

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against BRADLEY V. LARSON,
a Minnesota Attorney,
Registration No. 0060379.

**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 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:

SECOND COUNT

ENNIS MATTER

11. On June 6, 2005, Ruby Nieskens signed a last will and testament ("2005 will"). This will nominated three of Nieskens' children – Merle Nieskens ("Merle"), Joette Tilbury ("Joette") and Delores ("Delores") Ennis – as successive personal representatives. Nieskens had two other children, daughters Darlene McDougall ("Darlene") and Lucille Lundy ("Lucille").

12. On March 26, 2006, Nieskens signed a new last will and testament and a declaration of trust ("2006 will and trust"). These documents nominated Merle, Joette and Delores as co-personal representatives and co-trustees, respectively.

13. Nieskens' largest asset was her homestead. Following execution of the 2006 will and trust, Nieskens signed a quit claim deed that transferred the homestead into the trust.

14. Nieskens died on June 17, 2012. Following Nieskens' funeral, Delores and her siblings agreed to return to their mother's home in October 2012 to go through and dispose of her belongings. Until then, Joette managed Nieskens' financial affairs.

15. When Delores arrived at her mother's home in October 2012, however, she was presented with a letter from Joette in which Joette stated that she did not want to see or speak to Merle or Delores.

16. On October 11, 2012, Delores, along with Darlene and Lucille, met with and retained respondent for the purpose of removing Joette as a co-trustee.

17. During their October 11, 2012, meeting, Delores gave respondent her mother's original 2005 will and original 2006 will and trust. The original 2006 will was fully executed and bore the names and signatures of the two individuals who witnessed the will, Daniel Spike and Lecia Spellman.

18. On October 11, 2012, following his meeting with Delores and her sisters, respondent wrote to attorney Jan Larson (no relation to respondent), who represented Joette. Respondent enclosed with his letter copies of the 2006 will and trust documents. Like the originals, the copies were fully executed and had the names and signatures of the two witnesses.

19. In his October 11, 2012, letter to Jan Larson, respondent stated that the original 2006 will and trust in his possession "would be fully enforceable in this matter." Respondent requested an accounting of Joette's handling of Nieskens' assets to date, advised that Delores had arranged for an appraisal of Nieskens' home, discussed the opening of a trust bank account and requested Larson to call respondent to further discuss administration of the estate.

20. On October 18, 2012, Delores emailed respondent to, among other things, report the results of the appraisal of her mother's home.

21. On November 13, 2012, Delores again emailed respondent. Delores stated that she and Merle “want [Joette] removed as trustee of the estate.” Respondent responded to Delores’ email on November 28, 2012, stating, “[i]n order to justify removal as Trustee, can you please give me a list/conduct that you don’t believe is in everyone’s best interests? This will form the factual basis to bring a removal action.” Delores provided the list of conduct respondent requested by a responsive email on November 29, 2012.

22. On December 28, 2012, Delores emailed respondent and asked about the status of the trust and Joette’s removal as co-trustee. Respondent responded on January 3, 2013, stating, “I’ve left 2 phone messages for Attorney Jan Larson who represents the estate. Once I hear back from him, I’ll contact you with a plan.”

23. On January 31, 2013, Delores again emailed respondent asking about the status of her mother’s estate. On February 1, 2013, respondent responded that, in his last conversation with Larson, he stated “we would be seeking removal of the Trustee and requesting the Court to appoint a replacement.” Respondent stated further that once he completed a trial for which he was scheduled on February 14, he would “draft the necessary documents.”

24. Respondent performed no substantive work in Delores’ matter during the period from October 16, 2012, to February 22, 2013.¹

25. On February 22, 2013, respondent spoke by telephone with both Larson and Delores “regarding motion,” and on February 25, 2013, respondent reviewed the file, conducted legal research and prepared a petition for formal probate.

26. On March 4, 2013, respondent forwarded to Delores a draft petition for formal probate of Nieskens’ will and for appointment of personal representative (“petition for probate”) and other probate documents for her review. The draft petition

¹ In a March 10, 2015, affidavit submitted in response to Delores’ complaint to the Director, respondent stated that during the period “from November 2012 to January 2013 . . . I was out of State.” Respondent stated that he was also “out of State” when he received and responded to Delores’ January 31, 2013, email.

for probate respondent attached to his email stated that the 2006 will was “Not Validly Executed” and sought to have the 2005 will probated. The petition for probate further sought Delores’ appointment as personal representative and included the statement, “Merle Nieskens has declined to serve.” Both the 2006 will and trust and the 2005 will were referenced as attachments to the petition for probate. Respondent did not, however, forward those documents to Delores with his email, nor did he explain to Delores the basis for the claim that the 2006 will was invalidly executed.

27. On March 5, 2013, respondent wrote to Delores and her siblings. Respondent stated “there is a question with regards to the validity of her most recent Last Will and Testament” and that, as a result, “we must have the Court designate her heirs and any final distribution.” Respondent did not explain the basis for there being a question concerning the validity of the 2006 will. Respondent enclosed with his letter both a petition for probate and a “Nomination of Personal Representative and Renunciation of Priority for Appointment,” and requested Delores’ siblings to sign and return to him the nomination/renunciation document.

28. On March 7, 2013, Delores emailed respondent and stated, “I was unaware the March, 2006 will had not been properly executed; none of us were.” In addition, Delores asked, “What, if any, differences are there from the June, 2005 will?” Finally, Delores asked, “I understand this probate proceeding will establish the legality of our mother’s wills, but will the issue of Joette being removed as co-trustee of the trust be addressed at some point in the near future?”

29. On March 12, 2013, respondent sent Delores a responsive email. Respondent stated only that “[t]here does not seem to be any differences between the 3/2006 improperly executed Will and the valid 6/2005 Will, except that the 2006 Will places everything into the Trust.” Respondent proposed that after Delores was appointed personal representative, “we may consider getting a non-family member involved” to serve as trustee. Respondent failed to explain to Delores the basis for the claim that the 2006 will had been invalidly executed.

30. On April 2, 2013, respondent emailed the final petition for probate to Delores and requested her to sign the document before a notary public and return it to him. Delores signed the petition for probate on April 3, 2013, and respondent filed it with the court, along with the original 2005 will, original 2006 will and trust and other probate documents, on April 9, 2013. Respondent sent copies of his filing letter and the enclosures to that letter to Delores and her siblings.

31. The original 2006 will respondent filed with the court on April 9, 2013, and the copies of that will respondent sent to Delores and her siblings on that date, had been altered to remove the name and signature of Lecia Spellman, one of the witnesses to the will. This alteration was the basis for respondent's claim in the petition for probate that the will had been invalidly executed.

32. The alteration occurred while the 2006 will was in respondent's possession. More specifically, the alteration had to have occurred sometime during the period October 11, 2012, when Delores gave the original 2006 will to respondent, and February 25, 2013, when respondent began preparing the petition for probate.² Respondent's only staff during that period of time was his paralegal, Nancy Fenton.

33. The alteration of the 2006 will either occurred as a result of respondent's failure to properly safeguard the will or was done or directed by respondent.

34. On April 11, 2013, Delores emailed respondent. Delores noted that the petition for probate stated that Merle had declined to serve as personal representative, but that she did not believe that to be the case. Respondent stated that he would revise the petition to remove that statement.

² In his March 10, 2015, affidavit, respondent stated that "[u]pon further review of the file" at or about the time he filed the petition for formal probate and other documents, "the improperly executed Will did appear suspicious." In a March 25, 2015, supplemental response, respondent stated similarly that he "noticed that the will was missing the signature by Spellman in connection with preparing the Petition for Formal Probate of the Will and Formal Appointment of Personal Representative." Respondent stated further that, upon discovering the missing witness signature on the 2006 will, he "looked through the file and had my paralegal look through the file to try and figure out why we had a will that was signed by only one witness."

35. On April 11, 2013, Delores signed a corrected petition for probate. This petition for probate did not include the statement that Merle had declined to serve as personal representative and reflected a different address for Merle, but was otherwise identical to the petition for probate respondent filed on April 9, 2013.

36. On April 15, 2013, respondent filed the corrected petition for probate with the court. Once again, respondent sent copies of his filing letter and the enclosure to that letter to Delores and her siblings.

37. On June 12, 2013, a hearing on the petition for probate was held. In an order of the same date, the court determined that the 2006 will was invalidly executed, directed the probate of the 2005 will and appointed Delores as personal representative of her mother's estate.

38. Sometime between receiving a copy of respondent's April 9, 2013, filing letter and the June 12, 2013, hearing, Jan Larson and respondent discussed the missing witness name and signature on the 2006 will. Jan Larson stated to respondent that his file contained a fully-executed and witnessed copy of the 2006 will and he did not understand why the original of that will respondent filed with the court was missing one of the witnesses' name and signature. Respondent stated simply that the original will he had had in his possession turned out to be missing the witness name and signature and that he had been incorrect in his earlier claim that that will was enforceable.

39. The court filed letters testamentary on June 12, 2013, but respondent did not request copies from the court until July 31, 2013, and did not provide them to Delores until sometime in August 2013.

40. On October 7, 2013, Joetta filed a report with the Buffalo, Minnesota, police department alleging that Delores was responsible for altering the 2006 will.

41. In October 2013, respondent and Delores exchanged emails regarding a possible action to partition Nieskens' homestead property and the cost associated with such an action. In an October 22, 2013, email, Delores asked, "Would it be less costly to

have her removed as a co-trustee; which I have wanted to do since this all started?" On October 23, 2013, respondent responded, "I think it is a good suggestion to try and remove her as co-trustee for cause and we can do that through a motion and supporting affidavits." Delores stated in response, "Yes, please go forward with the removal asap."

42. On December 9, 2013, Delores received an email from Joetta in which Joetta accused Delores of altering the 2006 will and stated that she had reported the matter to the police, who were investigating. Delores contacted respondent, who simply dismissed Joette's claim as "ridiculous" and took no action to investigate or refute the allegation.

43. On December 17, 2013, respondent filed with the court a petition to remove Joetta as co-trustee. The hearing on the petition was eventually scheduled for February 18, 2014.

44. In a January 8, 2014, email, respondent suggested to Delores that a neutral third-party trustee be appointed. In her January 9, 2014, response, Delores stated, "I would really appreciate an explanation as to the validity of the 2006 will. . . . I never knew the reason why the 2006 will was improperly executed; you never explained it. . . . I would very much appreciate your thoughts on the issue of the 2006 will as this is weighing heavily on my mind."

45. On January 6, 2014, Sheldon Brown was substituted for Jan Larson as Joette's attorney.

46. On January 12, 2014, Delores emailed respondent and referenced their recent telephone conversation. Delores stated:

I hope when you speak with Attorney Brown in the next few days, you will ask him about his implication that I have removed a witness signature to invalidate the 2006 will. To be honest, Brad, I don't think you read my emails thoroughly. Would you please refer to the paper copy I sent you of Joette's 12-09-13 email where she accuses me of fraud & states that you have done questionable things. What is the document she claims was filed to have the 2006 will portion of the trust invalidated & what copy does she have with two signatures? Attorney Brown writes he has a clean

copy of the 2006 will with a signature of the second witness. If I'm not mistaken, weren't the witnesses to sign in three places? I do not understand where this is coming from. My copy of the 2006 will has David Spike signing in three places & no other signatures. I cannot & will not sign off the trust to a neutral party without clarification of this matter & that both Attorney Brown & Joette know that I have done nothing illegal.

The thought of Joette telling our relatives how I resorted to fraud to 'screw her over' as she put it, is something I cannot allow to continue. Please get back to me after you have spoken to Attorney Brown.

47. In his January 14, 2014, response, respondent simply related the substance of a telephone conversation with Brown regarding appointment of a neutral third-party trustee. Respondent did not address or even mention Delores' concerns regarding the 2006 will or its alteration, or Joette's claims of her involvement in the alteration.

48. In a January 14, 2014, responsive email to respondent, Delores again opposed the appointment of a third-party trustee and stated, "[a]nd you have not addressed my request to have answers about the missing witness signature. I won't sign off the trust until those questions are answered." Respondent did not respond.

49. On January 22, 2014, Delores substituted Matthew Burton for respondent as her attorney.

50. As part of its investigation of Joette's report, the Buffalo police department requested the Minnesota Bureau of Criminal Apprehension ("BCA") to conduct a forensic examination of the original 2006 will. In August 2014, the BCA concluded that the name and signature of the witness Lecia Spellman on the will "had been removed using a chemical" and "were now only visible by examination using ultraviolet light."

51. On September 2, 2014, also as part of its investigation of Joette's report, the Buffalo police department contacted respondent. Respondent stated that he "does not believe that he filed any of the documents with the court related to his involvement in the situation." Respondent further stated that he did not alter any of the documents.

52. Respondent's conduct in failing to diligently pursue the Delores Ennis representation violated Rule 1.3, Minnesota Rules of Professional Conduct (MRPC).

53. Respondent's conduct in failing to advise Delores of the alteration of the 2006 will, the significance of that fact for Delores' case, and his failure to respond to Delores' reasonable requests for information violated Rule 1.4(a)(2), (3) and (4), and Rule 1.4(b), MRPC.

54. Respondent's conduct in failing to safeguard the 2006 will violated Rule 1.15(c)(2), 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: Aug. 31, 2015.



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