters but were unable to locate them and have no independent recollection of having received the letters.

57. On July 15, 1998, Fuller wrote to the Director in response to a request for information. Fuller referenced and enclosed a copy of a letter he purportedly sent to Vance Bushay on July 3, 1998.

58. Vance Bushay was unable to confirm receipt of the July 3, 1998 letter.

E. Fuller's Disciplinary History.

59. On April 12, 1993, Fuller was issued an admonition for instituting suit against a former client in violation of Rule 1.9(a), MRPC.

60. On May 20, 1996, Fuller 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.

F. Aggravating and Mitigating Factors.

61. Fuller had been previously warned that his letter-writing campaigns could form the basis for serious discipline. In the May 20, 1996, admonition issued to Fuller, the Director stated:

Fuller has subsequently conducted a voluminous letter-writing campaign to judges and this Office about this matter and about Fuller's general views of the judicial system. While there are some limits on an attorney's freedom of speech, Fuller's conduct, while irritating and in poor judgment, has not yet crossed the line.

62. Fuller is either unable or unwilling, due to his mental state, to recognize the wrongful nature of his misconduct. At trial, Fuller testified that, despite the testimony of the Chief Financial officer of E. D. Bullard that only \$148,650 was paid to Imprint, he would again write to the IRS and MDOR claiming that \$700,000 was actually paid.

63. At trial, Fuller, stated that since his falling out with Hanson, several persons have asked him if he wanted to have Hanson "whacked." He testified that his answer to them has always been "Not yet."

64. Fuller clearly suffers from a mental illness or disability which impairs his judgment. In the course of the disciplinary proceedings Fuller was examined by an independent psychiatrist who diagnosed Fuller as having a Paranoid Personality Disorder but opined that Fuller was not so disabled that he should be put into an inactive status as an attorney. Fuller is not participating in any treatment or counseling. Given the volumes of materials I have received from Fuller and my observations of him during the hearing, it is apparent to me that his current mental state prevents him from making rational judgments especially when it involves Mr. Hanson. Fuller's characterization of Hanson as a "scalawag" may be true, but that is not a relevant issue in this proceeding.

CONCLUSIONS OF LAW:

1. Fuller'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.

2. Fuller's conduct in revealing confidences and secrets gained during his representation of Imprint and Hanson violated Rule 1.6, MRPC.
3. Fuller'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.
4. Fuller'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.
5. Fuller's conduct in submitting false evidence in the course of a disciplinary investigation violated Rules 3.3(a)(4), 3.4(b), 8.1(a), and 8.4 (c), MRPC.

RECOMMENDATION:

1. That Fuller be suspended from the practice of law indefinitely, with a one year minimum term of suspension.
2. That Fuller successfully complete a mental health evaluation and follows the recommendations of the evaluation.
3. The attached memorandum is incorporated by reference.

Dated: May 23, 2000.


John C. Lindstrom
Referee

MEMORANDUM

I. FACTS

A petition for disciplinary action was filed against the Respondent, Donald Bedelle Fuller, on November 12, 1999. In the petition the Office of Lawyers Professional Responsibility (OLPR) alleges five areas in which Fuller has violated misconduct. First, Fuller is charged with improperly withdrawing from representing Imprint Technologies, Inc. by not giving sufficient notice in time to permit his client to obtain replacement counsel. The petition alleges Fuller also committed misconduct by failing to obtain permission from the bankruptcy court as required under court rules. Second, the OLPR charges that Fuller improperly revealed client confidences and secrets he gained during his representation of both Imprint Technologies and its owner Brett Hanson. Third, Fuller is alleged to have knowingly made false statements to the bankruptcy court and other government agencies regarding Brett Hanson's activities in order to harass Mr. Hanson. Fourth, it is alleged Fuller also made false statement to the bankruptcy court regarding the payment of his fees in the Imprint Technologies bankruptcy. The OLPR contends that Fuller failed to disclose the source of his fee and that he received payment for his representation of Imprint in the Chapter 11 bankruptcy without seeking court approval. Last, Fuller is alleged to have submitted false evidence to the OLPR in the course of the disciplinary investigation.

A brief history would show that Fuller represented Brett Hanson (Hanson) personally and professionally through several businesses owned by Hanson since 1990. Hanson was the owner and sole shareholder of Imprint Technologies (Imprint) at all relevant times herein. (Ex. 226, p. 6).

In September 1995 Fuller prepared and filed a Chapter 11 bankruptcy petition for Imprint. (Ex. 203). On October 19, 1995, the bankruptcy court issued an order approving Fuller as attorney for Imprint in the bankruptcy. (Ex. 257). On May 2, 1996, the bankruptcy court entered an order

confirming Imprint's plan of reorganization and providing that all objections by Imprint to creditors' proofs of claim were to be served and filed within 30 days of the date of that order. (Ex. 204). The court also ordered that Imprint file, within 10 days, a report setting forth certain administrative expense payments. (Ex. 204).

During the course of the bankruptcy proceedings, Imprint, represented by Fuller, was negotiating with their landlord over the terms of the lease of the business premises. On May 23, 1996, the landlord commenced an unlawful detainer proceeding. A hearing in the unlawful detainer matter was scheduled for June 4, 1996.

On June 3, 1996, Fuller withdrew from representing Imprint. (Ex. 205). Prior to withdrawal, Fuller had not filed any notice of objection to the claims of creditors in the Imprint bankruptcy matter nor had he obtained an extension of time in which to file a notice of objection. Fuller had not filed the report regarding administrative expenses nor did he obtain the permission of the court to withdraw from the representation of Imprint in the bankruptcy matter as required by Rule 9010-3, Local Rules of the Bankruptcy Court for the District of Minnesota. Fuller did not appear at the June 4, 1996, unlawful detainer hearing.

After withdrawing from the representation, and over the course of the next four years, Fuller wrote over 25 letters to various individuals and government agencies alleging wide-ranging misconduct on the part of Brett Hanson. (Ex. 218-221, 223, 227, 233-251, and 278). During the course of his letter-writing campaign, Fuller disclosed to various individuals and government agencies the fact that Brett Hanson had been convicted on a bad check charge and was an untreated alcoholic. In addition to disclosing these matters, Fuller made numerous allegations of other misconduct including murder, conspiracy, theft, fraud, perjury, gambling, "womanizing," drug addiction, alcoholism, and tax evasion. The recipients of the various letters include Vice President

Al Gore, United States Attorney General Janet Reno, the Internal Revenue Service (IRS), the Minnesota Department of Revenue (MDOR), the Minnesota Department of Economic Security, the U.S. Attorney's Office, Judge Robert Kressel, Judge Nancy Dreher, the Minnesota Supreme Court, the Hennepin County Attorney's Office, the U.S. Bankruptcy Trustee, the FBI, the Minnesota Attorney General's Office, various creditors of Imprint and Hanson, Judge Thomas Wexler, the Plymouth City Attorney, Judge Dennis O'Brien, Hanson's probation officer, and Judge Ann Montgomery. In the various letters, Fuller knowingly made false statements of fact.

When applying for approval of his employment as attorney for Imprint, Fuller told the court that his fees would be paid by Imprint and that the source of all payments to him would be from the earnings or other current compensation of the debtor. (Ex. 255 and 256). Shortly after commencement of the bankruptcy proceedings, however, Fuller told Hanson that he would require payments of \$290 per week from Hanson personally. Hanson regularly made the payments. (Ex. 267 and 268). Fuller did not disclose to the court that he was receiving attorney's fees from Hanson and did not petition the court for approval of the payment of attorney's fees.

Finally, Fuller submitted false evidence during the course of the disciplinary investigation. On August 6, 1998, in response to inquiries about the death threats allegedly made by Hanson, Fuller submitted two letters to the Director's Office, intending them as proof that he had expressed concern over the threats early on. (Ex. 271 and 272). The letters were addressed to Judge Kressel and Michael Fadlovich. Both Kressel and Fadlovich testified that they had no independent recollection of having received the letters and that, despite thorough searches of their files, could not locate the originals. Similarly, Fuller submitted to the Director a letter allegedly written to Vance Bushay that Bushay testified that he had never received.

II. IMPROPER WITHDRAWAL

Fuller does not contest that he withdrew from the representation of Imprint on June 3, 1996, on the eve of the unlawful detainer hearing and a day after the deadline date for submission of objections to claims of creditors. (Exhibits 204, 205, 215, and 216). The timing and manner of his withdrawal violated Rules 1.16(c) and (d) of the Minnesota Rules of Professional Conduct (MRPC).

The rules of the bankruptcy court require that an attorney in a bankruptcy case who wishes to withdraw without a substitution of attorneys shall make a motion for leave to withdraw. The rules further provide that until a substitution of attorneys is filed or court permission for withdrawal is obtained, the original attorney remains the attorney of record. (Ex. 215). Fuller does not contest that, at the time he withdrew, he had neither obtained permission from the court for withdrawal nor filed a substitution of attorneys. (Exhibit 216). His failure to do so violated MRPC.

1.16(c).

Fuller's withdrawal left Imprint unrepresented at the unlawful detainer hearing the following day and he missed the deadline for filing objections to claims and submission of the administrative expense report. Fuller's failure to take steps to the extent reasonably practicable to protect Imprint's interests violated Rule 1.16. Fuller failed to give reasonable notice of his intent to withdraw and failed to allow time for employment of other counsel.

Fuller has argued that his withdrawal was required by law and any further representation of Imprint would have constituted assisting Hanson in the commission of crimes or frauds. Fuller may have had good cause for withdrawal under the provisions of either MRPC 1.16(a) or 1.16(b) however he should have taken appropriate steps in withdrawing by obtaining permission of the court and providing adequate notice to his client.

The facts also do not support the specifics of Fuller's claim that he withdrew upon learning his services were being used to commit a crime. Fuller testified that one of the major reasons for withdrawal was that, immediately prior to June 3, 1996, he learned Hanson was misappropriating 401(k) funds from Imprint. In fact, Hanson was subsequently criminally convicted for converting to the benefit of Imprint 401(k) monies that should have been paid to the 401(k) trustee. However, this was not information that Fuller learned immediately prior to withdrawal. The bankruptcy schedules Fuller filed on behalf of Imprint clearly reflect that well over \$8,000 of back due payments were owed by Imprint to the 401(k) trustee. (Ex. 203). Fuller should have known of the failure to pay the 401(k) funds at the outset of the bankruptcy in September 1995.

Fuller's assertion that his attendance at the unlawful detainer hearing would constitute assisting Hanson in ongoing crimes or fraud is also questionable. An unlawful detainer hearing is an action brought to compel return of the possession of leased premises. All that is at issue in such a hearing is whether or not the terms of the lease have been complied with such that the tenant may retain possession. Fuller did not identify exactly how his attendance at the unlawful detainer hearing, on behalf of Imprint, would have been assisting a crime or a fraud. Fuller would not have been compelled at that hearing to submit evidence that he knew was false or enter into any sort of a new agreement with the landlord on behalf of Imprint.

III. IMPROPER DISCLOSURES

Fuller's disclosure of information he gained from Hanson during the course of his various representations violated MRPC 1.6. Fuller violated the provisions of MRPC 1.6(a) by knowingly revealing confidences and secrets of Brett Hanson. Fuller disclosed to Randall Seaver, Art Benson, Richard Saliterman, and Judge Kressel the facts that Hanson was chemically dependent, had failed to obtain treatment for his chemical

dependency, and had issued Fuller bad checks for his services. (Exhibits 218-221). Hanson's chemical dependency and his treatment plans were client confidences as that term is defined in Rule 1.6(d) of the MRPC. Fuller learned of Hanson's chemical dependency and his treatment plans in the representation of both Imprint and Hanson personally. Disclosure of this information was embarrassing and likely detrimental to Hanson. Further, Hanson had specifically asked that Fuller not disclose this information. (Ex. 232).

Fuller argued that he was authorized, both explicitly and implicitly, to disclose the fact that Hanson was chemically dependent and had failed to obtain treatment. He asserts that Hanson specifically authorized him to disclose this in order to avoid objection by the U. S. Trustee to the filing of the bankruptcy petition. He asserts that Hanson's treatment for chemical dependency was both a condition of his representation and a condition of the bankruptcy. However, no evidence was produced at the disciplinary hearing showing that treatment was a condition of representation or the filing of bankruptcy. Michael Fadlovich, attorney for the U. S. Trustee, Randall Seaver, attorney for the committee of unsecured creditors, and David Hoiland, Hanson's personal attorney in the Imprint bankruptcy, all testified that they did not recall Hanson's chemical dependency to have ever been an issue in the bankruptcy proceedings. They all further testified that Hanson's receiving chemical dependency treatment was not a pre-condition to any event in the bankruptcy.

Fuller's contention that the provisions of MRPC 1.6(b)(4) permitted him to reveal Hanson's confidences and secrets is misfounded. Rule 1.6(b)(4) permits the disclosure of confidences and secrets necessary to rectify the consequences of a client's criminal or fraudulent act in the furtherance of which the lawyer's services were used. No evidence was produced to show that Fuller's services were used to commit a crime or fraud. While Hanson in fact was

convicted for conversion of 401(k) funds there was no evidence that Fuller's services were used in furtherance of Hanson's criminal act.

The OPLR has argued that Fuller's disclosure of Hanson's criminal conviction in the various letters he wrote constituted a secret as that term is used in Rule 1.6 of the MRPC. This court does not find that to be the case. A similar check by any member of the public would show that Hanson had been convicted of the bad check charge. The disclosures regarding Hanson's issuance of bad checks to Fuller and the disclosure of Hanson's chemical dependency however, would not be a matter of public record and as such are disclosures which violate MRPC 1.6.

IV. FALSE STATEMENTS AND HARRASMENT

Fuller's letters to the various individuals and agencies contained false statements about Hanson's activities. The sheer number of the letters, the nature of the accusations, the lack of a factual basis for the accusations, and the choice of to whom the letters were sent all evidence an intent on the part of Fuller to embarrass and burden Hanson. Fuller's false statements and harassment violated Rules 3.3(a) (a lawyer shall not knowingly make a false statement of fact to a tribunal), 4.1 (a lawyer shall not knowingly make a false statement of fact or law), 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation), and 4.4 (a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person), MRPC.

On June 19, 1996, Fuller wrote to Judge Kressel purportedly to explain why a stipulation for assumption of the lease by Imprint had not yet been submitted. (Ex. 221). In that letter, Fuller made the statement: "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.” (Ex. 221). This statement was false and Fuller knew it was false.

On July 17, 1997, Fuller wrote to the IRS and the MDOR. (Ex. 223). In that letter, Fuller falsely stated that Brett and Cindy Hanson had withheld financial information during the course of negotiations for compromise of their personal tax liabilities. Fuller testified that he had represented Brett and Cindy Hanson during the course of these negotiations. In his July 17, 1997, letter Fuller asserted that Hanson had received up to \$700,000 from the sale of assets to E. D. Bullard. Fuller knew that this assertion was false and that the sale price of the assets was only \$148,650. Fuller knew this because he had reviewed the sale documents and performed other services in order to close the sale between Imprint and Bullard. (Ex. 225). The testimony of Nick Katko, Chief Information Officer of E. D. Bullard, Inc., verified that Bullard had, in fact, paid only \$148,650 to Imprint. (Exhibit 274). Fuller was unable to identify any documents such as cancelled checks, deposit slips, or bank statements that supported his assertion that Bullard had paid \$700,000.

On July 28, 1998, Fuller wrote a letter to Judge Kressel, Judge Dreher, and Edward Cleary. (Ex. 227). That letter contained a number of statements Fuller either knew were false or statements that were made with reckless disregard as to their truth or falsity. At page three of the letter Fuller states, “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.” (Ex. 227). Fuller had already entered into an agreement that Brett Hanson would pay him \$290 per week for services rendered in the bankruptcy. (Exhibits 267 and 268).

In his July 28 letter Fuller also stated, “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 residential 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.” (Ex. 227). There was nothing in Fuller’s retainer agreement with Imprint that sets forth any term of agreement requiring Hanson to go through residential chemical dependency treatment. (Exhibit 255). Further, the other participants in the bankruptcy proceedings testified that Hanson’s chemical dependency and/or his treatment plans were not an issue in the bankruptcy.

In his July 28, 1998, letter Fuller went on to state that:

A few days later, Brett Hanson talked with me and stated that he could ruin me, that he and Ron Meshbesh and another knew who had caused a gangland drug slaying of a local executive and that I should forget what I had seen. Hanson further and often stated that a hit or whack could be done and no one could ever trace or determine who did it. The fact that Brett Hanson suffered from blackouts related to alcohol and claimed he could not remember things he did added to my concerns.

* * *

It was a cause for concern when Hanson continued his feud, harassment and retaliation with a Robert Nyman who was a creditor in JDE Inc. and Nyman then died.

It was a cause of concern when Hanson learned that he might be investigated by federal authorities and he confronted an aged CPA and the CPA was then dead within a couple of days. (Ex. 227).

These statements in a letter to judges of the bankruptcy court, copied to creditors of Imprint, create the clear impression that Fuller is accusing Hanson of complicity in the deaths of Nyman and the aged CPA. Fuller, at trial, was unable to articulate any basis for asserting that Hanson had some connection to these deaths. Fuller acknowledged that he was unaware of any official investigation into these deaths or that they were otherwise considered suspicious. In fact, Lowell Lysen, the aged CPA referred to by Fuller, died a natural death of a heart attack. (Ex. 228).

Fuller made numerous other statements in his July 28, 1998, letter and other letters to various persons and government agencies alleging that Hanson had improperly diverted corporate funds to his personal use. At trial, Fuller was asked what documentary evidence he had reviewed in support of these allegations but was unable to cite to a single bank statement, cancelled check, deposit slip, ledger, or other document which illustrated the improper diversion of funds by Hanson from Imprint to his personal use.

V. FALSE STATEMENTS AND FAILURE TO DISCLOSE SOURCE OF ATTORNEY'S FEES

Rule 2016 of the Rules of Bankruptcy Procedure and 11 U.S.C. §§ 328-331 requires that an attorney appointed to represent a bankruptcy debtor in possession may not be paid compensation absent approval of the court and upon application setting forth, amongst other things, the source of all payments. (Ex. 258). It is uncontested that Fuller, despite being paid \$290 a week by Hanson personally, never applied to the court for compensation and did not disclose to the court the source of his compensation. In fact, Fuller submitted an affidavit to the court falsely stating that he was not connected with any party in the proceeding. (Ex. 262). Fuller's failure to apply for approval of payment of attorney's fees and his failure to disclose the source of his payment of fees violated Rules 1.5(a) and 3.4(c) of the MRPC.

VI. SUBMISSION OF FALSE EVIDENCE IN THE DISCIPLINARY INVESTIGATION

During the course of the disciplinary investigation, Fuller submitted false evidence to the Director. On August 6, 1998, in order to demonstrate that he had been making allegations regarding Hanson's death threats early on, Fuller submitted two letters to the Director that contained attachments consisting of letters purportedly written in 1996 and 1997 to Judge Kressel and Michael Fadlovich. (Ex. 271 and 272). Judge Kressel and Michael Fadlovich both testified that after

extensive and repeated searches for the correspondence in question, they could find no record and had no independent recollection of ever having received the letters in question.

Fuller asserts that, at least insofar as the letter to Judge Kressel is concerned, he never said that he actually mailed the letter to Judge Kressel and that it was simply a letter he found on an old computer. Fuller's letter to the Director enclosing the letter to Judge Kressel, however, makes no such representation.

VII. MITIGATING FACTORS

The Minnesota Supreme Court has held that mitigating factors are only to be considered when raised by a respondent. This case presents a unique dilemma since Fuller has not argued any mitigating factors even though factors relating to his mental health clearly exist. The strongest reason why these mitigating factors have not been presented by Fuller is his inability or lack of insight in recognizing them. However, it is clear to this court and apparently to the OLPR that Fuller suffers from some a mental instability. (*See*, Director's Memorandum p. 18.)

At the on set of this petition being filed the OLPR required Fuller to undergo a psychological assessment and a psychiatric evaluation. On January 28, 1999, Fuller saw Dr. R. Owen Nelson a licensed psychologist. Dr. Nelson prepared a report in which he described Fuller's in the Rorschach interpretive statements as suggesting; "that his thinking is seriously disturbed and that is ideational activity is marked by very flawed judgment and conceptualization and often includes disorganized and/or inconsistent decision making patterns." (Ex. 282 p. 3-4). Fuller was found to have a; "stylistic tendency to use fantasy excessively and to substitute fantasy for reality in stress situations." *Id.* at 4.

Dr. Nelson also offered interpretive statements of personality inventories on a cautionary basis since other clinical data had not yet been collected. Dr. Nelson stated in his report that Fuller

has; "personality characteristics such as being overly sensitive, hyperactive, and overideational (sic), that may cause him problems at times." Id. There was no distinctive Axis I clinical syndrome in his MCMI-III diagnostic picture which reflected a personality configuration composed of Narcissistic Personality Traits and Histrionic and Obsessive Compulsive Personality Features. Id. at 5. Dr. Nelson summarized by stated;

"this is an individual who exhibits both psychometrically and interpersonally distinct personality characteristics of grandiosity, oversensitivity, and self-righteousness. He explains behaviors which elicit criticism and censure from others as motivated by a deeply ingrained need to be ethical and true to his principles. He appears to harbor a negative, angry attitude towards the environment and has difficulty being tolerant of the routine compromises which are typically required in social interaction with others. Although the results of this assessment do not indicate the presence of a thought disorder, his thinking is likely marked by very flawed judgment and conceptualization which results in disorganized and/or inconsistent decision making patterns." Id. at 5-6.

Fuller was then seen by Dr. Carl P. Malmquist in February 1999 for psychiatric evaluation and a report was received by the OLPR in March 1999. (Ex. 281). In the report Dr. Malmquist gave Fuller a diagnostic impression of suffering from Paranoid Personality Disorder. Dr. Malmquist wrote that Fuller; "is prone to see others as exploiting and deceiving him" and that he has an alertness; "to search out hidden meaning to what Hanson might be implying" when they converse. (Ex. 281 p. 15). Further;

"Couple with this feeling of threat is his own idea that somehow he is someone who has to be ruthlessly honest and a vigilante about others' wrongdoing. He does not appear to have an insight as to how this role leads him in to difficulties. Rather he sees it as an ongoing duty. Even more strongly, he puts these situations in terms of a lack of integrity if he does not expose others' wrongdoing. The result of this type of thinking is to split off any badness or wrongdoing onto others, and to view them as in need of monitoring and oversight in contrast to himself as the person who is maintaining a sense of integrity. This puts him into a position of thinking that he has to be alert for the malevolent intentions and actions of others to avoid getting hurt himself. Within the framework of power, rank and authority, such as the Marines, it appears that his personality found a more congenial atmosphere than with uncertainties and ambiguities of civilian life." Id.

Dr. Malmquist concluded that; “Mr. Fuller is [not] so disabled that he should be put into an inactive status as an attorney. I do think that he would find rewards, and a much smoother way if he had a private and confidential relationship with a professional person to ease many of these burdens and conflicts with which he has been struggling.” Id. at 16.

The Petitioner initially presented to the OLPR panel both probable cause for disciplinary charges against Fuller and an alternative set of charges to transfer Fuller to disability inactive status. Apparently, based on Dr. Malmquist’s conclusion that Fuller was not so disabled to be put into inactive status, the panel proceeded with the disciplinary charges. It would appear, however, that Fuller’s mental health has declined in the year since he was evaluated.

In the time leading up to and during the disciplinary hearing Fuller displayed symptoms of both paranoia and obsession regarding this action. Fuller’s demeanor throughout these proceedings as is evidenced in his multiple letters containing repeated, unsupported allegations of extensive misconduct by Hanson, bear out the fact that Fuller’s judgment is impaired. Fuller’s obsessive focus on his former position as an officer in the United State’s Marine Corp was demonstrated during the entire disciplinary hearing by his statement at the outset of the hearing. Fuller stated his admiration for Iwo Jima participant Charles Lindberg as his hero, his appearance at the second day of the hearing in his full Marine dress uniform, and his closing video of various Marine Corp activities. (Fuller Ex. 117). His service as a veteran may have been honorable, but may also be contributing to his current mental state. All of Fuller’s current behaviors need further analysis and evaluation by a mental health professional. Whatever mental deficiencies he currently has, do not excuse his disciplinary violations.