

FILE NO. A09-2166
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary
Action against:

WILLIAM D. PAUL,
a Minnesota Attorney,
Registration No. 164811.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION
FOR DISCIPLINE**

The hearing on the Director's Supplementary Petition for Disciplinary Action took place on January 14, 2011.

Timothy M. Burke, Esq., Senior Assistant Director, Office of Lawyers Professional Responsibility, 1500 Landmark Towers, 345 St. Peter Street, St. Paul, Minnesota 55102-1218, appeared for the petitioner.

William D. Paul, Esq., 1217 East First Street, Duluth, Minnesota 55805-2402, the respondent, appeared *pro se*.

Based upon the testimony of the witnesses, the exhibits introduced at the hearing, the submissions and arguments of counsel, the undersigned finds the following facts have been proven by clear and convincing evidence:

FINDINGS OF FACT

COUNT FIVE

(Frestedt)

1. John Frestedt (Frestedt), a retired Duluth municipal worker, retained William D. Paul (Paul) to represent him in a child support matter.

2. Frestedt paid Paul a one thousand five hundred dollars (\$1500.00) "retainer" on January 28, 2010.

3. The handwritten retainer agreement describes the \$1500.00 payment as a "non-refundable retainer," which was not deposited in his trust account.

4. The St. Louis County Child Support Officer indicated in his/her January 21, 2010 Affidavit that "St. Louis County is setting this case direct to hearing as (sic) the issue of medical and dental insurance, and who should carry for the joint child, could not be settled upon. John Frestedt did indicate that he would like to go to hearing on this."

5. The child support hearing took place on February 24, 2010 at which, according to the Child Support Magistrate's February 24, 2010 Order, "the Obligor (Frestedt) was not present and did not appear by counsel."

6. The February 24, 2010 Order required in salient part that:

- a.) Frestedt to pay as basic child support \$426.00/month (later amended to \$465.00/month;
- b.) Frestedt obtain and maintain medical and dental insurance for the joint child;
- c.) Frestedt to pay to the obligee \$181.00/month as reimbursement for

the amount she expends for the coverage until Frestedt has in effect medical and dental insurance for the child;

- d.) The obligation for payment of unreimbursed medical/dental expense for the child were allocated 47% to Frestedt, 53% to the obligee.

7. On March 17, 2010, the Child Support Magistrate issued an Amended Order in which the basic support was increased from \$426.00/month to \$465.00/month, correcting the mathematical error in the first order.

8. Frestedt planned to attend the February 24, 2010 hearing but Paul told him not to show up.

9. Paul instructed his paralegal, Amber Marsolek (Marsolek), to "get a continuance" which she attempted to do by calling Clarissa McDonald, Assistant St. Louis County Attorney, who had no objection to the requested continuance. Marsolek also left a voice mail with the Court, called again and one of the clerks agreed to run a note over.

10. Based upon these efforts, Marsolek assumed that a continuance was a *fait accompli*.

11. The Child Support Magistrate noted in his March 17, 2010 Order that:

The County Attorney's office was contacted by an attorney in Duluth, on behalf of the Obligor, on February 23, 2010, *less than one business day prior to the hearing*, and asked if it would agree to a continuance of the February 24, 2010 hearing. Counsel was then informed that the decision whether or not to continue an expedited child support process (ExPro) hearing must be made by the court and, consequently, although it did not object to a continuance, *that decision would have to be made by the magistrate*.

The magistrate was not informed of any request to continue the February 24, 2010 hearing prior to that hearing and, had he been contacted, would have provided his standard response that no continuance would be granted, at that late state, absent the consent of both the County *and the other party to the proceeding*.

The Obligee appeared at the February 24, 2010 hearing, *after driving 4-1/2 hours, one way, to get there*, and, when asked, informed the magistrate she had not been contacted by the Obligor or anyone else acting on his behalf about a continuance of that hearing.

The Obligor has had notice of the February 24, 2010 (sic) since service of the motion to modify child support, by first class mail, on January 22, 2010, or for over one month. Any request to continue that hearing, on less than one day's notice, without even contacting the Obligee, would be denied, as unreasonable and without good cause and, consequently, the hearing proceeded, as scheduled.

12. Paul claims that a "miscommunication" resulted in his office telling Frestedt not to appear and that he did not appear because he was led to believe, and, he contends, reasonably so, that a continuance would be granted.

13. He further contends that his need for a continuance was precipitated by a three-day trial and arguments in the Court of Appeals.

14. Paul does not explain why he waited until the day before the February 24 hearing to attempt to obtain the continuance when he was retained on January 28, 2010.

15. The three-day trial and the arguments in the Court of Appeals are not matters which arise suddenly and create a last minute crisis, so Paul must have been cognizant of these problems long before the scheduled hearing date.

16. Paul has provided no facts which justify the "ninth hour" attempt for a continuance.

17. Paul should have known that a continuance must be agreed to by all parties and that his failure to contact the obligee was an unreasonable omission and one capable of causing great prejudice to an opposing party.

COUNT SIX

(Kalligher)

18. Respondent, representing Dennis and Darlene Kalligher (the grandparents of Dennis Kalligher [dob 10/08/2006] whose parents are Michelle Kalligher and Brian Beltramo), sought to intervene in a CHIPS proceedings to obtain grandparent visitation rights for his clients, ". . . pursuant to Minn. Stat. § 257.022, subd. 2a (1994)."

19. Counsel Peter L. Radosevich, representing Helen and Kelly Malzac, wrote to respondent on March 16, 2010 that respondent's Motion to Intervene for Visitation and to Modify Custody:

- a.) cited authority ". . . no longer exists"
- b.) the replacement statute, i.e., Minn. Stat. § 257C.08, has no application because ". . . this is not a dissolution or custody matter; the child was not removed by her parents; nor are the parents deceased."
- c.) "there is no proper service of the Amended Motion"
- d.) ". . . you did not comply (nor does it seem you even attempted to comply) with Minnesota Rules of civil (sic) Procedure Rule 24.03 to intervene."

3) "... nor does rule 24.03 allow intervention in this matter."

20. In her March 25, 2010 Order and Memorandum, Judge Heather L. Sweetland found that:

a.) "... the parties had not been properly served with the motion ..."

b.) "... the motion was not timely ..."

21. On May 6, 2010 Judge Sweetland filed her order requiring respondent to pay the Malzacs' attorney \$1500.00 "... within thirty (30) days of the date of filing of this Order," based upon her findings that:

On September 30, 2008, Attorney William D. Paul, representing Dennis and Darlene Kalligher, filed a Motion to Intervene for Visitation and to Modify Custody. No date for a hearing was in the motion nor was there any Affidavit of Service. Court Administration staff brought the matter to this Court's attention. The Court directed staff to advise Mr. Paul to serve and file a Petition for Custody.

During the March 4, 2009, hearing, the court advised Mr. Paul that a Petition for Custody and the opening of a new file would be the proper way to proceed with his clients' prayers for relief. Mr. Paul had a partial transcript of the March 4, 2009, hearing filed with the Court. The Court specifically told Mr. Paul to file the Petition for Custody and that there would be either consolidation or joinder of the files. The Court also made a record of this Court's advice to Mr. Paul (through Court Administration staff) after the filing of September 30, 2008, noted in Finding of Fact 5 above.

22. Respondent argued that his intransigence (the undersigned's description, not Mr. Paul's) ultimately benefited his clients because they ultimately were assigned to a different judge. It seems, however, that the result would likely have been the result if

respondent had promptly abided by Mr. Radosevich's requests and Judge Sweetland's directions.

23. Respondent offered no factual or legal justification for his failure to follow the rules of civil procedure other than that referred to in the paragraph above.

24. The failure of the Kallighers to testify at the hearing did not prejudice respondent because respondent could have secured the presence of each through the use of subpoenae. Neither did respondent request continuation of the hearing to allow him to subpoena one or both of the Kallighers.

COUNT SEVEN

(Viall)

25. Respondent admits that he had Raymond J. Viall pre-sign dated and undated signature pages under "Further This Affiant Saith Naught" and above the "Subscribed and sworn to before me this ____ day of October, 2008."

26. The signature lines were strategically placed (high on the page, in the middle of the page and at the bottom of the page) so that wherever the affidavit ended one of the signature pages could be used to disguise the fact that the signature was in place before the affidavit was prepared and to make it appear that the signature was placed on the affidavit after it was completed.

27. Respondent claims his actions were solely to prevent inconvenience to the client.

28. He exhibited no remorse for his wrongdoing nor did he manifest any understanding of the reasons for statutory requirements relating to notarizations.

COUNT EIGHT

(Bucci)

29. The Office of Lawyers Professional Responsibility (OLPR) mailed respondent its notice of investigation to respondent on July 1, 2010, requiring his written response and entire client file within fourteen days.

30. On July 9, 2010, the OLPR wrote Mark W. Gehan (then respondent's attorney) that no written response had been made.

31. On July 27, 2010, the OLPR again wrote to Mark W. Gehan (then respondent's lawyer) that none of the items requested in its July 1, 2010 letter had been provided.

(Frestedt)

32. On May 17, 2010, OLPR mailed to Mr. Gehan its notice of investigation, requesting a written response and certain documents within fourteen days.

33. The OLPR wrote on June 3, 2010 to respondent's counsel advising him that no response to the investigation nor any of the requested documents had been received.

34. On June 11 respondent's paralegal wrote that respondent would send the documents on June 24, 2010.

35. Respondent on June 16, 2010 sent the OLPR the requested document.

36. The OLPR wrote to counsel again requesting respondent's written response.

37. Respondent's counsel told the OLPR by phone on July 29, 2010 that respondent was working on his written response.

CONCLUSIONS OF LAW

(Frestedt)

38. Respondent's late, ineffectual attempt to obtain a continuance of the hearing, his failure to obtain, or attempt to obtain, the concurrence of interested parties to the proposed continuance, his failure to appear at the hearing and his office's instruction to Frestedt not to appear at the hearing violated Rules 1.1 and 1.3, MRPC.

(Kalligher)

39. Respondent's failure to properly file and serve his Motion and Amended Motion, his failure to respond to the advice from Mr. Radosevich and to the instructions from Judge Sweetland, without a factual or legal justification, violated Rules 3.4(c) and 8.4(d), MRPC.

(Viall)

40. Respondent's procurement of and participation in the improper notarization violated Rule 8.4(c), MRPC.

(Bucci/Frestedt)

41. Respondent's failure to promptly respond to requests of OLPR relative to the Bucci and Frestedt investigations violated Rule 25, RLPR.

42. The attached Memorandum is made a part hereof.

RECOMMENDATION FOR DISCIPLINE

The undersigned respectfully recommends to the Minnesota Supreme Court that the following discipline be imposed:

1. The respondent, William D. Paul, be indefinitely suspended from the practice of law for a minimum of six (6) months.
2. The respondent be placed on active, supervised probation for at least two (2) years after termination of his suspension, at his own expense.
3. Respondent be responsible for the costs of this proceeding, including cost and disbursements.

DATED: March 22, 2011

BY: 
HON. MICHAEL F. FETSCH
DISTRICT COURT JUDGE (Retired)
REFEREE HEREIN BY SUPREME COURT APPOINTMENT

MEMORANDUM

These new violations and William D. Paul's response to them demonstrate a continuing and heightened lack of insight, a lack of an appropriate legal and moral compass, an ignorance of basic procedure, a lack of basic legal competence and an ability to rationalize any failure of his duty to his client as somehow benefiting the client.

His past history of discipline as found in paragraph twenty-four (24) of the August 5, 2010 Findings of Fact, Conclusions of Law and Recommendation for Discipline, and the failure of prior supervisory and rehabilitative efforts and the respondent's inability to understand the goals and needs of his clients require discipline of a more severe nature and a more intensive, supervisory probation after the period of suspension.

M.F.F.