

FILE NO. A11-108
STATE OF MINNESOTA
IN SUPREME COURT

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

FINDINGS OF FACT,
CONCLUSIONS OF LAW and
RECOMMENDATION FOR
DICIPLINE

The above-entitled matter came on for hearing before the undersigned on August 1 and 2, 2011, upon the Director of the Office of Lawyers Professional Responsibility's petition seeking discipline to be imposed upon the attorney John O. Murrin III (Murrin).

Kevin T. Slator, Esq., Assistant Director, Office of Lawyers Professional Responsibility, 345 St. Peter Street, No. 1500, St. Paul MN 55102-1218, appeared on behalf of the petitioner.

John O. Murrin III, Esq., the respondent, 7045 Los Santos Drive, Long Beach CA 90815, appeared *pro se*.

Based upon the testimony of the witnesses, the exhibits and arguments of counsel, the undersigned makes the following as:

FINDINGS OF FACT

1. The litigation out of which the Director's complaint arises is the Murrins' lawsuit against Avidigm Capitol Group, Inc. (Avidigm), its principals and those persons

and other entities whom the Murrins perceived as responsible with Avidigm for their investment loss.

2. On or about September 1, 2004, the Murrins invested \$600,000 with Avidigm, the terms of which required Avidigm to pay interest to the Murrins for fifteen (15) months and then return the principal amount after that period.

3. Avidigm made several interest payments until it then defaulted on January 20, 2006, and also failed to return the \$600,000 principal to the Murrins.

4. Murrins found Avidigm to be insolvent. They and others had been victimized by Avidigm and its president, Steven J. Mattson, who was subsequently convicted in federal court of the aiding and abetting the making false statements to a bank.

5. The security which Avidigm claimed protected the Murrins' investment was non-existent.

6. The Murrins began the laborious process of investigation which initially focused upon the auditors whose reports found Avidigm to be a financially viable company and suggested that it represented a reasonable investment.

I. Hennepin County

7. The Murrins filed their First Amended Complaint (J1, D3) February 12, 2007, which was 132 pages long, containing 493 paragraphs and naming 47 defendants (including the "Does").

8. The Murrins filed a Second Amended Complaint June 20, 2007, which was 144 pages long, containing 493 paragraphs and naming the 48 defendants (J3).

9. The Murrins filed a Third Amended Complaint (Joint 3, D5) October 3, 2011, which was 187 pages long, contains 777 paragraphs and adds an additional 50 defendants (J5).

10. Respondent's Fourth Amended Complaint was filed with his motion on April 11, 2008, containing 272 pages, 1,668 paragraphs and naming 43 defendants (J4).

11. Respondent's Fifth Amended Complaint was 165 pages long, 945 paragraphs, 64 counts against 43 defendants.

12. John O. Murrin signed each of the above complaints in the capacity as "Attorney for Plaintiffs."

13. In response to motions by some of the defendants, Judge Denise Reilly held a hearing on January 10, 2008, and issued an order (D6) dated January 15, 2008, which found that the Respondent did not "clearly delineat[e] which claim is being pursued against which defendant for each cause of action contained in the Second Amended Complaint."¹

14. On January 25, Respondent and some of the defendants' lawyers again appeared on Respondent's motion for approval of his Third amended Complaint and on some of the defendants' motions.

15. Judge Reilly made the following comments concerning the plaintiff's various complaints described above.

¹ This finding presumably uses the civil burden of proof. My findings below must meet the "clear and convincing" test.

Second Amended Complaint

- a) Order dated January 15, 2008 (D6): Found that Respondent did not “clearly delineat[e] which claim is being pursued against which defendant for each cause of action contained in the Second Amended Complaint.”
- b) Order dated February 14, 2008 (D8): Found that the Second Amended Complaint and the chart Respondent was ordered to prepare were “incomprehensible,” had serious deficiencies and were unintelligible and failed to put defendants on notice as to the alleged claims against them.
- c) Order dated February 14 (D8): Found that the Third Amended Complaint did not adequately cure the serious deficiencies in the Second Amended Complaint.
- d) Additionally Respondent did not provide accurate statutory citations, cited repealed statutes, statutes renumbered, and statutes which never existed.
- e) Respondent lumped distinct causes of action into single counts which confused the defendants and the Court.
- f) Found that the Third Amended Complaint would only further prejudice defendants (Reilly Order of December 2, 2008).

Third Amended Complaint

g) It fails to provide accurate statutory citations. Ex. 8 Reilly Memorandum, pp. 7-8.

h) It lumps separate, multiple causes of actions into single counts. Ex. 8 Reilly Memorandum, p. 8.

i) It does not make clear what claims are alleged against what parties and what facts support which claims.

*Id.*²

16. The Court of Appeals affirmed Judge Reilly's orders and her findings above in *Murrin v. Mosher*, No. A08-1418 (unpublished August 4, 2009). Review denied October 28, 2009.

17. On December 2, 2008, the Court of Appeals affirmed the District Court's order for sanctions and the bases cited to support those sanctions under the trial court's inherent authority to manage litigation in the trial courts. *Murrin v. Mosher*, A09-314, A09-315, A09-816, A09-1400 (unpublished March 23, 2010). Review denied August 10, 2010.

II. United States District, District of Minnesota

First Complaint

18. In January 2007 Respondent and Devonna Murrin, as *pro se* plaintiffs, signed a United States District Court, District of Minnesota amended complaint 156 pages long, with 626 paragraphs, naming 20 defendants (D.Ex.30).

² Respondent protested that to identify which defendant was implicated would be a laborious task.

19. Judge Patrick J. Schiltz dismissed the First Amended Complaint by order dated February 25, 2008, for failure of the Murrins to comply with Rule 8, Fed.R.Civ.P.

20. The Murrins' conduct in making their motion to serve and file a Second Amended Complaint parallels and resembles his conduct in the Hennepin County District Court litigation because the complaint in the second amended version now contains 187 pages, 745 paragraphs. (R.Ans.¶34)

21. Magistrate Judge Raymond L. Erickson, in his Order dated November 26, 2008, addressed the Murrins' multiple amendments.

We accept that the plain intendment of Rule 15(a), Federal Rule of Civil Procedure, as underscored by the Supreme Court's opinion in Foman v. Davis, 371 U.S. 178, 182 (1962), mandates that leave to amend "shall be freely given when justice so requires." Liberty of amendment, however, is not a license, and is subject to restraint. "A district court appropriately denies the movant leave to amend if 'there are compelling reasons such as undue delay, bad faith, or dilatory motive, **repeated failure to cure deficiencies by amendments previously allowed**, undue prejudice to the non-moving party, or futility of the amendment. (citations omitted) The Plaintiffs have had repeated opportunities to properly support a punitive damages claim against the remaining Defendants, beyond that related to Section 604.14, and they have abjectly failed in their proofs. We will not allow a sixth bite out of that apple.

(D.Ex. 38, pp. 5-6)

22. Magistrate judge Erickson heard the Murrins' motion to file a Fourth Amended Complaint (D.Ex.34) but before Erickson, (M.J.) could rule on the motion, the Murrins filed a Fifth Amended Complaint.³ (D.Ex.35)

23. On September 5, 2008, Erickson (M.J.) ordered the Murrins to file a final complaint, omitting as defendants those against whom the Murrins' complaint had been dismissed.

24. Instead of complying with the order to file a final amended complaint "containing those claims which have not been previously dismissed, and which we have granted leave to plead" (D.Ex.36), the Murrins filed a motion to amend with a Sixth Amended Complaint which included "precisely the language" the Court had previously rejected. (D.Ex. 37)

25. In his November 26, 2008, order Erickson, (M.J.) commented about the Murrins' failure to comply with his previous order to file a final amended complaint, noting:

Now, apparently of the belief that they should be afforded a further attempt at demonstrating a prima facie case for punitive damages as to a variety of their claims against the remaining Defendants, the Plaintiffs have submitted a further Affidavit, together with another raft of exhibits, which plainly evince the Plaintiffs' attempt to circumvent the Court's directive that they file a "**Final** Amended Complaint": containing only those claims previously allowed by the Court.

(D.Ex.38, p.4)

26. The Murrins finally achieved the ordered result, a Final Amended Complaint.

³ This too replicates the Murrins' conduct in the state court litigation.

27. In his December 8, 2008, order Schiltz, J. addressing the Murrins' appeal of the Judge Magistrate's November 26, 2008, order denying the Murrins permission to seek punitive damages in connection with any claim other than their Minn. Stat. § 604.14 claim (civil liability for theft) noted:

Plaintiffs now claim that they understood this language to give them permission to plead punitive damages in connection with all of their claims. But this claim of confusion is almost surely contrived. Judge Erickson's order cannot possibly be read to grant permission to plead punitive damages in connection with any claim other than the § 604.14 and conspiracy claims.

(D.Ex.39, p.2)

28. Judge Schiltz also noted that, "Plaintiffs have proven themselves singularly unwilling or unable to comply with the rules and instructions of this Court...."

Id at p. 4.

29. Murrins sought "nearly \$500,000 in fees and costs with these lawsuits" (the four Avidigm related lawsuits). The Court (Schiltz, J.) in allowing only \$10,000 commented:

In addition, the Murrins' contractual right to attorney's fees is limited to "reasonable" fees. 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." Docket No. 337 at 2. 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.

This is all the more astonishing in light of the fact the Murrins could have obtained a judgment on their breach-of-contract claims against Avidigm and Mattson within a couple of months of filing suit and for a tiny fraction of the fees and costs they claim to have incurred. The parties' contracts are clear; the breach has never been in dispute; the amount of damages is readily calculable; and, most importantly, both Avidigm and Mattson have been in default since this case was removed to federal court in February 2007. 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. The Murrins' claim that they should recover a quarter of a million dollars for pursuing their breach-of-contract claims is absurd.

(D.Ex.41, pp. 4-5)

III. Bankruptcy Court

30. On February 27, 2007, Jason and Clichelle Scott sought discharge from their debts in the United States Bankruptcy Court, District of Minnesota, naming the Murrins as configured claimants.

31. On June 4, 2007, the Murrins then filed an adversary complaint against the Scotts, 48 pages long, including 3 pages of exhibits, containing 141 paragraphs.

(D.Ex.50)

32. After the Murrins' two motions to amend their complaint (the Court denied one, granted the other⁴), the Bankruptcy Judge Gregory F. Kishel found in response to the Scotts' motion to dismiss:

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. This matter is ripe for a disposition with prejudice to further litigation on the merits.

403 B.R.25, 46 (D.Minn. 2009)

Aggravating/Mitigating Factors

33. Respondent has no appreciation, no understanding of the damage his complaints inflicted upon the defendants. Neither does he comprehend his duty to the courts, i.e., to follow the rules or to respect the judicial process.

34. Even at hearing the Respondent asserted that his only duty was to his client or, at least, that that duty took precedence over any other duty.

35. He further argued that the First Amendment to the United States Constitution permitted his form of pleading.

⁴ The judge referred to the complaints' allegations as a rambling, non-sequential rhetorically-embellished complaint.

36. He further expresses the belief, unsubstantiated and unfounded, that courts are against him, are in cahoots negatively to deal with him, are overbearing, impinging on his First Amendment rights and do not understand the attorney's duty to his client.

37. Respondent's attitude toward the evidence presented at hearing approaches the delusional in its unflinching rejection of the reasoned, learned criticisms of his litigation conduct.

38. Respondent admitted his history of prior discipline, which is: (1) a September 5, 1985, admonition for engaging in an altercation at a deposition and improperly terminating the deposition in violation of DR 1-102(A)(5), Minnesota Code of Professional Responsibility (the predecessor to Rule 8.4(d), Minnesota Rules of Professional Conduct [MRPR] (D.Ex.62); and (2) a September 1, 1999, admonition for participating in offering and making an employment agreement that restricted a former employee's right to practice in violation of rule 5.6, MRPC (D.Ex. 63).

39. Each of the above findings of fact meet the "clear and convincing" burden of proof as to those facts referred in the attached Memorandum.

CONCLUSIONS OF LAW

1. Respondent's conduct in Hennepin County district Court violated Rules 3.2 and 8.4(d) MRPC.

2. Respondent's conduct in the United States District Court, District of Minnesota violated Rules 3.2 and 8.4(d) MRPC.

3. Respondent's conduct in United States Bankruptcy Court, District of Minnesota violated Rules 3.2 and 8.4(d) MRPC.

4. Respondent's consistently repetitious conduct warrants the imposition of professional discipline.

IV. Recommendation for Discipline

1. Respondent's egregious, persistent conduct which disrupted litigation in three different courts, causing excessive delay and enormous costs to the opposition and to the courts warrants a year's suspension from the practice of law.

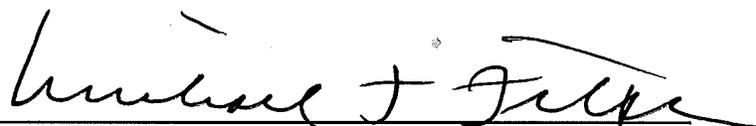
2. This recommendation is made not only in recognition of the harm done but also in light of Respondent's unapologetic attitude, because of his failure to comprehend the damage caused by his tactics and because of his inability in hindsight to empathize in the slightest those who he has harmed and disrupted in the performance of their duties.

3. The attached Memorandum is made a part hereof.

4. These Findings of Fact, Conclusions of law shall be mailed to the attorneys of record by United States mail and such service shall be sufficient for all purposes.

DATED: November 2, 2011

BY:



**MICHAEL F. FETSCH
DISTRICT COURT JUDGE - RETIRED
SERVING AS REFEREE BY**

MINNESOTA SUPREME COURT APPOINTMENT

MEMORANDUM

Respondent's vexatious, unreasonable conduct was not limited to his complaints. Judge Reilly awarded costs and attorney's fees (Davisson and Smogoleski) for Respondent's failure timely to respond to discovery. (D.6, p.3)

At the same hearing Respondent asked the Court to have the Murrins deposition taken in a single block of time to be divided among all defendants because it would be unreasonable for the Court to require the Murrins as residents of California to return for individual depositions. The Court pointed out that in their complaint the Murrins identified themselves as "residents of the State of Minnesota, mostly residing in Duluth, St. Louis County, Minnesota," noting that the Murrins chose the forum in which to litigate and are not entitled to limit defendants' discovery options.

This but another example of how the Respondent judges matters, not in relation to an objective standard, but only whether the course of action serves his self interest. (D.6, p.3)

Respondent's intransigence in the face of judicial findings, his unwillingness to modify his behavior even though basic due process rights of defendants are at stake provides additional insight to his character.⁵

The damage which defendant caused when measured in financial terms almost defies belief. He continues to be unrepentant, incapable of perceiving the harm he has caused. His inability to accept any responsibility for this conduct, which propelled him into these disciplinary proceedings, approaches the extremities of intractability.

Respondent continually asserted at hearing that his duty to his client, i.e., himself and often his wife, trumped all other duties as an attorney. His failures, on the most practical of levels would have the result that, if every lawyer conducted his litigation in the Murrin style, the civil courts would suffocate.

The Comment to 8.4 MRPC emphasizes the lawyer's duty:

... a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to the practice of law. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

It is for the above reasons that the recommendation for discipline takes this severe form.

⁵ The conduct of the Respondent "... demonstrated 'willfulness and contempt for the court's authority' in addition to prejudice to the parties involved." D.Ex.15, pp. 10-11

The answer under the test contained in the Comment to Rule 3.2 MRPC is a resounding "No":

The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay.

M.F.F.