

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

STATE OF MINNESOTA

IN SUPREME COURT

-----  
In Re Petition for Disciplinary Action  
against NATHAN KENT McLEAN,  
a Minnesota Attorney,  
Registration No. 389532.  
-----

**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 December 16, 2008. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Pattern of Client-Related Misconduct

**R.R. and A.R. Matter**

1. R.R. and A.R. retained respondent in June 2009 to represent them in a dispute with Kosel Construction (Kosel). R.R. and A.R. had hired Kosel to build a house in Redwood Falls, Minnesota.

2. R.R. and A.R. agreed to pay respondent a "flat fee" of \$3,500 to represent them in their dispute with Kosel. Respondent and R.R. and A.R. signed a retainer agreement on June 4, 2009.

3. Shortly after, respondent agreed to accept only \$700 from R.R. and A.R. with the understanding that, if Kosel did not agree to mediate the dispute and litigation that was required, R.R. and A.R. would be required to pay the remaining \$2,800. Respondent made handwritten changes to the retainer agreement to memorialize the amended agreement. R.R. and A.R. paid respondent \$700, which he deposited to a law office business account rather than to a trust account.

4. Respondent wrote to Kosel on June 12, 2009, to identify the problems in the construction of R.R. and A.R.'s home and to seek to resolve the dispute.

5. R.R. and A.R. met with respondent on July 10, 2009. By this time, it was clear Kosel was unwilling to enter into mediation, so respondent requested that R.R. and A.R. pay the additional \$2,800 as agreed. R.R. and A.R. persuaded respondent to instead accept \$1,300, which respondent deposited to a law office business account rather than to a trust account.

6. Shortly after meeting with R.R. and A.R., respondent received a letter dated July 9, 2009, from Kosel's counsel, Raymond Walz, denying any liability by Kosel and enclosing a summons and complaint alleging that R.R. and A.R. actually owed Kosel money. Respondent provided a copy of the complaint to R.R. and A.R., and they provided respondent with a handwritten suggested response.

7. Respondent prepared and mailed an answer and counter-claim to Walz on August 14, 2009, but did not provide copies to R.R. and A.R.

8. After serving the counter-claim, respondent and Walz spoke by phone and agreed that, because the amount of money at stake in the case was low (less than \$5,000), rather than doing any discovery the parties would agree to ask the local building inspector to act as a "neutral expert" and determine if Kosel had complied with building codes. Respondent did not inform R.R. and A.R. of this, however, and instead led them to believe that Kosel had missed a September 8, 2009, deadline to respond to the counter-claim and was in default.

9. Respondent told R.R. he would bring a motion for a default judgment against Kosel. By September 14, 2009, R.R. and A.R. had not heard anything from respondent so R.R. phoned him. Respondent promised to serve the motion by September 16, 2009. Respondent did not do so.

10. After September 16, 2009, R.R. phoned respondent almost every day for the next two or three weeks. She was unable to reach respondent and he did not return her calls.

11. R.R. finally reached respondent by phone on October 5, 2009. She demanded to know whether respondent had completed the motion for default judgment. Respondent said he had not done the motion because of personal difficulties, but he promised to have it completed by the following day. He did not do so.

12. At approximately 8:00 p.m. on October 8, 2009, R.R. and A.R. visited respondent at home, which also contains his law office, to discuss their case and respondent's unresponsiveness and lack of progress. Respondent requested that R.R. and A.R. meet him at a restaurant the following day to discuss their case.

13. Respondent met with R.R. and A.R. at a restaurant on October 9, 2009. Respondent presented R.R. and A.R. with a notice that he was withdrawing from representation. Respondent also presented R.R. and A.R. with a partial copy of their file but did not include copies of pleadings, proof of service, or most correspondence.

14. Respondent presented R.R. and A.R. with a check in the amount of \$320 to cover the court filing fee. R.R. and A.R. learned for the first time, contrary to earlier statements by respondent, that respondent had never filed their answer and counter-claim with the court.

15. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(a), 1.15(b), 4.1, and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

## **C.M. Matter**

16. C.M. retained respondent on June 3, 2009, to respond to a child support motion brought against C.M. by his ex-wife, A.D. A court hearing on the motion was scheduled for July 24, 2009.

17. Respondent met with C.M. and his live-in partner, D.K., at their home on June 3, 2009. Respondent presented C.M. with a retainer agreement that provided for a "flat fee" of \$1,200 for representation in the child support matter. C.M. paid respondent \$1,200 and signed the retainer agreement.

18. The hearing in C.M.'s case had to be rescheduled to September 3, 2009, because respondent failed to timely serve a responsive motion on A.D. At the hearing, respondent persuaded the court to lower C.M.'s monthly child support obligation from \$732 to \$281, but did not request the modification to be retroactive to June 2009, as he had promised C.M. he would do. The court scheduled a review hearing for November 17, 2009.

19. Respondent only spoke with C.M. or D.K. on two brief occasions between September 3 and November 17, 2009, and arrived only moments before the review hearing, without a chance to confer and prepare with them. Respondent was unaware that C.M. wished to have his child support further reduced because he was still jobless and his unemployment benefits had run out. Respondent gave incorrect information to the court about C.M.'s income, incorrectly argued that no changes had occurred in C.M.'s situation since September 3, 2009, and that C.M.'s child support did not require modification.

20. The court took the matter under advisement after the November 17, 2009, hearing and issued an order on December 3, 2009. Respondent had no contact with C.M. after November 17, 2009, however, and C.M. was unaware that the order had been issued.

21. C.M. phoned respondent on December 17, 2009. Respondent informed C.M. about the issuance of the December 3, 2009, order and promised to send a copy of

it to him. Respondent failed to do so. C.M. or D.K. attempted to contact respondent several times by phone or email after December 17, 2009. Respondent failed to respond.

22. By January 25, 2010, C.M. still had not heard from respondent and had not received a copy of the December 3, 2009, order. C.M. decided to go to the courthouse and obtain a copy for himself. C.M. also informed the court that he was discharging respondent as his counsel.

23. C.M. and D.K. brought a conciliation court action against respondent to recover the fee they felt respondent did not earn. Respondent appeared for a hearing on March 22, 2010, and returned C.M.'s file to him. Respondent agreed to settle C.M. and D.K.'s claim by refunding \$1,000 to them no later than April 15, 2010, but, to date, has failed to do so.

24. Respondent's conduct violated Rules 1.1, 1.3, 1.4(a)(3), and 1.4(a)(4), MRPC.

#### **B.N./J.C. Matters**

25. B.N. retained respondent on July 29, 2009, to represent her in a dissolution of marriage from C.N. B.N. signed a retainer agreement and paid respondent a \$1,400 retainer along with \$350 for a court filing fee.

26. Respondent failed to appear for a motion hearing on or about November 9, 2009, and the court issued a temporary order on or about November 30, 2009. The court ordered B.N. to pay attorney fees of \$950 to C.N. based on the failure to appear for the November 9, 2009, motion hearing.

27. Upon discovering this, on November 30, 2009, respondent contacted the court and was told he should file a motion under Rule 60.02, Minn. R. Civ. P., if he wished to vacate the order. On December 16 or 17, 2009, respondent requested attorney J.C. to prepare the motion. J.C. was at the time working for respondent on a contract basis.

28. Respondent told B.N. in an email message that he had drafted the motion and filed it with the court on or before December 10, 2009. Respondent's statement was

false. In fact, J.C. prepared the motion on or after December 16, 2009, and it was filed with the court on about January 11, 2010.

29. Respondent appeared for a hearing on the motion to vacate the order along with B.N. on January 11, 2010. J.C. also attended the hearing, but not as B.N.'s counsel.

30. On January 14, 2010, the court issued an order denying the motion to vacate the November 30, 2009, order. The court did not address the attorney fee award. Respondent failed to inform B.N. that the January 14, 2010, order had been entered or provide her with a copy of it. B.N. obtained a copy of the order directly from the court.

31. On February 3, 2010, B.N. discharged respondent and retained J.C. as substitute counsel.

32. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), 4.1, 8.4(c), and 8.4(d), MRPC.

#### **M.R. Matter**

33. In May 2009, M.R. retained respondent to represent him in filing a Chapter 7 bankruptcy petition. M.R. paid respondent a retainer fee of \$750 that was to include attorney fees of \$500 and a filing fee of \$250.

34. Respondent failed to file a bankruptcy petition for M.R. Beginning in January 2010, M.R. attempted to contact respondent regarding the status of his case. Respondent failed to respond. Respondent also failed to return M.R.'s file to him or refund his retainer fee to him.

35. M.R. retained attorney Christopher L. Paul in place of respondent. Paul prepared and filed a Chapter 7 bankruptcy petition for M.R. on March 23, 2010.

36. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 1.16(d), MRPC.

## **F.T. Matter**

37. F.T. retained respondent to represent him in a dispute with Maserati of Minneapolis over a vehicle F.T. purchased in 2008. F.T. paid respondent a "flat fee" of \$3,300 to take the case to trial, if necessary.

38. F.T. settled his case through mediation on December 15, 2009. Maserati of Minneapolis agreed to pay F.T. \$5,000 plus the costs of mediation. Counsel for Maserati of Minneapolis, Thomas Zappia, drafted the settlement paperwork and forward it to respondent on December 21, 2009.

39. After December 15, 2009, respondent had no contact with F.T. and failed to respond to F.T.'s efforts to contact him by phone and email.

40. Respondent did not respond to Zappia's letter, so Zappia sent a follow-up letter on January 22, 2010. Respondent did not respond.

41. F.T. contacted Zappia directly about the status of his case. Zappia emailed respondent and told him if he did not return the signed settlement agreement he would send it directly to F.T., as F.T. had requested. Respondent did not respond, so Zappia sent the settlement documents to F.T. F.T. represented himself and settled the matter shortly after.

42. On February 8, 2010, F.T. submitted a complaint to the Director's Office. Or about March 29, 2010, respondent submitted a response to F.T.'s complaint. Respondent stated that he was mailing F.T.'s file back to him the same day, along with the title to his vehicle. To date, respond has failed to do so.

43. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(a), and 1.16(d), MRPC.

## **E.L. Matter**

44. E.L. resides in Florida and owns a house located in Big Lake, Minnesota.

45. E.L. sold the house on a contract for deed. E.L. retained respondent in May 2009, after the buyer of the house quit making payments and moved out a few

months later. E.L. paid respondent a "flat fee" of \$1,700 to bring a legal action, including a trial if necessary, to cancel the contract for deed with the buyer.

46. E.L. told respondent he wished to have the buyer removed from the house as soon as possible. In August 2009, respondent emailed E.L. and apologized for the delay in beginning legal action and said he was "in the process of drafting papers to get the litigation started." Respondent failed to do so.

47. At respondent's request, in December 2009 E.L. gave him two checks for court filing fees. Respondent never filed any court action, however, or began the formal process to cancel the contract for deed.

48. Beginning in January 2010, respondent had no contact with E.L. and failed to respond to numerous attempts by E.L. to contact him.

49. On or about February 8, 2010, E.L. discharged respondent and submitted a complaint to the Director's Office.

50. Respondent's conduct violated Rules 1.3, 1.4(a)(3), and 1.4(a)(4), MRPC.

#### **A.S. and R.S. Matter**

51. A.S. and R.S. retained respondent in late 2008 or early 2009 to represent A.S. in two cases, a custody case in LeSueur County against J.M., and a paternity case in Washington County. A.S. and R.S. paid respondent a "flat fee" of \$950 in each case as well as court filing fees.

52. In the LeSueur County case, in late December respondent contacted A.S. and R.S. to report that a court hearing had just been held and that the court had awarded J.W. visitation with the two children of J.M. and A.S. Respondent had failed to notify A.S. and R.S. of the hearing until after it was over.

53. After the December 2009 court hearing respondent failed to communicate with A.S. and R.S., failed to respond to their attempts to contact him, and failed to inform them of another hearing that was originally scheduled for February 18, 2010, but was rescheduled to March 11, 2010.

54. On February 15, 2010, R.S. emailed respondent, discharged him, and requested that a copy of their file be sent to their new counsel, Jesse Matson. Respondent failed to respond, so A.S. and R.S. went to the courthouse and paid \$200 for a complete copy of their file, which they delivered to Matson.

55. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 1.5(a), MRPC.

#### **D.O. Matter**

56. Respondent represented D.O. in a dissolution of marriage proceeding against J.O. in Ramsey County District Court. J.O. was represented by Larry Neilson.

57. On November 18, 2009, D.O., J.O., Neilson, and respondent appeared before Referee Mary Madden and reached a settlement agreement that was read into the court record. Respondent agreed to draft a proposed judgment and decree and a qualified domestic relations order (QDRO) and submit them to Neilson for approval.

58. When Neilson had not received anything by January 11, 2010, he emailed respondent. Respondent did not respond, so Neilson emailed him again on January 16, 2010. Respondent responded by email on January 18, 2010, and told Neilson he would have the proposed judgment and decree to him by January 20, 2010. Respondent did not do so.

59. Referee Madden scheduled a status conference for January 26, 2010, and ordered the D.O., J.O., Neilson, and respondent to appear. Neilson and D.O. and J.O. appeared for the status conference, but respondent did not. Just before the hearing, Neilson attempted to phone respondent but did not reach him. Neilson left a phone message for respondent about the status conference. Respondent did not return the call and had no further contact with Neilson.

60. On January 27, 2010, the court issued an order directing Neilson to draft the judgment and decree and QDRO. The order also stated that respondent would be sanctioned by a separate order for his failure to appear at the status conference.

61. Neilson drafted a proposed judgment and decree and emailed it to respondent on January 20, 2010. Respondent did not respond, so Neilson submitted the proposed judgment and decree to the court.

62. On February 26, 2010, the court approved the judgment and decree and issued an order requiring respondent to personally pay J.O. attorney fees of \$1,548, by March 31, 2010, or face further sanctions. Respondent failed to pay J.O. attorney fees as ordered by the court. The court has not, to date, taken further action against respondent.

63. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), 3.4(c), and 8.4(d), MRPC.

#### **D.M. Matter**

64. D.M. retained respondent to represent him in a dissolution of marriage and custody matter against E.T. E.T. was represented by Rebecca Rossow, who had filed a prehearing statement with the court on or about January 5, 2010, and had requested permission from the court to bring a motion to compel discovery. A pretrial hearing was scheduled for February 18, 2010.

65. D.M. and respondent signed a "representation and fee agreement" on January 21, 2010, that provided for a \$900 "flat fee" to be paid in two \$450 installments on January 21 and February 21, 2010. D.M. paid the first installment.

66. Respondent told D.M. that he would immediately begin working on his case. Respondent did not file a prehearing statement or any other pleadings in connection with the February 18, 2010, court pretrial hearing. Respondent had no contact with D.M. after their initial consultation on January 21, 2010, and did not respond to D.M.'s attempts to phone and email him. Respondent also failed to have any contact with the custody evaluator appointed in D.M.'s case.

67. Respondent failed to appear for the pretrial hearing on February 18, 2010, so D.M. appeared without counsel. The judge attempted to contact respondent at his

office but was unable to reach him. Shortly after the February 18, 2010, court hearing, D.M. retained other counsel in place of respondent.

68. Respondent's conduct violated Rules 1.3, 1.4(a)(3), and 1.4(a)(4), MRPC.

#### **J.H. Matter**

69. J.H. retained respondent on August 21, 2009, to represent him in obtaining a reduction of his child support obligation. J.H. signed a retainer agreement and paid respondent a "flat fee" of \$1,400. Respondent promised to begin working on J.H.'s case and contact him again within two weeks.

70. Respondent contacted J.H. approximately two weeks later, by U.S. Mail, seeking further information about J.H.'s child support case. J.H. responded to respondent by email. Thereafter, between September 2009 and January 2010, respondent had no contact with J.H. and did not respond to J.H.'s phone messages.

71. In January 2010, J.H. went to respondent's office, but respondent was not in. J.H. also left additional phone messages, but respondent did not respond. J.H. then left a message on respondent's door, which is also his home. Respondent phoned J.H. two days later, on or about January 21, 2010, to report that he had a family emergency and had been out of town. Respondent has had no further contact with J.H. and has not responded to J.H.'s request for the return of his file and refund of his retainer fee.

72. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(a), and 1.16(d), MRPC.

#### **H.G. Matter**

73. H.G. retained respondent in approximately September 2009 to represent her in a child protection case. H.G.'s parents paid respondent a \$2,000 retainer fee.

74. On December 3, 2009, H.G. appeared in court with respondent and made a "qualified admittance" of the charges against her. H.G.'s next court hearing was scheduled for January 26, 2010.

75. Between December 3, 2009, and January 26, 2010, H.G. attempted to phone respondent about her case on numerous occasions. H.G. was unable to reach

respondent. Respondent only attempted to phone H.G. once, during the first or second week of January 2010, but did not reach her. Respondent left a message saying he wanted to talk to H.G. and catch up on the case because the court date was approaching soon. Respondent did not call again and did not respond to subsequent attempts by H.G. to reach him.

76. Respondent failed to appear for the court hearing on January 26, 2010. H.G. and the prosecuting attorney, Tami McConkey, attempted without success to phone respondent about his failure to appear.

77. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 1.5(a), MRPC.

#### **B.S. and K.S. Matter**

78. B.S. and K.S. retained respondent in late 2009 to represent them in a contract for deed cancelation matter. B.S. and K.S. paid respondent a "flat fee" of \$750 to bring an action to cancel the contract for deed and to recover money owed to B.S. and K.S. by the vendees under the contract. Respondent initiated a cancelation proceeding and the vendees moved out of the house.

79. Respondent promised in late December 2009 to bring an action against the vendees to recover \$6,405 that was owed to B.S. and K.S. for missed mortgage payments, late fees, unpaid utility bills, etc. Respondent failed to do so. Respondent has had no contact with B.S. and K.S. since late December 2009 and has failed to respond to B.S. and K.S.'s efforts to contact him.

80. Respondent's conduct violated Rules 1.3, 1.4(a)(3), and 1.4(a)(4), MRPC.

#### **M.K. Matter**

81. In May or June 2009, M.K. retained respondent to represent him in a dissolution of marriage. M.K. signed a retainer agreement and agreed to pay a "flat fee" retainer fee of \$1,400 in two equal installments, at the beginning and at the end of the case. M.K. paid respondent \$700.

82. Beginning in October 2009, respondent did not communicate with M.K. or respond to his email. In early December 2009, M.K. went to respondent's office, which is in his home, and they discussed the case. Respondent showed M.K. a settlement proposal from opposing counsel that he had received approximately two weeks earlier. M.K. asked for a copy of it, and respondent promised to mail a copy to him. Respondent did not do so for two more weeks.

83. After M.K.'s visit with respondent in early December 2009, respondent had no further communication with M.K. and again did not respond to his phone calls and email.

84. On April 30, 2010, M.K. wrote to respondent to demand the return of his file. Respondent failed to respond or return M.K.'s file.

85. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 1.16(d), MRPC.

#### **C.L. Matter**

86. On January 7, 2010, C.L., age 66, retained respondent for advice about what to do with a \$50,663.03 check that she received for retroactive Social Security benefits. C.L. paid respondent a retainer fee of \$2,500.

87. Since January 7, 2010, C.L. has had no contact from respondent. On February 22, 2010, C.L. wrote to respondent to discharge him and request the return of her \$2,500 retainer. Respondent did not respond.

88. C.L. retained attorney Laurie Hanson in place of respondent. On March 9, 2010, Hanson wrote to respondent to request the return of C.L.'s \$2,500 retainer fee. Respondent did not respond.

89. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), and 1.5(a), MRPC.

## SECOND COUNT

### Noncooperation with Disciplinary Investigations

90. R.R. and A.R.'s complaint was referred to the Second District Ethics Committee for investigation on October 27, 2009. It was assigned to investigator Julie LaFleur.

91. On January 19, 2010, LaFleur asked respondent to provide a breakdown of time he spent on R.R. and A.R.'s case and a complete copy of his file. Respondent agreed to do so within one week. LaFleur confirmed her request and respondent's agreement in a letter to him dated January 20, 2010. Respondent failed to respond and had no further contact with LaFleur.

92. Respondent voluntarily appeared for a meeting at the Director's Office on March 15, 2010. Respondent indicated he would submit responses to the following complaints, which were overdue at that time, no later than the close of business on March 17, 2010: J.C., A.S. and R.S., E.L., F.T., C.P., A.H., B.N., and C.M./D.K. Respondent did not submit responses, however, until March 29, 2010. In addition, respondent failed to provide a copy of his response to the complainants who were also his former clients (which were each of the previously listed complainants except L.N. and J.C.) as required by Rule 20(a)(5), RLPR. The Director provided copies of respondent's responses to these complainants so they would have an opportunity to respond.

93. A representative from the Director's Office attempted to phone respondent about the pending complaints and disciplinary investigation on March 31, April 1, April 2, and April 6, 2010. A phone message was left on each occasion asking respondent to contact the Director's Office. Respondent failed to return the phone calls and had no contact with the Director's Office until April 23, 2010. On that day, respondent phoned the Director's Office and stated he would submit a response in each case where a response was due by Monday, April 26. Respondent did not do so and has had no further contact with the Director's Office.

94. When initiating a disciplinary investigation pursuant to Rule 8, RLPR, the Director sends a "Notice of Investigation" (NOI) to the respondent along with a copy of the complaint or a summary of the allegations of professional misconduct. The NOI instructs the respondent to submit a response within 14 days.

95. In the following instances, respondent failed to respond to a NOI: H.G. (NOI sent on March 10, 2010), B.S. and K.S. (NOI sent on March 18, 2010), C.L. (NOI sent on April 2, 2010), M.K. (NOI sent on April 2, 2010), Director-initiated investigation regarding S.K. and D.M. court matters (NOI sent on April 7, 2010), S.K. (NOI sent on April 14, 2010), P.O. (NOI sent on April 30, 2010), and S.H. (NOI sent on April 30, 2010).

96. Respondent's conduct 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.

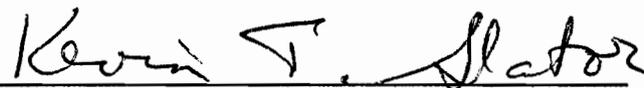
Dated: June 21, 2010.



---

MARTIN A. COLE  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 148416  
1500 Landmark Towers  
345 St. Peter Street  
St. Paul, MN 55102-1218  
(651) 296-3952

and



---

KEVIN T. SLATOR  
ASSISTANT DIRECTOR  
Attorney No. 204584