

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against PETER MAYRAND,
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 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 April 22, 1976. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

1. On May 29, 1986, respondent received an admonition for neglect of a legal matter, failure to promptly deliver the client's file to his new attorney upon request, and failure to fully and promptly cooperate with the disciplinary investigation.

2. On January 26, 1987, respondent was placed on two years private probation for repeated instances of driving while intoxicated, for driving after his driver's license had been withdrawn, and for practicing law after his license was suspended for non-payment of the attorney registration fee, in violation of Rules 8.4(d) and 5.5(a), Minnesota Rules of Professional Conduct (MRPC).

COUNT ONE

Clark Matter

1. On November 21, 1996, Rick Clark paid respondent \$15,000 to handle his appeal of a federal criminal conviction. Respondent did not deposit the \$15,000 into a trust account. Although respondent claims that the \$15,000 was a non-refundable flat fee retainer, he has not produced any written fee agreement with Clark for the appeal.

2. Although respondent promised Clark and his wife that he would be promptly ordering a transcript, he failed to do so until January 16, 1997.

3. By March 1997 Clark and his wife became dissatisfied with respondent's progress on the appeal and his lack of communication. On or about March 6, 1997, the Clarks retained new counsel (i.e. attorney Howard Bass). When Clark's wife informed respondent that Bass had been hired, respondent told her he would send the balance of the \$15,000 retainer (less the \$3,500 transcript deposit cost and two additional expenses) to Bass.

4. On April 1, 1997, Bass supplied respondent with an authorization for release of Clark's records. Respondent replied that he was in the process of arranging for Clark's files to be copied.

5. After a May 1, 1997, meeting with Bass, respondent paid \$1,200 to Bass for the remainder of the cost of obtaining the trial transcript and agreed to provide Bass and the Clarks with an accounting. Respondent's agreement to provide an accounting was reiterated in his May 23, 1997, letter to Bass, in which respondent stated "[a]s we discussed, the time and expenses will not aggregate \$15,000 and Mr. Clark will obviously receive a full accounting." Respondent never provided the accounting or a refund and in fact never intended to provide an accounting.

6. On October 28, 1998, respondent submitted a written response to the Clark ethics complaint. In responding to the failure to account allegation, respondent stated he "never had any intention of accounting to Mr. Bass." When asked by the Director's Office why he had told Bass an accounting would be forthcoming, respondent stated "to get [Bass] off my back."

7. Respondent's conduct in the Clark matter violated Rules 1.3, 1.4, 1.15(b)(3), 4.1, and 8.4(c), MRPC, and Opinion 15 of the Lawyers Professional Responsibility Board (LPRB).

COUNT TWO

Campbell Matter

8. Respondent was retained by Douglas Campbell to pursue a direct criminal federal appeal to the Seventh Circuit. Respondent's notice of appearance was filed on April 18, 1996.

9. On May 2, 1996, respondent brought a Motion to Enlarge Time to obtain a two week extension of time in which to file Campbell's brief and submitted an affidavit in support of his motion. In his affidavit, respondent stated that Campbell "has a meritorious and uncomplicated claim that he was illegally sentenced." Respondent also stated that Campbell's brief "can be completed, printed, copied, served and filed within one week of this Court's Order enlarging the time within which such brief must be filed."

10. The Court amended the briefing schedule and ordered that respondent file his brief by May 15, 1996. The Court then consolidated a number of criminal appeals and amended the briefing schedule to require joint opening briefs by all defendant-appellants by July 5, 1996, and separate supplemental briefs by July 15, 1996. Appellants then brought a joint motion for extension of time to file brief, and on June 5, 1996, the court issued an amended scheduling order requiring the joint brief and appendix be filed by July 26, 1996, and the supplemental briefs by individual defendants by August 5, 1996.

11. While several other defendant-appellants timely submitted a joint brief by the July 26, 1996, due date, respondent failed to timely file a brief. The Assistant U.S. Attorney accordingly requested an order holding its brief in abeyance. On September 9, 1996, the court issued an order directing respondent to show cause by September 20, 1996, why the court should not take disciplinary action for his failure to prosecute the appeal.

12. On September 19, 1996, respondent replied to the order to show cause by filing a motion requesting that the court seal the appellate records in the case.

Respondent supported his motion with an affidavit in which he stated that "the brief of Appellant Douglas Campbell had been completed, albeit not yet served and filed, by the time this Court ordered consolidation." Respondent further stated that he:

[C]hose this course fully committed to seeing Mr. Campbell's appeal through to a full and fair decision on the merits; and that I consciously risked incurring the momentary wrath of the Court to protect Mr. Campbell. He has over twenty years for his claim to be aired, a delay of a few months would be of no real consequence to anyone.

13. On October 2, 1996, the Court again issued an order directing respondent to show cause by October 16, 1996, why the court should not take disciplinary action for his failure to prosecute the criminal appeal.

14. On October 9, 1996, the Court severed Campbell's appeal from the consolidated appeal. The Assistant U.S. Attorney did not object to respondent's motion to seal all matters involving Campbell. The court, however, denied respondent's motion to seal the appellate record on October 25, 1996.

15. On January 14, 1997, the court issued a scheduling order requiring Campbell's brief to be filed by January 30, 1997. Respondent failed to file the brief.

16. On February 21, 1997, the Court issued an order requiring respondent to show cause why disciplinary proceedings should not be instituted for failure to prosecute the appeal.

17. On March 12, 1997, respondent filed an affidavit in response to the Show Cause Order. In his affidavit, respondent stated that "the reason for delaying the filing of Appellant Douglas Campbell's Brief is the same as it has been since the improvident joinder of his appeal with those of the above-referenced former co-defendants - namely, the lives and personal safety of Appellant and his wife and daughters." He further stated that "[Campbell] has been fully advised of the delaying tactic which your Affiant has employed and he is in full accord with its use." (emphasis added).

Moreover, respondent stated that "**both Affiant and [Campbell] remake their request that this matter be delayed until the decisions in the former companion cases have been announced.**" (emphasis added). In fact, Campbell had not consented to respondent's delaying tactic.

18. On April 29, 1997, the court issued an order suspending the Show Cause Order and requiring that respondent file a brief by May 23, 1997. Respondent still failed to file a brief.

19. On June 11, 1997, the court again issued an order to show cause why disciplinary action should not be instituted for failure to prosecute the appeal. On July 7, 1997, respondent filed an affidavit in response to the Order to Show Cause. In that affidavit, respondent again stated that "**[Campbell] has been fully advised of the delaying tactic which your Affiant has employed and he is in full accord with its use.**" (emphasis added). In fact, Campbell had not been advised of the delaying tactic nor had he approved it.

20. On August 27, 1997, the court issued an order requiring respondent to file the appeal brief by September 26, 1997. The court specifically noted on its order that "If counsel believes that his brief should be filed under seal, he must move the court for that relief prior to this due date. Counsel is advised that failure to comply with this order may result in disciplinary action." Respondent failed to timely file a brief or to file a motion to permit the filing of the brief under seal.

21. On November 12, 1997, respondent filed a Motion to Enlarge Time requesting a two week delay to file appellant's brief under seal. He also filed an affidavit dated November 7, 1997, to support his motion. In that affidavit, respondent stated that "**[Campbell's] Brief can easily be served and filed within one week of this Court's Order enlarging the time within which such brief must be filed.**"

22. The Court granted the motion for additional time and required that the brief be filed no later than November 24, 1997. The court also informed respondent that no further extensions would be granted by stating:

Attorney Mayrand is advised that no further extension of time will be allowed in this matter and failure to file a brief in this matter by November 24, 1997 will result in disciplinary action pursuant to Fed. R. App. P. 46(c).

(Emphasis added).

23. Respondent claims he filed an appellate brief on November 21, 1997. The brief filed by respondent was apparently deficient according to the Seventh Circuit's briefing rules or requirements. On November 24, 1997, the court issued a brief deficiency letter to respondent.

24. The court issued an Amended Scheduling Order on December 10, 1997, which required that Campbell's brief be filed by December 12, 1997. On December 31, 1997, the court issued an order to show cause due to respondent's failure to file a brief or a motion for an extension of time. Respondent failed to respond to the court's Show Cause order.

25. On March 26, 1998, the Seventh Circuit Court of Appeals issued an order striking respondent's name from the role of attorneys entitled to practice before the court because of his continuous failure to prosecute the appeal and failure to respond to the December 31, 1997, Show Cause order.

26. On April 6, 1998, the court appointed successor counsel to represent Mr. Campbell in his appeal.

27. Respondent's conduct in failing to prosecute Campbell's criminal appeal and his conduct regarding the Seventh Circuit Court of Appeals Rule to Show Cause Orders violated Rules 1.3, 1.4, 3.2, 3.3(a)(1), 3.4(c) and 8.4(c) and (d), MRPC.

COUNT THREE

Joanne Hannasch Matter

28. In March 1997 Joanne Hannasch retained respondent to represent her in a bankruptcy proceeding. Hannasch paid respondent \$950 to represent her in the bankruptcy matter. Although respondent claims the money was paid pursuant to a flat fee retainer agreement he has not produced a written fee retainer agreement signed by Hannasch despite repeated requests.

29. Throughout the representation, respondent sent Hannasch no correspondence regarding her bankruptcy matter. Hannasch had difficulty contacting respondent about her case and when she was able to contact him, respondent was evasive about the status.

30. Respondent failed to take any action on the matter until he met with Hannasch in January 1998 at a Cracker Barrel Restaurant. Hannasch signed a number of papers at that meeting. Respondent told Hannasch he would file the papers that same week and that it would take approximately five weeks for the discharge to occur.

31. In February 1998 Hannasch contacted respondent and informed him that her creditors were continuing to call her. In response, respondent falsely assured her that the necessary bankruptcy papers already had been filed and that it could take four to six weeks for creditors to receive notification.

32. In early April 1998 Hannasch decided to sell her house in a pre-foreclosure sale. She then was informed that her bankruptcy had never been filed. She attempted to contact respondent by certified mail on April 20, 1998, demanding a refund of fees paid and the return of her file materials, but her letter was returned as unclaimed. Respondent had relocated his offices in April 1998, but he failed to contact Hannasch or otherwise notify her of his new address and telephone number.

33. In August 1998 respondent was notified by the Director of Hannasch's ethics complaint alleging neglect and failure to return Hannasch's file and retainer. Respondent has not returned Hannasch's file materials or her retainer.

34. Respondent's conduct in handling the Hannasch matter violated Rules 1.3, 1.4, 1.15(b)(3), and 8.4(c), MRPC, and Opinions 13 and 15 of the LPRB.

COUNT FOUR

Failure to File and Pay Unemployment Taxes

35. In December 1999 the Director's Office received an ethics complaint against respondent from the Minnesota Department of Economic Security alleging that respondent had failed to file and pay his state quarterly unemployment tax returns for

his law firm entitled "Peter C. Mayrand, P.A." See Minn. Stat. § 268.0625. Respondent failed to timely file quarterly unemployment tax returns for the majority of quarterly periods from 1993 through 2000. He has failed to pay any unemployment taxes, penalties or interest whatsoever since 1991.

36. Respondent failed to timely file and pay his quarterly unemployment tax filings for the following time periods, which resulted in the following past due tax debt, interest and penalties:

Tax Period	Timely Filed	Payroll Taxed	Tax	Interest	Report Penalty
1 Q 1993	No	0	0	0	\$25.00 + \$39.00 costs
2 Q 1993	No	0	0	0	\$25.00
3 Q 1993	Yes	0	0	0	None
4 Q 1993	No	\$14,300	\$85.80	\$97.81	\$66.92
1 Q 1994	No	0	0	0	\$25.00
2 Q 1994	No	0	0	0	\$25.00
3 Q 1994	No	0	0	0	\$25.00
4 Q 1994	No	\$15,100	\$105.70	\$101.47	\$63.42
1 Q 1995	Yes	0	0		None
2 Q 1995	No	0	0		\$25.00
3 Q 1995	No	0	0	0	\$25.00
4 Q 1995	No	\$15,300	\$61.20	\$47.74	\$25.70
1 Q 1996	No	0	0	0	\$25.00
2 Q 1996	No	0	0	0	\$25.00
3 Q 1996	No	0	0	0	\$25.00
4 Q 1996	No	\$15,800	\$31.61	\$18.97	\$25.00
1 Q 1997	No	0	0	0	\$25.00
2 Q 1997	No	0	0	0	\$25.00
3 Q 1997	No	0	0	0	\$25.00
4 Q 1997	Yes	\$16,000	\$272.00	\$114.24	None
1 Q 1998	Yes	0	0	0	None

37. In the second quarter of 1998, the Department of Economic Security began estimating respondent's quarterly payroll and tax liabilities, as authorized under Minn. Stat. § 268.057, subd. 1(b). The estimated tax and penalties accruing since that time are as follows:

Tax Period	Timely Filed	Payroll Taxed	Tax	Interest	Report Penalty
2 Q 1998	No	Est. \$16,463.00	\$263.41	\$86.92	\$25.00
3 Q 1998	No	Est. \$16,627.63	\$266.04	\$75.82	\$25.00
4 Q 1998	No	Est. \$16,793.90	\$268.70	\$64.49	\$25.00
1 Q 1999	No	Est. \$16,961.83	\$237.47	\$46.31	\$25.00
2 Q 1999	No	Est. \$17,131.44	\$239.84	\$35.97	\$25.00
3 Q 1999	No	Est. \$17,302.75	\$242.24	\$25.43	\$25.00
4 Q 1999	No	Est. \$17,475.77	\$244.66	\$14.68	\$25.00

38. Respondent's debt for unemployment taxes due, penalties, and interest computed through May 31, 2000, is \$3,768.55. The interest on unpaid taxes continues to accrue. Respondent has failed to pay any unemployment taxes since 1991.

39. Minnesota Statutes provide that the failure to pay unemployment taxes due is a felony matter if the tax or other payment involved exceeds \$500 and the individual willfully fails or refuses to pay any taxes or other payments at the time required. See Minn. Stat. § 268.057, subd. 1(e).

40. Respondent's failure to timely file unemployment tax returns and pay the taxes due thereon violated Rules 8.4(b) and (d), MRPC, and the Minnesota Supreme Court's holding in *In re Bunker*, 199 N.W.2d 682 (Minn. 1972).

Failure to File Personal State and Federal Income Taxes

41. During the December 20, 1999, pre-hearing meeting on the charges of unprofessional conduct, respondent stated that he had not filed his state and federal personal income tax returns for 1997 and 1998. Respondent indicated that he or his accountant had obtained "an extension" from the IRS for the late filing. Despite a direct request for information regarding the "extension," respondent has failed to respond. Respondent also has failed to provide executed authorizations permitting the release of his state and federal personal income tax records to the Director's Office to verify his filing compliance.

42. Respondent's failure to timely file his personal state and federal income taxes and pay the taxes due thereon violated Rules 8.4(b) and (d), MRPC, and the Minnesota Supreme Court's holding in *In re Bunker*, 199 N.W.2d 682 (Minn. 1972).

COUNT FIVE

Non-Cooperation

43. Respondent has failed to respond to letters and notices of investigations in the investigations of the complaints against him as follows:

Joanne Hannasch Matter

44. On August 31, 1998, the Director sent a notice of investigation to respondent. Respondent failed to respond. The investigator sent respondent a letter dated September 16, 1998, requesting a response to the complaint. Respondent again failed to respond.

45. On October 19, 1998, the Director wrote to respondent and again requested a response to the notice of investigation. The Director also sought further information and notified respondent that his failure to respond could constitute a separate ground for discipline. Respondent did not respond until October 28, 1998.

46. On November 4, 1998, the Director requested additional information from respondent. Respondent failed to respond to the letter.

Rick Clark Matter

47. The Director sent a July 29, 1998, notice of investigation to respondent requesting a written response within two weeks. On October 19, 1998, the Director sent a certified letter to respondent again requesting a response to the notice of investigation, requesting additional information, and informing respondent that his failure to respond could constitute a separate ground for discipline. Respondent responded on October 28, 1998.

All Matters

48. On May 25, 1999, respondent attended a meeting at the Director's Office to discuss the Hannasch, Clark, and Campbell matters. During the meeting, respondent

claimed he possessed documents and records relating to his explanations and responses. Respondent agreed to provide this information after the meeting. On June 2, 1999, the Director requested respondent to provide this additional information within three weeks, or not later than June 23, 1999.

49. On June 18, 1999, respondent requested additional time to respond to the Director's request for information. Respondent's letter indicated that he anticipated he "should have the full response ready for delivery by Monday, June 28, 1999." Respondent failed to make such a delivery.

50. On July 9, 1999, the Director again requested the information that respondent had referred to in the earlier meeting. On July 16, 1999, respondent stated that his "full response" to the Director's "various inquiries" would be delivered on July 22, 1999. No such response was delivered or received.

51. Respondent's conduct in failing to cooperate with the disciplinary investigations in the Clark, Campbell, and Hannesch matters, together with his prior discipline for failure to promptly cooperate constitutes a pattern of non-cooperation in violation of Rules 8.1(a)(3) and 8.4(d), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

COUNT SIX

Non-Cooperation - Taxes

52. Respondent has failed to respond to letters and notices of investigation in the investigations of the tax complaint against him as follows:

53. Failure to Return Tax Authorizations. At the pre-hearing meeting on December 20, 1999, the Director furnished respondent with authorizations for the release of information from the following sources: (1) respondent's CPA, Greg Boynton; (2) Minnesota Department of Revenue regarding personal income tax for tax years 1994 through 1998; (3) Minnesota Department of Revenue regarding corporate and employment taxes for tax years 1994 through 1998; (4) IRS for employment returns

(form 941) and corporate returns (form 1120) from 1994 through 1998; and (5) IRS for personal income tax information (form 1040) from 1994 through 1998.

54. At the December 20, 1999, pre-hearing meeting, respondent indicated that he would execute the authorization forms and return them to the Director. To date, however, respondent has failed to return any executed authorizations forms.

55. Also at the pre-hearing meeting, respondent stated that he would locate and provide copies of documents relevant to the charges of unprofessional conduct, including but not limited to the retainer agreements and confirming correspondence in the Rick Clark and Joanne Hannasch matters. Despite respondent's statements, no such documents have been provided to the Director's Office.

56. Failure to File and Pay Unemployment Taxes. On February 1, 2000, the Director's Office sent respondent a notice of investigation regarding respondent's failure to file and pay unemployment taxes. The Director also enclosed a Rule 25 request for information and documents with the notice. Respondent's response was due not later than February 15, 2000. Respondent failed to respond. On April 27, 2000, the Director's Office again requested a response to the complaint, a response to the Rule 25 request for information and documents, and the return of the authorizations from respondent. To date, no response has been received.

57. Respondent's failure to respond to the February 1, 2000, notice of investigation regarding his failure to timely file his unemployment taxes and pay the taxes due thereon and his failure to cooperate with the Director's Office with respect to the pending investigations violated Rule 8.1(a)(3), 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: November 21, 2000.



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