

FILE NO. A05-1270

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against DAVID L. McCORMICK,  
a Minnesota Attorney,  
Registration No. 259500.  
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**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 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 June 6, 2005, petition for disciplinary action. 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:

THIRD COUNT

Continued Failure to Appear for Hearings

**S.M. Matter**

28. Respondent represents S.M. in a criminal matter. An omnibus hearing was scheduled for November 10, 2004, at 3:00 p.m.

29. Neither respondent nor S.M. appeared for the November 10, 2004, hearing and the court declared the omnibus hearing waived. Respondent thereafter called the court at approximately 3:40 p.m., but offered no excuse for his failure to appear.

30. An arraignment hearing was scheduled for December 10, 2004, at 9:00 a.m. Respondent did not appear for the hearing until 9:57 a.m. and the matter proceeded.

31. At the arraignment, respondent asked the court to reconsider its determination that the omnibus hearing had been waived. The court directed respondent to file a motion to that effect.

32. On February 11, 2005, respondent faxed a motion to reconsider to the court. Respondent failed to indicate a hearing date in his motion. The court administrator scheduled the matter for hearing on March 23, 2005, at 2:15 p.m.

33. At 2:10 p.m. on March 23, 2005, respondent called the court administrator's office. He stated that he was "somewhere on highway 52" and would be up to an hour late for the hearing. After conferring with the judge, the court administrator informed respondent that the hearing would not be delayed for that period of time. Neither respondent nor his client ever appeared for the hearing. The court issued an order deeming respondent's motion to reconsider withdrawn.

34. At a pretrial conference on July 6, 2005, respondent renewed his request for the scheduling of an omnibus hearing. The court granted the request and a hearing has been scheduled.

35. Judge Margaret Shaw Johnson complained to the Director concerning respondent's conduct in the S.M. matter. A copy of Judge Johnson's complaint is attached as Exhibit 11.

#### **H.T. Matter**

36. Respondent represented H.T. in a criminal matter.

37. On July 25, 2005, respondent filed a motion on H.T.'s behalf. The hearing on respondent's motion was scheduled for August 15, 2005.

38. Respondent failed to appear for the August 15, 2005, hearing, and did not contact the court regarding his failure to appear.

39. Judge Margaret Shaw Johnson complained to the Director concerning respondent's conduct in the H.T. matter. A copy of Judge Johnson's complaint is attached as Exhibit 11.

40. Respondent's conduct in failing to appear for the S.M. and H.T. hearings violated Rules 1.3, 3.4(c) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

#### FOURTH COUNT

##### Neglect and Non-Communication

41. Respondent represented K.R. in a criminal matter.

42. At his initial meeting with respondent in December 2004, K.R. requested copies of the relevant police reports. Respondent failed to provide K.R. with those reports until March 2005.

43. During the period from December 2004 to April 2005, K.R. and his father placed numerous calls to respondent concerning the status of, and his progress concerning, the criminal matter. Respondent failed to return these calls.

44. During the period from December 2004 to April 2005, respondent did little or no known work on K.R.'s case. In fact, as of April 12, 2005, respondent had yet to conduct any factual investigation.

45. Judge Johnson observed that during a hearing in K.R.'s case on March 24, 2005, respondent "appeared not to be prepared or to have consulted with his client." Further, respondent "had not talked to the prosecutor and attempted to do so at the counsel table, during the hearing."

46. Judge Johnson complained to the Director concerning respondent's conduct in the K.R. matter. A copy of Judge Johnson's complaint is attached as Exhibit 11.

47. Respondent's conduct in neglecting K.R.'s matter and failing to respond to his and his father's telephone calls violated Rules 1.3 and 1.4, 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: September 22, 2005.

  
KENNETH L. JORGENSEN  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
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and

  
MARTIN A. COLE  
FIRST ASSISTANT DIRECTOR  
Attorney No. 148416

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

Dated: 9/23/05, 2005.

  
PATRICK J. MCGUIGAN  
PANEL CHAIR, LAWYERS  
PROFESSIONAL RESPONSIBILITY BOARD