

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against THOMAS JOHN LYONS, JR.,
an Attorney at Law of the
State of Minnesota.

**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 contained in the attached December 17, 1998, stipulation for probation (Exhibit 1) 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 St. Paul, Minnesota.

INTRODUCTION

On December 17, 1998, respondent and the Director entered into a stipulation for private probation. Respondent's probation was based upon an admission that respondent failed to maintain the required trust account books and records, routinely deposited to his trust account nonrefundable fee retainers, causing his trust account to contain both client and non-client funds, shortages in his client trust account caused by disbursements on behalf of clients in amounts greater than the clients' balances, unreimbursed bank charges and dishonored deposits, and allowing trust account checks to be negotiated without any signature, and allowing a non-lawyer to sign trust account checks.

Among the conditions of respondent's probation was that respondent would abide by the Minnesota Rules of Professional Conduct and commit no further unprofessional conduct, and that if, after giving respondent an opportunity to be heard, the Director concluded that respondent had not complied with the conditions of the probation, then the Director could file this petition without the necessity of Panel proceedings.

The Director, after giving respondent an opportunity to be heard, has concluded that respondent has not complied with the conditions of the probation.

Respondent has committed the following unprofessional conduct warranting public discipline:

ADDITIONAL DISCIPLINARY HISTORY

On December 18, 1998, respondent was issued an admonition for contacting directly a party he knew to be represented by counsel concerning the subject matter of the representation (Exhibit 2).

FIRST COUNT

Conroy Matter - Frivolous Claim

1. Respondent represented Steve Conroy in an action against Ford Motor Credit Company and others. Respondent's representation began on or about June 23, 1998. Respondent's retainer agreement with Conroy provided that respondent would receive 45 percent of any recovery.

2. On or about June 29, 1998, respondent signed an agreement with the Rawlings & Associates law firm of Louisville, Kentucky. This agreement provided that Rawlings & Associates would act as lead counsel, that respondent would act as local counsel and that respondent would participate in all pre-trial proceedings.

3. On or about June 30, 1998, respondent had a summons and complaint served on the defendants. In July 1998 respondent served and filed an amended complaint.

4. The original and amended complaints contained multiple causes of action. Count Two sought to recover damages for unconscionability pursuant to Minn. Stat. § 336.2A-108. The relevant section of this statute, however, does not allow damages as a remedy. The remedy section of this statute provides:

If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

Minn. Stat. § 336.2A-108(1).

5. The defendants moved to dismiss the case. By order dated December 4, 1998, the court granted the motion. The court found that as a matter of law the unconscionability claim was “groundless, frivolous and not warranted by existing law.” (Exhibit 3.)

6. By order dated May 26, 1999, the trial court awarded sanctions against respondent and his co-counsel in the amount of \$13,622.85 in attorneys’ fees and \$1,018.26 in costs (Exhibit 4).

7. The matter subsequently settled. Respondent and his client agreed not to pursue an appeal of the matter, and the defendants agreed not to collect the awarded sanction.

8. Respondent’s conduct violated Rules 1.1, 3.1, and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Huber Matter - Frivolous Litigation

9. Respondent represented James D. Huber in an action against Chrysler Financial Corporation and Courtesy Ford. Respondent’s representation began in December 1996.

10. On or about January 15, 1997, respondent filed a complaint. The complaint contained allegations on behalf of Huber individually and on behalf of a purported class of consumers alleged to be similarly situated to Huber.

11. Before respondent commenced the action, respondent had failed to undertake reasonable efforts to determine if Huber would be an adequate class representative.

12. Although respondent styled the case as a class action, during the litigation respondent took no steps to perfect those claims or to protect the members of the alleged class.

13. On or about February 13, 1997, Huber filed a bankruptcy petition. Huber had separate bankruptcy counsel.

14. In March 1997 respondent caused the complaint to be served on Chrysler Financial Corporation and Courtesy Ford.

15. On or about April 10, 1997, Courtesy Ford served on respondent a motion for summary judgment and supporting papers.

16. By letter dated April 10, 1997, respondent informed opposing counsel of Huber's bankruptcy filing. Respondent claimed that he had not learned of Huber's bankruptcy filing until April 8, 1997.

17. On June 27, 1997, a hearing was conducted on Courtesy Ford's motion for summary judgment. Respondent appeared. During the hearing, respondent stated that Huber had gone through a bankruptcy, Huber was not in position financially or otherwise to litigate the case further, and judgment could be entered against Huber on the summary judgment motion. Respondent also stated that judgment could be entered on behalf of Chrysler Financial Corporation even though Chrysler Financial had filed no motion or other papers requesting summary judgment.

18. By order filed June 30, 1997, summary judgment was granted in favor of both defendants.

19. On or about July 15, 1997, both defendants served and filed notice of intent to seek sanctions.

20. By letter dated August 26, 1997, respondent requested permission from the court to submit additional material regarding the sanctions motions. By order dated October 27, 1997, the court ordered:

If any Defendant desires to file additional materials, they shall be filed not later than October 31, 1997. Plaintiff may file responsive materials no later than November 7, 1997.

Respondent did not file any additional papers before November 7.

21. During the November 14, 1997, hearing on the sanctions motions, the magistrate judge ruled from the bench that respondent had violated Rule 11, Federal Rules of Civil Procedure, and 28 U.S.C. § 1927 by (1) maintaining the lawsuit and (2) commencing it as a class action (Exhibit 5).

22. On December 1, 1997, the magistrate judge issued an order confirming his ruling from the bench, ordering respondent to pay Chrysler Financial Corporation \$6,000 in sanctions, and ordering respondent to pay Courtesy Ford \$4,000 in sanctions (Exhibit 6).

23. Respondent appealed the magistrate judge's ruling to the district court judge. By order dated December 29, 1997, the district court judge affirmed (Exhibit 7).

24. Despite multiple requests from opposing counsel, respondent did not pay any of the sanction against him until on or about May 31, 1998, when he paid \$500 of the \$10,000 award. In June 1998, respondent paid the balance.

25. Respondent's conduct violated Rules 1.1, 3.1, and 8.4(d), MRPC.

THIRD COUNT

Lindholt Matter - Frivolous Litigation

26. Respondent represented Michael Lindholt in an action against Walser Ford, Inc.

27. Respondent's representation began in August 1997. Respondent's retainer agreement with Lindholt provided that respondent would receive 45 percent of any recovery, that before commencing a lawsuit respondent would perform investigation, and that if the investigation revealed the claim was meritless respondent had the right to withdraw from representation without commencing a lawsuit.

28. In September 1997 respondent filed a complaint. The complaint contained allegations on behalf of Lindholt personally and on behalf of a purported class of consumers alleged to be similarly situated to Lindholt.

29. Some of Lindholt's claims arose out of a service contract Lindholt signed with Walser Ford when he purchased a vehicle.

30. During an October 1997 conversation, respondent advised Lindholt that because Lindholt did get use out of the service contract, it would be pointless to pursue claims based on the service contract. At that time Lindholt decided to dismiss these claims.

31. After this discussion, however, respondent did not dismiss the claims based on the service contract.

32. During a September 9, 1998, hearing on Walser Ford's motion for summary judgment, respondent's co-counsel stated that the service contract claims were being withdrawn.

33. On September 28, 1998, Lindholt's deposition was taken. During the deposition, Lindholt stated that respondent had advised him in September or October 1997 that pursuit of the service contract claim would be pointless.

34. By order filed September 28, 1998, the court dismissed the complaint.

35. Respondent appealed. On January 12, 1999, the appeal was dismissed pursuant to stipulation.

36. Walser Ford moved for sanctions. By order filed March 18, 1999, respondent and co-counsel were sanctioned \$2,500 for failing to promptly withdraw the service contract claims and ordered to pay the sanction within 30 days (Exhibit 8).

37. On or before April 20, 1999, respondent's co-counsel paid \$500 of the sanction. On or about April 21, 1999, respondent paid the other \$2,000 of the sanction.

38. Respondent's conduct violated Rules 3.1 and 8.4(d), MRPC.

FOURTH COUNT

Patterson Matter - Failure to Follow Proper Affidavit Practice

39. Respondent represented Ronnie Patterson in an action against Bob Ryan Oldsmobile, Inc. ("Bob Ryan"). Respondent's representation began in March 1996. Respondent's retainer agreement provided that respondent's fee would be 45% of any recovery, before commencing litigation respondent would investigate the matter, and that if the investigation revealed the claim was meritless respondent had the right to withdraw from representation without commencing a lawsuit.

40. In July 1996 respondent filed a complaint. In April 1997 Bob Ryan served a motion for summary judgment.

41. On June 18, 1997, respondent's legal assistant sent to Ronnie Patterson draft affidavits of Annette Patterson and LaToyia Jefferson. In that letter, respondent's legal assistant told Ronnie Patterson:

Please find enclosed herein three (3) affidavits. Please have your wife and niece sign their affidavits before a notary public and then either mail or bring them back to our office.

42. On or about June 20, 1997, respondent served on Bob Ryan's counsel papers in opposition to Bob Ryan's motion for summary judgment. These papers included the unsigned affidavits of Annette Patterson and LaToyia Jefferson that respondent sent to Ronnie Patterson two days earlier.

43. Rule 11, Federal Rules of Civil Procedure, provides that by signing, filing, submitting or advocating a pleading, motion or any other paper, an attorney certifies:

. That to the best of the persons knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

* * *

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

44. Respondent failed to conduct a reasonable inquiry into whether Annette Patterson and LaToyia Jefferson's affidavits had, or were likely to have, evidentiary support. Respondent did not communicate with either Annette Patterson or LaToyia Jefferson about their affidavits. Instead, respondent relied on information provided by Ronnie Patterson as the basis of these two affidavits.

45. On or about July 8, 1997, respondent served on opposing counsel signed, notarized, but undated affidavits of Annette Patterson and LaToyia Jefferson.

46. By letter dated July 24, 1997, to Ronnie Patterson, respondent's legal assistant stated:

Please find enclosed herein three (3) Affidavits. Please have your wife and niece sign their affidavits before a notary public and then either mail them back to our office or drop them off. Make sure the affidavits are **notarized by an individual not related to anyone in your family.** Also make sure that the notary dates and puts the county of which it is being notarized on said affidavits.

47. On July 31, 1997, the depositions of Patterson's wife, Annette Patterson, and Patterson's niece, LaToyia Jefferson, were taken.

48. LaToyia Jefferson's deposition testimony conflicted heavily with the statements in the affidavits respondent had drafted for her.

49. By letter dated August 7, 1997, opposing counsel informed respondent that Bob Ryan would seek sanctions for, among other things, the use of improper affidavits in opposition to Bob Ryan's motion for summary judgment.

50. On or about August 8, 1998, respondent filed with the court the signed and notarized but undated affidavits of Annette Patterson and LaToyia Jefferson.

51. By order filed November 20, 1997, the court found respondent's use of the Annette Patterson and LaToyia Jefferson affidavits improper and in violation of Rule 11, Federal Rules of Civil Procedure. The court stated:

Mr. Lyons filed two affidavits without conducting a reasonable inquiry into whether the affidavits were true. Both Ms. Patterson and Ms. Jefferson were readily available to Mr. Lyons - a local telephone call would have confirmed the information conveyed by Mr. Patterson. Both affidavits were eventually signed without change. However, given Ms. Jefferson's deposition testimony that heavily conflicted with her affidavit, there is some question whether Ms. Patterson and Ms. Jefferson understood the import of the affidavits and understood that the affidavits could be changed to comport with their recollection of events. Mr. Lyons cannot rely upon his client to convey such information to his affiants - it is his responsibility both as an attorney in this action and as an officer of the Court.

(Exhibit 9.)

52. The court (1) sanctioned respondent \$2,000 (\$1,000 per affidavit) to be paid to the clerk of district court; (2) ordered respondent not to file affidavits unless the affidavits were based upon personal contact with the affiant and were properly signed and notarized; and (3) sanctioned respondent \$1,500 to be paid to opposing counsel for attorneys' fees incurred in the matter.

53. The case continued and went before the Eighth Circuit Court of Appeals. The trial court sanctions against respondent were not an issue on appeal.

54. Respondent did not pay the \$2,000 sanction to the clerk of district court until March 1998. Respondent did not pay the \$1,500 (*see* ¶ 52, above) to opposing counsel until September 1998.

55. Respondent's conduct in failing to follow proper affidavit practice violated Rules 3.4(c) and 8.4(c) and (d), MRPC.

56. Respondent's failure to timely pay the sanctions violated Rule 8.4(d), MRPC.

FIFTH COUNT

Pattern of Frivolous Litigation

57. Respondent's conduct as set forth in Counts One, Two and Three, above, constitutes a pattern of frivolous litigation in violation of Rules 3.1 and 8.4(d), MRPC.

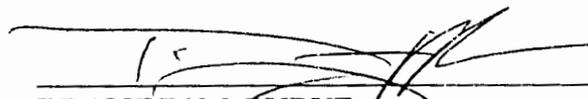
WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent from the practice of law or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief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

Dated: November 9, 2000.



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