

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against THOMAS B. JAMES,
a Minnesota Attorney,
Registration No. 179747.

**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 (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on December 5, 1986. Respondent currently practices law in Cokato, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

On November 17, 1999, respondent stipulated to two years' private probation based, among other things, on his failure to diligently represent a client in an employment discrimination case in violation of Rules 1.3, 1.4 and 8.4(d), Minnesota Rules of Professional Conduct (MRPC). Respondent provided medical records that indicated he was suffering from depression, that the depression may have been a causal

factor in his neglect of the employment discrimination matter, and that he was currently receiving appropriate medical treatment.¹ Respondent's probation terminated in 2001.

FIRST COUNT

1. Brian D. Larson (Larson) retained respondent on April 25, 2004, to represent him in a paternity matter involving Gretchen North (date of birth February 9, 2002), who was born to Julie North. North was represented by attorney Jane Van Valkenburg (Van Valkenburg). Larson paid respondent a retainer fee of \$1,500.00.

2. In early and mid-2005, Larson and North unsuccessfully attempted to reach an agreement on issues of paternity, custody, and child support.

3. On October 25, 2005, Van Valkenburg attempted to serve a temporary motion and an unsigned affidavit of Julie North on respondent by fax at 320-286-5030. A notice of motion attached to the motion indicated that a hearing on the motion was scheduled for November 8, 2005, at 1:30 p.m. Respondent had changed his fax number to 952-473-2096, however, so Van Valkenburg was unable to complete the fax transmission despite several attempts.

4. Van Valkenburg attempted to telephone respondent to discuss the problems she was having in faxing the motion to respondent, but was unable to reach respondent. Van Valkenburg left a phone message for respondent. Van Valkenburg also e-mailed a copy of the motion and affidavit to respondent on that day and sent a copy to respondent by U.S. mail.

5. Respondent returned Van Valkenburg's phone call on October 26, 2005. Van Valkenburg informed respondent that she had e-mailed the motion and affidavit to respondent on the previous day, and had attempted to fax it to him several times without success. Respondent indicated that service by e-mail was acceptable to him,

¹ On July 13, 1990, respondent was transferred to disability inactive status following his diagnosis as suffering from a major depressive disorder which interfered with his ability to practice law. On September 29, 1994, respondent was reinstated to the practice of law and placed on two years' supervised probation which was successfully completed.

and he also gave Van Valkenburg his new fax number. Van Valkenburg faxed the motion and affidavit to respondent on that day.

6. Respondent failed to inform Larson of North's motion or the date and time of the motion hearing. Respondent failed to submit any response to the motion and failed to appear for the hearing on November 8, 2005. Larson, who was unaware of the hearing, also failed to appear.

7. Van Valkenburg and North appeared at the November 8, 2005, motion hearing and requested that an order be issued despite respondent's and Larson's failure to appear. The district court issued an order following the hearing on November 30, 2005. On December 6, 2005, Van Valkenburg served a copy of the order on respondent by mail.

8. After receiving the November 30, 2005, order from Van Valkenburg, respondent went to the courthouse to review the court's file. Respondent failed to notify Larson that he did this, or that the order had been issued.

9. On January 3, 2006, Larson e-mailed respondent stating, "I just received a notice from the HR that I am going to be docked an additional \$306.53 per month. What is going on?" Respondent did not respond, so Larson e-mailed respondent again on January 5, 2006. On January 9, 2006, respondent e mailed the following reply to Larson: "I have a full calendar today, but will check on this as soon as I can, if not today then tomorrow, and let you know."

10. Respondent did not contact Larson again after his January 9 e-mail, so Larson e-mailed respondent again on January 12, 13, 30, on February 13 (twice), and on March 1, 21, and 27, 2006. In Larson's March 27, 2006, e-mail, he stated:

Tom,

I would like to find out what the heck is going on. It is almost 3 months and I have not heard a thing from you. You need to communicate with me as soon as possible.

In the remainder of Larson's e-mail, he quoted verbatim Rules 1.3 and 1.4, MRPC. Respondent did not respond.

11. In June 2006, Larson discharged respondent and retained a new attorney. In July 2006, Larson's new attorney brought a motion to the district court to vacate the court's November 30, 2005, order, which was denied in August 2006.

12. Respondent's conduct violated Rules 1.1, 1.3, 1.4, and 8.4(d), MRPC.

SECOND COUNT

13. On December 7, 2006, Larson submitted a complaint against respondent to the Director's Office. On December 13, 2006, the Director forwarded the complaint to the Eighteenth District Ethics Committee (DEC) for investigation. Respondent was directed to submit a written response to Larson's complaint within 14 days pursuant to Rule 25, RLPR, and Rule 8.1(b), MRPC.

14. On January 18, 2007, respondent submitted a written response to Larson's complaint to the DEC investigator. Respondent's response included the following statement:

Contrary to what Mr. Larson claims, I was not aware that opposing counsel had filed a motion to resolve the issues in this case.

15. Respondent's statement is false. As noted above, respondent (1) received a copy of the motion from Van Valkenburg by e-mail on October 25, 2005, (2) was orally informed of the motion and hearing by Van Valkenburg on October 26, 2005, (3) received a copy of the motion from Van Valkenburg by fax on October 26, 2005, and (4) received a copy of the motion by U.S. mail on or about October 26, 2005.

16. Respondent's January 18, 2007, response to the DEC investigator also included the following statement:

And it was impossible for the motion to have been served by fax at (320) 286-5030 in October, 2005, because by that time I had established a dedicated fax line at my new office in Long Lake, namely, (952) 473-2096.

17. Respondent's statement is misleading in that it omits the facts that, on October 26, 2005, respondent spoke with Van Valkenburg by phone, gave Van Valkenburg his new fax number, and received a copy of the motion by fax on that day.

18. Respondent's conduct violated Rules 1.1, 1.3, 1.4, 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: March 27, 2008.



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