FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action against JOHN HUGH B. GILMORE, a Minnesota Attorney, Registration No. 0175523.	**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 October 3, 1986. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent has the following disciplinary history:

A. On November 12, 1996, the Director issued an admonition to respondent for failing to pursue a client's child visitation matter and failing to communicate adequately with his client about the matter. Respondent's actions violated Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).

B. On April 5, 1999, the Director issued an admonition to respondent for receiving a non-refundable fee without a written fee agreement, in violation of Lawyers Professional Responsibility Board Opinion No. 15.

C. On July 19, 2000, the Director issued an admonition to respondent for failing to satisfy a judgment until after a disciplinary complaint had been filed in violation of Rule 8.4(d), MRPC.

D. On July 3, 2012, the Director issued an admonition to respondent for collecting fee payments from his client beyond the contingent fee provided by statute in a workers' compensation matter in violation of Rule 1.5(a), MRPC.

FIRST COUNT

A. D.M. Matter

1. In October 2004, D.M.'s then-wife filed for divorce. In June 2005, D.M. retained respondent to represent him in his marital dissolution. On January 26, 2006, the district court entered its judgment and decree. D.M. asked respondent to appeal the district court's order pertaining to permanent spousal maintenance.

2. On March 28, 2006, respondent filed D.M.'s appeal. The court of appeals found D.M.'s time period to appeal had expired on March 27, 2006, 60 days after judgment was entered. The court of appeals ordered the parties to serve and file informal memoranda addressing the question of timeliness of D.M.'s appeal.

3. On April 17, 2006, respondent filed a memorandum as directed by the court of appeals. In his memorandum, respondent stated that in D.M.'s March 28, 2006, appellate filing, respondent had erroneously indicated that the district court's January 26, 2006, judgment disposed of all claims, including attorney's fees. Respondent now acknowledged that his earlier statement was wrong. Respondent indicated that a motion for attorney's fees remained pending in district court.

4. On April 25, 2006, the court of appeals filed an order holding that D.M.'s appeal was taken improperly from a partial judgment. The court stated that D.M. could obtain review of the district court's partial judgment "in a proper appeal after entry of a

final judgment adjudicating the attorney-fees issue." The court further ordered, "The filing fee for such an appeal shall not be waived."

5. On November 27, 2006, the district court filed, but did not enter, its final judgment adjudicating attorney's fees. In its order, the court awarded $950 to opposing counsel for respondent's appeal of a non-appealable order.

6. On March 8, 2007, respondent filed D.M.'s appeal a second time. In his March 2007 appeal, respondent failed to include a copy of the district court's November 27, 2006, order, and failed to provide the court of appeals with a copy of the district court's January 26, 2006, judgment and decree. On March 8, 2007, the court of appeals notified respondent of the deficiencies in his filing and directed that he remedy the filing within ten days. Respondent failed to do so.

7. On March 30, 2007, the court of appeals filed an order and listed the above-referenced deficiencies to respondent's filing. The court noted that *if* the final judgment was entered on November 27, 2006, then the appeal time expired 60 days after judgment, i.e., January 26, 2007. However, unknown to the court (because respondent had not filed the November 27th order), final judgment had not been entered. The court also found that respondent failed to file a transcript certificate indicating to the court that a transcript had been ordered.

8. The court of appeals ordered respondent to file certified copies of the November 27, 2006, district court order and its underlying judgment and decree, together with a fully executed transcript certificate by April 9, 2007.

9. Respondent filed his memorandum on April 11, 2007. Respondent indicated in his memorandum that the district court's November 27, 2006, order and judgment for attorneys' fees had been filed, but not entered.

10. On April 26, 2007, the court of appeals dismissed D.M.'s appeal as taken from a non-appealable partial judgment and a non-appealable order. The court ordered the district court administrator to promptly enter judgment pursuant to the

November 27, 2006, order. The court further notified respondent that he could obtain review of the January 26, 2006, partial judgment and the November 27, 2006, order, after final judgment on the attorneys' fees had been rendered. The court waived filing fees for D.M.'s anticipated appeal.

11. On October 19, 2007, the district court entered final judgment on D.M's dissolution matter. After the district court entered final judgment, respondent then had 60 days to request a review from the court of appeals. Respondent failed to do so.

12. On November 30, 2007, D.M. emailed respondent and asked respondent for a status on the appeal. Respondent had time to file the appeal at that time, but respondent failed to follow up with the district court, failed to file an appeal, and the deadline for filing an appeal passed on or about December 18, 2007.

13. Respondent's conduct violated Rules 1.1, 1.3, and 3.2, MRPC.

SECOND COUNT

B. Communication - D.M. Matter

14. On February 8, 2006, respondent sent an email message to D.M. and requested D.M. pay him $1,500 to cover out-of-pocket expenses for the appeal. Respondent indicated that part of that cost was for a copy of a transcript. D.M. paid respondent $1,500. Respondent never filed a copy of the required transcript.

15. Respondent emailed D.M. on April 25, 2006, and stated that the appeal had been submitted and that D.M. owed respondent $2,025 for work done on D.M.'s appeal. D.M. paid respondent $2,025.

16. In his April 25, 2006, email, respondent indicated he would keep D.M. updated on the appeal. However, respondent did not provide D.M. with copies of the court of appeals' April 5, 2006, order, opposing counsel's memorandum, or the court of appeals' April 25, 2006, order. Respondent failed to inform D.M. that the court of appeals required a new filing fee if D.M. appealed the final district court judgment.

17. Respondent's April 25, 2006, email also indicated he would print off invoices that D.M. had requested so that D.M. could seek reimbursement of his legal costs. However, D.M. never received these records.

18. On May 4, 2006, respondent wrote to D.M. and stated, "I can do everything that remains for the appeal for $8500." Respondent estimated that a "straight hourly billing approach would be in the 60 or more hours range which would be $14,625." Respondent stated he would be ordering transcripts of the evidentiary hearing and of the hearing on attorney's fees. D.M. paid respondent $8,500.

19. On October 10, 2006, respondent wrote to D.M. and told D.M. that he had heard nothing from the district court or from opposing counsel. Respondent stated that "once we get the decision, however, we'll file the appeal immediately." Respondent told D.M. that if he sent respondent a check in the amount of $1,010 within a week, there would not be any delay. D.M. paid respondent the $1,010 he requested.

20. The district court filed its final order regarding attorney's fees on November 27, 2006. Respondent did not provide D.M. with a copy of the district court's order. D.M. attempted to reach respondent in December 2006, but respondent did not return D.M.'s calls.

21. On December 28, 2006, respondent sent D.M. an email message in which respondent acknowledged receiving D.M.'s telephone calls and a check. Respondent told D.M. that he would "be filing shortly" and would send D.M. a copy. D.M. received a copy of respondent's March 8, 2007, notice of appeal and statement of the case.

22. On March 12, 2007, D.M. wrote to respondent and requested an itemized statement for the fees he had paid to respondent to date. D.M. listed dates and amounts he had paid to respondent for his legal services. At the time of D.M.'s request, D.M. had the ability to be reimbursed for his legal costs. Respondent failed to provide D.M. with the requested itemization.

23. Respondent failed to provide D.M. with a copy of the court of appeals' March 30, 2007, order, respondent's April 9, 2007, response to that order, or the court of appeals' April 26, 2007, order. Respondent did not file a copy of the hearing transcript with the court, nor did he provide a copy to D.M. (*see* paragraphs 7 – 10 above).

24. In May 2007, D.M. again requested respondent provide him with the status of D.M.'s billing invoices. Respondent failed to do so.

25. In September 2007, respondent sent D.M. an email message and stated he would send a letter to the district court if final judgment had not been entered by mid-September. D.M. did not hear from respondent and, in October 2007, sent respondent two email messages requesting respondent update him.

26. On October 19, 2007, the district court entered its order and judgment, which started a 60-day period from which to file D.M.'s appeal on permanent spousal maintenance. (*See* ¶ 11 above.)

27. On November 30, 2007, D.M. emailed respondent and requested a status on the judgment and decree from the court, as well as the appeal. D.M. also asked respondent about respondent's progress on providing D.M. with the requested billing statements.

28. D.M. heard back from respondent in early December 2007 but respondent did not tell D.M. that the district court had entered judgment and that D.M.'s appeal could now be filed. Respondent did not tell D.M. that his 60 days began running as of October 19, 2007. This is the last time respondent communicated with D.M.

29. From March 12, 2007, until December 15, 2008, D.M. sent 13 email messages to respondent. Each of D.M.'s emails indicated that D.M. was waiting for some action from the district court judge, the status of his appeal or asking respondent when he could expect itemized billing statements. Respondent failed to provide this information to D.M.

30. In his emails, D.M. told respondent that he could be reimbursed for his attorney's fees, but that he needed respondent to provide him with an itemized billing to make a reimbursement claim. Respondent never provided D.M. with an itemized billing.

31. On June 17, 2008, D.M. stated in an email, "You were going to tell me what the plan was to get the appeal moving." However, D.M. no longer had a viable appeal and respondent failed to tell D.M. that he, respondent, had missed the deadline to file an appeal. In his emails, D.M. indicated that he was still waiting for information on the status of the appeal.

32. Respondent collected over $13,000 from D.M. for an appeal but never filed a proper appeal. Respondent collected funds from D.M. for a copy of a hearing transcript for which there is no evidence a transcript was ever ordered, but for which payment was made.

33. Respondent failed to inform D.M. that the district court had entered final judgment in October 2007 and that respondent failed to file a proper appeal. Respondent also failed to provide D.M. with the requested itemized billing statements.

34. Respondent's conduct violated Rules 1.3, 1.4, 1.5(b)(1), and 3.2, MRPC.

THIRD COUNT

C. Non-Cooperation

35. On February 26, 2013, the Director mailed to respondent a copy of D.M's complaint and a notice of investigation. The Director requested respondent answer the complaint within 14 days. Although the notice of investigation was sent to the address that respondent maintained with attorney registration, respondent states that he did not pick-up his mail and was unaware of the Director's investigation.

36. On March 21, 2013, the assigned District Ethics Committee (DEC) investigator sent a certified letter to respondent and attempted to call him. The certified

letter was not picked up and the DEC investigator learned respondent's telephone number had been disconnected.

37. On March 22, 2013, respondent sent an email message to the DEC investigator and stated that respondent had been out of town and would provide the investigator with a full response by April 8, 2013.

38. On April 8, 2013, respondent responded to the complaint and stated that he provided D.M. with detailed invoices and that, although he filed an appeal on D.M.'s behalf, he was uncertain if the appeal had been perfected. In both respondent's email message and in his response, respondent wrote that additional documents would be provided within the next several days.

39. Respondent did not submit any additional documents, nor did he contact the investigator with an explanation as to why he had not done so. On April 29, 2013, the DEC investigator sent an email message to respondent asking if he intended to submit any materials for consideration. Respondent replied that he would provide a complete response within a week. Respondent did not do so.

40. On May 13, 2013, respondent sent an email message to the DEC investigator stating he would send the DEC investigator his response either later that day or the following day. Respondent did not do so. No substantive response to D.M.'s complaint was ever received by the DEC investigator.

41. On August 15, 2013, the Director sent a letter to respondent requesting that respondent provide the Director with a substantive response to D.M.'s complaint, together with additional information and documentation. The Director requested this information to be provided within two weeks. The Director sent this correspondence to the last address respondent maintained with attorney registration and the address from which respondent had previously responded. Again, respondent states that he did not check his mail and was unaware of the Director's correspondence.

42. On October 28, 2013, the Director wrote to respondent and requested a meeting at the Director's Office on November 13, 2013. The Director further requested that one week prior to the meeting, respondent provide the Director with a written response to his August 15, 2013, letter. Respondent states that he did not check his mail, was unaware of the Director's correspondence and therefore, did not appear for the meeting or respond.

43. On November 14, 2013, a staff member from the Director's Office called respondent at the telephone number listed on respondent's letterhead. A recording indicated that the telephone number had been disconnected. The staff member then called the cell phone number referenced in respondent's email address. A recording indicated that the cell phone number's mailbox was full.

44. On November 19, 2013, respondent wrote to the Director. In response to the question of his failure to cooperate with the DEC's investigation, respondent stated, in part, that the DEC investigator's final request for respondent's reply "did not establish a date by which to do so" and, therefore, there was nothing for respondent to calendar that would "trigger a timely response." However, it was respondent who had repeatedly informed the DEC investigator that a substantive response was forthcoming, without ever providing the promised response.

45. Respondent's November 19, 2013, letter to the Director did not address the issues arising from the complaint, nor did respondent's letter address the specific requests set out in the Director's August 15, 2013, letter.

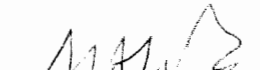
46. On November 25, 2013, respondent called the Director's Office and spoke with an Assistant Director. Respondent stated in the telephone call that he would provide the requested information within two weeks, or by December 9, 2013. Respondent did not do so.

47. On December 10, 2013, the Director sent an email message to respondent requesting respondent give the matter his immediate attention. On December 13, 2013, respondent wrote to the Director and provided the requested information.

48. Respondent's conduct violated Rule 8.1(b), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility (RLPR).

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: June 3, 2015.



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