

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DANIEL J. MOULTON,
a Minnesota Attorney,
Registration No. 136888.

**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 petition upon the parties' agreement pursuant to Rules 10(a) 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 May 7, 1982. Respondent currently practices law in Rochester, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

a. On September 11, 1992, respondent was issued an admonition for contacting a client's sister and mother for payment of the client's debt in violation of Rules 1.6, 3.4(c), 4.4, 5.3(c), 8.4(a) and (d), Minnesota Rules of Professional Conduct (MRPC) (Exhibit 1).

b. On September 15, 1992, respondent was issued an admonition for recording an attorney lien against a client's homestead without the appropriate waiver

in violation of Rule 1.8(j), MRPC, and Lawyers Professional Responsibility Board (LPRB) Opinion No. 14 (Exhibit 2).

c. On April 14, 1995, respondent was issued an admonition for conditioning return of a client file on payment of outstanding legal fees in violation of Rules 1.15 and 1.16, MRPC (Exhibit 3).

d. On February 25, 2000, respondent was issued an admonition for acting as an advocate at a trial at which he was a witness in violation of Rule 3.7, MRPC (Exhibit 4).

e. On March 22, 2002, respondent stipulated to a two year private probation stating respondent lost client documents, failed to communicate with his clients, failed to provide competent representation and failed to promptly respond to a notice of filing, therefore denying his clients' an opportunity to file post-trial motions in violation of Rules 1.1, 1.3, 1.4(a), 1.6(a), 1.15(c)(2), 5.3(c), 7.1, 7.5, and 8.4(a), MRPC.

FIRST COUNT

Failure to File Federal and State Income Taxes

Failure to File Employer Withholding Returns

1. Respondent owns and operates Moulton Law Office and employs personnel to assist in the operation of the law office. Respondent is required to file employer withholding tax returns.

2. Respondent timely filed but did not timely pay state employer withholding taxes for the fourth quarter of the tax year 2001; the fourth quarter of tax year 2002; the first through the fourth quarters of tax year 2003 and the first quarter of tax year 2004. No withholding tax returns were filed for the second and third quarters of tax year 2004.

3. Respondent did not timely file or timely pay federal employer withholding tax from the first quarter of 1998 through the fourth quarter of 2003. Respondent owes a total of approximately \$180,143.31 to the Internal Revenue Service.

4. Respondent's failure to file federal and state quarterly employee withholding returns and failure to timely pay federal and state employee withholding taxes violated Rule 8.4(d), MRPC.

5. Respondent's failure to file federal and state quarterly employee withholding returns and failure to timely pay federal and state employee withholding taxes violated Rule 8.4(d), MRPC.

6. Respondent's tax violations and history of prior discipline warrants public discipline.

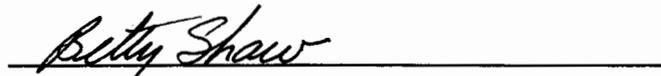
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: June 1, 2005.



KENNETH L. JORGENSEN
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 159463
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



BETTY M. SHAW
SENIOR ASSISTANT DIRECTOR
Attorney No. 130904

In the Matter of the Complaint of
DEBRA J. BUCKNELL
Rural Route 1, Box 307
Clear Lake, MN 50428, Complainant,
against DANIEL J. MOULTON,
an Attorney at Law of the
State of Minnesota.

ADMONITION AND NOTICE
PURSUANT TO RULE 8(d)(2),
RULES ON LAWYERS
PROFESSIONAL RESPONSIBILITY

ADMONITION

This matter was initiated by a written complaint filed with the Director by the complainant. Thereafter, it was assigned for investigation to the Third District Ethics Committee (DEC) which recommended that the Director issue an admonition. Based upon the entire file the Director hereby makes the following findings of fact:

1. The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 7, 1982. Respondent is current in paying the registration fee required by the Minnesota Supreme Court. Respondent currently practices law in Rochester, Minnesota.
2. Respondent represented complainant in a criminal matter in 1989 and 1990. Complainant paid a \$1,000 retainer against which withdrawals for legal fees were made. Thereafter, complainant made no further payments on monthly billings.
3. On January 11, 1990, complainant was convicted. Complainant was sentenced to probation.
4. On January 8, 1990, complainant's sister, who at that time was employed by respondent, made a \$25 payment on complainant's account. Respondent did not have a written guarantee for payment of complainant's account by complainant's sister.

5. On December 19, 1989, complainant's mother made a \$150 payment on complainant's account. In 1990, complainant's mother made further payments as follows:

February 12	\$200 paid
March 21	\$100 paid
April 29	\$100 paid

On March 23, September 14, and September 22, 1990, respondent's bookkeeper called complainant's mother and asked for further payments. Respondent did not have a written guarantee for payment of complainant's account by complaint's mother.

6. In June 1991, respondent received notice of complainant's Chapter 13 bankruptcy. Respondent's law firm was listed as a debtor. The bankruptcy code, 11 U.S.C. §§ 362 and 524, prohibits action to collect a debt from the debtor, including indirect action by contact with relatives who may pressure the debtor to collect the debt. Under Chapter 13 plans, 11 U.S.C. § 1301, a creditor is prohibited from proceeding against a co-debtor until the plan is completed.
7. On November 12, 1991, respondent's bookkeeper again called complainant's mother and asked for payment on complainant's account.
8. On November 16, 1991, complainant wrote to respondent objecting to the contact with family members about her account. On November 20, 1991, respondent wrote complainant stating he recognized he could not collect on the account from her, but that he felt he could collect from family members. Respondent ratified the

bookkeeper's conduct in contacting complainant's relatives.

9. On November 27, 1991, respondent's bookkeeper sent copies of complainant's bill, showing a balance due, to complainant's sister and mother.
10. The contacts with complainant's sister and mother for payment on complainant's account improperly revealed client secrets and were embarrassing and burdensome to the sister and mother. The contacts after respondent had notice of complainant's bankruptcy also violated the bankruptcy code.

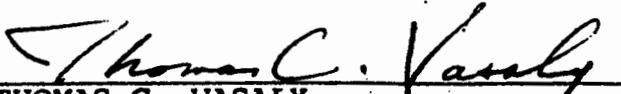
Based upon these facts, the Director states the following conclusions:

1. Respondent's conduct in contacting complainant's sister and mother for payment of complainant's debt violated Rules 1.6, 3.4(c), 4.4, 5.3(c), 8.4(a) and 8.4(d), Minnesota Rules of Professional Conduct.
2. Respondent's unprofessional conduct warrants the issuance of an admonition.

WHEREFORE, this admonition is issued pursuant to Rule 8(d)(2), Rules on Lawyers Professional Responsibility (RLPR). The attached memoranda are made a part hereof.

MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

By


THOMAS C. VASALY
FIRST ASSISTANT DIRECTOR
520 Lafayette Road, Suite 100
St. Paul, MN 55155-4196
(612) 296-3952

NOTICE

To Respondent:

You are hereby notified that the Director has, pursuant to Rule 8(d)(2), RLPR, issued the foregoing admonition.

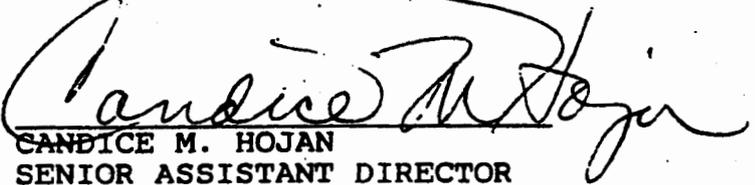
You are further notified that the issuance of this admonition is in lieu of the Director's presenting charges of unprofessional conduct to a Lawyers Professional Responsibility Board Panel. You have the right to demand that the Director so present the charges to a panel which shall consider the matter de novo or instruct the Director to file a petition for disciplinary action in the Minnesota Supreme Court.

To demand the presentation of charges to a panel, you must notify the Director in writing within 14 days of the date of this notice. If you demand a hearing, you are hereby requested, pursuant to Rule 25, RLPR, to enclose a reply to the facts and conclusions contained in the admonition. Your reply should set forth with specificity, those facts and conclusions which you admit, those which you deny, and any qualifications, explanations, defenses, or additional information you deem relevant.

If you do not demand the presentation of charges within 14 days of the date of this notice, the Director's file will be closed with the issuance of this admonition. The complainant, if any, and the district ethics committee, if any, that has considered this complaint, will be notified and provided with a copy of the admonition and memorandum, if any.

Dated: 9/11/92.

MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

By 
SANDICE M. HOJAN
SENIOR ASSISTANT DIRECTOR

DISTRICT ETHICS COMMITTEE MEMORANDUM

Dan Moulton represented Ms. Bucknell in regard to criminal proceedings against her. After his representation, Ms. Bucknell filed Chapter 13 bankruptcy in 1991. The bankruptcy was confirmed by the court in June of 1991. Mr. Moulton was listed in that bankruptcy proceeding. Complainant contends that Mr. Moulton continued to send bills to her after the bankruptcy proceeding occurred and to send bills to her family members, specifically her parents and sister, asking them to repay her obligation. Complainant made a number of calls and contacts with Mr. Moulton's office to tell him to cease his collection against her family as well as against her.

According to both Ms. Bucknell and Mr. Moulton, the complainant's sister was employed by him. According to Mr. Moulton, Ms. Bucknell's sister and her family said they would assist with the complainant's legal fees. According to Mr. Moulton, the complainant's family told him that they were going to continue with the payment of her legal fees and on that basis he continued to represent her. There is documentation that certain members of complainant's family did make payment on her fees. Mr. Moulton confirms that there was no signed retainer agreement with Ms. Bucknell, nor with her sister or other family members. He has no separate written document signed by Ms. Bucknell's family members by which they obligate themselves to payment of her fees. Mr. Moulton contends that he did not communicate with Ms. Bucknell after she commenced the bankruptcy proceeding. Perhaps mistakenly, he did not respond to her phone calls in the fall of 1991. The investigator did receive copies of the bills sent to family members in November of 1991. Ms. Bucknell did not forward any bills which she had received after the bankruptcy commenced.

This investigator pursued the rights of the creditor under bankruptcy with Richard H. Bins, an attorney who specializes in bankruptcy. This investigator also contacted Daniel Ruffalo, who also specializes in bankruptcy. A Chapter 13 bankruptcy prohibits any contact with anyone who might pressure the debtor to pay the debt. In that light, it was inappropriate for Mr. Moulton to contact any of Ms. Bucknell's family members in regard to this debt. I also confirmed with Mr. Moulton that he had no signed retainer agreement with Ms. Bucknell and no signed agreement with Ms. Bucknell's family members to assume responsibility for Ms. Bucknell's debt to him.

In summary, from the documentation furnished by the complainant and her family and by the respondent attorney, it would appear that there is a basis to conclude that Mr. Moulton should be disciplined for his contact with Ms. Bucknell's family after the Chapter 13 bankruptcy commenced.

DIRECTOR'S SUPPLEMENTAL MEMORANDUM

In addition to violating Rule 3.4(c) and Rule 8.4(d), Minnesota Rules of Professional Conduct (MRPC), by violating the bankruptcy code's stay against proceeding against complainant or co-debtors, respondent's contact with complainant's relatives violated Rule 1.6, MRPC. This rule prohibits a lawyer from revealing client secrets except under certain circumstances.

Rule 1.6(d) defines secret as "information gained in the professional relationship . . . the disclosure of which would be embarrassing or would be likely to be detrimental to the client." The amount of the bill and complainant's failure to pay it was a client secret. Respondent gained this information as a result of the attorney-client relationship. The disclosure of the information to her relatives was embarrassing to complainant.

Respondent's disclosure was not permitted by Rule 1.6(b)(5), MRPC, which permits an attorney to reveal client secrets to collect a fee. Even assuming respondent had a valid basis to collect complainant's fee from her mother or sister, proceedings against co-debtors were stayed by 11 U.S.C. § 1301.

Respondent also violated Rule 8.4(a) and Rule 5.3, MRPC, because the contacts were through his bookkeeper, but ratified by respondent. Respondent cannot escape responsibility because the phone calls and billing were done by someone else. Respondent should have taken steps to ensure compliance by his office staff with the bankruptcy code's stay. Further, after being contacted by complainant about the objectionable phone calls, respondent should have ensured no further contacts were made. Instead, a copy of complainant's bill was sent to complainant's mother and sister a week later.

An admonition is issued for unprofessional conduct which is isolated and nonserious. Rule 8(d)(2), Rules on Lawyers Professional Responsibility. Here, respondent engaged in a single course of conduct which violated several rules. Although complainant was understandably embarrassed that her debt was revealed to family members without her permission, she and her relatives have not as yet suffered any financial harm. Therefore, the Director has determined that respondent's conduct, although in violation of several rules, warrants issuance of an admonition.

T.C.V.

In the Matter of the Complaint of
TINA M. SPIDAHL
740 Cannon Court
Cannon Falls, MN 55009, Complainant,
against DANIEL J. MOULTON,
an Attorney at Law of the
State of Minnesota.

ADMONITION AND NOTICE
PURSUANT TO RULE 8(d)(2),
RULES ON LAWYERS
PROFESSIONAL RESPONSIBILITY

ADMONITION

This matter was initiated by a written complaint filed with the Director by the complainant. Thereafter, it was assigned for investigation to the Third District Ethics Committee (DEC) which recommended that the Director determine discipline is not warranted. Based upon the entire file the Director hereby makes the following findings of fact:

1. The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 7, 1982. Respondent is current in paying the registration fee required by the Minnesota Supreme Court. Respondent currently practices law in Rochester, Minnesota.
2. In 1990-91 respondent represented complainant in a marriage dissolution action. Respondent's oral representation agreement provided respondent would bill complainant monthly, and charge an hourly fee of \$85, plus expenses. Complainant paid respondent \$68 on March 22, 1991, but thereafter made no further payments. The October 5, 1991, billing was \$2,553.08 after the final decree was entered and respondent was discharged.
3. On October 2, 1991, respondent executed and recorded two attorney liens against complainant's farmstead and homestead. Pursuant to the property settlement in the dissolution action, the two properties were to be sold and the equity divided between the parties. Complainant

had not signed a waiver of the homestead exemption or otherwise agreed to imposition of an attorney lien against the homestead.

4. On April 16, 1992, the Director's Office sent respondent a copy of Opinion No. 14 of the Lawyers Professional Responsibility Board (LPRB) and asked respondent whether he believed the lien he placed on complainant's homestead was appropriate.
5. On May 5, 1992, respondent executed and recorded a release of the lien on the homestead.

Based upon these facts, the Director states the following conclusions:

1. Respondent's conduct in recording an attorney lien against complainant's homestead violated Rule 1.8(j), Minnesota Rules of Professional Conduct (MRPC), and Opinion No. 14, LPRB.
2. Respondent's unprofessional conduct warrants the issuance of an admonition.

WHEREFORE, this admonition is issued pursuant to Rule 8(d)(2), Rules on Lawyers Professional Responsibility (RLPR). The attached memorandum is made a part hereof.

MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

By


THOMAS C. VASALY
FIRST ASSISTANT DIRECTOR
520 Lafayette Road, Suite 100
St. Paul, MN 55155-4196
(612) 296-3952

NOTICE

To Respondent:

You are hereby notified that the Director has, pursuant to Rule 8(d)(2), RLPR, issued the foregoing admonition.

You are further notified that the issuance of this admonition is in lieu of the Director's presenting charges of unprofessional conduct to a Lawyers Professional Responsibility Board Panel. You have the right to demand that the Director so present the charges to a panel which shall consider the matter de novo or instruct the Director to file a petition for disciplinary action in the Minnesota Supreme Court.

To demand the presentation of charges to a panel, you must notify the Director in writing within 14 days of the date of this notice. If you demand a hearing, you are hereby requested, pursuant to Rule 25, RLPR, to enclose a reply to the facts and conclusions contained in the admonition. Your reply should set forth with specificity, those facts and conclusions which you admit, those which you deny, and any qualifications, explanations, defenses, or additional information you deem relevant.

If you do not demand the presentation of charges within 14 days of the date of this notice, the Director's file will be closed with the issuance of this admonition. The complainant, if any, and the district ethics committee, if any, that has considered this complaint, will be notified and provided with a copy of the admonition and memorandum, if any.

Dated: 9/15/92.

MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

By


CANDICE M. HOJAN
SENIOR ASSISTANT DIRECTOR

MEMORANDUM

Complainant alleged that respondent settled her dissolution of marriage action in a way contrary to her wishes, did not prepare the case adequately, discussed the case with her in a public hallway in the courthouse, charged excessive legal fees (including interest), and placed a lien on her homestead. The DEC determined that respondent did his best to serve complainant's interests, adequately prepared the case and did not endanger client confidentiality by the hallway discussions. In addition, the DEC found that the fees charged were not unreasonable and accepted respondent's response that the interest charge and lien on the homestead were permitted by statute. The DEC recommended no discipline.

The Director's Office concurs with the recommendation on all matters except the homestead lien. In response to the complaint, respondent stated the attorney lien was filed pursuant to Minn. Stat. § 481.13, which allows the attorney a lien upon the interests of the attorney's client "in any money or property involved in or affected by any action or proceeding" for which the attorney was retained. The DEC investigator did not consider whether the lien violated Opinion No. 14, LPRB, and Rule 1.8(j), MRPC.¹

1/

Opinion No. 14, LPRB, adopted June 15, 1990, states: "It is professional misconduct for a lawyer to file an attorney lien against a client's homestead or the client's interest in the homestead without first obtaining a legal waiver of the client's homestead exemption. The homestead exemption waiver must be a written document separate and apart from the fee agreement."

Respondent did not obtain a waiver of the homestead exemption. Respondent clearly recorded an attorney lien against the homestead for his unpaid fees. This conduct violated Rule 1.8(j), MRPC, and Opinion No. 14, LPRB.

Respondent's conduct in this matter appears to be isolated and non-serious. Respondent has now recorded a release of the attorney lien against the homestead, after being advised of Opinion 14, LPRB. Disposition of this complaint with the issuance of an admonition is appropriate.

T.C.V.

In the Matter of the Complaint of
JAMES & PATRICIA MERRILL
121 - 11th Street NE
Rochester, MN 55906, Complainants,
against DANIEL J. MOULTON,
an Attorney at Law of the
State of Minnesota.

**ADMONITION AND NOTICE
PURSUANT TO RULE 8(d)(2),
RULES ON LAWYERS
PROFESSIONAL RESPONSIBILITY**

AMENDED ADMONITION

This matter was initiated by a written complaint filed with the Director by the complainants. Thereafter, it was assigned for investigation to the Third District Ethics Committee which recommended that the Director issue an admonition. Based upon the entire file the Director hereby makes the following findings of fact:

1. The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 7, 1982. Respondent is current in paying the registration fee required by the Minnesota Supreme Court. Respondent currently practices law in Rochester, Minnesota.
2. Respondent's history of prior discipline, including admonitions, is as follows:
 - a. On September 15, 1992, the Director issued an admonition to respondent for violating Rule 1.8(j), Minnesota Rules of Professional Conduct (MRPC), and Opinion No. 14 of the Lawyers Professional Responsibility Board (LPRB).
 - b. On September 11, 1992, the Director issued an admonition to respondent for violating Rules 1.6, 3.4(c), 4.4, 5.3(c), and 8.4(a) and (d), MRPC.
3. The present complaint arises out of respondent's representation of complainants in a child custody dispute.

4. A trial was scheduled to begin on Monday, June 22, 1992. Prior to the trial, however, two of the other attorneys involved negotiated a possible settlement of the dispute. Although the settlement eventually fell through, the trial was continued.
5. On September 14, 1992, respondent spoke with complainants and at that time, complainants told respondent not to do anything further concerning the custody dispute.
6. On April 8, 1993, respondent's secretary contacted complainant Pat Merrill and informed her that respondent would not be able to continue his representation of complainants without "a major amount of money or at least a payment plan . . ." Respondent's secretary also informed Merrill that respondent would not be able to continue to do any work on the case and would be withdrawing unless respondent heard from complainants concerning a payment or payment schedule.
7. Respondent did not withdraw at that time and subsequent to the April 8, 1993, conversation, complainants contacted respondent about an upcoming scheduling conference. Respondent informed complainants that he would be unable to attend the scheduling conference on May 19, 1993. Complainants themselves appeared at the scheduling conference.
8. On May 19, 1993, respondent submitted his notice of withdrawal.
9. After respondent withdrew, complainants contacted respondent's office about obtaining their file. An employee of respondent informed one of the complainants that he could pick up the file and that respondent "would like to have him pay for the medical records, as well as the video tape transfer." When respondent's employee asked complainant when he would be able to pay, he said that he would have to get back to

them. Respondent's employee then told complainant that respondent "would like it if we could exchange the check for the file." (Exhibit 1).

Based upon these facts, the Director states the following conclusions:

1. Respondent's conduct in making return of the file a condition of payment of outstanding legal fees violated LPRB Opinions No. 11 and No. 13.
2. Respondent's unprofessional conduct warrants the issuance of an admonition.

WHEREFORE, this admonition is issued pursuant to Rule 8(d)(2), Rules on Lawyers Professional Responsibility (RLPR). The attached memorandum is made a part hereof.

MARCIA A. JOHNSON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

By


KENNETH L. JORGENSEN
FIRST ASSISTANT DIRECTOR
520 Lafayette Road, Suite 100
St. Paul, MN 55155-4196
(612) 296-3952

MEMORANDUM

The complaint arises out of respondent's representation of complainants in a child custody matter. In their complaint, complainants allege that respondent worked on the case actively until June of 1992, when everything came to a stop and they did not know why. Complainants also allege that they were told they could not have their entire file returned to them until they paid a fee of \$103.

On Friday, June 19, 1992, a telephone pre-hearing was held concerning the trial scheduled for Monday, June 22, 1992. At that time, the attorneys for the various parties were unable to reach a settlement. Later that day, the attorney for the child's father and the attorney for the couple who had custody were able to reach a settlement. A second telephone conference, involving only those attorneys and the judge, was held later that same day. Complainants indicate they do not know why respondent was not present for the second telephone conference. The Director finds that the second "conference" was merely an opportunity for the two attorneys to read the settlement into the record. Respondent was not notified of the second conference and there was no wrongdoing on the part of respondent in failing to be present for that second conference.

It appears from the Director's investigation of this matter, that complainants learned of the settlement and the fact that there would be no trial that evening when they were called by Sean Merrill. Sean was the brother of complainant James and the father of the child over whom the custody dispute was being fought. Later that weekend complainants and respondent did speak concerning the possible settlement and the postponed trial.

As to the subsequent communication between respondent and complainants, respondent evidently had no further contact with complainants until September 14, 1992. At that time, complainants told respondent not to do anything further concerning the custody dispute. Evidently, a partial reason for the lack of

communication between respondent and complainants was the fact that another of the attorneys involved in the matter had not fully advised respondent as to what was taking place.

The Director notes that even the absence of activity on a file is information which should be communicated to clients. Nonetheless, given the relatively non-serious nature of the non-communication and the fact that complainants were not harmed, the Director has determined that respondent's conduct in this matter was not in violation of Rule 1.4.

As to the failure to return the file, respondent indicates that he did not intend to hold the file in exchange for payment of his outstanding fees. The documentation provided by respondent himself, however, evidences that the file was in fact being withheld in exchange for payment of certain costs. The memo from respondent's file indicates that an individual from his office told complainant that they "would like it if we could exchange the check for the file." (Exhibit E.) The Director agrees with the district investigator that the reasonable interpretation of this request, in light of respondent's recent withdrawal for non-payment of fees, is that respondent was requesting that complainants pay the outstanding costs in exchange for release of the file. Respondent's conduct in this regard warrants an admonition.

Lastly, in their original complaint, complainants stated that they did not attend the pre-trial conference on November 22, 1993, as they were not notified by the court. As respondent had effectively withdrawn in May 1993, he himself was not notified of the conference. Therefore, respondent was in no position to notify complainants.

K.L.J.

STIPULATION

Respondent admits the allegations of the above amended admonition and waives his rights to notify the Director within 14 days of a demand for presenting the charges to a Panel. Respondent understands that upon signing this stipulation, the matter will be closed with the acceptance of the admonition.

Dated: _____, 1995.



KENNETH L. JORGENSEN
FIRST ASSISTANT DIRECTOR OF THE
OFFICE OF LAWYERS PROFESSIONAL
RESPONSIBILITY
Attorney No. 159463
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(612) 296-3952

and



CRAIG D. KLAUSUNG
ASSISTANT DIRECTOR
Attorney No. 202873

Dated: April 14, 1995



DANIEL J. MOULTON
RESPONDENT
Attorney No. 136888
976 - 14th Avenue SW
Rochester, MN 55902
(507) 288-6334

02-93-2082

MEMO

TO: JIM MERRILL FILE

RE: REMOVAL OF FILE FROM OFFICE

FROM: DAWN

DATE: MAY 25, 1993

I spoke with Jim Merrill and informed him that he could pick up his file. I also explained that Dan would like to have him pay for the medical records, as well as the video tape transfer. I informed him that the amount combined was \$157.10. I asked him when he would be able to pay us for that and he said he would have to get back to us. I told him that Dan would like it if we could exchange the check for the file.

In the Matter of the Complaint of
SHELLEY AND JEFFREY KRAMER
514 Winona Street
Chatfield, MN 55923, Complainants,
against DANIEL J. MOULTON,
an Attorney at Law of the
State of Minnesota.

ADMONITION AND NOTICE
PURSUANT TO RULE 8(d)(2),
RULES ON LAWYERS
PROFESSIONAL RESPONSIBILITY

ADMONITION

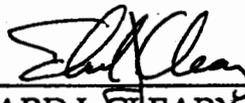
This matter was initiated by a written complaint filed with the Director by the complainant. Thereafter, it was assigned for investigation to the Third District Ethics Committee, which recommended that the Director issue an admonition. Based upon the entire file the Director hereby makes the following findings:

1. The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 7, 1982. Respondent is current in paying the registration fee required by the Minnesota Supreme Court. Respondent currently practices law in Rochester, Minnesota.
2. In August 1999 respondent attended a hearing on a request for a restraining order brought by complainant Shelley Kramer against Gary Fong. Respondent represented Fong.
3. Respondent initially sat at counsel table with his client. When he informed the court that he was also a fact witness in the matter, the court advised respondent that he could not act in both capacities. He then no longer sat at counsel table. The parties then both proceeded *pro se*.
4. On at least one occasion during the hearing, respondent passed a note to his client advising him to make certain evidentiary objections.

Based upon these facts, the Director states the following conclusions:

1. Respondent's conduct violated Rule 3.7, Minnesota Rules of Professional Conduct (MRPC).
2. Respondent's unprofessional conduct warrants the issuance of an admonition.

WHEREFORE, this admonition is issued pursuant to Rule 8(d)(2), Rules on Lawyers Professional Responsibility (RLPR). The attached memorandum from the district ethics committee is made a part hereof.



EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
25 Constitution Avenue, Suite 105
St. Paul, MN 55155-1500
(651) 296-3952

NOTICE

TO: Respondent Daniel J. Moulton at 976 - 14th Avenue SW, Rochester, MN 55902.

You are hereby notified that the Director has, pursuant to Rule 8(d)(2), RLPR, issued the foregoing admonition.

You are further notified that the issuance of this admonition is in lieu of the Director's presenting charges of unprofessional conduct to a Lawyers Professional Responsibility Board Panel. You have the right to demand that the Director so present the charges to a panel which shall consider the matter *de novo* or instruct the Director to file a petition for disciplinary action in the Minnesota Supreme Court.

To demand the presentation of charges to a panel, you must notify the Director in writing within 14 days of the date of this notice. If you demand a hearing, you are hereby requested, pursuant to Rule 25, RLPR, to enclose a reply to the facts and conclusions contained in the admonition. Your reply should set forth with specificity, those facts and conclusions which you admit, those which you deny, and any qualifications, explanations, defenses, or additional information you deem relevant.

If you do not demand the presentation of charges within 14 days of the date of this notice, the Director's file will be closed with the issuance of this admonition. The complainant, if any, and the district ethics committee, if any, that has considered this complaint, will be notified and provided with a copy of the admonition and memorandum, if any.

Dated: February 25, 2000.

EDWARD J. CLEARY
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY

By Martin Cole
MARTIN A. COLE
SENIOR ASSISTANT DIRECTOR

MEMORANDUM

Ms. Shelley Kramer and Mr. Jeffrey Kramer bring this complaint against Mr. Daniel Moulton regarding Mr. Moulton's appearance at a restraining order hearing brought by Ms. Kramer against Mr. Gary Fong. Ms Kramer's complaint states that Mr. Moulton acted as both a witness and an attorney at the hearing and when called as a witness did not state the whole truth.

Ms. Kramer raises two issue in her complaint. First she states that Mr. Moulton did not tell the whole truth under oath. She questions whether Mr. Moulton was correct in stating when he was with Mr. Fong. The difficulty in determining that Mr. Moulton perjured himself on the issue of the timing of a phone call would require a clearer idea when the phone call took place and whose watch or clock we are using to determine the time of the call. The evidence presented is that the call could have occurred between 1:30 p.m. and 1:50 p.m. During that timeline there were times Mr. Fong was not in Mr. Moulton's presence. Mr. Moulton stated that while he awaited the preparation of the order in the courthouse Mr. Fong stepped outside for a cigarette. He also testified that he went into his house to see his children, it does not appear that Mr. Fong accompanied him. It is apparent that during the time Mr. Fong was with Mr. Moulton he did not make the phone call. But the phone call clearly could have been made outside of Mr. Moulton's presence during the time line Mr. Moulton presented. He did not lie about the time he was with Mr. Fong.

The second issue raised in the complaint gives me more concern. Mr. Moulton was well aware of the conflict an attorney has acting as both an advocate and a witness in

a case. If he was not aware of that conflict it was one specifically raised by the court before the matter began and again during Mr. Moulton's testimony. It is clear Mr. Moulton advised Mr. Fong of the evidentiary objection. Mr. Moulton stated he simply advised Mr. Fong of the basis of the objection but did not tell him to object. However, the fact is that he advised the client of the objection and the client looking to Mr. Moulton as an attorney made the objection based on that information. Also during the direct examination, Mr. Moulton was warned by the Court to testify from his personal knowledge and not to summarize the evidence. In both of these circumstances, Mr. Moulton blurred the line between witness and advocate. The comment to Rule 3.7 states "Combining the roles of advocacy and witness can prejudice the opposing party....[t]he opposing part has proper objection where the combination of roles may prejudice the party's rights in the litigation." Mr. Moulton's actions certainly affected the evidence submitted.

Mr. Moulton states that he felt it was necessary to object to the hearsay for justice, or he states the matter could have been appealed on that issue. But the rule is clear, an attorney shall not act as an attorney at a trial where he is likely to be called as a witness. The first and second exceptions listed to the Rule are not applicable. In addition, no evidence was submitted that would show Mr. Moulton's disqualification as Mr. Fong's attorney would be a substantial hardship on Mr. Fong. The mere fact that a piece of evidence might have been admitted by the court without an attorney's presence does not meet the level of "substantial hardship." Even should justice require an objection it was

up to Mr. Fong to make it without prompting. As an attorney it is difficult to sit and watch matters go awry, especially for a client. But pursuant to the Rules of Professional Responsibility, it is a line an attorney must draw. I believe Mr. Moulton's behavior crossed that line.

It may appear to be a relatively minor violation, but I feel some discipline is appropriate. I believe an admonition is appropriate.

In Re Probation of
DANIEL J. MOULTON,
an Attorney at Law of the
State of Minnesota.

**STIPULATION FOR
PROBATION PURSUANT
TO RULE 8(d)(3), RLPR**

This stipulation is entered into by Edward J. Cleary, Director of the Office of Lawyers Professional Responsibility, hereinafter Director, and Daniel J. Moulton, the above-named attorney, hereinafter respondent.

WHEREAS, the parties desire to present this stipulation to the Lawyers Professional Responsibility Board (LPRB) Chair, hereinafter Chair, for consideration pursuant to Rule 8(d)(3), Rules on Lawyers Professional Responsibility (RLPR),

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS
FOLLOWS:

1. Respondent was admitted to practice law in Minnesota on May 7, 1982. Respondent has paid through June 30, 2002, the registration fee required by the Minnesota Supreme Court, hereinafter the Court. Respondent currently practices law in Rochester, Minnesota.

2. Respondent's record of prior discipline is as follows:

a. On September 11, 1992, respondent was issued an admonition for contacting a client's sister and mother for payment of the client's debt.

b. On September 15, 1992, respondent was issued an admonition for recording an attorney lien against a client's homestead without the appropriate waiver.

c. On April 14, 1995, respondent was issued an admonition for conditioning return of a client file on payment of outstanding legal fees.

d. On February 25, 2000, respondent was issued an admonition for acting as an advocate at a trial at which he was a witness.

3. The Director alleges and respondent unconditionally admits for purposes of these and any future disciplinary proceedings the following allegations of unprofessional conduct:

a. In January 1998 Richard and Pauline Bale retained respondent to represent them in connection with claims they had against Peterbilt of Winona, Inc. In or about August 1998, respondent served a summons and complaint.

b. During respondent's representation of the Bales, they provided documents to respondent. Some of these documents were lost. Respondent made no record of the original client materials he received from the Bales, and he made no record of return of client materials to the Bales. Respondent does not know what client documents are missing.

c. In January 1999 opposing counsel produced documents to respondent. Respondent failed to inform the Bales that respondent had received these documents and failed to provide copies of these documents to the Bales.

d. In September 2000 respondent served and filed an Affidavit of Attorney's Fees. The affidavit was signed by respondent's bookkeeper and notarized by respondent. The affidavit purported to attach "a copy of [respondent's] bill that has been incurred with regard to the prosecution of the case against Peterbilt of Winona." The bill attached to the Affidavit, however, included services respondent rendered for the Bale family in other matters. In addition, substantial portions of the bill were illegible or incomprehensible.

e. The Bales consistently maintained to respondent that they wanted a jury trial, not a bench trial. Respondent's firm served and filed an informational statement form that stated the Bales waived trial by jury. The Bales did not consent to waiver of a jury trial. In a June 10, 2001, letter to the Director's Office,

respondent stated, "I did not notice in the Information Statement that was filed by [respondent's associate] that the jury trial was waived" On November 16, 1999, the court issued an amended final scheduling order. The order provided, among other things, that after the conclusion of the pretrial conference the court would "set deadlines for submission of requests for jury instructions and proposed special verdict forms" On February 24, 2000, the court issued a trial calendar. The trial calendar identified the matter as one to be tried to the judge. After receiving the February 24 trial calendar, respondent did not object to a bench trial. Respondent did not object to a bench trial at the commencement of the trial, either.

f. When the Bales retained respondent, the Bales identified for respondent several favorable witnesses. Respondent did not attempt to talk to these witnesses for several months and failed to timely try to locate and subpoena one witness, John Devlin.

g. On November 1, 2000, the court filed its findings of fact, conclusions of law and order for judgment. The order provided that the Bales take nothing on their claims.

h. Shortly after November 1, respondent's office received the court's ruling. Respondent states that although his office had received the court's ruling, he was not aware of it personally until approximately November 30, 2000. The Bales did not learn of the court's ruling until November 30, 2000, and did not receive a copy of the court's ruling until December 4, 2000.

i. On November 13, 2000, opposing counsel served by mail on respondent notice of the filing of the court's November 1 ruling. Minn. R. Civ. P. 50.02(c) and 59.03 as effective at the time of the court's ruling provided that post-trial motions for new trial or judgment notwithstanding the verdict had to be made within 15 days after a party served notice of the decision or order.

Respondent could not make these motions for the Bales because he did not discover the order until the time to make these motions had expired.

j. After the court's ruling, respondent claimed that the Bales owed respondent for past due attorneys' fees. Respondent retained an independent contractor, Tracy Thompson, to attempt to collect the fees from the Bales. By letter dated January 19, 2001, to Richard Bale, Thompson requested the Bales to enter into a payment plan or else legal action would be commenced.

Thompson's letter was written on respondent's law firm letterhead and did not identify Thompson's connection to the firm.

k. Respondent's conduct violated Rules 1.1, 1.3, 1.4(a), 1.6(a), 1.15(c)(2), 5.3(c), 7.1, 7.5, and (as to paragraph 3.j., above) 8.4(a), Minnesota Rules of Professional Conduct.

4. Respondent has been advised by the undersigned counsel concerning this stipulation and these proceedings generally.

5. Upon approval by the Chair, pursuant to Rule 8(d)(3), RLPR, respondent shall be on private probation for two years, under the following conditions:

a. Respondent shall cooperate fully with the Director's Office in its to monitor compliance with this probation and promptly respond to the Director's correspondence by the due date. Respondent shall cooperate with the Director's investigation of any allegations of unprofessional conduct which may come to the Director's attention. Upon the Director's request, respondent shall provide authorization for release of information and documentation to verify compliance with the terms of this probation.

b. Respondent shall abide by the Minnesota Rules of Professional Conduct.

c. Respondent shall submit to the Director an inventory of all active client files by the first day of each month during the probation. With respect to

each active file, the inventory shall disclose the client name, type of representation, date opened, most recent activity, next anticipated action, and anticipated closing date.

d. Respondent shall meet with the Director's Office at least once per calendar quarter, as the Director requests.

e. Respondent shall initiate and maintain office procedures which ensure that there are prompt responses to correspondence, telephone calls, and other important communications from clients, courts and other persons interested in matters which respondent is handling, and which will ensure that respondent regularly reviews each and every file and completes legal matters on a timely basis.

f. Within thirty days from the execution of this stipulation, respondent shall provide to the Director a written plan outlining office procedures designed to ensure that respondent is in compliance with probation requirements. Respondent shall provide progress reports as requested.

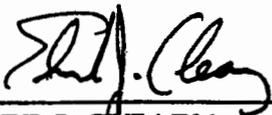
6. If at any time during the period of probation, after giving respondent an opportunity to be heard by the Director, the Director concludes that respondent has violated the conditions of the probation or engaged in further misconduct, the Director may file a petition for disciplinary action against respondent in the Minnesota Supreme Court without the necessity of submitting the matter to a Panel or Panel Chair. Respondent waives the right to such consideration by the Panel or Panel Chair.

7. The complainant(s), if any, and the district ethics committee, if any, that has considered this matter, will be notified and provided with a copy of this stipulation pursuant to Rule 8(d)(3), RLPR.

If respondent complies with all the conditions of the probation as set forth above, the probation will be terminated. Pursuant to Rule 8(d)(3), RLPR, the Director will maintain a permanent disciplinary record of this stipulation and probation file.

IN WITNESS WHEREOF, the parties executed this stipulation on the dates indicated below.

Dated: February 8, 2002

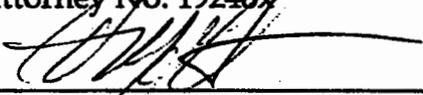

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and

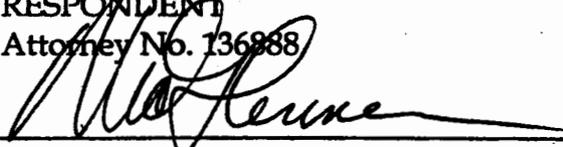
Dated: February 8, 2002


TIMOTHY M. BURKE
SENIOR ASSISTANT DIRECTOR
Attorney No. 19248

Dated: March 6, 2002


DANIEL J. MOULTON
RESPONDENT
Attorney No. 136888

Dated: Feb. 19, 2002


MICHAEL H. MCGLENNEN
ATTORNEY FOR RESPONDENT
Attorney No. 70439
425 South Third Street
Minneapolis, MN 55415
(612) 333-9999

Pursuant to Rule 8(d)(3), RLPR, this stipulation for probation is hereby approved.

Dated: March 22, 2002


CHARLES E. LUNDBERG
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD