

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against PETER JAMES NICKITAS,
a Minnesota Attorney,
Registration No. 212313.

**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 26, 1990. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline, including admonitions, is as follows:

- A. On July 2, 1997, respondent was issued an admonition for disclosing information related to a former client to the former's client disadvantage.
- B. On April 27, 1999, respondent was issued an admonition for failing to handle a client's matter with adequate diligence and promptness.

C. On July 23, 2003, respondent was issued an admonition for directing a sexist epithet to a *pro se* person with whom respondent was dealing on behalf of a client.

D. On August 11, 2005, the Supreme Court suspended respondent, effective 14 days from the date of that order, for 90 days for engaging in a consensual sexual relationship with a client, entering into multiple business transactions with the client without written disclosure of the potential conflicts of interest and without advising the client of the desirability of obtaining independent counsel, and failing to handle a client matter with adequate diligence and promptness. On January 1, 2006, respondent was reinstated to the practice of law.

FIRST COUNT

Hurley Matter

1. Bashir Osman was involved in a traffic accident with Jason Hand. West Bend Mutual Insurance Company (West Bend) was Hand's insurer.
2. The vehicle Osman was driving was a taxi cab owned by Northwind Transportation (Northwind). Northwind claimed that Osman operated the vehicle as an independent contractor cab driver.
3. West Bend and Northwind entered into arbitration of Northwind's claims for damages to the vehicle it owned and business interruption losses. The arbitration was conducted through Arbitration Forums. Respondent represented Northwind, and Michelle Hurley represented West Bend.
4. The arbitration hearing occurred on February 24, 2009. This was the first time respondent met Hurley in person.
5. During and after the arbitration hearing, respondent made insulting comments to Hurley. After Hurley made her presentation to the arbitrator, respondent made his presentation. As part of his presentation, respondent stated that Hurley could

not read and needed glasses. After the arbitration hearing concluded, respondent told Hurley that he knew of a good place for her to get the glasses she needs.

6. The arbitrator awarded Northwind \$1,101.26. Respondent thereafter served and filed a motion in district court to vacate the award, claiming it was erroneous and insufficient.

7. The hearing on the motion to vacate occurred on September 22, 2009. This was the second time respondent met Hurley in person.

8. After the motion hearing concluded and while still in the courthouse, respondent made multiple threatening and/or insulting comments to Hurley. After the hearing, Hurley was in the courthouse building, as Hurley was leaving the courtroom, respondent yelled at her that he hoped she "sleep[s] with the fishes." Hurley was shocked. After pausing a moment to recover from the shock, she continued proceeding toward the courthouse exit. As Hurley was about to exit the building, respondent, who was trailing, caught up to Hurley, got in front of her and went nose-to-nose to her and began screaming at Hurley. Respondent had to be pulled away by an associate of his as a bailiff approached.

9. Respondent's actions shook and scared Hurley. Hurley thereafter refused to be alone in a room with respondent and always had another person accompany her at hearings at which respondent would be present.

10. By order filed October 16, 2009, the court vacated the arbitration award. The matter was referred back to Arbitration Forums.

11. Arbitration Forums does not require the parties to an arbitration to respond to discovery.

12. Respondent thereafter commenced an action, *Osman v. Hand*, arising out of the same accident. Respondent identified himself as counsel for Osman.

13. Osman had not initiated contact with respondent about representation. Instead, respondent was contacted by Daniel Ehrman. Ehrman was handling

Northwind's claim as an insurance adjuster. Ehrman told respondent that Osman was interested in retaining respondent to represent Osman in an action against Hand.

14. Respondent prepared and gave to Ehrman a representation agreement and consent to simultaneous representation, for Ehrman to provide to Osman.

15. Northwind and Osman had conflicting interests. As respondent understood, Northwind had a claim against Osman for damage to the vehicle. These included claims for property damage and business interruption losses.

16. Respondent failed to advise Osman of any actual or potential conflict of interest in respondent's simultaneous representation of Osman and Northwind.

17. Respondent did not obtain Osman's informed consent to respondent's representation despite the conflict. Although respondent had obtained from Osman a signed consent to respondent's simultaneous representation of Osman and Northwind, respondent did not inform Osman of the reasonably foreseeable risks from, or of the reasonable alternatives to, respondent's representation of Osman while respondent was also representing Northwind. To the contrary, the consent form that respondent drafted for Osman to sign erroneously stated that there was no conflict.

18. During the *Osman v. Hand* matter, respondent engaged in discovery. Among other things, respondent served written discovery and took the deposition of the defendant.

19. Respondent sought this discovery in *Osman v. Hand* in the hope that it would provide information helpful to Northwind's separate arbitration proceeding against West Bend, Hand's insurer.

20. Trial in *Osman v. Hand* was scheduled for March 24, 2011. Shortly before the hearing, respondent told Osman that the interests of Osman and Northwind were not materially adverse. In fact, and as noted above, they had materially adverse interests. To ensure Osman attended and was available to testify, Hurley attempted to have a subpoena served on Osman.

21. After unsuccessful attempts at service, the process server called Osman. During their telephone conversation, Osman said that he did not know the name of Jason Hand, the defendant, or the matter the process server was discussing.

22. Shortly before the trial date, Hurley served and filed motions *in limine*. The motions noted that the signatures of Osman on various documents were inconsistent, in that some of the signatures bore a relationship to the handwriting of the owner of Northwind.

23. At the start of trial on March 24, the court conducted an *in camera* examination of Osman. Osman told the judge that he did not go to respondent and ask the matter be brought to court, and that when suit was brought Osman did not know it was being brought in his name. Instead, it was brought to Osman to participate.

24. By order filed March 25, 2011, the court dismissed the *Osman v. Hand* matter. The court found that the matter was brought in bad faith and for an improper purpose.

25. By letter dated April 14, 2011, respondent requested the court to reconsider the March 25 order.

26. Respondent thereafter served and filed a motion for consideration of that March 25 order and for an evidentiary hearing.

27. The hearing on the motion was conducted on June 23, 2011.

28. During the hearing, respondent and counsel for Hand stipulated that the *Osman v. Hand* matter would remain dismissed.

29. By order filed June 24, 2011, the court memorialized the stipulation that the *Osman v. Hand* matter would remain dismissed and confirmed "the finding that this action was brought in bad faith for an improper purpose refers to the actions and/or inactions of [respondent]."

30. By letter dated August 2, 2011, respondent requested the court to allow respondent to file a motion to reconsider that June 24 order.

31. By letter dated August 3, 2011, the court denied respondent's request.

32. Respondent's representation of both Osman and Northwind violated Rule 1.7(a)(2), Minnesota Rules of Professional Conduct (MRPC), respondent's filing and pursuit of a claim in bad faith violated Rules 3.1 and 8.4(d), MRPC, and his harassing and bullying statements and conduct toward Hurley violated Rules 4.4(a) and 8.4(d), MRPC

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

Dated: April 30, 2012.



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