

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary  
Action against JOSEPH D. O'BRIEN, JR.,  
a Minnesota Attorney,  
Registration No. 184810.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 16, 1987. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Mashak Matter

1. In December 2009 Donald Mashak retained respondent for representation in two matters - the appeal of a harassment restraining order to the Minnesota Court of Appeals and the appeal of a conciliation court matter to district court. Prior to formally retaining respondent, Mashak expressed concern to him that he did not know if his

previous counsel had done discovery in the appeal of the conciliation court matter and emphasized his desire that such discovery be conducted.

2. On December 28, 2009, respondent filed a notice of appeal and statement of the case with the Court of Appeals in the harassment restraining order matter.

3. On January 27, 2010, after receiving a response from respondent regarding issues raised by the court pertaining to whether the order appealed from was independently appealable, the Court of Appeals issued an order finding the lower court's order appealable and directing that, "The appeal shall proceed pursuant to the rules of civil procedure."

4. On February 14, 2010, Mashak sent respondent an email inquiring about discovery in the conciliation court appeal matter and expressing concern that the discovery be completed before the court-imposed deadline.

5. Starting in February 2010 Mashak repeatedly tried to contact respondent to discuss the status of his legal matters and to urge respondent to conduct discovery in the appeal of the conciliation court matter. Mashak was only occasionally successful in speaking with respondent and, on those occasions, respondent assured him that he would conduct the discovery requested.

6. Respondent did not conduct the discovery requested.

7. On March 10, 2010, the Court of Appeals issued an order finding that Mashak's brief in the matter was due on March 1, 2010, but that no brief or motion for an extension of time had been received. The court ordered that Mashak's brief be filed on or before March 22, 2010, and directed that, as a sanction for the late filing of the brief, there would be no oral argument allowed.

8. Respondent did not provide Mashak with a copy of the March 10, 2010, order or otherwise inform him of the order.

9. On March 23, 2010, Mashak and another attorney who had volunteered to assist him in his dealings with respondent, John Remington Graham, met with respondent to discuss the status of Mashak's matters. Respondent assured Mashak and Graham that everything in both matters was in good order and that discovery in the conciliation court appeal matter would be sent out within the next two days. Respondent did not then tell Mashak of the March 10 Court of Appeals order or of the March 22 deadline for filing a brief with the Court of Appeals.

10. On March 31, 2010, the Court of Appeals issued an order finding that no brief had been submitted on behalf of Mashak and dismissing the appeal.

11. Respondent did not provide Mashak with a copy of the March 31, 2010, order or otherwise inform him of the order.

12. On April 6, 2010, Graham wrote to respondent on Mashak's behalf and asked that respondent provide Mashak with a copy of his client files.

13. On April 16, 2010, in a personal meeting with respondent, Mashak asked for the return of his client files.

14. On April 20, 2010, Graham again wrote to respondent on Mashak's behalf and again asked that respondent provide Mashak with a copy of his client files.

15. On May 4, 2010, Mashak submitted a complaint against respondent to the Director.

16. On May 12, 2010, the Director mailed to respondent a notice of investigation regarding the complaint of Don Mashak. That notice assigned the matter to the Fourth District Ethics Committee (DEC) for investigation and requested a complete written response to the Mashak complaint within 14 days.

17. On May 14, 2010, in a series of telephone calls and emails exchanged between Mashak and respondent, Mashak again requested that his client files be returned to him.

18. On May 14, 2010, the Director withdrew the Mashak complaint from the DEC. That same day, in a telephone conversation with respondent, respondent was notified that he should send his response to the Mashak complaint directly to the Director's Office. During this telephone conversation, respondent stated that he would return Mashak's files to him that day.

19. On May 19, 2010, Mashak sent respondent an email again requesting the return of his client files.

20. On May 20, 2010, the Director forwarded additional information regarding the Mashak complaint to respondent and asked for detailed information regarding the return of Mashak's files to him.

21. On May 27, 2010, the Director's Office sent an email to respondent asking for a return telephone call so that the return of Mashak's files could be discussed. Respondent did not call in response to this email.

22. On June 7, 2010, respondent told the Director's Office that he had mailed his client files to Mashak by regular mail "last week." Respondent explained that he previously had unsuccessfully tried to have the files couriered to Mashak, but that the courier could not locate Mashak's address. During this telephone conversation, respondent said he would have a response to the notice of investigation in the mail by the end of the week (June 11).

23. On June 10, 2010, the Director left a message on respondent's voice mail asking that he fax a copy of the cover letter that accompanied the mailing of Mashak's files to Mashak. Respondent did not respond to this message.

24. On June 15, 2010, the Director wrote a follow-up letter to respondent, sent by email and U. S. Mail. That letter noted that no response to the notice of investigation had yet been received, asked for additional information and documentation regarding the return of Mashak's files, and reminded respondent that failure to respond is a separate disciplinary offense. That letter requested a response within one week.

25. On June 15, 2010, respondent left what appears to be only a portion of Mashak's files in a car owned by Mashak.

26. Respondent has not provided a written response to the May 12, 2010, notice of investigation or the additional information requested of him in the Director's letter of June 15, 2010.

27. On July 15, 2010, the Director served charges of unprofessional conduct on respondent alleging the misconduct set forth above. Rule 9(a), RLPR, provides that, "Within 14 days after the lawyer is notified of the Charges, the lawyer shall submit an answer to the Charges to the Panel Chair and the Director and may submit a request that the Panel conduct a hearing."

28. Respondent did not submit an answer as required by Rule 9(a), RLPR.

29. Respondent's conduct in failing to file a brief with the Court of Appeals on behalf of Mashak, failing to inform Mashak of the March 10 and 31, 2010, orders of the Court of Appeals, failing to respond to Mashak's requests for information regarding the status of his legal matters, failing to conduct discovery in the conciliation court appeal matter as promised, failing to return Mashak's files to him, and failing to cooperate in the disciplinary proceedings violated Rules 1.1, 1.3, 1.4, 1.15(c)(4), 1.16(d), 3.2, and 8.1(b), Minnesota Rules of Professional Conduct, and Rule 25, Rules on Lawyers Professional Responsibility.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent 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: August 16, 2010.

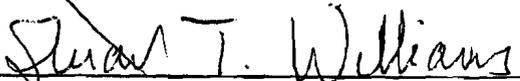
  
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and

  
PATRICK R. BURNS  
FIRST ASSISTANT DIRECTOR  
Attorney No. 134004

This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: August 13, 2010.

  
STUART T. WILLIAMS  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD