

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against THOMAS JOHN LYONS, JR.,
a Minnesota Attorney,
Registration No. 249646.

**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. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 28, 1994. Respondent currently practices law in Vadnais Heights, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On December 18, 1998, respondent was issued an admonition for directly contacting a party he knew to be represented by counsel concerning the subject matter of the representation.

B. On December 15, 1998, respondent signed a stipulation for private probation. Respondent's discipline arose out of shortages in his trust account and failure to maintain adequate trust account books and records.

C. On January 26, 2001, the Minnesota Supreme Court publicly reprimanded respondent and placed him on probation for two years. Respondent was disciplined for prosecuting frivolous claims or litigation in three cases and failing to follow proper

affidavit procedures in another case, all of which resulted in sanctions which had been satisfied before the date of the Court's order.

D. On September 17, 2002, respondent stipulated to the issuance of an admonition for improperly seeking an extension to file a responsive brief *ex parte* in violation of a Federal Rule of Civil Procedure, misrepresenting that he had been granted an extension to file a responsive brief and motion, breaching a confidentiality provision of a settlement agreement and bringing a claim that had been resolved before it was filed.

E. On May 18, 2005, respondent was issued an admonition for failing to take reasonable remedial measures after he learned evidence which he had submitted was false.

F. On September 25, 2007, respondent was issued an amended admonition for preparing an ambiguous and incomplete retainer agreement and disbursement summary.

G. Also on September 25, 2007, respondent was issued a separate amended admonition for preparing an ambiguous retainer agreement, and failing to prepare a settlement statement or to otherwise account for his client's settlement.

FIRST COUNT

Grover Matter

1. Respondent practices with the firm Consumer Justice Center ("CJC").
2. Respondent represented Chad Grover in a Fair Credit Reporting Act ("FCRA") matter in which Grover was the plaintiff. The defendant was Trans Union, LLC ("Trans Union").
3. On or about September 27, 2006, the complaint was filed. The case was venued in the United States District Court for the District of Montana ("Montana federal court"). Because respondent is not admitted in Montana federal court, respondent retained Sean Frampton to act as local counsel. Frampton was a friend of Grover.

4. On or about September 18, 2007, a settlement conference was conducted, but no settlement was reached.

5. On October 6, 2007, Grover took ill and was hospitalized.

6. In an October 7, 2007, e-mail, Frampton told respondent, "Chad is ill and in critical conditions [sic]. Please keep him in your prayers. Call and I will explain."

7. In an October 8, 2007, e-mail, respondent asked Frampton, "Are you in the office today or on your cell phone? Should I explore settlement with Defendant?"

8. In an e-mail to respondent on the morning of October 9, 2007, Frampton told respondent:

The doctors will be pulling the life support today. Sadly, he isn't going to make it. Upon direction of Tina [Grover's wife], please settle the lawsuit with TU [Trans Union].

9. In an e-mail to Frampton later that morning, respondent stated, "I will do so and report back to you ASAP. I am totally confused by the series of events leading up to this tragic loss. Please advise when you have information about the funeral and wake."

10. On October 9, 2007, Grover passed away.

11. Respondent failed to then inform opposing counsel of Grover's death.

12. On October 9, 2007, respondent stated to opposing counsel by e-mail, "Also need to confirm the settlement positions"

13. Within a week of Grover's passing, respondent spoke by telephone with Frampton and discussed Grover's passing.

14. By e-mail on October 26, 2007, opposing counsel on behalf of Trans Union informed respondent that Trans Union would pay \$19,000 to settle the Grover matter.

15. In an October 27, 2007, e-mail, respondent stated to opposing counsel, "Deal at \$19,000. Draft the release and order the check made payable to CJC Trust Account." Respondent had not yet informed opposing counsel that Grover had died.

16. On or about December 14, 2007, respondent and opposing counsel signed and filed with the court a stipulation of dismissal with prejudice, based on the agreement to settle contained in the October 26 and 27 e-mails. The court then dismissed the matter.

17. Pursuant to the October 26 and 27 e-mails, opposing counsel sent to respondent a draft settlement agreement.

18. In a January 7, 2008, e-mail, respondent told opposing counsel that Grover "was hospitalized and I [respondent] think the release is being signed by his wife or someone with power of attorney." These statements were false and misleading. Grover had passed away almost three months earlier.

19. Later that day, one of respondent's non-lawyer assistants sent an e-mail to opposing counsel's firm requesting that the release be changed to allow for someone to sign for Grover. Respondent's assistant sent a copy of this e-mail to respondent.

20. In reliance on these statements, opposing counsel's firm drafted and sent to respondent a revised settlement agreement, with the signature block changed for someone to sign for Grover pursuant to a power of attorney. The signature block for Grover was changed to read "Agent (Attorney-In-Fact) for Chad Grover"

21. The January 10, 2008, e-mail transmitting the revised settlement agreement from opposing counsel's firm to respondent's assistant stated, "Also, we have made reference to the Power of Attorney as Exhibit B in the signature line for Mr. Grover. Please provide us with a copy of this POA when you return the original signed Settlement Agreement & Release to us."

22. On January 10, 2008, Tina Grover signed the settlement agreement as "Personal Representative for the Estate of Chad Edward Grover."

23. By letter dated January 14, 2008, respondent sent the signed settlement agreement to opposing counsel.

24. In a January 29, 2008, e-mail, opposing counsel asked respondent, "Estate of Chad Grover? Is he dead?" Respondent did not reply.

25. In a January 31, 2008, e-mail, opposing counsel forwarded his January 29 e-mail to respondent and stated, "Just wanted to make sure you got this. See below." In an e-mail later on January 31 respondent replied, "Yes – HOW IRONIC!"

26. In an e-mail later on January 31, 2008, opposing counsel asked respondent, "When did [he] die? When did you find out?"

27. In an e-mail later on January 31, 2008, respondent replied, "Unsure. Recently. Remember him telling us about his wife and two little girls . . . so sad." The statements, "Unsure. Recently" were false. Respondent learned of Grover's death by the middle of October, which was not "Recently," but more than three months previously.

28. In a February 1, 2008, e-mail, opposing counsel wrote to respondent, "It is sad. Seemed like a young, vibrant guy. Did he die before or after we agreed to settle?"

29. In an e-mail later on February 1, 2008, respondent replied in pertinent part, "We settled before I found out he passed away." This statement was false. Respondent learned of Grover's death before the parties agreed to settle on October 27, 2007.

30. In a February 4, 2008, e-mail, opposing counsel again asked respondent, "Did Mr. Grover die before or after we agreed to settle?"

31. In an e-mail later on February 4, 2008, respondent replied, "Grover died after we agreed to settle." This statement was false.

32. In a February 5, 2008, e-mail, opposing counsel asked respondent, "On what date did Grover die? On what date did you find out?"

33. In an e-mail later on February 5, respondent replied to opposing counsel, "Unsure of exact dates – sorry. I learned about it from local counsel afterwards – that is why we had to redo the signature block to estate after you sent it to us with only Grover's name." These statements were false. Respondent learned of Grover's death before the parties agreed to settle, not after.

34. Later that day, respondent sent an e-mail to his non-lawyer assistant and to his local counsel, Frampton. Respondent stated:

I think TU [Trans Union] is trying to avoid payment on this settlement. Andi [respondent's non-lawyer assistant] pull the file and we will pinpoint to the best we can the exact date of settlement with [opposing counsel] as I am sure there is an email – also I may have telephone call notes. **Chad's date of death was 10/09/07 and I believe that was confirmed in an email the following week by Sean.**

Sean, call me with your recollection and notes – then we will respond to [opposing counsel].

Thanks –

PS – I left you vm on this weekends [sic] trip to Big Sky – what is Yellowstone Club?

(Bold added.)

35. By e-mail dated February 12, 2008, opposing counsel advised respondent that he was still waiting for a response to the February 5 e-mail (¶ 32, above).

36. In a February 13, 2008, e-mail, respondent updated Frampton on the matter:

Sean –

This is what TU [Trans Union] lawyer sent to me:

“Grover – Still awaiting you and Frampton's response.”

This is my response that I just sent:

CHAD DIED ON 10/09/07. ACCORDING TO OUR EMAILS WE SETTLED ON 10/27/07. I DID NOT LEARN OF HIS PASSING UNTIL AFTER WE SETTLED – SORRY EXACT DATE UNKNOWN BY MYSELF OR FRAMTON [sic]. SEND THE CHECK AND WE CAN CLOSE OUR FILES.

Not sure what the hold up is now. He could be waiting for your response.

(Emphasis in original.) Respondent's statement that he did not learn of Grover's death until after the parties settled was false. Respondent learned of Grover's death within a week thereafter. Additionally, that statement was inconsistent with his statement to

Frampton a week earlier (§ 34, above). Respondent's statement that Grover died on October 9, 2007, was inconsistent with his prior statement that Grover had died after the parties had agreed to settle (§ 31, above).

37. In a February 15, 2008, e-mail, opposing counsel asked respondent when local counsel learned of Grover's death.

38. In a February 20, 2008, e-mail, opposing counsel asked Frampton to respond to a February 5 e-mail he had sent to Frampton asking "Sean, can you fill in any of the dates below as to when Mr. Grover died and when his counsel found out? Thanks." Opposing counsel sent a copy of that February 20 e-mail to respondent.

39. In an e-mail later on February 20, 2008, Frampton advised opposing counsel, "I was aware of Chad's death on the day he died. I was there for his wife." Frampton sent a copy of this e-mail to respondent.

40. When Trans Union agreed to settle the Grover matter, respondent had not informed opposing counsel that Grover had died. If Trans Union had known this fact, Trans Union would not have agreed to enter into the same settlement.

41. Respondent's conduct violated Rules 3.3(a)(1), 4.1 and 8.4(c) and (d), Montana Rules of Professional Conduct.¹

SECOND COUNT

Misrepresentations During Disciplinary Investigation

42. On April 7, 2008, the Director mailed to respondent notice of investigation of a complaint regarding the Grover matter. The notice requested respondent:

Pursuant to Rule 25, Rules on Lawyers Professional Responsibility, and Rule 8.1(b), Minnesota Rules of Professional Conduct, please respond

¹ Rule 8.5(b)(1), Minnesota Rules of Professional Conduct, provides in pertinent part, "In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied . . . for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits . . ." The Grover matter was venued in Montana federal court. That court applies the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct. Rule 83.13, Local Rules of Procedure of the United States District Court for the District of Montana (copy attached). Therefore, the Montana Rules of Professional Conduct apply to respondent's misconduct in the Grover matter. A copy of the Montana Rules of Professional Conduct is attached.

completely to the complaint in a writing mailed to the undersigned within 14 days of this notice.

Together with your response, please provide all documents that evidence, memorialize, or refer or relate in any way to, any communications, whether verbal, written or electronic, you had with any person regarding the death of Chad E. Grover.

(Bold in original.)

43. Respondent replied through counsel's April 16, 2008, letter to the Director and stated:

Mr. Lyons contends that settlement discussions were ongoing from August of 2007 until October 27, 2007. Indeed it is correct that Mr. Lyons did not advise Trans Union or the Court of his client's death on October 9, 2007 **as he was not aware of this until the first week of November that Plaintiff had died.**

(Emphasis added.) This statement was false. Respondent knew no later than the middle of October 2007 that Grover had died.

44. Together with that April 16, 2008, letter, respondent provided copies of some e-mails concerning the death of Grover. Respondent failed to provide, however, copies of e-mails between him and Frampton, including the e-mails on the day Grover died (¶¶ 6 - 9, above) and the February 5, 2008, e-mail concerning when respondent learned of Grover's death (¶ 34, above). Coupled with respondent's misrepresentation that he did not know of Grover's death until November 2007, the failure to provide these documents was false and misleading.

45. By letter dated April 18, 2008, the Director requested respondent to provide additional information and documents regarding the matter.

46. Respondent replied through his counsel's May 12, 2008, letter and stated, "It is Mr. Lyons['] recollection that he heard from Mr. Frampton sometime in early November after the settlement was negotiated that Mr. Grover had passed. There are no documents to Mr. Lyons['] knowledge that exist with respect to this communication." These statements were false. Respondent learned of Grover's death

no later than the middle of October 2007. In early October 2007 and again in early February 2008, respondent and Frampton exchanged e-mails concerning the date of Grover's death and/or when respondent learned of this. Respondent failed to provide these e-mails with his response to the complaint or the May 12 letter. Coupled with respondent's misrepresentation that he did not learn of Grover's death until November 2007, the failure to provide these documents was false and misleading.

47. The April 16 and May 12 letters were sent to the Montana lawyer discipline agency, which also received a complaint about respondent's conduct in the Grover matter. Respondent thereby made the same false statements (§§ 43 and 46, above) to the Montana disciplinary agency.

48. Respondent gave a deposition during the Minnesota disciplinary investigation on August 27, 2008. During that deposition (p. 15), respondent gave the following answer:

Q: How did you learn that Mr. Grover had passed away?

A: I believe I got a call from – let me correct that. I called Mr. Frampton to advise him of the settlement with Trans Union, and it was in that call that I learned that Mr. Grover had actually passed away.

This statement was false. Respondent had learned of Mr. Grover's death before the parties had agreed to settle.

49. Respondent's false and misleading statements during the Minnesota disciplinary investigation violated Rules 8.1(a) and (b) and 8.4(c) and (d), Minnesota Rules of Professional Conduct, and Rule 25, RLPR.²

² Rule 8.5(b)(2), Minnesota Rules of Professional Conduct, provides:

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows: * * *

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

50. Respondent's false and misleading statements made to the Montana disciplinary agency violated Rules 8.1(a) and (b) and 8.4(c) and (d), Montana Rules of Professional Conduct.³

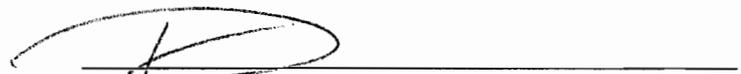
WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent from the practice of law or imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may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

Dated: March 6, 2009.



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See, e.g., In re Overboe, 745 N.W.2d 852, 861-62 (Minn. 2007). Therefore, the Minnesota Rules of Professional Conduct apply to respondent's misconduct during the Minnesota disciplinary investigation.
³ The Montana disciplinary proceeding is conducted through an agency of the Montana Supreme Court. That court applies the Montana Rules of Professional Conduct. Therefore, the Montana Rules of Professional Conduct apply to respondent's misrepresentations to the Montana lawyer discipline agency.