

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against DOUGLAS F. McGUIRE,  
a Minnesota Attorney,  
Registration No. 70622.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 9, 1980. Respondent currently practices law in Richfield, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On October 29, 2004, respondent was issued an admonition for failing to respond to a client's communications, and failing to either appear at a hearing, request a continuance, or advise the client that as a corporation the client could not appear at the hearing without counsel.

B. On December 17, 2007, a Lawyers Professional Responsibility Board Panel issued an admonition to respondent for billing his client and accepting payment for fees without the approval required by law.

## FIRST COUNT

### Destroying Evidence During Disciplinary Proceeding

1. In September 2006, Michael Daraitis filed a complaint with the Director's Office, arising out of respondent's representation of Daraitis in a federal workers' compensation proceeding.

2. The Fourth District Ethics Committee (DEC) conducted the initial investigation of Daraitis' complaint against respondent. After the DEC completed its handling of the matter, the Director conducted further investigation.

3. On March 23, 2007, the Director wrote to respondent. The Director identified one of the issues raised by the complaint as whether respondent had collected fees from Daraitis in connection with respondent's representation of Daraitis in the federal workers' compensation proceeding without required approval and therefore committed professional misconduct. *See* disciplinary history, ¶ B, above. The Director's March 23 letter identified multiple cases for the proposition that, "Lawyers who have collected fees in an amount not allowed by law and/or in a manner not allowed by law have been suspended from the practice of law." The Director requested, among other things, respondent to provide Daraitis' client file to the Director.

4. By letter dated April 17, 2007, respondent (through counsel) stated: "in none of these contacts and on no form that [respondent] ever received or reviewed from OWCP, [the Office of Workers' Compensation Federal Programs, which administers the Workers' Compensation Act], was there ever any suggestion that the fees for his services had to be approved by OWCP." Respondent (through counsel) also stated: "[Respondent], quite frankly, was unaware of the Federal requirement that before he cashed the checks or money orders that complainant sent to him, he had to seek OWCP approval."

5. Together with that April 17 letter, respondent (through counsel) provided what respondent claimed was his entire client file.

6. In respondent's Daraitis client file was a September 29, 2004, letter from OWCP claims examiner Rose Knox to respondent (hereinafter the "Knox letter"). The Knox letter notified respondent that he must apply for approval of attorney's fees. Enclosed with the Knox letter were the OWCP's procedures relative to representatives' fee applications. The procedures state in pertinent part: "No claim for a fee for services is valid unless prior approval is obtained from OWCP. 20 C.F.R. 10.702. Collection of a fee prior to OWCP's approval is a violation of 18 U.S.C. 292."

7. Some time before April 17 respondent removed the Knox letter from his client file and destroyed it. The remaining documents were delivered to the Director by respondent (through counsel) as respondent's complete client file.

8. Accordingly, respondent's statements in that April 17 letter (§ 4, above) were false. Respondent had received the Knox letter which specifically informed respondent of the requirement that he have his fees approved. Additionally, respondent's retainer agreement referenced the required approval for attorney's fees.

9. Respondent's representation that he provided his entire client file to the Director (§ 4, above) was false. The file respondent produced did not contain the Knox letter. Respondent did not inform the Director when respondent produced the file that he had removed the Knox letter from the file.

10. The day after respondent's counsel sent respondent's client file to the Director (i.e., on April 18, 2007), respondent (through counsel) notified the Director that respondent had removed and destroyed the Knox letter.

11. Respondent's destroying evidence during a disciplinary proceeding violated Rules 3.4(a), 8.1(a) and (b), and 8.4(c) and (d), MRPC, and Rule 25, RLPR.

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: January 28, 2008.



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