FILE NO. A10-1519

STATE OF MINNESOTA

IN SUPREME COURT

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

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 an August 4, 2010, petition for disciplinary action. Respondent was suspended on July 1, 2010, for non-payment of lawyer registration fees. 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

Continuing Pattern of Client-Related Misconduct

T.V. Matter

97. T.V. retained respondent in March 2010 to represent him in a driving while intoxicated matter. T.V. agreed to pay respondent a "nonrefundable" fee of $750.00 for representation. Respondent presented T.V. with a "Representation and Fee Agreement," which he and respondent signed on March 17, 2010. T.V. paid respondent $750.00.

98. After March 17, 2010, respondent communicated very little with T.V., did not respond to T.V.'s attempts to contact him, and did not keep T.V. informed about the status of case.

99. On or about April 23, 2010, T.V. phoned respondent and told him he was discharged. In an email to T.V. dated April 23, 2010, respondent promised to mail a refund check in the amount of $750.00 to T.V. on April 26, 2010. Respondent failed to do so and never refunded any portion of T.V.'s $750.00 retainer fee.

100. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.5(a), and 1.16(d), Minnesota Rules of Professional Conduct (MRPC).

K.W. Matter

101. K.W. retained respondent to represent her in bringing an action to modify custody and visitation provisions contained in her August 27, 2002, judgment and decree. Respondent presented K.W. with a "Representation and Fee Agreement," which she signed on June 17, 2009. K.W. agreed to pay a "flat fee" of $950.00 for respondent's representation. K.W. paid respondent $950.00 on the same day.

102. K.W. did not hear anything from respondent for approximately two months after she retained him, so she phoned him. Respondent told K.W. the reason for the delay was that the courts were backed up and it was taking a long time to get a court date. Sometime later, K.W. contacted respondent again because she had not heard anything. Respondent told K.W. a court date was scheduled for October 29, 2009.

103. On October 28, 2009, respondent phoned K.W. and told her the October 29 court hearing had to be postponed because, under the terms of her judgment and decree, custody and visitation disputes were required to be submitted to mediation before going to court. Although respondent accurately described the requirement for mediation, he had never served K.W.'s ex-husband with a motion.

104. Respondent scheduled a mediation session for December 23, 2009. Respondent and K.W. appeared, but K.W.'s ex-husband failed to appear.

105. After the mediation session, respondent still failed to serve and file a motion. Respondent told K.W. he had asked attorney John Chitwood to assist him in handling her case. Chitwood, who was not an employee or a member of respondent's law firm, did not take any action. On March 31, 2010, Chitwood notified K.W. that he was no longer assisting respondent with the case.

106. K.W. was upset about the lack of progress and by Chitwood's sudden announcement that he was no longer assisting respondent on her case. K.W. attempted to phone respondent several times for approximately two weeks. K.W. was unsuccessful in reaching respondent and he did not return her phone calls. Sometime later, respondent's phone number was disconnected. Respondent has had no further contact with K.W. since that time.

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

P.M. Matter

108. P.M. retained respondent to represent him in gaining custody of his son from his ex-wife. Respondent presented P.M. with a "Representation and Fee Agreement," which he signed on March 17, 2009. P.M. agreed to pay a "flat fee" of $2,500.00 for respondent's representation. P.M. paid respondent $2,500.00.

109. Respondent met with P.M. on several occasions, but failed to prepare and serve a motion for change of custody. Respondent then told P.M. he had asked attorney John Chitwood to assist him in handling her case. Chitwood, who was not an employee or a member of respondent's law firm, did not take any action and then shortly after notified P.M. that he was no longer assisting respondent with the case.

110. P.M. attempted to contact respondent on numerous occasions after speaking with Chitwood. P.M. was not able to reach respondent, and respondent did not return P.M.'s phone calls. Sometime later, respondent's phone number was disconnected.

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

S.H. and S.T. Matter

112. S.H. and S.T., who are sisters, retained respondent to probate their mother's will. Respondent presented S.H. with a "Representation and Fee Agreement," which she signed on November 16, 2009. S.H. agreed to a $3,800.00 "flat fee" to be paid $2,400.00 immediately and $1,400.00 within 14 days. S.H. paid respondent $2,400.00 on the same day.

113. S.H. did not hear anything from respondent for several weeks, so she called respondent several times and left voicemail messages for him. Respondent finally returned S.H.'s calls on December 8, 2009. Respondent told S.H. that he had requested attorney John Chitwood, who was not an employee or a member of respondent's law firm, to assist him with the case.

114. On or about December 31, 2009, Chitwood phoned S.H. to report that a court date had been scheduled for February 22, 2010, and that he would prepare a petition for appointment of a personal representative for S.H.'s review. Chitwood sent a petition to S.H. on January 18, 2010, which she signed and returned to him.

115. On February 2, 2010, S.H. phoned respondent to check on the status of the case. Respondent told S.H. that the court hearing on February 22, 2010, was not going to occur. Respondent requested that S.H. pay the remaining $1,400.00 of the "flat fee" retainer. S.H. reminded respondent that the payment of $1,400.00 was not due until the first court appearance and did not pay it.

116. After February 2, 2010, S.H. tried on several occasions to phone respondent, without success. Respondent finally returned S.H.'s calls on February 16, 2010. Respondent told S.H. he was working on preparing a proposal for appointment of a personal representative. S.H. sent respondent $400.00 in the hope that it would be an incentive to make more progress on her case.

117. On March 22, 2010, S.H. contacted Chitwood to ask about the status of the case. Chitwood told S.H. that he was no longer assisting respondent with the case. S.H. immediately contacted respondent for an explanation. Respondent said Chitwood had discontinued working on the case due to a conflict of interest. Respondent promised to begin working on S.H.'s case immediately.

118. S.H. phoned respondent and had a conversation with him about her case on March 30, 2010. Thereafter, S.H. heard nothing further from respondent and respondent failed to return S.H.'s phone calls.

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

D.B. and J.B. Matter

120. D.B. and J.B., who are brothers, retained respondent in March 2009 to represent them in a lawsuit against them and two other defendants brought by Everhome Mortgage Company. D.B. and J.B. agreed to pay respondent a "flat fee" of $2,100.00 for respondent's representation. Respondent presented D.B. and J.B. with a "Representation and Fee Agreement," which they and respondent signed on March 10 and 18, 2009. D.B. and J.B. paid respondent $2,100.00.

121. D.B. emailed respondent on December 30, 2009, and on January 20, 2010, and received no response from respondent. D.B. emailed respondent again on or about January 27, 2010. D.B. stated, "I'm sadly observing that you are not responding to my emails regarding this lawsuit." Respondent emailed a reply to D.B. on January 27, 2010. Respondent apologized for his lack of communication and wrote that "it will absolutely not happen again." Respondent enclosed an invoice of attorney fees and expenses and wrote, "I am available to discuss the next step with you whenever you are also available."

122. D.B. emailed respondent on February 1, 2010, requesting an updated attorney fees and expenses itemization and asking questions about the Everhome legal matter. Respondent did not respond. D.B. and J.B. attempted to phone respondent on

several occasions in April and May 2010. Respondent did not respond, and had no further contact with D.B. Despite D.B.'s and J.B.'s requests, respondent has not returned their client file.

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

K.J. and J.J. Matter

124. Respondent represented K.J. and J.J., husband and wife, in a Chapter 7 bankruptcy proceeding. The case was dismissed by the bankruptcy court on July 27, 2009, based on K.J. and J.J.'s failure to undergo credit counseling and to file "certain lists, schedules or statements" despite an order of the court to do so by July 24, 2009.

125. On August 4, 2009, respondent prepared and filed with the bankruptcy court another Chapter 7 petition on behalf of K.J. and J.J. On October 27, 2009, the bankruptcy trustee filed a motion seeking a dismissal of the petition. The trustee alleged that K.J. and J.J. had filed the petition in bad faith because they were not entitled to a bankruptcy discharge until eight years had passed from their prior bankruptcy discharges in 2002 and 2003, respectively. The trustee also moved the court to force respondent to "disgorge" and repay to K.J. and J.J. the $750.00 attorney fees he had received.

126. On November 18, 2009, the bankruptcy court dismissed the case and ordered respondent to repay the $750.00 he had received from K.J. and J.J. Respondent repaid K.J. and J.J. $750.00, as ordered, and also refunded their $299.00 filing fee.

127. The bankruptcy court barred K.J. from filing another Chapter 7 bankruptcy petition before January 2010 and J.J. from filing another Chapter 7 petition until after September 2010. Respondent told K.J. and J.J. to contact him again about filing a bankruptcy in February 2010.

128. In April 2010, K.J. and J.J. contacted respondent about filing another bankruptcy petition. Respondent agreed to represent K.J. and J.J. On April 12, 2010,

respondent sent a courier to their house to pick up a check in the amount of $800.00 for attorney and filing fees. K.J. gave the courier $800.00 and signed a "receipt."

129. After April 12, 2010, respondent had no contact K.J. and J.J. and did not return their phone calls and messages. Sometime after, respondent's phone was disconnected and K.J. and J.J. could no longer leave messages.

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

S.K. Matter

131. S.K. retained respondent in July 2009 to represent him in a dissolution of marriage including custody and also in a possible criminal matter. S.K. agreed to pay respondent a "flat fee" of $1,700.00 for representation. Respondent presented S.K. with a "Representation and Fee Agreement," which he and respondent signed on July 27, 2009. S.K. paid respondent $1,700.00.

132. On or about January 19, 2010, respondent phoned S.K., who lives in California, and told him, for the first time, that a pretrial hearing was scheduled for that day. Respondent asked S.K. to consider a settlement proposal that had been made by S.K.'s wife. S.K. told respondent he would think about it and get back to him later.

133. A few days after January 19, 2010, S.K. attempted to contact respondent by phone, fax, and email. S.K. was not able to contact respondent and respondent was unresponsive. On or about February 5, 2010, S.K. learned on the court's online docket that a trial was scheduled in his case for March 16, 2010.

134. S.K. decided to discharge respondent and retain another lawyer in his place because he was dissatisfied with respondent's lack of progress and communication. On February 11, 2010, S.K. flew to Minnesota to discharge respondent and pick up his file. Respondent persuaded S.K. not to discharge him and said he would schedule a deposition of S.K.'s wife on February 16, 2010.

135. The deposition did not finish on February 16, 2010, and was continued to February 27, 2010. Just before S.K. arrived for the continued deposition, respondent sent him a text message telling S.K. he did not need to attend. Respondent also told S.K. that he would continue the trial, which had been scheduled for March 16, 2010, to a later date. Respondent told S.K. he would mail a copy of his file to him.

136. Respondent failed to request a continuance of the trial or mail a copy of S.K.'s file to him. On March 10, 2010, S.K. submitted his own request to the court for a continuance of the trial. S.K. also told the court he planned to discharge respondent and hire a new attorney because of respondent's unresponsiveness.

137. On or about March 11, 2010, S.K. retained attorney David Gapen in place of respondent. The court held a hearing on March 26, 2010, to consider Gapen's request for an order requiring respondent to turn over a copy of S.K.'s file. The court issued an order continuing the trial to April 30, 2010, and requiring respondent to turn over S.K.'s file to Gapen.

138. Respondent told Gapen he could pick up the file from his office on March 30, 2010, but respondent's office was empty when Gapen's courier arrived.

139. Gapen picked up S.K.'s file from respondent on April 2, 2010, but email between respondent and S.K. was missing. S.K. needed the email to defend himself against a motion for sanctions brought by his wife that alleged S.K. had failed to respond to discovery requests. S.K. states that he failed to respond to discovery because respondent failed to inform him of it.

140. Respondent told Gapen to come and pick up the missing email from his office on May 3 or 4, 2010. On May 4, 2010, Gapen went to respondent's office, but it was empty. Gapen never obtained the email that was missing from S.K.'s file.

141. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), and 8.4(d), MRPC.

P.O. Matter

142. P.O. retained respondent in October 2009 to represent him in a contract dispute with Jem Construction Company, a general contractor. P.O. agreed to pay respondent a "flat fee" of $3,000.00 for representation, $1,500.00 immediately and $1,500.00 on February 19, 2010. Respondent presented P.O. with a "Representation and Fee Agreement," which he and respondent signed on October 19, 2009. P.O. paid respondent $1,500.00.

143. Respondent did not take any action in P.O.'s case for three weeks and did not communicate with P. O. during that time. P.O. phoned respondent and told him he wanted action taken or his money back. Respondent then prepared a summons and complaint and had it served on Jem. Respondent did not provide P.O. with a copy of the summons and complaint or any other documents in the case.

144. Respondent informed P.O. that Jem had answered the complaint, but thereafter respondent had no further contact with P.O.

145. P.O. visited respondent's home/office to obtain his file. Respondent apologized that he did not have the file ready and told P.O. he was getting divorced. Respondent told P.O. he would copy his file and return it to him. Respondent failed to do so.

146. P.O. visited respondent's home/office again and asked for his file. Respondent persuaded P.O. not to discharge him and to allow him to continue to work on the case. Respondent took no further action on P.O.'s case.

147. In February 2010, P.O. retained attorney Walter Baker in place of respondent. Baker wrote to respondent and requested a copy of P.O.'s file. Respondent faield to respond.

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

D.V. Matter

149. D.V. retained respondent in April 2010 to represent him in a post-dissolution custody and visitation dispute for a "flat fee" of $1,700.00. Respondent presented T.V. with a "Representation and Fee Agreement," which respondent signed on April 15, 2010. T.V. paid respondent $1,700.00.

150. After April 15, 2010, respondent took no action on D.V.'s case and failed to respond to D.V.'s phone calls and email messages. Respondent agreed to meet with D.V. on May 12, 2010, but failed to appear for the meeting. In or about June 2010, D.V. retained attorney Marian Saksena in place of respondent. Respondent failed to refund any portion of D.V.'s $1,700 retainer fee.

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

M.Q. Matter

152. M.Q. retained respondent in January 2010 to represent him in drafting a qualified domestic relations order for a "nonrefundable flat fee" of $540.00. Respondent presented M.Q. with a "Representation and Fee Agreement," which respondent and M.Q. signed on January 12, 2010. M.Q. paid respondent $540.00.

153. After January 12, 2010, respondent took no action on M.Q.'s case. M.Q. phoned respondent several times, but was not able to reach him and respondent did not return the calls. Respondent failed to refund any portion of M.Q.'s retainer fee.

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

T.C. Matter

155. T.C. retained respondent in October 2009 to represent him in a dissolution of marriage. T.C. paid respondent a retainer of $1,700.00.

156. In or about November 2009, respondent told T.C. he had asked attorney John Chitwood to assist him in handling his case. Chitwood was not an employee or a

member of respondent's law firm, but submitted a certificate of representation to the court. In late March 2010, Chiwood notified T.C. that he was no longer assisting respondent with the case.

157. After Chitwood discontinued working on T.C.'s case, T.C. attempted to contact respondent, but was unable to reach him until April 8, 2010. Respondent assured T.C. that he would represent him. Approximately one week later, T.C. attempted to phone respondent, but was unable to do so because his phone would not accept calls. T.C. emailed respondent on several occasions, but got no response. On April 23, 2010, respondent submitted a certificate of representation to the court.

158. T.C.'s case was called for a telephone status conference on May 4, 2010. Respondent failed to appear. The court attempted without success to phone respondent because respondent's phone would not accept calls. The court scheduled a review hearing on May 26, 2020. In late May 2010, T.C. retained attorney Stacy Wright in place of respondent.

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

L.M. Matter

160. Respondent represented L.M. in lawsuits against World's Foremost Bank, in federal court, and against Rebecca Siders, in state court.

161. In the World's Foremost Bank matter, the defendant moved for dismissal on December 4, 2009. A hearing on the motion was scheduled for February 2, 2010. Respondent's brief in opposition to the motion was due on January 12, 2010. Respondent failed to file a brief by the deadline.

162. The court contacted respondent on three separate occasions in January 2010 about his failure to file a brief. On each occasion, respondent assured the court that he would file a brief, first by January 18, then by January 21, and finally by January

28, 2010. On January 29, 2010, the court dismissed L.M.'s case for failure to prosecute and on the merits.

163. In the Rebecca Siders case, respondent filed a certificate of representation of L. M. on September 28, 2009.

164. On March 9, 2010, the court issued a scheduling order in the Rebecca Siders case. Respondent failed to file a statement of the case and an information statement within 10 days, as ordered by the court, and failed to participate in an April 19, 2009, telephone status conference.

165. L.M. learned of respondent's failures to file documents and participate in the telephone scheduling conference from the court. She attempted to reach respondent to discuss them on several occasions by U.S. Mail, email, and phone. L.M. also requested the return of her file so she could retain other counsel. Respondent failed to respond or return L.M.'s file to her.

166. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(d), 3.4(c), and 8.4(d), MRPC.

FOURTH COUNT

Failure to Comply with Court Orders

S.K. Matter

167. Respondent was subpoenaed to appear on April 30, 2010, for trial in the dissolution of marriage proceeding involving S.K., described above. Respondent was subpoenaed by Richelle Wahl, counsel for S.K.'s wife, to give testimony in connection with Wahl's motion for sanctions based on S.K.'s failure to respond to discovery. Respondent failed to appear. Either Wahl or the court attempted, without success, to phone respondent.

168. The court issued a writ of attachment for respondent's arrest. Respondent was apprehended and appeared in court later on April 30, 2010. Respondent stated, under oath, that he would meet with Wahl on the following Monday and produce an

electronic client file to her. Respondent also stated he would appear again in court for trial at a future date. Respondent failed to produce the electronic client file to Wahl and failed to appear for court on June 7, 2010. The court attempted, without success, to reach respondent.

169. Respondent's conduct violated Rules 3.4(c) and 8.4(d), MRPC.

D.M. Matter

170. Respondent represented and was attorney of record for D.M. in a civil harassment or domestic abuse matter in Ramsey County District Court. Attorney Terry Duggins represented the opposing party, J.H. The case was set for a trial on April 26, 2010.

171. The parties agreed that they would jointly move for a continuance of the trial on April 26, 2010, in order to allow the guardian ad litem to complete a report. Respondent failed to appear for the motion, however, which had to be rescheduled. Respondent did not contact the court at that time or at a later time to explain his failure to appear on April 26, 2010.

172. Respondent's conduct violated Rules 3.4(c) and 8.4(d), MRPC.

FIFITH COUNT

Further Noncooperation with Disciplinary Investigations

173. Between April 14, 2010, and August 10, 2010, the Director's Office mailed a "Notice of Investigation" (NOI) to respondent in each of the above matters. Respondent was required to respond to each complaint within 14 days of the date of the NOI. In each case, respondent failed to respond or contact the Director's Office to request an extension of time in which to respond.

174. Respondent's conduct violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court disbarring respondent, 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: Sept. 15, 2010.

MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
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and

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

Dated: September 16, 2010.

STUART T. WILLIAMS
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD