

FILE NO. A14-1843

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against MATTHEW THOMPSON NIELSEN,
a Minnesota Attorney,
Registration No. 230698.

**SUPPLEMENTARY PETITION
FOR DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of an October 21, 2014, petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

THIRD COUNT (Morris matter)

39. In 2012, Kenneth L. Morris retained respondent to represent him in claims against Swan Engineering, Inc., and its sole owner, Mychael Swan. Morris believed that Mychael Swan and Swan Engineering owed him money for engineering and construction management services Morris provided to "Rural Energy Solutions" (RES). RES is jointly owned by Morris (49%), Mychael Swan (49%), and a third person (2%). In 2011, Mychael Swan and the third owner removed Morris from management of RES.

40. Respondent sued Swan Engineering and Mychael Swan in Steele County district court in October 2012. Mychael Swan was dismissed as a defendant on November 22, 2013, by order of the Honorable Joseph A. Bueltel.

41. Morris' case was tried to a jury in May 2014. On May 8, 2014, a jury decided in favor of Swan Engineering and found there was no contract between Morris and Swan Engineering or obligation to pay Morris.

42. Judge Bueltel issued an order for judgment on May 15, 2014. Judgment was entered on June 16, 2014. As the prevailing party, Swan Engineering was awarded costs and disbursements against Morris totaling \$1,532.40.

43. In March 2014, while Morris' case against Swan Engineering was pending, respondent prepared a "Motion for Limited Receivership and Temporary Injunction," dated March 20, 2014. The motion contained the same court file number as Morris' case against Swan Engineering, but was captioned, "Kenneth L. Morris vs. Residential Energy Solutions."

44. Among other things, the motion sought to restrain RES from "liquidating or encumbering assets of Rural Energy Solutions." Respondent prepared the purported motion because Morris was concerned about the effect on the value of his ownership interest in RES if he were successful in his lawsuit against Swan Engineering. Morris asked respondent to take appropriate action.

45. The motion, which was accompanied by a proposed order, referred to a purported hearing before Judge Bueltel scheduled for April 28, 2014, at 11:30 a.m. Respondent prepared a filing cover letter dated March 20, 2014, that was addressed to the court administrator. Morris was noted as having received a copy of the letter. Respondent falsely told Morris the motion had been filed with the court.

46. In fact, the motion was bogus. Respondent never served the motion on RES or filed it with the court, and the motion was never scheduled for a court hearing. Respondent provided a copy of the motion and cover letter to Morris in order to

mislead him into believing he was seeking the appointing of a receiver in response to Morris' concerns about the value of his ownership stake in RES.

47. Respondent later prepared a bogus "Order for Limited Receiver and Injunction" dated June 12, 2014. Respondent signed Judge Bueltel's name to the bogus order. Respondent provided a copy of the order to Morris in order to mislead him into believing the court had actually issued the order. Respondent later told Morris a receiver could not be located.

48. On or about December 3, 2014, Morris discharged respondent and retained attorney Bryant T. Tchida.

49. Respondent's conduct violated Rules 1.4(a)(3), 4.1, 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

FOURTH COUNT (Baker matter)

50. Bonnie M. Baker was injured at work in November 2000. Baker retained respondent to represent her in a workers' compensation claim in December 2000.

51. On several occasions during the representation, respondent failed to return Baker's phone calls.

52. In June 2014, respondent prepared an 11-page "Confidential Settlement Agreement and Mutual and Full and Final Release of Claims" in Baker's case. The agreement purported to be a settlement of Baker's claims in exchange for \$105,000 from the insurer. Respondent was to receive \$15,000. Baker signed the agreement on June 2, 2014. Respondent notarized Baker's signature.

53. The agreement was, in fact, bogus. Respondent had not reached an agreement with the insurer to settle Baker's claims and Baker was owed no money from her workers' compensation claim. Respondent's purpose in preparing the agreement was to mislead Baker.

54. Baker called respondent several times after June 2, 2014, to ask when she would be receiving the \$105,000. One reason for Baker's urgency is that her husband,

James Baker, had spent \$37,000 to purchase a pick-up truck on the expectation that Baker would receive \$105,000.

55. After obtaining Baker's consent to the bogus agreement, respondent continued to mislead Baker. For example, respondent falsely told Baker the check had been lost in transit and that respondent drove to the insurer's office in Des Moines, Iowa, to try and obtain a replacement check. Respondent wrote to Baker on October 31, 2014, and falsely told her the insurer had canceled the check and was issuing a new one.

56. Respondent prepared a bogus letter dated November 3, 2014, to Jill Masterson, the claims analyst at Principal Financial in Des Moines. Respondent said Baker was waiting for the check and had "lost any sense of patience." Respondent asked Masterson to respond in writing rather than "the customary call." Respondent did not actually send the letter to Masterson but provided a copy of it to Baker in order to further mislead her.

57. On November 24, 2014, respondent wrote to Baker to tell her he was leaving his law firm, Kraemer and Nielsen, P.A., on December 31, 2014. Respondent said Baker's files were "closed due to inactivity or no need for legal action." Respondent did not mention the bogus settlement agreement with the insurer in Baker's workers' compensation case. On December 17, 2014, Baker submitted a complaint to the Director's Office.

58. Respondent's conduct violated Rules 1.3, 1.4(a)(3) and (4), 4.1, 8.4(c) and (d), MRPC.

SIXTH COUNT (Merron matter)

59. Respondent represented Andy and Lisa Merron in a dispute with Nasco Equipment, Inc., over the performance of a corn dryer the Merrons purchased from Nasco in summer 2013. The Merrons live in Iowa.

60. Respondent was unsuccessful in negotiating a settlement with Nasco. The Merrons authorized respondent to sue Nasco.

61. The Merrons emailed respondent on August 12, 2014, and said "just wondering if there was any news yet." Respondent's August 13, 2014, reply was as follows:

Andy and Lisa,

Finally I have an answer: yes, things are moving. I have a pre-trial/scheduling conference set for the 28th of August at 10:00. I will send you the outcome and potential dates. If any date does not work for you, let me know.

Matt

62. The Merrons replied on August 14, 2014, and asked if they needed to attend the conference on August 28, 2014. Respondent replied and said, "No, it is just the attorneys with the judge, so a nonissue there."

63. Respondent's statement about a conference at court on August 28, 2014, was false. Respondent had taken no action on the case and had not filed anything with the court.

64. The Merrons met with attorney Christophe Butzon about their dispute with Nasco after respondent announced he was leaving his law firm at the end of 2014. It was at this time that the Merrons learned, for the first time, that respondent had taken no action on their case and had never filed it with the court.

65. On January 6, 2015, Andy Merron filed a summons and complaint against Nasco in conciliation court in Martin County, Minnesota. The complaint seeks damages against Nasco in the amount of \$6,152.47. A hearing is scheduled to be held on March 9, 2015.

66. Respondent's conduct violated Rules 1.3, 1.4(a)(3), 4.1, 8.4(c) and (d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the

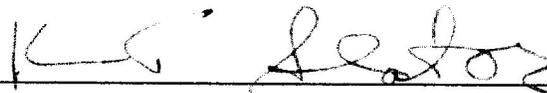
Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: Feb. 17, 2015.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
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and



KEVIN T. SLATOR
SENIOR ASSISTANT DIRECTOR
Attorney No. 204584

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

Dated: February 23, 2015.



JUDITH M. RUSH
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD