

FILE NO. A11-0108

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JOHN O. MURRIN, III,
a Minnesota Attorney,
Registration No. 7679X.

**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 October 5, 1976. Respondent currently practices law in Madison, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On July 25, 1980, respondent accepted a private reprimand for false and misleading advertising in violation of DR 2-101(A) and (B) and DR 1-102(A)(1), (5), and (6), Minnesota Code of Professional Responsibility (MCPR).

B. On May 15, 1981, respondent accepted a warning for contacting a party who was represented by counsel in violation of DR 7-104, MCPR.

C. On September 5, 1985, respondent received an admonition for engaging in an altercation with opposing counsel during a deposition, causing the deposition to have to be rescheduled in violation of DR 1-102(A)(5), MCPR.

D. On September 1, 1999, respondent received an admonition for participating in offering and making an employment agreement that restricted the complainant's right to practice in violation of Rule 5.6, Minnesota Rules of Professional Conduct (MRPC).

FIRST COUNT

1. In 2003 and 2004, respondent and his wife, DeVonna Murrin, made investments in an entity known as "Avidigm Capital Group, Inc." The final investment, in the amount of \$600,000, was made on or about September 1, 2004. Avidigm agreed to make interest payments to the Murrins for 15 months and then return the principal of \$600,000.

2. Avidigm made several interest payments to the Murrins but then defaulted and did not return the principal. Avidigm later became insolvent and its president, Steven J. Mattson, was convicted in federal court of aiding and abetting false statements to a bank.

3. Respondent and DeVonna Murrin brought legal action against Avidigm and numerous defendants associated with Avidigm in state and federal court, alleging they were engaged in an illegal Ponzi scheme. Respondent represented himself and, at times, also represented DeVonna Murrin. At other times, DeVonna Murrin was represented by attorney Christopher LaNave.

4. Between January 2007 and April 2009, respondent filed, or attempted to file, several complaints against Avidigm and others in Hennepin County District Court, in U.S. District Court for the District of Minnesota, and in Bankruptcy Courts for Minnesota.

5. Despite warnings and orders from each of the courts, respondent repeatedly failed to comply with the Rules of Civil Procedure and filed or attempted to file pleadings that wasted the courts' and opposing parties' time and unnecessarily prolonged the proceedings.

Hennepin County District Court

6. Respondent filed, or attempted to file, several summonses and complaints in Hennepin County District Court naming Avidigm and nearly 50 other individual and business defendants. The first such complaint, titled Amended Summons and Complaint, was filed on February 12, 2007.

7. On June 20, 2007, respondent filed a Second Amended Complaint that was 144 pages long and contained 542 individually numbered paragraphs. The Second Amended Complaint also contained approximately 28 counts, many containing several causes of action. For example, Count VI alleged disgorgement, fraudulent conveyance, restitution, excessive fees, misappropriation, and conspiracy.

8. On October 3, 2007, respondent filed a Third Amended Complaint that was 187 pages long and contained 777 individually numbered paragraphs. Respondent did not bring a motion for leave to file the Third Amended Complaint until January 9, 2008. The court scheduled a hearing on respondent's motion for January 25, 2008.

9. On January 10, 2008, the court heard motions to compel discovery brought by respondent and certain defendants. The defendants also complained to the court that respondent's Second Amended Complaint failed to contain a factual and legal basis for the claims against them.

10. On January 15, 2008, the court issued an order compelling discovery and also finding that respondent's Second Amended Complaint failed to contain a short and plain statement of the respondent's claims and did not comply with Rule 8.01, Minn. R. Civ. P. The court ordered respondent to provide to the court and opposing parties a chart "clearly delineating which claim is being pursued against which Defendant for each cause of action contained in the Second Amended Complaint."

11. The parties appeared before the court on January 25, 2008, on respondent's motion to file a Third Amended Complaint and on motions by certain defendants. In an order dated February 14, 2008, the court found that respondent failed

to follow the court's January 15, 2008, order, because respondent's chart did not clearly delineate which claims were being made against which defendants for each cause of action. The court found that the Second Amended Complaint was "unintelligible and fail[ed] to put defendants on notice as to the alleged claims against them."

12. The February 14, 2008, order also found that respondent's Second Amended Complaint and proposed Third Amended Complaint were "incomprehensible," and that the Second Amended Complaint had "serious deficiencies" that were "not adequately cured" in the Third Amended Complaint. The court cited the fact that respondent failed to provide accurate statutory citations, cited statutes that had been repealed, renumbered, or never existed, and lumped distinct causes of action into single counts which the court found was "confusing for Defendants and for the Court." The court concluded that respondent failed to put defendants on notice of the claims alleged against them in violation of Rule 8, Minn. R. Civ. P., and allowing respondent to file a Third Amended Complaint would "only result in further prejudice to Defendants." The court denied respondent's motion to file the Third Amended Complaint.

13. On April 11, 2008, respondent filed a motion with the court for leave to file a Fourth Amended Complaint. The proposed Fourth Amended Complaint was 272 pages long and contained 132 counts and 1,668 individually numbered paragraphs against 43 defendants.

14. On April 25 and 29 and May 22, 2008, the court heard numerous motions by respondent and various defendants, including respondent's motion for leave to file the Fourth Amended Complaint and a motion for dismissal by certain defendants.

15. In an order dated June 13, 2008, the court denied respondent's motion to file a Fourth Amended Complaint. The court again found that the Second Amended Complaint was "convoluted," "highly prejudicial," "poorly drafted and beset with frivolous claims," "unintelligible," and failed to put defendants on notice of the claims

being made against them. Pursuant to Rule 41.02, Minn. R. Civ. P., the court dismissed respondent's Second Amended Complaint (and respondent's case) with prejudice against all but two defendants. The court cited respondent's "failure to give defendants fair notice of the claims against them" in violation of Rules 8.01, 8.05, 9.02, and 10.02, Minn. R. Civ. P., and failure to comply with the court's January 15, 2008, order for a more definite statement in violation of Rule 12.05, Minn. R. Civ. P.

16. Respondent appealed the court's June 13, 2008, order. On August 4, 2009, the Minnesota Court of Appeals affirmed the court's decision.

17. On July 22, 2008, the court issued an order to show cause requiring respondent and LaNave to appear on August 1, 2008, to show cause why they should not be sanctioned under Rule 11, Minn. R. Civ. P., and Minn. Stat. § 549.211, based on their (1) failure to comply with the court's January 15, 2008, order, (2) "consistent and willful disregard of the court's orders and the rules of civil procedure," (3) "harassment and obstructionist tactics," and (4) "abuse of the litigation process and harassing and obstructionist behavior."

18. On December 2, 2008, the court issued an order granting the defendants' motions for sanctions and ordering respondent to pay attorney fees of \$431,023.35.

19. Respondent appealed the December 2, 2008, order. On March 23, 2010, the Minnesota Court of Appeals affirmed the court's authority to impose sanctions using the "inherent authority" of the court, but reversed as to the imposition of sanctions based on either Minn. Stat. § 549.21 or Rule 11, Minn. R. Civ. P.

Federal Court

20. As described below, respondent's conduct in federal court and bankruptcy court related to the Avidigm matter was similar to his conduct in state court. Respondent filed, or attempted to file, a series of complaints against numerous defendants that failed to comply with the federal rules of civil procedure and orders of the court. Respondent wasted the courts' and opposing parties' time and unnecessarily

needlessly prolonged the proceedings. The following is a summary of respondent's conduct.

21. In an order dated February 25, 2008, the court dismissed respondent's First Amended Complaint for failing to comply with Rule 8, Fed. R. Civ. P. The court noted that respondent's litigation strategy "seem[ed] to involve mak[ing] every conceivable claim against every conceivable defendant, bring[ing] every conceivable motion in connection with those claims, and mak[ing] every conceivable argument in support of those motions."

22. Respondent also moved for leave to file a Second Amended Complaint that was 187 pages and 745 paragraphs long. The court stated the following:

Remarkably, the plaintiffs seek to expand their already abusively long complaint to a total of 187 pages and 745 paragraphs. A quick skim of the second amended complaint reveals that it is no less 'convoluted and confusing' than the first amended complaint; like the first amended complaint, it is 'an endless, repetitious, and con-founding collage of allegations. . . .' Needless to say, the Court will not give the plaintiffs permission to commit an even more egregious violation of Rule 8. Thus the plaintiffs' motion for permission to file the second amended complaint is denied.

The court was concerned, however, that respondent would 'undoubtedly file another complaint -- this one perhaps approaching 200 pages and 1000 paragraphs -- and some other judge would be forced to undertake the herculean task of divining what it is that the Murrins are truly asserting.' The court directed respondent to file an amended complaint no later than March 31, 2008, that complied with the court's directives as to pleadings.

23. Respondent filed a Third Amended Complaint on March 30, 2008. On June 5, 2008, the court heard respondent's motion to file a Fourth Amended Complaint. The court expressed concern about respondent's pleading practices and the fact that the Fourth Amended Complaint named several defendants who had been dismissed in April 2008 by stipulation with respondent. Before the court could rule on the motion,

respondent filed a Fifth Amended Complaint on June 17, 2008. The court directed respondent to file a Fifth Amended Complaint, in final form, and consistent with the requisites in *Foman v. Davis*.

24. On September 5, 2008, the court ordered respondent to file a final amended complaint “containing those claims which have not previously been dismissed, and which we have granted leave to plead.” Rather than file a final amended complaint, on November 25, 2008, respondent filed another (fourth) motion to amend his complaint along with a Sixth Amended Complaint that contained “precisely the language” the court had rejected in respondent’s previous complaints. On November 26, 2008, the court denied respondent’s motion to amend his complaint but directed him to forthwith file a final amended complaint that complied with the court’s prior rulings. Respondent did so, and in an order dated April 1, 2009, the court accepted respondent’s Sixth Amended Complaint as final.

25. In a motion for a default judgment against Avidigm and Mattson, respondent claimed to have incurred nearly \$500,000 in fees and costs and requested an award of attorney fees and costs from the court. In an order for judgment dated March 25, 2010, the court awarded respondent only \$10,000 and stated the following:

This Court has first-hand knowledge of the Murrins’ litigation strategy, which the Court earlier observed ‘resembles nothing so much as *peine forte et dure* — a method of torture by which heavier and heavier weights are placed on the chest of a defendant until the defendant either confesses or suffocates.’ Perhaps never in the history of this District has more paper been filed by a litigant to less effect. By way of example, the Court points out that the docket in this case contains over four hundred entries despite the fact that this action has barely progressed past the pleading stage. The Murrins have proven to be singularly incapable of following the Federal Rules of Civil Procedure and singularly incapable of following the directions of this Court. . . .

Any competent attorney could have filed a complaint against Avidigm and Mattson — a simple complaint running five to ten pages — and, once

Avidigm and Mattson failed to answer, obtained a default judgment for the amount due under the contract. It should not have taken three years, four lawsuits, thousands of pages of filings, and a half-million dollars in attorney's fees to get to this point.

Bankruptcy Court

26. On February 27, 2007, two defendants in the state court Avidigm matter described above, Jason and Clichelle Scott, filed a Chapter 7 bankruptcy petition. The Scotts listed a claim in favor of respondent as a "contingent claim."

27. On June 4, 2007, respondent filed an adversary complaint in the Scotts' bankruptcy proceeding that was 45 unnumbered pages along with a 3-page documentary attachment. The court wrote that it was "an understatement to note that the wording of the text was dense, repetitious, fervid, and hyperbolic."

28. The Scotts moved for dismissal of the Second Amended Complaint on the ground that respondent failed to plead sustainable causes of action against them, failed throughout the complaint to "state with particularity the circumstances constituting fraud," and failed to state a claim upon which relief can be granted.

29. On April 10, 2009, the court granted the Scotts' motion and dismissed each of respondent's alleged claims, citing the "sprawling sloppiness of the Plaintiffs' pleading." The court stated the following:

Plaintiff John O. Murrin is an attorney who has practiced for over thirty years in this state. He had three chances to lay out a 'short and plain statement' of his and his wife's case against the Debtors for nondischargeability. His third effort did not come materially closer to doing that than his first did. Murrin had ample opportunity to step far back from the invested and emotionally-charged posture of a party-litigant, to look at the situation from the cool distance of an advisor-advocate, and to act professionally as an officer of the court to avoid a waste of judicial and party resources. He did not make responsible use of that opportunity. He certainly is not to be granted a fourth try.

30. Respondent's conduct violated Rules 3.2 and 8.4(d), MRPC.

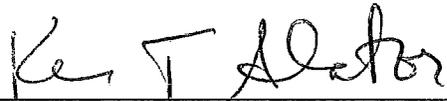
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: Dec. 28, 2010.



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