

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against WILLIAM D. PAUL,
a Minnesota Attorney,
Registration No. 164811.

**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 May 15, 1985. Respondent currently practices law in Duluth, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On October 1, 1991, respondent was issued an admonition for instructing his investigators to directly contact a represented party, and then ratifying the conduct by attempting to use the admissions gained in that communication.

B. On June 4, 1997, respondent was issued an admonition for failing to handle a matter with adequate diligence and promptness and failing to communicate adequately with his client.

C. On November 26, 1997, respondent was issued an admonition for failing to pay a valid, law-related judgment entered against him.

D. On April 4, 2000, the Minnesota Supreme Court publicly reprimanded respondent and placed him on two years' supervised probation for neglecting client matters, failing to keep clients informed, making misrepresentations to one client, failing to promptly return a file to a client, engaging in a pattern of depositing fee and cost advances in his business account and failing to safeguard client funds, and failing to cooperate with the disciplinary investigation.

E. On January 23, 2004, respondent was placed on private, supervised probation for a period of two years for neglecting a client matter and failing to communicate adequately with the client.

F. On October 13, 2006, respondent was issued an admonition for failing to provide an accounting of his attorney fees upon request of a client.

G. On October 13, 2006, respondent was issued a separate admonition for conditioning a refund of attorney fees upon a client agreeing not to file a professional responsibility complaint.

FIRST COUNT

Neglect, Failure to Communicate With Client - PDQ Engine and Machine Matter

1. On or about September 19, 2008, PDQ Engine and Machine ("PDQ Engine") retained respondent for representation in the appeal of a conciliation court judgment which had been entered against PDQ Engine in the amount of \$7,500.60. When PDQ Engine retained respondent, he received what his retainer agreement described as a \$1,500 "non-refundable retainer."

2. The judgment creditor moved to dismiss the appeal from conciliation court to district court. Respondent filed a memorandum opposing the motion. The district court granted the motion to dismiss.

3. On or about October 19, 2008, respondent agreed to represent PDQ Engine in an appeal of the district court decision to the Minnesota Court of Appeals.

4. On or about December 4, 2008, respondent served and filed a notice of appeal. Respondent failed, however, to file the required statement of the case. *See* Minn. R. Civ. App. P. 133.03.

5. On or about December 9, 2008, the Clerk of Appellate Courts sent to respondent notice of case filing. The notice identified the failure to file a statement of the case and directed respondent to file two copies of a statement of the case within ten days. Respondent failed to inform his client of the notice of case filing, failed to send a copy of the notice of case filing to his client and failed to serve and file a statement of the case.

6. By order filed December 30, 2008, the Court of Appeals ruled that there would be no oral argument regarding the matter because respondent failed to file a statement of the case. The Court of Appeals also ordered respondent to serve and file a statement of the case on or before January 12, 2009, and stated that if respondent failed to do so sanctions, including dismissal of the appeal, may be imposed. Respondent failed to inform his client of this order and failed to send a copy of this order to his client.

7. On or about January 12, 2009, respondent served and filed a statement of the case which stated that a full transcript was required for the appeal.

8. Also on or about January 12, 2009, the opposing party served and filed a motion to dismiss the appeal.

9. Respondent failed to inform his client of the motion to dismiss and failed to send a copy of the motion to his client.

10. By order filed January 22, 2009, the Court of Appeals denied the motion to dismiss. The Court of Appeals also noted that when a transcript is required, a transcript must be ordered within ten days after the appeal is filed, and that a certificate as to transcript is due ten days after the transcript is ordered. *See* Minn. R. Civ. App. P. 110.02, subds. 1, 2(a). The Court of Appeals ordered respondent to serve and file a

completed certificate as to transcript, signed by the court reporter and respondent, on or before February 2, 2009, and advised that if respondent failed to do so, the appeal may be dismissed.

11. Respondent failed to inform his client of the January 22 order, failed to send a copy of the order to his client, and failed to serve and file a certificate as to transcript.

12. By order filed February 13, 2009, the Court of Appeals dismissed the appeal based on the "multiple violations of the appellate rules and failure to comply with the January 22 order." Respondent failed to inform his client of this order, failed to send a copy of this order to his client and failed to advise PDQ Engine of its legal options after the appeal was dismissed.

13. During the appeal, respondent failed to initiate communications with PDQ Engine and failed to respond substantively to requests from PDQ Engine for communication, including the following:

- On or about April 29, 2009, PDQ Engine telephoned respondent's office and left a message for respondent to return the call. Respondent failed to do so.
- On or about May 1, 2009, PDQ Engine sent to respondent an e-mail inquiring about the status of the matter. Respondent failed to respond.
- On or about May 6, 2009, an officer of PDQ Engine went to respondent's office. Respondent stated that he was busy at that time and could not speak, but would telephone later that same day. Respondent failed to do so.

14. On or about May 11, 2009, a representative of PDQ Engine reviewed the district court file. Included in the file was a copy of the Court of Appeals' February 13, 2009, order dismissing the appeal. This was the first that PDQ Engine learned that the appeal had been dismissed.

15. Respondent's conduct violated Rules 1.3, 1.4, 3.2, 3.4(c) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Neglect, Failure to Communicate With Client - Jorgensen Matter

16. In or about October 2007 Michelle Jorgensen (n/k/a Foucault) retained respondent to represent her in a matter involving the father of her child. On or about October 10, 2007, Jorgensen signed a retainer agreement and paid to respondent what his retainer agreement described as a \$1,250 "non-refundable retainer." Respondent then began work on the matter.

17. By letter dated December 11, 2007, opposing counsel outlined to respondent the terms of an agreement.

18. By letter dated January 4, 2008, opposing counsel advised respondent that counsel had received no response from respondent to that December 11 letter and requested respondent to take action by a scheduled January 21, 2008, hearing date, or it would be counsel's understanding that Jorgensen had decided not to pursue the agreement.

19. On June 17, 2008, opposing counsel filed the petition for termination of parental rights of the father, which respondent had already drafted and served on behalf of Jorgensen, together with the father's waiver of right to be present at the hearing.

20. Respondent took no action on the matter between early January 2008 and August 2008, after the Director had mailed to respondent on August 11, 2008, notice of investigation of Jorgensen's complaint against respondent.

21. On August 13, 2008, respondent wrote to Jorgensen regarding an upcoming August 20, 2008, hearing.

22. The hearing was conducted on August 20, 2008. Thereafter, proposed findings of fact, conclusions of law and order were drafted, submitted to and signed by opposing counsel, the guardian ad litem, and respondent. Respondent signed the

proposed findings, conclusions and order on September 10, 2008, and filed the fully executed document with the court on or about September 23, 2008.

23. Respondent's conduct violated Rule 3.2, MRPC.

THIRD COUNT

Neglect, Failure to Communicate With Client - Nelson Matter

24. On or about September 21, 2007, Russell D. Nelson retained respondent for representation in a family law matter, including the filing of a motion regarding child support. Respondent agreed to represent Nelson for a \$750 flat fee, to be paid in installments. On or about September 21, Nelson paid \$200 to respondent. On or about October 3, 2007, respondent and Nelson met again, and Nelson paid an additional \$100 to respondent.

25. From October 3, 2007, until early February 2008, respondent took no action on the matter.

26. On or about February 12, 2008, Nelson and his sister met with respondent to prepare an affidavit for the motion respondent was to bring. After the meeting ended, respondent decided that he needed to speak with a child support worker before making a motion and that he would ask Nelson for copies of medical bills to support a claim for reimbursement. Respondent failed, however, to either contact the child support worker or request bills from Nelson.

27. Respondent took no action on the matter after the February 12 meeting until July 2008.

28. By letter dated July 11, 2008, Nelson told respondent that respondent had not responded to phone calls from Nelson or otherwise contacted Nelson, and therefore Nelson requested a refund of the funds paid.

29. By letter dated July 21, 2008, respondent requested Nelson to contact respondent to discuss the refund, to ensure the proper amount was refunded.

30. By letter dated July 31, 2008, Nelson advised respondent that Nelson again requested a full refund. Respondent did not do so and failed to otherwise communicate with Nelson or work on the matter.

31. In September 2008, Nelson filed a complaint with the Director's Office. Notice of investigation of that complaint was sent to respondent on or about September 30, 2008.

32. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

FOURTH COUNT

Failure to Cooperate

33. On August 11, 2008, the Director mailed to respondent notice of investigation of Foucault's complaint. The notice requested respondent to provide his complete written response within 14 days of the notice. Respondent failed to do so.

34. By letter dated September 3, 2008, the district ethics committee (DEC) investigator assigned to investigate Foucault's complaint requested respondent to provide information which had been requested previously. Respondent failed to do so.

35. On September 30, 2008, the Director mailed to respondent notice of investigation of a complaint by Jessica DeMars against respondent. The notice requested respondent to provide his complete written response within 14 days of the date of the notice. Respondent failed to do so.

36. On October 8, 2008, the DEC investigator assigned to investigate DeMars' complaint spoke with respondent about the matter.

37. On October 28, 2008, the Director mailed to respondent notice of investigation of a complaint by Mary Jo Booth against respondent. The notice requested respondent to provide his complete written response within 14 days of the date of the notice. Respondent failed to do so.

38. On November 3, 2008, the DEC investigator assigned to investigate DeMars' complaint placed a telephone call to respondent and left a message for respondent to return the call. Respondent failed to do so.

39. On November 10, 2008, the DEC investigator assigned to investigate DeMars' complaint placed a telephone call to respondent and left a message for respondent to return the call. Respondent returned the call on November 12, 2008, and left a message for the investigator.

40. On November 13, 2008, the DEC investigator and respondent spoke by telephone. During that conversation, respondent stated that he would be sending a response to the complaint. Respondent failed to do so at that time.

41. On December 1, 2 and 3, 2008, the DEC investigator assigned to investigate DeMars' complaint placed telephone calls to respondent and, on each occasion, left a message for respondent to return the phone call. Respondent failed to do so and failed to provide a response to the complaint.

42. On or about December 9, 2008, the DEC investigator assigned to investigate Booth's complaint telephoned respondent and requested respondent to provide his response to Booth's complaint. Respondent told the investigator that he believed that the matter was being resolved through the fee arbitration process. The investigator advised respondent that this was not the case, and that he needed to respond to the notice of investigation. Respondent failed to do so.

43. On December 22, 2008, the DEC investigator assigned to investigate Booth's complaint again telephoned respondent, requesting him to provide his response to the complaint.

44. By letter dated December 23, 2008, respondent provided his response.

45. By letters dated January 16, 2009, the Director advised respondent that the DEC had completed its handling of the Booth, DeMars, Foucault and Nelson matters and that further handling of the matters would be conducted by the Director's Office.

46. By letter dated January 20, 2009, the Director requested respondent to provide his complete written response to Foucault's complaint, as originally requested in the August 11, 2008, notice of investigation, and his complete written response to DeMars' complaint, as originally requested in the September 20, 2008, notice of investigation, together with certain additional information and documents.

47. On or about February 2, 2009, respondent spoke by telephone with an Assistant Director and requested an extension of the time to respond. Respondent agreed to provide his response by February 13, 2009.

48. On February 12, 2009, respondent spoke by telephone with an Assistant Director and stated that he would provide his responses to the DeMars and Foucault complaints. By letters dated February 17, 2009, respondent did so.

49. Respondent's conduct violated Rule 8.1(b), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility.

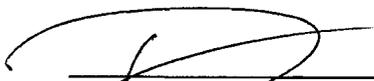
WHEREFORE, the Director respectfully prays for an order of this Court suspending from the practice of law or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may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

Dated: Nov. 23, 2009.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



TIMOTHY M. BURKE
SENIOR ASSISTANT DIRECTOR
Attorney No. 19248x