

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against THOMAS P. LOWE,
a Minnesota Attorney,
Registration No. 164574.

**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 May 15, 1985. Respondent currently practices law in Burnsville, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline, including admonitions, is as follows:

A. On February 17, 2004, respondent was issued an admonition for insulting a judge during a proceeding and disrupting a judicial proceeding in violation of Rule 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

B. On April 11, 2001, respondent was issued an admonition for shouting obscenities at a court employee during a telephone conversation in violation of Rule 4.4, MRPC.

C. On April 2, 1997, respondent was placed on a two-year private probation for using cocaine on several occasions, purchasing or being involved in purchasing cocaine from a client, and on at least four or five occasions providing cocaine to his law partner in violation of Rule 8.4(b), MRPC.

D. On May 31, 1995, respondent received an admonition for shouting obscenities at and attempting to strike opposing counsel in the courthouse hallway in violation of Rule 8.4(b) and (d), MRPC.

FIRST COUNT

R.D. Matter

1. On August 18, 2011, R.D. met with respondent to discuss pursuing a divorce from her husband of 26 years. Respondent and R.D. were from the same hometown, Valley City, North Dakota. R.D. had previously consulted with respondent about a divorce in 1996, but chose not to pursue one at that time.¹

2. The meeting between respondent and R.D. lasted approximately 90 minutes during which time respondent described the dissolution process and asked R.D. various questions about her marriage. Respondent agreed to undertake the representation at an hourly rate of \$250 for attorney's fees. The parties did not sign a written fee agreement.

3. Several days later, respondent emailed R.D. that he was bored and was driving back to North Dakota to attend a funeral. Respondent asked R.D. to call him and that there would be no charge for the call. R.D. called respondent. During the conversation, respondent inquired about R.D.'s sexual relationship with her husband and made comments about R.D.'s physical appearance. Respondent asked R.D. if she was interested in pursuing a sexual relationship with him.

¹ Although respondent and R.D. were acquainted from their hometown, they had no prior sexual history.

4. During the next week, respondent and R.D. continued to text with each other. On September 1, 2011, respondent and R.D. met at the Holiday Inn Express in Eagan, Minnesota, and engaged in sexual relations for the first time.

5. Between September 2011 and March 2012, respondent and R.D. continued to engage in sexual relations at various hotels, R.D.'s home and restaurant parking lots while respondent represented her in dissolution proceedings.²

6. Respondent also billed R.D. for legal services that correlate to dates in which they engaged in sexual relations:

a. On September 15, 2011, respondent and R.D. met at the Holiday Inn Express in Eagan and engaged in sexual relations. During the meeting, R.D. provided respondent with a check in the amount of \$2,500 for attorney's fees. Respondent's billing entry for that day shows he billed \$75 in attorney's fees for meeting with R.D. and drafting a memo to the file. Respondent's client file contains no memos to the file.³

b. On September 22, 2011, respondent and R.D. met at the Holiday Inn Express in Eagan and engaged in sexual relations. Respondent's billing entry for that day shows he billed \$50 in attorney's fees for meeting with R.D. and revising the divorce petition.

c. On October 6, 2011, respondent and R.D. met at the Holiday Inn Express in Eagan and engaged in sexual relations. Respondent's billing entry for

² The number of times respondent and R.D. engaged in sexual relations is not limited to the number of incidents repeated in paragraph 6, which discusses only those instances in which respondent billed R.D. for attorney's fees on the same date in which they engaged in sexual relations. Respondent and R.D. maintained an extensive sexual relationship over the course of the representation.

³ Respondent provided the Director with R.D.'s original client file, which was reviewed. No memorandums were in the file or any other equivalent thereof. There were also no email messages between respondent and R.D. despite multiple billing entries therefore. Respondent claims that he no longer has such email messages and R.D. denies emailing with respondent, because respondent was afraid his wife would discover the correspondence.

that day shows he billed \$100 in attorney's fees for meeting with R.D. and drafting a memo to the file.

d. On October 25, 2011, respondent and R.D. dined at Ansari's restaurant in Eagan and engaged in sexual relations in respondent's vehicle in the restaurant parking lot. Respondent's billing entry for that day shows that he billed \$100 in attorney's fees for meeting with R.D. and drafting a memo to the file.

e. On October 27, 2011, respondent and R.D. met at the Holiday Inn Express in Eagan and engaged in sexual relations. Respondent's billing entry for that date shows he billed \$250 in attorney's fees for a meeting with R.D. in addition to other work performed.

f. On November 17, 2011, respondent met R.D. at her home and engaged in sexual relations. Respondent's billing entry for that date shows he billed \$250 in attorney's fees for a meeting with R.D.

g. On March 1, 2012, respondent met R.D. at her home and engaged in sexual relations. Respondent's billing entry for that date shows he billed \$75 in attorney's fees for a meeting with R.D.

In total, R.D. paid respondent \$3,700 in attorney's fees consisting of the initial \$2,500 retainer paid on September 15, 2011, and a second check in the amount of \$1,200 paid on or about January 16, 2012.

7. R.D. is a vulnerable client. R.D. has a history of sexual abuse by a high school coach, which she disclosed to respondent at the onset of the attorney-client relationship. R.D. also disclosed to respondent that she had previously attempted to commit suicide and that she had undergone mental health treatment as a result of the sexual abuse. Respondent's sexual relationship with R.D. while acting as her lawyer resulted in R.D. suffering significant mental and emotional distress over the course of the representation.

8. In early December 2011, respondent's wife learned of his relationship with R.D. Respondent blamed R.D. for ruining his marriage and threatened to commit suicide. As a result of the stress of her relationship with respondent and the divorce proceedings, R.D. began suffering from depression, insomnia and panic attacks. R.D. sought assistance from a physician and was prescribed anti-depressants. Despite these concerns, respondent continued to engage in frequent sexual relations with R.D. through January and February 2012.

9. On March 6, 2012, respondent and R.D. got into an argument about their relationship and respondent's marriage. Respondent stated that he was terminating the sexual relationship with R.D. Respondent stated that her file was available at his office. R.D. and respondent continued to communicate by text message for the next two days.

10. On the afternoon of March 8, 2012, R.D. left her work and attempted to commit suicide in a nearby park. Thereafter, R.D. was hospitalized and placed on a 72-hour psychiatric hold at Regions Hospital where she disclosed that her sexual relationship with respondent, who was also her attorney, was the reason for her suicide attempt. R.D. is currently undergoing psychiatric treatment to deal with the emotional and psychological distress caused by her relationship with respondent.

11. By letter dated March 8, 2012, respondent notified R.D. that he was withdrawing as counsel. Respondent also notified opposing counsel to this effect and filed a notice of withdrawal with the court administrator. Respondent maintains that R.D. continues to owe him unpaid attorney's fees and sent R.D. a March 2012 billing statement to that effect.

12. Respondent's sexual relationship with R.D. violated Rules 1.7(a)(2) and 1.8(j), MRPC.

13. Respondent's conduct in billing R.D. for meetings in which they engaged in sexual relations violated Rules 1.5(a) and (b) and 1.7(a)(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: June 25, 2012.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



CASSIE HANSON
SENIOR ASSISTANT DIRECTOR
Attorney No. 303422