

FILE NO. C4-99-1780  
STATE OF MINNESOTA  
IN SUPREME COURT

-----  
In Re Petition for Disciplinary  
Action against WILLIAM P. KASZYNSKI,  
an Attorney at Law of the  
State of Minnesota.  
-----

**SUPPLEMENTARY 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 supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a October 15, 1999, petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

COUNT V

Failure to Timely Pay Employer Withholding Taxes

Federal Withholding Taxes

250. Respondent has withheld from his employees' pay, but failed to remit to the Internal Revenue Service, the taxes shown as due on his federal employer withholding returns for the quarters ending September 30, 1997, December 31, 1997, March 31, 1998, September 30, 1998, December 31, 1998, March 31, 1999, and June 30, 1999.

251. Respondent's total unpaid federal employer withholding obligation, including penalty and interest, is currently at least \$21,784.59.

## State Withholding Taxes

252. Respondent failed to timely file, and pay the taxes due on, his state employer withholding for the quarter ending December 1997. Specifically, although the return and payment were due from respondent by January 31, 1998, respondent did not file the return and remit payment thereon until June 19, 1998.

253. Respondent has withheld from his employees' pay, but failed to remit to the Minnesota Department of Revenue, the taxes shown as due on his state employer withholding returns for the quarters ending December 1998 and March 1999.

254. Respondent's total unpaid state employer withholding obligation, including penalty and interest, is currently \$799.72.

255. Respondent's conduct in failing to pay federal and state employer withholding taxes violated Rules 8.4(b) and (d), Minnesota Rules of Professional Conduct (MRPC).

## COUNT VI

### Continued Pattern of Incompetence and Failure to Communicate

256. In January 1997 Antonio Sevilla retained respondent to represent him in a suspension of deportation matter and paid him \$1,500.

257. Initially Sevilla met with Juan Olivetti. Olivetti took all of Sevilla's documentation and filled out a suspension of deportation application. The suspension application was filed on or about April 21, 1997.

258. A Notice of Hearing was mailed to Sevilla's address but was not forwarded to him when he moved. Respondent attended the hearing but did not contact Sevilla about the hearing, so Sevilla did not appear. The judge told respondent:

What I'm going to do is I'm going to continue the case one time to allow him to appear in court. . . . No notice will be sent to him. You will receive a written notice here today and it will be your obligation to advise him of the hearing date. If he fails to appear at that time, an in absentia order of deportation will be entered against him. Okay?

Exhibit 1, pp. 1-2.

259. On September 18, 1997, respondent's associate Martha Burns wrote to Sevilla giving him the wrong hearing date (Exhibit 2).

260. Sevilla failed to appear for the October 21, 1997, hearing. Respondent told Judge Dierkes that the reason Sevilla was not present was that he could have been confused about the date of the hearing based on a letter (Exhibit 2) sent by his office giving an incorrect hearing date.

261. Judge Dierkes stated "That's not a satisfactory explanation for his failure to appear as far as the Court is concerned" (Exhibit 3, p. 6). Judge Dierkes then entered an in absentia order of deportation against Sevilla.

262. Judge Dierkes told respondent: "That's my decision, Mr. Kaszynski. Since this is an in absentia order, there is not an appeal period. It would require a motion to rescind the in absentia order if it is to be set aside" (Exhibit 3, p.6).

263. Despite the judge's clear direction, respondent did not bring a motion to rescind the in absentia order but instead filed an appeal of the order on August 27, 1998. Appeals of in absentia removal orders are prohibited by INA § 240(b)(5)(c) [INA § 242B(c)(3) before enactment of IIRIRA]. The Board of Immigration Appeals has no jurisdiction to hear such an appeal.

264. In its July 14, 1999, order the Board of Immigration Appeals stated:

We observe that the Immigration Judge instructed the respondent's attorney at the conclusion of the in absentia hearing that a direct appeal of the decision could not be filed with the Board. Under these circumstances, the record will be returned to the Immigration Court without further Board action as we are precluded by the Act from considering such an appeal. (citations omitted)

Exhibit 4.

265. In pursuing a fruitless appeal, respondent failed to file a motion to rescind within the 180-day statutory limit so that Sevilla is now foreclosed from pursuing the appropriate remedy.

266. Respondent's conduct in failing to adequately communicate the correct hearing dates to Sevilla and in failing to pursue the appropriate remedy to obtain relief from the in absentia order of deportation violated Rules 1.1 and 1.4, MRPC.

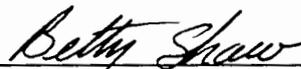
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: November 3, 1999.



EDWARD J. CLEARY  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 17267  
25 Constitution Avenue, Suite 105  
St. Paul, MN 55155-1500  
(651) 296-3952

and



BETTY M. SHAW  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 130904

This supplementary petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: November 4, 1999



JOHN G. BRIAN III  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD