

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against MARK A. OLSON,
a Minnesota Attorney,
Registration No. 82119.

**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 petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 9, 1980. Respondent currently practices law in Burnsville, Minnesota.

DISCIPLINARY HISTORY

A. On February 11, 1992, respondent was publicly reprimanded for, on four separate occasions, altering a declarations sheet from an expired malpractice insurance policy to falsely indicate that he was currently insured, and then providing the altered declarations sheets to his office sharers for them to submit with their applications for malpractice insurance coverage. *In re Olson*, 481 N.W.2d 23 (Minn. 1992).

B. On September 7, 1994, respondent was issued an admonition for failing to promptly submit to the court a proposed temporary order and a proposed order and decree in a marital dissolution proceeding.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Guetzkow/Bailey Appeal Matter

1. John Bailey sued Ricky Lee Guetzkow, Christopher Guetzkow and Homelink Mortgage Corp. (collectively "the Defendants"). Bailey obtained an \$83,874 default judgment against the Defendants. Bailey made extensive efforts to collect the judgment. There were at least six post-judgment collection motions. Respondent represented the Defendants during the collection proceedings. Terrance Moore represented Bailey.

2. On or about March 6, 2006, respondent caused a subpoena to be served on Title One, Inc. (Title-1). The subpoena required Title-1 to produce certain documents. Title-1 produced to respondent documents in response to the subpoena.

3. Minn. R. Civ. P. 45.02(a), as it read in or about March 2006, required a subpoena for the production of documents to be served on opposing counsel before the subpoena is served on the target of the subpoena. Respondent failed to serve a copy of the subpoena on Moore or to inform Moore of the subpoena before (or after) the subpoena was served. Moore did not learn of the subpoena until several weeks after it was issued and learned of the subpoena not from respondent but from Moore's client, Bailey, who had been informed of it by Title-1.

4. On or about December 8, 2006, respondent sent to Judge Lloyd B. Zimmerman and Moore a letter argument (1) against the imposition of injunctive relief against the Defendants, two non-party corporations, Guetzkow Companies, Inc. and iComm Benefit Solutions, Inc. ("the Companies") and (2) in support of respondent's request for attorney's fees.

5. On December 19, 2006, the court issued an order temporarily (1) enjoining Rickey Lee and Christopher Guetzkow (two of the Defendants) from transferring certain assets or property of the Companies without further order of the court and

(2) requiring the Companies to provide within five days a sworn accounting of all assets and property transferred from the Companies on or after December 1, 2006.

6. On or about December 29, 2006, respondent served and filed a notice of appeal of the December 19, 2006, order, together with a statement of the case.

Respondent's statement of the case stated that the appeal was taken pursuant to Minn. R. Civ. App. P. 103.03(b). Respondent represented the Defendants and the Companies in the appeal.

7. On January 3, 2007, at 8:30 a.m., respondent sent to Judge Zimmerman and Moore an e-mail which stated:

Dear Judge Zimmerman – As I assume you are aware, we have appealed your December 19, 2006, decision. Prior to seeking a writ of prohibition I am required to request that you stay your order pending the appeal. Please advise if you will defer to the Court of Appeals. Thank you. Mark Olson.

8. On January 3, 2007, at 8:37 a.m., Moore sent an e-mail to Judge Zimmerman and respondent which stated in pertinent part, "[t]he automatic stay does not apply to appeal of an injunction or TRO. There is also a supersedeas bond requirement related to such a stay. May I suggest that if these judgment debtors want this Court to order a stay, that they proceed by motion to request one."

9. On January 3, 2007, at 11:58 a.m., Judge Zimmerman sent an e-mail to respondent and Moore, and stated, "[p]lease be advised that I will not stay my order."

10. On January 4, 2007, the district court issued an order to show cause for the Companies to appear on January 23, 2007, and show why the Companies should not be held in contempt for failing to comply with the December 19, 2006, order.

11. On or about January 5, 2007, respondent served and filed with the Court of Appeals a motion seeking an immediate stay of the district court's December 19, 2006, restraining order as it related to the Companies pending the outcome of the appeal.

12. In his memorandum in support of emergency motion, respondent quoted Minn. R. Civ. App. P. 108.01, subd. 1, as follows:

* * * the filing of a proper and timely appeal suspends the authority of the trial court to make any order necessarily affecting the order or judgment appealed from. The trial court to make any order necessarily affecting the order or judgment appealed from. The trial court retains jurisdiction as to matters independent of, supplemental to, or collateral to the order or judgment appealed from, and to enforce its order or judgment. * * *
Unless otherwise provided by law, a proper and timely appeal does not stay an order or judgment or enforcement proceeding in the trial court but the appellant may obtain a stay by providing a supersedeas bond or other security in the amount and form which the trial court shall order and approve, in the cases provided in this rule, or as otherwise provided by rule or statute.

13. Respondent's quotation of this rule was incomplete within the context of this appeal. Respondent omitted the following words from the beginning of Minn. R. Civ. App. P. 108.01: "Except in appeals under Rule 103.03(b), or as otherwise provided by law." Respondent had specifically stated in his statement of the case that the appeal was brought "under Minn. R. Civ. App. P. 103.03(b)," the provision respondent omitted from his quotation. (*See* ¶6, above.)

14. On January 23, 2007, the Court of Appeals denied respondent's motion and ordered respondent to file a completed certificate of transcript on or before January 29, 2007, or the appeal would be dismissed. In that order the Court of Appeals stated:

Appellants apparently made an e-mail request to the district court for a stay pending appeal. The request cited no authority, did not present any argument to the district court on the amount of security, if any, required to protect the interests of respondent, and included misleading references to a 'writ of prohibition' (which has never been filed) and deference to this court (although this court has not issued any order regarding a stay, to which the district court could be expected to 'defer').

15. Respondent failed to file a completed certificate as to transcript because the underlying case was settled and the appeal was moot. Although the issue had been rendered moot, respondent failed to so advise the Court of Appeals.

16. On February 9, 2007, the Court of Appeals dismissed the appeal.

17. Respondent's conduct violated Rule 3.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Simmons Matter

18. On or about January 27, 2005, Sherrie Simmons retained respondent to represent her in a marital dissolution proceeding. Respondent agreed to charge Simmons \$200 per hour. Attached to the retainer agreement was a copy of the homestead exemption statute.

19. When Simmons retained respondent, she signed a retainer agreement and an addendum to the retainer agreement. The addendum provided in pertinent part:

The undersigned agrees to unconditionally assign to the Olson Law Office any and all property rights that the undersigned may have, as security and collateral for attorneys fees and costs herein. Specifically, the undersigned waives any exemption rights that she may have in such property, including, without limitation, rights pertaining to her homestead.

20. Minn. Stat. § 507.02 provides in pertinent part: "If the owner [of real estate] is married, no conveyance of the homestead, . . . shall be valid without the signatures of both spouses." A waiver of the homestead exemption is the "granting of an attorney lien [which constitutes] a conveyance governed by the statute." *Peterson v. Hinz*, 605 N.W.2d 414, 415 (Minn. Ct. App. 2000). Accordingly, unless both spouses sign a waiver of the homestead exemption, the waiver is not valid. *Id.*

21. At no time did respondent obtain a waiver of homestead exemption from Simmons' spouse.

22. Respondent received and deposited into his trust account \$15,377.43. These funds were Ms. Simmons' proceeds from the sale of the parties' marital homestead. Respondent subsequently disbursed \$1,500 to Simmons, and retained the remaining \$13,877.43 in his trust account.

23. Respondent was not entitled to claim these funds or disburse these funds to himself for payment of his fees, however, because he did not have a valid waiver of the homestead exemption.

24. In July 2005, respondent requested the court to order the opposing party to pay respondent's attorney's fees. In conjunction with this request, respondent served and filed an affidavit dated July 22, 2005.

25. In his July 22, 2005, affidavit, respondent stated, "The hourly rate of \$225 an hour that was charged to [Simmons] . . ." The invoice attached to respondent's affidavit also stated that his rate was \$225 per hour. These statements were inaccurate. As set forth above (¶ 18), respondent agreed to charge Simmons \$200 per hour.

26. On March 21, 2006, and at respondent's request to submit to the pension administrator, Simmons executed an assignment of her interest in the portion of her husband's retirement assets that she received in the dissolution proceeding to the extent of respondent's unpaid attorney's fees. Respondent did not file this assignment with the pension administrator, as respondent and Simmons later resolved the fees issue.

27. In late March 2006 respondent withdrew from representation.

28. Respondent's conduct before October 1, 2005, violated Rule 1.8(j), MRPC.

THIRD COUNT

Ehlen Appeal Matter

29. Respondent represented Charles Ehlen in the appeal in a marital dissolution matter. On or about April 24, 2006, respondent served and filed a notice of appeal and statement of the case.

30. Minn. R. Civ. App. P. 132.01, subd. 3, requires briefs to be double spaced (with limited exceptions) and limits principal briefs to 45 pages.

31. On or about May 17, 2006, respondent served and filed a motion to expand the page limit by 15 pages.

32. On May 19, 2006, the Court of Appeals denied respondent's motion and ordered respondent to file a brief that complied with the 45-page limit. On or about October 12, 2006, respondent served and filed his brief.

33. On November 29, 2006, respondent timely served and filed a motion to extend the time in which to file his reply brief. Opposing counsel filed a memorandum in opposition which stated, among other things, that eight pages of respondent's 45-page principal brief were inappropriately single spaced.

34. On December 1, 2006, the Court of Appeals (1) denied respondent's motion for an extension to file the reply brief, (2) struck respondent's principal brief because it did not conform with Minn. R. Civ. App. P. and (3) ordered respondent to submit no later than December 12, 2006, an amended principal brief which complied with the requirements of Minn. R. Civ. App. P. 132.01, subd. 3.

35. Respondent thereafter filed an amended principal brief which complied with Minn. R. Civ. App. P. 132.01, subd. 3.

36. Respondent's conduct violated Rules 3.4(c) and 8.4(d), MRPC.

FOURTH COUNT

Hayes Appeal Matter

37. Respondent represented Shawn Hayes in the appeal in a marital dissolution matter. The principal issue on appeal was child custody. On or about May 19, 2006, respondent served and filed a notice of appeal and statement of the case. Respondent stated in the statement of the case that a full transcript was required for the appeal.

38. On June 1, 2006, the Court of Appeals ordered the case be given priority for scheduling because the appeal involved determination of child custody.

39. Pursuant to Minn. R. Civ. App. P. 110.02, subd. 2, respondent was required to order the transcript within 10 days after the appeal was filed and to file a certificate as to transcript within 10 days after ordering the transcript. Respondent failed to do so.

40. On or about June 20, 2006, opposing counsel served and filed a motion to dismiss the appeal based on respondent's failure to order the transcript or to file a certificate as to transcript. Respondent did not file a memorandum in response to the motion.

41. On June 22, 2006, the Court of Appeals ordered respondent to file a transcript certificate by July 5, 2006, and advised respondent that failure to comply with that order may result in sanctions, including dismissal. Respondent advised Mr. Hayes that if he did not provide the payment of the cost bond, filing fee and court reporter fee by July 5, 2006, the appeal would be dismissed.

42. On June 30, 2006, respondent sent a letter to the Court of Appeals explaining that payment arrangements had been made with the court reporters and the transcripts would be ordered within a week. Respondent did not file a certificate as to transcript at this time.

43. On July 5, 2006, the primary court reporter filed a certificate as to transcript, which estimated that the transcript would be completed on August 30, 2006. On July 10, 2006, the other court reporter filed a certificate as to transcript, which estimated that her portion of the transcript would be completed on August 15, 2006.

44. On July 11, 2006, the Court of Appeals ordered respondent to serve and file his brief within 15 days after the last transcript was delivered.

45. By August 30, 2006, the court reporters had completed and delivered to respondent the full transcript. On September 18, 2006, respondent timely filed his appellant's brief and appendix.

46. Respondent's conduct violated Rules 1.3, 3.2, 3.4(c) and 8.4(d), MRPC.

FIFTH COUNT

McIntosh Appeal Matter

47. Respondent represented Kenneth McIntosh in two appeals arising out of Kenneth's dissolution proceeding from Marjorie McIntosh. One appeal arose out of the judgment and decree; the other arose out of an order for protection. On or about July 31, 2006, respondent served and filed two notices of appeal and two statements of the case.

48. Pursuant to Minn. R. Civ. App. P. 110.02, subd. 2(a), respondent was required to order a transcript within 10 days after he filed the notice of appeal and required to file a certificate as to transcript 10 days after ordering the transcript. Respondent failed to do so, but had within ten (10) days written and phoned the court reporter requesting the cost of the transcript. Respondent states that his policy is to send the check for the transcript with the certificate.

49. By letter dated August 25, 2006, respondent advised the Court of Appeals that the court reporter had been on vacation since August 3, 2006, and had just returned, and that respondent would send a certificate as to transcript to the court reporter to file with the Court of Appeals.

50. By letter dated August 29, 2006, respondent sent the certificate as to transcript to the court reporter to sign, together with payment for the estimated cost of the transcripts.

51. On September 14, 2006, the Court of Appeals in one of the appeals ordered respondent to file the certificate as to transcript no later than September 25, 2006, and advised respondent that the failure to do so could result in sanctions,

including dismissal. The court reporter filed the certificate as to transcript before September 25, 2006.

52. By order filed October 16, 2006, the Court of Appeals (1) consolidated the appeals, (2) ordered the parties to file informal memoranda on or before October 24, 2006, addressing whether the part of the May 25, 2006, post-trial order awarding Marjorie past medical expenses was appealable, and (3) informed the parties that failure to file a memorandum may result in sanctions, including dismissal.

53. On October 19, 2006, respondent filed a motion seeking an extension to October 31, 2006, to file the memorandum required by the Court of Appeals' October 13, 2006, order.

54. On November 3, 2006, the Court of Appeals granted respondent's request for an extension to file his jurisdiction memorandum and ordered respondent to serve and file his jurisdiction memorandum by November 7, 2006. Respondent failed to do so. Although the issue had been rendered moot, respondent failed to so advise the Court of Appeals before the November 6 deadline (*see* preceding paragraph).

55. On December 1, 2006, the Court of Appeals dismissed the portion of respondent's appeal dealing with past-due medical expenses because respondent failed to file the required jurisdiction memorandum.

56. Respondent's conduct violated Rules 1.3, 3.4(c) and 8.4(d), MRPC.

SIXTH COUNT

Jabr Estate Matter

57. On August 6, 2000, Samir Jabr died. Respondent was retained to represent the personal representative of the estate.

58. On January 13, 2001, Samir Jabr, Jr., a son of the deceased, signed a petition for a formal probate of will and for formal appointment of personal representative. Respondent did not file this document until April 4, 2001.

59. On or about February 2, 2001, respondent filed documents to commence the probate proceeding.

60. On January 25, 2001, respondent signed a statement of contents of loss, destroyed or otherwise unavailable will. Respondent did not file this document until June 18, 2001.

61. On March 28, 2001, respondent wrote to the court, enclosing a proposed order for notice and hearing. Respondent stated these documents were inadvertently omitted from his February 2, 2001, filing.

62. On April 5, 2001, the court issued a notice of hearing on the petition for appointment of a personal representative. The hearing was scheduled for May 7, 2001.

63. On June 8, 2001, respondent wrote to the court, enclosing a proposed order.

64. On June 8, 2001, Aref Jabr, a son of the deceased, signed a renunciation of rights to be the personal representative and trustee. Aref and his wife were nominated as personal representatives in the will. Respondent filed this document on June 18, 2001.

65. On June 18, 2001, the judge signed letters testamentary and issued an order for formal probate and appointing Samir Jabr, Jr., as personal representative.

66. On September 17, 2001, an application for informal appointment of successor personal representative was signed by Linda Jabr, widow of the deceased.

67. In January 2002, Samir signed a notice of intent to resign as personal representative.

68. On May 14, 2002, the original inventory was signed by Linda as personal representative of the estate. At this time, the court had not issued an order appointing Linda personal representative. Respondent did not file the original inventory with the court until September 28, 2005.

69. On August 13, 2002, respondent wrote to the probate court, enclosing an application for appointment of successor personal representative, etc.

70. On April 9, 2003, the court issued an overdue notice and a request for respondent to file the closing documents.

71. On September 15, 2003, respondent wrote to the court, enclosing a proposed order appointing a successor personal representative.

72. In January 2004, Aref Jabr signed a renunciation of his right to be successor personal representative and a renunciation of his right to be successor trustee.

73. In January 2004 Samir Jabr, Jr., signed a renunciation of his role as personal representative.

74. By letter dated July 14, 2004, to all of the Jabrs, respondent stated that all paperwork necessary to close the estate and transfer the title to the homestead was completed, but respondent had just not yet had an opportunity to file the documents with the court.

75. On July 20, 2004, Linda was appointed as personal representative.

76. On August 27, 2004, Linda signed an acceptance of oath as personal representative.

77. Respondent filed this document with the court on September 13, 2004.

78. On September 15, 2004, respondent wrote to Linda, requesting her to sign the inventory, final account, and petition to allow final account, settle and distribute the estate.

79. On or about September 1, 2004, Linda signed this document. Respondent did not file this document until January 30, 2005.

80. On May 9, 2005, the court sent an overdue notice to respondent regarding the inventory and appraisal, and the closing documents.

81. On May 10, 2005, respondent wrote to the court enclosing an inventory and final account.

82. On July 20, 2005, the court sent to respondent an overdue notice, containing the court's final request for the inventory and appraisal, and the closing documents.

83. On September 23, 2005, respondent submitted the original inventory, original final account, and petition to distribute the estate.

84. On September 28, 2005, court administration told respondent to submit a notice and order for hearing. Respondent failed to do so.

85. Accordingly, on November 16, 2005, the court returned the previously filed documents. Respondent still did not submit a notice and order for hearing.

86. On January 11, 2006, the court wrote to respondent, directing respondent to file these documents within 20 days.

87. On January 30, 2006, the court issued a notice and order of final hearing. The hearing was scheduled for, and then conducted on, March 13, 2006. Respondent sent attorney B.S. to appear for respondent at this hearing. It was respondent's understanding that B.S. appeared and provided Judge Asphaug with the proposed decree of distribution.

88. On March 17, 2006, court administration telephoned respondent and reminded him of this obligation.

89. On March 28, 2006, Linda Jabr wrote to the court, complaining of respondent's delay in the matter.

90. On May 2, 2006, the court wrote to respondent. The court stated that during the March 13, 2006, hearing on the petition to allow final account, settle and distribute the estate, the court had directed respondent to submit a proposed decree of distribution, but respondent did not do so.

91. By letter dated May 2, 2006, the court told respondent that the court had received Linda's April 28, 2006, letter, and that the court was frustrated with respondent's delay in the matter. The court directed respondent to submit a proposed

decree of distribution within 14 days and to submit final closing documents 30 days after the decree was approved.

92. By letter dated May 17, 2006, respondent told the court that he thought that another lawyer had taken care of these issues in March. Respondent's May 17 letter was not received by the court, however, until August 5, 2006.

93. On August 26, 2006, Linda signed a petition for discharge of personal representative. Respondent filed this document on September 11, 2006. At this point, the estate was closed.

94. Respondent's conduct violated Rules 1.3, 3.2 and 8.4(d), MRPC.

SEVENTH COUNT

Loveland and Brosnan Matter

95. Respondent represented Francis Brosnan in a family law matter.

96. Respondent served on Loveland's counsel notice of Loveland's deposition. The deposition was scheduled for January 23, 2007. On January 23, 2007, the deposition was taken. Respondent administered the oath.

97. Minn. R. Civ. P. 28.03 prohibits a deposition being "taken before or reported by any person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel"

98. Respondent's conduct violated Rules 3.4(c) 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: May 7, 2009.



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