

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JASON WILLIAM McGEE,
a Minnesota Attorney,
Registration No. 387360.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) 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 25, 2007. Respondent most recently practiced law in Minneapolis, Minnesota. On January 3, 2014, respondent was placed on involuntary CLE restricted status by order of the Minnesota Supreme Court.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Failure to Timely File State Individual Income Tax Returns

1. From 2008 until approximately April 2013, respondent was employed as an assistant public defender in Hennepin County. At all times relevant, respondent had sufficient gross income to require him to file Minnesota State individual income tax returns.

2. Respondent failed to timely file his state individual income tax return for 2008. Respondent filed his 2008 tax return late on or about December 9, 2013.

3. Respondent failed to timely file his state individual income tax return for 2009. Respondent filed his 2009 tax return late on or about June 6, 2013.

4. Respondent failed to timely file his state individual income tax return for 2010. Respondent filed his 2010 tax return late on or about June 6, 2013.

5. Respondent failed to timely file his state individual income tax return for 2011. Respondent filed his 2011 tax return late on or about June 6, 2013.

6. Respondent's failure to timely file his 2008, 2009, 2010 and 2011 state tax returns violated Rule 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Felony Conviction for Failure to Pay State Income Taxes

7. Respondent failed to pay his 2008 through 2011 Minnesota state income taxes, although required by law to do so.

8. On or about October 5, 2012, the State of Minnesota filed an eight count felony complaint against respondent in which he was charged with failure to file tax returns and pay taxes for four years.

9. On April 9, 2013, respondent pled guilty to one felony count of failure to pay taxes in violation of Minn. Stat. § 289A.63, subdiv. 1(b). At the plea hearing, respondent testified that in 2008 he was a Minnesota resident, he received sufficient wages to require him to pay a Minnesota tax by April 15, 2009, and he willfully attempted to evade paying taxes when required to do so.

10. Respondent's plea agreement included a 180-day cap on jail time (to be stayed) and required respondent to cooperate with an audit, pay taxes and enter into a payment plan.

11. Respondent was convicted of a felony and sentenced on July 19, 2013.

12. As of October 30, 2013, respondent's total outstanding tax liability was \$8,632.99.

13. Respondent's felony conviction under Minn. Stat. § 289A.63, subdiv. 1(b), for failure to pay taxes violated Rule 8.4(b), MRPC.

THIRD COUNT

Failures to Appear for Hearings

K.J. Matter

14. On September 21, 2011, respondent was appointed to represent K.J. in a criminal matter. An omnibus hearing was scheduled for October 11, 2011. Respondent failed to timely appear. K.J. appeared without counsel. The court continued the hearing to October 31, 2011.

15. Respondent failed to appear for the hearing on October 31, 2011. K.J. appeared without counsel. The court continued the hearing to November 30, 2011.

16. Respondent failed to appear for the hearing on November 30, 2011. K.J. appeared without counsel and signed a pre-plea investigation informed consent form.

X.T.P. Matter

17. On September 28, 2012, a hearing was held in *In the Matter of the Welfare of X.T.P.*, a juvenile. A public defender appeared on behalf of X.T.P. Respondent subsequently filed a certificate of representation also dated September 28, 2012, on behalf of X.T.P. On his certificate of representation, respondent listed the public defender's office address as his address and the public defender's office telephone number as a number where he could be reached. Respondent was not court-appointed to represent X.T.P., but was privately retained.

18. On September 28, 2012, the court issued an order scheduling a hearing for October 5, 2012. The court sent a copy of the September 28, 2012, order to respondent at the address he had provided on his certificate of representation.

19. Respondent failed to appear for X.T.P.'s October 5, 2012, hearing. Several attempts were made to contact respondent by telephone that day. Because X.T.P. was in custody, the court appointed a public defender to appear on X.T.P.'s behalf and noted in its October 5, 2012, order that respondent, X.T.P.'s attorney of record, failed to

appear. The court sent a copy of the October 5, 2012, order to respondent at the address he had provided on his certificate of representation.

20. On October 5, 2012, the court also wrote to respondent and noted his failure to appear for the hearing that day. The court informed respondent that he could not withdraw from the case except upon written court order pursuant to a written motion. The court expressed its expectation that respondent would appear at X.T.P.'s pre-trial hearing and trial or follow the procedure for withdrawal. The court's letter was sent to the address respondent provided on his certificate of representation.

21. Respondent's failure to appear for hearings violated Rules 1.3, 3.2, and 8.4(d), MRPC.

FOURTH COUNT

Non-Cooperation

22. On January 13, 2012, the Director sent respondent a notice of investigation of K.J.'s complaint. The notice requested respondent to respond to K.J.'s complaint within 14 days. The matter was referred to the Fourth District Ethics Committee (DEC) for investigation. Although respondent responded to K.J.'s complaint, he failed to respond to the DEC investigator's May 25, 2012, request for additional information.

23. On July 9, 2012, the Director wrote to respondent and requested additional information regarding K.J.'s complaint. The Director also requested respondent to respond to the investigator's May 25 letter and to supply the documentation requested therein. Respondent was requested to respond within two weeks. Respondent failed to respond.

24. On July 30, 2012, the Director wrote to respondent again and informed him that his cooperation with the investigation was required. The Director requested that respondent produce his response within one week. Respondent again failed to respond.

25. On August 13, 2012, the Director wrote to respondent again and reminded him of his duty to cooperate with the Director's investigation. Further, the Director's

August 13 letter informed respondent that failure to cooperate with the disciplinary process can in itself warrant a period of suspension. The Director requested respondent's response within one week.

26. On August 20, 2012, respondent called the Director's Office and asked what was required of him. Respondent was instructed to respond to the Director's July 9 letter. Respondent failed to respond.

27. On August 29, 2012, the Director wrote to respondent again and reminded him of his duty to cooperate with the Director's investigation. The Director requested that respondent provide a response to the Director's July 9 letter within one week.

28. On September 4, 2012, respondent faxed a response to the Director. Respondent's response, however, was incomplete and did not address the DEC investigator's May 25 letter. The cover sheet to respondent's fax was on letterhead from the Office of the Public Defender.

29. On September 6, 2012, the Director wrote to respondent regarding the deficiencies in his September 4 letter and requested that he produce the documents referenced in the DEC investigator's May 25 letter within one week. Respondent failed to respond.

30. On December 6, 2012, the Director sent respondent two notices of investigation, one pertaining to the criminal tax matter and the other pertaining to the X.T.P. matter. Both of the notices requested respondent to provide complete written responses within 14 days. Respondent failed to respond.

31. On December 12, 2012, respondent called the Director's Office, stated he obtained his mail from his old office and began discussing the X.T.P. matter. Specifically, respondent stated he missed the hearing on October 5 because he was not in the office. Respondent was informed that he was required to respond in writing to the notice of investigation concerning his failure to appear for X.T.P.'s hearing. Respondent failed to respond.

32. On December 28, 2012, the Director wrote to respondent and requested his responses to both of the December 6, 2012, notices of investigation within one week. The Director again informed respondent of his duty to cooperate. Respondent failed to respond.

33. On January 14, 2013, the Director again wrote to respondent and informed him that a lawyer's failure to cooperate can constitute an independent rule violation and a separate basis for professional discipline. The Director requested respondent's responses to both of the December 6, 2012, notices of investigation within one week. Respondent failed to respond.

34. By letter dated January 18, 2013, but received in the Director's Office on January 30, 2013, respondent informed the Director that he had been on leave from the Hennepin County public defender's office since September 17, 2012. Respondent stated he did not have access to any mail sent to the public defender's office, but would be returning to work on March 18, 2013. Respondent stated that the "alleged failure to file Minnesota State income tax returns" was "a current and ongoing matter" and requested that the "[B]oard postpone any proceedings until this matter is resolved."

35. Although respondent stated he did not have access to any mail sent to the public defender's office, respondent failed to provide the Director with any information that would allow the Director to contact respondent somewhere other than at the public defender's office. The return address on respondent's January 18, 2013, letter was the address for the Hennepin County public defender's office.

36. On April 8, 2013, respondent called the Director's Office and requested that all pertinent documents be sent to him again. Respondent asked that the documents be sent to him at the Hennepin County public defender's office. By letter dated April 9, 2013, the Director's Office mailed the requested documents to respondent. In the April 9 letter, the Director requested that respondent produce his written responses to both of the December 6, 2012, notices of investigation within ten days of the date of the Director's letter. The Director also requested that respondent

provide an explanation for his failure to timely respond to the notices of investigation, copies of which were enclosed. Also enclosed were the Director's July 9 and September 6, 2012, letters to respondent, together with the DEC investigator's May 25, 2012, letter concerning K.J.'s complaint to which respondent's response was requested. The Director also requested respondent to provide an explanation for his failure to timely provide a response to the DEC investigator's May 25, 2012, letter. Respondent was requested to respond within ten days of the date of the Director's letter. Respondent failed to respond.

37. Shortly thereafter, respondent's employment with the public defender's office ceased.

38. By letter dated June 21, 2013, addressed to respondent at an address found on the Minnesota Court Information System and associated with respondent's then-pending criminal matter, the Director requested respondent to provide the Director with responses to both of the December 6, 2012, notices of investigation, and to provide the information and documents requested by the DEC investigator in the K.J. matter. Additionally, the Director requested respondent to provide specific information regarding the allegations that he failed to file state tax returns and to provide the Director with an executed DOR authorization to release tax information. Finally, the Director noted that respondent had not notified the Director or Lawyer Registration of a new address, despite the fact that he was no longer employed by the Hennepin County public defender's office. Respondent failed to respond.

39. On June 26, 2013, respondent's address was updated on the Minnesota Attorney Registration System.

40. As previously set forth above, on July 19, 2013, respondent was convicted of a felony for failure to pay his 2008 state tax liability. Although respondent requested that the Director defer any action until the criminal tax matter was resolved, respondent failed to inform the Director of his conviction.

41. By letter dated August 19, 2013, the Director requested respondent to provide within ten days proof that he had filed his 2008 through 2011 Minnesota state income tax returns. The Director also requested respondent to provide within ten days a completed DOR authorization form, which was previously mailed to respondent with the Director's June 21 letter.

42. On August 30, 2013, respondent faxed to the Director a letter dated August 29, 2013. Respondent's fax included a letter dated July 26, 2013, that respondent purportedly sent to the Director. Respondent's July 26, 2013, letter was never received in the Director's Office.

43. In his August 29 letter, respondent stated that in the K.J. matter he was unable to respond to the Director's request for information due to the fact that he was no longer employed by the Hennepin County public defender's office. Respondent did not address why he failed to respond to the DEC investigator's request from May 2012, or the Director's requests from July 9, July 30, August 13, and August 29, 2012, all originating at a time in which respondent had access to K.J.'s file.

44. Respondent indicated in his August 29 letter that he had filed his 2008 through 2011 tax returns, and then re-filed them as part of resolving the then-pending criminal charges against him. On September 5, 2013, however, DOR Special Agent Jeffrey Slater wrote to respondent and stated that respondent's 2008 return had not been received. Slater directed respondent to file his 2008 return immediately. On November 21, 2013, DOR revenue collection officer Valerie Nielsen informed the Director that respondent's 2008 income tax return had not yet been processed. On December 16, 2013, Nielsen informed the Director that she had received respondent's 2008 return by email on December 6, 2013, and that it had been processed on December 9, 2013.

45. Respondent stated in his August 29 letter that he did not receive a copy of the Director's June 21, 2013, letter. The Director's June 21, 2013, letter was not returned to the Director's Office as undeliverable or unclaimed.

46. Respondent stated in his August 29 letter that as of the date of his letter, he had never seen the letter sent to him by the court in the X.T.P. matter on October 5, 2012. The court's October 5, 2012, letter was sent to respondent by the court at the address respondent provided on his certificate of representation and was specifically referenced in the Director's December 6, 2012, notice of investigation and April 9 and June 21, 2013, letters. At no time in the intervening eight months did respondent ever claim to have not received the court's October 5, 2012, letter.

47. The Director scheduled a meeting between the assigned Assistant Director and respondent. By letter to respondent dated September 13, 2013, the Director confirmed the date and time of the meeting and sent respondent another copy of the court's October 5, 2012, letter regarding the X.T.P. matter. In his letter, the Director requested respondent to bring with him to the meeting copies of his tax returns, information regarding the tax service respondent stated he was using, an executed authorization to release tax information and a written response to the Director's December 6, 2012, notice of investigation regarding the X.T.P. matter.

48. On October 7, 2013, respondent met with the Assistant Director. Despite the Director's specific requests, respondent failed to bring to the meeting copies of his tax returns, or proof that they had been filed, and failed to provide the Director with a written response to the December 6, 2012, notice of investigation regarding the X.T.P. matter.

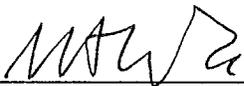
49. To date, respondent has failed to provide written responses to the Director's December 6, 2012, notices of investigation in the criminal tax matter and the X.T.P. matter and failed to respond to the DEC investigator's May 25, 2012, letter in the K.J. matter.

50. Respondent's failure to fully cooperate with the disciplinary investigation into the above matters violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing otherwise appropriate discipline, awarding costs

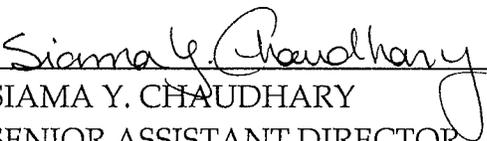
and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: January 9, 2014.



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and



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This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: January 15, 2014, 2014.



RICHARD H. KYLE, JR.
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD