

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

---

In Re Petition for Disciplinary Action  
against PETER C. MAYRAND,  
a Minnesota Attorney,  
Registration No. 69206.

---

**SECOND 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 second 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 November 29, 2000, petition for disciplinary action and a January 17, 2002, supplementary petition for disciplinary action. Respondent was suspended on July 1, 2002, for nonpayment of his attorney registration fee and has remained suspended continuously thereafter. 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 NINE

Incompetence, Neglect, Non-Communication – Groshong Matter

80. On February 19, 2001, Conrad R. Groshong was served with a notice of seizure and intent to forfeit vehicle as a result of an arrest for driving while impaired. On March 12, 2001, Groshong's attorney, David Valentini, served on opposing counsel a

demand for judicial determination pursuant to Minn. Stat. § 169A.63, subd. 8, in this forfeiture matter.

81. On or about May 23, 2001, Groshong retained respondent to represent Groshong in the forfeiture matter and in a separate implied consent matter. On May 23 and June 1, 2001, Groshong paid respondent's total fee of \$5,000.

82. The court scheduled an implied consent hearing for July 11, 2001, and a scheduling conference in the forfeiture matter for August 22, 2001.

83. Respondent told Groshong that he would contact Groshong prior to the July 11 implied consent hearing. When respondent did not do so, Groshong began to call respondent and left multiple messages for respondent to call. Respondent failed to do so.

84. On July 10, 2001, respondent telephoned the court and rescheduled Groshong's July 11 implied consent hearing to August 22, 2001. By letter dated July 10, 2001, to the court, respondent confirmed the new hearing date and that he was replacing Valentini as counsel. That same day respondent informed Groshong of the new date for the implied consent hearing and stated he would call him in a few weeks. Respondent did not call Groshong.

85. On July 12, 2001, the court sent to respondent and opposing counsel notice confirming the implied consent hearing date of August 22.

86. After two weeks, Groshong began to call respondent and again left multiple messages for respondent to call. Respondent failed to do so. When Groshong finally reached respondent, respondent stated he would call Groshong a few days before the August 22 hearing. Respondent failed to do so.

87. Groshong did not hear from respondent and again began to call respondent shortly before the August 22 hearing. After leaving several messages respondent failed to return, Groshong reached respondent, who told Groshong that he

did not need to appear at the August 22 hearing. Groshong asked respondent to keep him informed.

88. On August 22, 2001, respondent appeared at the hearings regarding Groshong's implied consent and forfeiture matters. The court took the implied consent matter under advisement. The court continued the forfeiture matter to December 12, 2001, for a scheduling conference.

89. On September 5, 2001, the court filed its order in the implied consent matter sustaining the revocation of Groshong's driving privileges. The court mailed the order to Valentini instead of respondent. On September 11, 2001, Valentini informed the court that he no longer represented Groshong and forwarded the court's order to Groshong.

90. Groshong contacted respondent to discuss the implied consent order. Respondent told Groshong that he would continue to pursue the forfeiture matter aggressively.

91. On November 8, 2001, opposing counsel in the forfeiture matter filed a notice of motion and motion for summary judgment to be heard on December 12, 2001.

92. Minn. R. Gen. Prac. 115.03(b) requires a party responding to a summary judgment motion to serve and file all responsive documents at least 28 days before the hearing.

93. Respondent failed to serve or file his response to the summary judgment motion until the day before the hearing.

94. Minn. R. Gen. Prac. 115.03(d) requires all memoranda of law in opposition to a motion for summary judgment to include: (1) a statement identifying all documents on which the party relies; (2) a recital of the material facts claimed to be in dispute, with a specific citation to the part of the record supporting the claim; and (3) the party's arguments and authorities.

95. Respondent's memorandum in opposition to the motion for summary judgment stated in its entirety:

STATEMENT OF DISPUTED FACTS

Plaintiff's Affidavit, attached hereto, makes to clear that there are a number of disputed facts – the most important of which are the claimed "convictions" which the Prosecuting Authority claims forms the basis for forfeiture – that prevent any grant of summary judgment.

Respondent's memorandum did not identify any documents relied on in opposing the motion, did not recite any disputed facts with citation to the record, and did not cite any authority.

96. Groshong thereafter left multiple messages for respondent to call Groshong. Respondent failed to do so.

97. On March 5, 2002, the court granted the motion for summary judgment, based in part on respondent's failure to comply with Minn. R. Gen. Prac. 115.03(d). Groshong's vehicle was thereby taken by forfeiture.

98. Respondent's conduct in failing to represent Groshong competently, failure to represent Groshong diligently and failure to communicate with Groshong adequately violated Rules 1.1, 1.3, 1.4, 3.4(c), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

COUNT TEN

Trust Account Overdraft

99. On October 10, 2002, a \$70 overdraft occurred in respondent's US Bank Trust Account. That same day, US Bank notified the Director of the overdraft as provided for by Rule 1.15(k), MRPC.

100. On November 26, 2002, US Bank closed respondent's trust account due to respondent's failure to deposit funds to cover the shortage caused by the October 10, 2002, overdraft.

101. Respondent's conduct in overdrawing his client trust account and failing to cure the shortage violated Rules 1.15, MRPC.

### COUNT ELEVEN

#### Continued Non-Cooperation

102. After agreeing at the August 1, 2000, probable cause hearing in this matter to waive the hearing and stipulate to the filing of a public petition for disciplinary action, respondent and the Director attempted over the next three months to negotiate a stipulated disposition. Those efforts failed. In November 2000 the Director then began efforts to serve on respondent a petition for disciplinary action.

103. Service of the petition for disciplinary action was accomplished on December 19, 2000. Respondent then requested that the hearing on the Director's petition for disciplinary action be postponed and the parties continue to try to negotiate a stipulated resolution due to respondent's poor health.

104. In late December 2000 respondent cancelled a meeting with the Director at which settlement was to be discussed. Respondent stated he would reschedule the meeting, but failed to do so.

105. On January 22, 2001, the Director wrote to respondent because respondent was in default with his answer to the petition for disciplinary action and asked that respondent to contact the Director by January 29, 2001, and stated that if respondent did not do so the Director would have to file a motion for summary relief asking the Court to deem the allegations of the petition for disciplinary action admitted.

106. By letter dated January 27, 2001, respondent served his January 29, 2001, answer to the petition for disciplinary action, but expressed a desire to meet the next week to continue settlement discussions.

107. On April 12, 2001, the Director mailed to respondent notice of investigation of a complaint by Rachel Roy. The notice requested respondent to

provide his complete written response within 14 days of the notice. Respondent failed to respond.

108. On September 16, 2002, the Director forwarded a proposed stipulation for discipline to respondent to consider. Respondent did not reply.

109. On September 25, 2002, the Director mailed to respondent notices of investigation of the complaints of Groshong and Jim Thornberg. The notices requested respondent to provide his responses to the complaints within 14 days. Respondent failed to respond.

110. On October 23, 2002, the Director wrote to respondent requesting respondent provide information and documents to explain the October 10, 2002, trust account overdraft (*see* ¶ 99, above) within ten days. Respondent failed to respond.

111. During the course of the Director's investigation of the overdraft, the Director learned that respondent failed to pay his attorney registration fee due July 1, 2002.

112. On November 4, 2002, the Director wrote to respondent requesting respondent to provide with his response to the overdraft notice an affidavit regarding the type and extent of his law practice since July 1, 2002, and stating that he would not practice law while his attorney registration fee remained unpaid. Respondent failed to respond.

113. On November 12, 2002, the Director wrote to respondent, enclosed copies of the October 23 and November 4 letters and requested respondent to provide his responses to the overdraft and attorney registration fee matters within five days. Respondent failed to respond.

114. On November 18, 2002, the Director wrote to respondent by both first class mail and by certified mail, return receipt requested, enclosing a second copy of the stipulation for discipline and asking respondent to immediately contact the Director to

discuss resolution of the discipline matters pending against respondent. The copy sent by certified mail was returned unclaimed. The copy sent by first class mail was not returned. Respondent did not respond.

115. By letters dated November 19, 2002, and sent by both certified mail and first class mail, the Director requested respondent to respond immediately to the Groshong and Thornberg complaints. The copies sent by certified mail were returned unclaimed. The copies sent by first class mail were not returned. Respondent failed to respond.

116. To date, respondent has failed to respond to the Groshong and Thornberg complaints.

117. At the Director's request, Ronald Urbanski, a private investigator, attempted to locate respondent. Urbanski was unable to do so.

118. On April 15, 2003, the Director sent to respondent a notice of investigation of the trust account matter, requesting that respondent provide within 14 days trust account books and records for the period of October 1, 2002, through March 31, 2003. The post office returned the notice as, "Moved, Left No Address."

119. To date, respondent failed to respond to the Director's letters and to the notice of investigation regarding respondent's trust account overdraft and has failed to respond to the Director's letters about respondent's suspension for nonpayment of his attorney registration fee.

120. Respondent's failure to cooperate violated Rules 8.1.(a)(3), and 8.4(d), 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: August 31, 2004.

  
KENNETH L. JORGENSEN  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 159463  
1500 Landmark Towers  
345 St. Peter Street  
St. Paul, MN 55102-1218  
(651) 296-3952

and

  
TIMOTHY M. BURKE  
SENIOR ASSISTANT DIRECTOR  
Attorney No. 19248X

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

Dated: Sept. 13, 2004.

  
KENT A. GERNANDER  
CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD