

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DANIEL L. GILES,
a Minnesota Attorney,
Registration No. 34800.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 5, 1979. Respondent currently practices law in Marshall, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Matter of S.M. and T.M.

1. S.M. and T.M. tried for many years to conceive a child. They were unable to do so.
2. In approximately September 2006, S.M.'s co-worker told her of a friend who was pregnant and looking for adoptive parents for her unborn child. S.M. and T.M. met with the birth mother on two occasions and she agreed to allow them to adopt her child. The birth mother was expected to give birth in early April 2007.

3. S.M. contacted respondent's law firm based on a referral from her parents.

4. After the first meeting with the birth mother, S.M. called respondent.

Respondent answered various questions that the birth mother had posed to S.M., including questions regarding a home study. Respondent stated to S.M. that a home study was not required at that time.

5. In November 2006, S.M. spoke again with respondent by telephone. S.M. informed respondent that: (a) the birth mother had agreed to allow her and T.M. to adopt her unborn child; (b) she wanted respondent to represent T.M. and her in the adoption proceeding; (c) it was extremely important to the birth mother that the adoption process go smoothly; and (d) the birth mother was expected to give birth in early April 2007. S.M. also provided respondent with her contact and other information. Respondent agreed to represent S.M. and T.M., but did not prepare a written retainer agreement.

6. During his November 2006 telephone conversation with S.M., respondent did not discuss with her any of the adoption requirements or procedures, or ask her any questions that would have indicated how best to proceed to accommodate S.M. and T.M.'s legal and personal needs. Respondent simply told S.M. to call him again on a date closer to the child's birth.

7. In fact, the type of adoption S.M. and T.M. wanted and required is known as a direct placement adoption, which is governed by Minn. Stat. § 259.47. In a direct placement adoption, most, if not all, of the adoption paperwork is prepared and filed prior to the child's birth and the adoptive parents are able to take the child home with them immediately after the birth. Although respondent had handled approximately 20 previous adoptions, all were adoptions conducted after the child's birth and based on parental consent. Before S.M. and T.M. hired him, respondent had never handled a direct placement adoption.

8. Respondent did not conduct any legal research or otherwise seek to determine what procedures were required in a direct placement adoption. Rather, respondent simply anticipated that he would handle S.M. and T.M.'s adoption in the same manner as he had handled all his previous adoptions. In other words, respondent anticipated that he would process all the adoption paperwork at or after the time the child was born.

9. During the course of respondent's representation, S.M. contacted him or his assistant regularly, often to ask questions raised by the birth mother. All of S.M. and T.M.'s dealings with respondent throughout the entire course of his representation were by telephone, fax or email, and were usually through his assistant. S.M. and T.M. never met with respondent in person.

10. On one or two occasions after their November 2006 telephone conversation, S.M. contacted respondent regarding the need for a home study. Respondent reiterated to S.M. that a home study was not required at that time.

11. On or about November 22, 2006, S.M. contacted respondent by telephone and told him that the birth father was leaving Minnesota and that it was unknown where he would be located at the time of the birth or whether he may assert parental rights at the time of the birth. For this reason, S.M. believed it necessary to obtain the birth father's consent to the adoption as soon as possible. Even though such a consent may not have even been necessary and, in any event, would likely not have been binding on the birth father, on December 1, 2006, respondent sent S.M. consent forms for signature by the birth father. S.M. obtained the birth father's signature on these documents and returned them to respondent.

12. By mid-December 2006 the birth mother was becoming increasingly concerned about the adoption because the paperwork she expected respondent would be preparing and filing was not being done. The birth mother expressed her concerns

to S.M., who, after speaking with respondent, assured her that respondent was handling the adoption in the proper manner.

13. On February 28, 2007, respondent's assistant emailed him inquiring, "Is there anything to be done on this file?" Respondent responded, "[T]he child is not yet born, so nothing is urgent. I should be doing some research to determine who I need to notify to get a home study done when the time comes. Put a reminder on my calendar for next week, or the next day that seems to be relatively open."

14. On or about March 16, 2007, S.M. notified respondent that the birth mother was in early labor and had entered the hospital. Respondent admits that until he learned of the early labor he had mistakenly come to believe that the due date for the child was in May 2007. The child was not delivered and the birth mother was discharged from the hospital.

15. Also on March 16, 2007, respondent, for the first time, downloaded and printed a series of Minnesota adoption statutes, including those regarding direct placement adoptions.

16. On or about March 31, 2007, respondent advised S.M. to arrange for a home study as soon as possible. At this time, the birth mother was continuing to express concerns to S.M., including concerns over the fact that the home study had not yet been completed. S.M. understood that a home study would take approximately three months to complete and asked how they would be able to complete the home study prior to the child's birth. Respondent stated that he would look into the matter and get back to S.M. Respondent failed to take any action at that time regarding the home study.

17. On April 3, 2007, respondent's assistant emailed to S.M. and T.M. a proposed affidavit of, and custody agreement with, the birth mother. Apparently, respondent expected S.M. to obtain the birth mother's signature on these documents.

The statute or rule under which respondent was proceeding in preparing and requesting the birth mother's signature on these documents is not clear.

18. On April 4, 2007, S.M. called respondent's office and advised that the birth mother was to be induced into labor on April 9, 2007. The baby was, in fact, born on April 9, 2007. S.M. and T.M. participated in the labor and delivery and cared for the baby during her entire hospital stay.

19. While the birth mother was in labor, the hospital social worker informed her that the paperwork necessary to allow S.M. and T.M. to adopt her child or to even leave the hospital with the child had not been provided.

20. On April 9, 2007, respondent faxed to S.M. and T.M. at the hospital the same documents his assistant had faxed to them on April 3, 2007, i.e., an affidavit of the birth mother and a consent of the birth mother to award legal and physical custody of the baby to S.M. and T.M. These documents were not, however, the proper documents for a direct placement adoption.

21. The social worker at the hospital informed S.M. and T.M. that the documents respondent faxed were not adequate. S.M. asked the social worker to contact respondent directly. Respondent thereafter spoke with the social worker by telephone.

22. On April 10, 2007, respondent faxed to S.M. and T.M. at the hospital a designated parent agreement. The birth mother and S.M. and T.M. signed the document on April 10, 2007.

23. S.M. and T.M. understood that the designated parent agreement and/or the other documents respondent faxed to the hospital were at least a significant step toward their adoption of the child.

24. In fact, however, the designated parent agreement only appointed S.M. and T.M. temporary legal and physical custodians of the child and authorized them to

make medical and other decisions regarding the child for a period of 60 days. The agreement did not have any bearing on S.M. and T.M.'s adoption of the child.

25. The documents respondent prepared and provided to the social worker were not sufficient to enable S.M. and T.M. to leave the hospital with the baby. Instead, the birth mother left the hospital with the baby and then gave her to S.M. and T.M. This was consistent with respondent's directives.

26. On April 11 or 12, 2007, the birth mother signed the affidavit and consent respondent had prepared. These documents were not, however, the proper adoption documents needed for S.M. and T.M. to adopt the child.

27. Not having heard back from respondent regarding the home study, S.M. took it upon herself to look into the matter. While the birth mother and child were still in the hospital, S.M. found an organization called "Adoption Minnesota" on the Internet and contacted that organization. S.M. also informed respondent that she was arranging the home study through Adoption Minnesota. The first of three home study visits was scheduled for sometime in April 2007.

28. On April 12, 2007, presumably after S.M. had informed respondent that she had contacted Adoption Minnesota, respondent's assistant downloaded information regarding that organization from the Internet and forwarded it to respondent. The assistant stated, "[T]hey can do home study within 30 days for \$1,900. Then is it possible to adopt right away?"

29. Within approximately one week of the birth mother's discharge from the hospital, the hospital social worker contacted her. The social worker stated to the birth mother that she believed the manner in which the adoption was being handled was improper. A Sherburne County social worker with whom the birth mother met later that same day also stated she believed the adoption was being handled in an illegal manner and that the birth mother risked criminal prosecution and loss of the right to decide who would be the child's adoptive parents.

30. On or about April 20, 2007, the birth mother contacted Central Minnesota Legal Services, a free legal clinic, about possible representation in the adoption matter. The birth mother informed S.M. of her contact with the legal clinic and S.M. informed respondent.

31. On April 23, 2007, presumably at the birth mother's request, respondent faxed to a representative of Central Minnesota Legal Services copies of the consent that had been signed by the birth father. Central Minnesota Legal Services ultimately informed the birth mother that it did not accept adoption cases.

32. In late April 2007 the birth mother contacted S.M. and asked whether or not the adoption had been filed with the court. S.M. contacted respondent to discuss the matter. After the conversation, S.M. believed that respondent had filed documents with the court. S.M. contacted the birth mother and informed her that the adoption matter had been filed with the court.

33. The birth mother learned that respondent had not, in fact, filed any documents with the court. On May 1, 2007, the birth mother called respondent. She informed respondent of various errors in the documents he had prepared, questioned respondent's handling of the adoption, and told respondent that she had been told that the adoption was illegal.

34. Also on May 1, 2007, the birth mother called S.M. and stated that she no longer believed respondent and that she did not think the adoption was being properly handled. The birth mother asked S.M. to hire an attorney other than respondent to handle the adoption. S.M. began looking for a new attorney.

35. On May 2, 2007, the birth mother called S.M. and stated that she intended to take the child back from S.M. and T.M. because the proper adoption procedures had not been followed. The birth mother demanded return of the child by 9:00 p.m., and stated that if S.M. and T.M. failed to return the child, she would call the police and

accuse them of kidnapping. S.M. called respondent, who advised that S.M. and T.M. had to return the child. S.M. returned the child to the birth mother.

36. Later that evening, after speaking with friends, the birth mother contacted S.M.'s parents and arranged to return the child to them. The birth mother presented S.M.'s parents with a document to sign to effect the transfer. S.M. and T.M. picked up the child from S.M.'s parents the next day.

37. On approximately May 9, 2007, S.M. and T.M. participated in the second of three visits that were part of the required home study. The third and final visit was scheduled for May 18, 2007.

38. Respondent's file contains a May 9, 2007, email from respondent to S.M. attaching a proposed petition for adoption, consent to adoption and waiver of notice of hearing for her review as attachments. In the email, respondent asked S.M. to review the documents carefully and to produce to him any missing information. S.M. does not recall receiving these documents. In any event, however, this was the first time respondent might have prepared a document of any kind that would have led to presentation of the matter to a court for determination.

39. The birth mother consulted with an attorney who stated that the adoption proceeding was illegal and advised the birth mother not to proceed with it.

40. After her consultation with the attorney, the birth mother again decided to remove the child from S.M. and T.M.'s care. On May 17, 2007, the birth mother's attorney contacted respondent and so informed him. Respondent called S.M. and stated that the birth mother had again requested return of the child. Respondent stated that S.M. and T.M. would have to return the child or they would be arrested. S.M. and T.M. returned the child to the birth mother and have not seen the child since. The child has since been adopted by other parents.

41. The birth mother decided to offer her child for adoption the moment she learned she was pregnant and never wavered in that decision. Her decision not to

allow S.M. and T.M. to adopt the child was based on her belief that they and/or respondent were not handling the adoption matter properly and were not being truthful to her.

42. Respondent's failure to provide competent representation to S.M. and T.M. violated Rule 1.1, Minnesota Rules of Professional Conduct (MRPC).

43. Respondent's failure to act with reasonable diligence in representing S.M. and T.M. violated Rule 1.3, MRPC.

44. Respondent's failure to provide reasonable communication and consultation with S.M. and T.M. violated Rule 1.4, MRPC.

SECOND COUNT

Matter of A and B

45. A and B were both born female. A and B began a same-sex relationship; soon thereafter A underwent a partial gender reassignment. In 2000 a child, who was conceived by artificial insemination, was born to B. A was shown on the birth certificate to be the child's father. In January 2001, A and B were married in the State of Nevada. Thereafter, two more children, both conceived by artificial insemination, were born to B.

46. By late 2005 or early 2006, A and B had determined to end their relationship. At that time, A telephoned respondent and they had a lengthy conversation regarding a possible marriage dissolution proceeding.

47. In mid-January 2006 respondent met with A and B to further discuss the marriage dissolution proceeding. Prior to meeting with respondent, A and B had reached agreement on all issues relevant to the marriage dissolution proceeding, including child custody, and so informed respondent. Respondent explained that he would be representing only A in the proceeding. B signed a waiver of right to counsel when she executed the Marital Termination Agreement in June 2007.

48. Also during the mid-January 2006 meeting, A and B informed respondent that A had been born female and had undergone a gender reassignment surgery. At no time during this meeting or at any other time did respondent ask A about the gender reassignment procedures he had completed by the time of his marriage to B. At no time did respondent ask A and B to produce a copy of their marriage certificate or conduct any legal research to determine whether A and B's marriage was legally recognized in Nevada or in Minnesota due to the gender reassignment procedures. Respondent simply deferred to A and B's claims that they were legally married.

49. Also during the mid-January 2006 meeting, A informed respondent of the names by which he had been previously known. Because these names revealed that A had been born female, A asked respondent if these prior names could be kept private. According to respondent and A, respondent stated he would not include A's prior names in the petition for dissolution, but would instead separately inform the judge and ask that A's prior names be allowed to remain confidential.

50. On January 20, 2006, respondent forwarded to A and B a draft summons and petition for dissolution. Although respondent included B's maiden name in the draft petition for dissolution, he alleged that A "has had no prior names." Respondent's statement in this regard was knowingly false.

51. On February 6, 2006, respondent signed the summons, respondent and A signed the petition for dissolution, and respondent served the documents on B by mail. The petition for dissolution served on B included the allegations that A "has had no prior names."

52. Respondent thereafter prepared a proposed marital termination agreement and on March 13, 2006, his assistant provided it to A for review and response. The marital termination agreement prepared by respondent included the false statement that A "has had no prior names."

53. A few months later, respondent, A and B all signed, and respondent filed with the court, a marital termination agreement. Respondent also filed the summons, petition for dissolution and proof of service. The marital termination agreement respondent filed with the court included the false statement that A "has had no prior names."

54. At the time he filed the matter with the court, respondent did not separately inform the court of A's prior names.

55. The hearing in the A and B marriage dissolution proceeding was held in August 2006. By the time of the hearing, A had, with B's consent, relocated to another state. A appeared at the hearing by telephone. B appeared in person. B provided testimony at the hearing.

56. During the August 2006 hearing, respondent questioned B regarding the content of the petition for dissolution and the parties' marital termination agreement. Respondent elicited from B testimony consistent with the allegations of the petition for dissolution and marital termination agreement, including that the parties had been married and that all three of their children had been born during the course of their marriage. Respondent asked B about her prior name, but did not inquire at all regarding any prior names by which A might have been known. Respondent did not separately inform the court of A's prior names.

57. Also during the August 2006 hearing, respondent presented to the court proposed findings of fact, conclusions of law, order for judgment and judgment and decree ("judgment and decree"). The proposed judgment and decree included the false statement that A "has had no prior names." The judge signed the proposed judgment and decree the day of the hearing, and respondent served it on B and filed it with the court on the next day.

58. Beginning in June 2007, A and B filed various post-decree motions, including one by B regarding parenting time, and one by A regarding child support and

a contemplated move to another state. By order dated July 17, 2007, A was allowed to move with the parties' children to another state. In December 2007 the court issued an order establishing a child support obligation on the part of B.

59. In September 2008, B filed a complaint in Nevada for declaration of void marriage or annulment. In October 2008 the Nevada court issued a default order, and in November 2008 it issued a declaration of void marriage.

60. Also in September 2008, B filed her complaint against respondent with the Director. In November 2008 respondent filed a motion with the Minnesota court to allow A to supplement the record in the parties' marriage dissolution proceeding to include A's affidavit regarding his prior names, which respondent requested be kept confidential. By order dated January 8, 2009, the Minnesota court accepted A's affidavit and ordered that the affidavit be kept confidential.

61. On December 12, 2008, based on the fact of the Nevada court's rulings, B filed a motion in Minnesota to void the judgment and decree. B's motion was heard on January 15, 2009. On March 20, 2009, the court issued an order denying B's motion.

62. On June 19, 2009, the Minnesota court issued an order, based on the parties' stipulation, granting continuing and exclusive jurisdiction over the issues regarding A and B's children, i.e., custody, visitation and support, to another state, where both parties then lived.

63. On June 29, 2009, the Nevada court issued an order, based on stipulation, that vacated and set aside its declaration of void marriage.

64. Respondent's failure to provide competent representation to A violated Rule 1.1, MRPC.

65. Respondent's failure to act with reasonable diligence in representing A violated Rule 1.3, MRPC.

66. Respondent's failure to reasonably consult with A about the means by which A's objectives were to be accomplished violated Rule 1.4(a)(2), MRPC.

67. Respondent's knowingly false statement of fact to the district court while representing A violated Rules 3.3(a)(1), 4.1, and 8.4(d), 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: Nov. 17, 2010.



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