

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 above-captioned matter was heard on May 19 and July 6, 2010, by the undersigned acting as Referee by appointment of the Minnesota Supreme Court.

Timothy Burke, Esq., 345 St. Peter Street, 1500 Landmark Towers, St. Paul, Minnesota 55102-1218, appeared on behalf of Office of Professional Responsibility.

Mark W. Gehan, Esq., W-1100 First National Bank Building, 332 Minnesota Street, St. Paul, Minnesota, 55101, appeared on behalf of William D. Paul who was personally present on each hearing date.

Based upon the evidence adduced at hearing, the submissions of counsel and the admissions in the pleadings, the undersigned makes the following:

FINDINGS OF FACT

COUNT ONE

(PDQ Engine and Machine)

1. Respondent admitted the factual accuracy of the allegations in Count One of the Director's petition, all of which are incorporated here by reference.

SECOND COUNT

(Jorgensen)

2. Michelle Foucault (f/n/a Jorgensen) (Foucault) retained respondent in October 2007 in connection with matters relating to her biological child, Austin Jorgensen (Austin), involving Jerry Atkinson (Atkinson), former boyfriend and the child's father.

3. Foucault had obtained a restraining order against Atkinson. Foucault had strong feelings about the events that led her to seek and obtain the order, among which were his harassing conduct toward her and his threats to take custody of Austin. Foucault later retained respondent to assist her in matters relating to Austin.

4. Contacts between respondent and James L. Cirilli (Cirilli) led to a memorandum of agreement (Ex. 16).

5. In January 2008 respondent and Foucault went to the Douglas County Courthouse, Superior, Wisconsin, for a child support hearing. Atkinson was then a Superior County resident.

6. Respondent and Cirilli negotiated, reaching an agreement in which Atkinson would agree to termination of his parental rights and that he would have no future child support obligation for Austin.

7. Atkinson signed the Consent of Parent and Waiver of Notice of Hearing on June 12, 2008.

8. Respondent drafted a stipulation containing the specifics of the parties' agreement and forwarded the same to Cirilli.

9. Cirilli subsequently filed the Stipulation, Consent of Parent and Waiver of Notice of Hearing sometime in the latter half of June 2008.

10. Respondent then called Foucault to tell her of the filing, advising her that he was waiting for notice of the hearing date.

11. On August 4, 2005, Atkinson called Foucault, telling her that they were supposed to go to court on August 20.

12. Foucault reacted with a high level of anxiety. She called the Superior County Court seeking more information. The clerk's office told her there was no August 20 hearing date. Her anxiety increased.

13. She called respondent's office. He was not available. She was sure respondent had somehow betrayed her; her words were "led me down the river." She filed a complaint against respondent that same day with the Director's office.

14. The Stipulation signed by the parties was not introduced into evidence. The St. Louis County District Court called Atkinson's attorney who advised Atkinson of the hearing date. It did not call either respondent or Foucault.

15. Foucault was extremely upset by her contact with Atkinson and the failure of respondent to notify her of the hearing date, all of which was compounded by her inability to confirm the hearing date.

16. On August 5 respondent spoke to Foucault and explained that the Court had so acted because no Certificate of Representation had been filed by respondent. That omission was on purpose, done to avoid the filing fee.

17. On August 13, 2008, respondent wrote Foucault giving her her notice of the August 20, 2008 hearing.

18. Cirilli drafted the Findings of Fact, Conclusions of Law and Order (for termination of Atkinson's parental rights). On September 10, 2008, respondent, Foucault and the guardian ad litem executed the same. Filing took place on September 23, 2008.

19. But for the fact that Atkinson called her, Foucault would have made no complaint about respondent's handling of the case.

COUNT THREE

(Russell D. Nelson)

20. The director dismissed this count for lack of evidence.

COUNT FOUR

(Failure to Cooperate)

21. The relevant facts are as follows:

- a) August 11, 2008: Director mails notice of investigation for Foucault's complaint with copy to Cheryl M. Prince (Prince), Chair Eleventh District Ethics Committee (DEC) September 3;
- b) Sean M. Quinn, Esq., wrote to respondent and Prince that Foucault was withdrawing her complaint;
- c) September 30, 2008: Director mails notice of Jessica DeMars complaint;
- d) October 8, 2008: DEC investigator speaks with respondent about DeMars;
- e) October 28, 2018: Director mails notice of Mary Jo Booth complaint;
- f) November 20, 2008: DEC investigator (DeMars) again calls respondent, leaving message. Respondent returns call, leaving a message;
- g) November 13, 2008: DEC investigator (DeMars) calls respondent, leaving message;

- h) November 12, 2008: Respondent calls DEC investigator (DeMars), leaving message;
- i) November 13, 2008: DEC investigator (DeMars) and respondent connect (phone). Respondent states he will send response to DeMars complaint. Respondent does not timely respond.
- j) December 1, 2 and 3, 2008: DEC investigator (DeMars) calls leaving messages. Respondent does not return calls nor does he respond to complaint;
- k) December 9, 2008: DEC investigator (Booth) calls respondent requesting his response. Respondent replies that matter is being handled by arbitration. The investigator advises respondent that he must reply. Respondent does not.
- l) December 22, 2008: DEC investigator (Booth) calls, requesting respondent's response.
- m) December 23, 2008: Respondent provides reply (Booth);
- n) January 16, 2009: Director advises that his office will be handling Foucault, DeMars, Booth and Nelson matters;
- o) January 20, 2009: Director requests:
 - (i) complete response to Foucault matter;
 - (ii) complete written response to DeMars matter plus additional information and documents;
- p) February 12, 2009: Respondent requests additional time to respond;
- q) February 17, 2009: Respondent responds.

22. Respondent admits “. . . that he was dilatory in responding to some communications from the District Ethics Committee.”

23. Respondent claims confusion about the matters (Foucault, DeMars, Booth), but the confusion and delay were generated by his failure to promptly clarify his incorrect assumptions with the designated investigators. Neither did those confusions justify his many delays.

24. The respondent's prior disciplinary history consists of the following:
- 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 sue the admissions gained in that communication (Ex. 38);
 - 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 (Ex. 37);
 - c) On November 26, 1997: Respondent was issued an admonition for failing to pay a valid, law-related judgment entered against him (Ex. 36);
 - d) On April 4, 2000: 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 (Ex. 35);
 - 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 (Ex. 34);
 - 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 (Ex. 33);
 - 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 (Ex. 32).

CONCLUSIONS OF LAW

1. There are facts sufficient to prove by clear and convincing evidence that respondent violated Rule 3.2, MRPC during his representation in the PDQ Engine matter (Count One).

2. There are not facts sufficient to prove by clear and convincing evidence that respondent violated either Rule 1.3 or rule 1.4, MRPC in the Foucault matter (Count Two).

3. The Director dismissed the Nelson matter (Count Three).

4. There are facts sufficient to prove by clear and convincing evidence that respondent failed to cooperate promptly in the Foucault, DeMars and Booth matters in violation of Rule 8.1(b) and Rule 25, MRPC (Count Four).

5. The attached Memorandum is made a part hereof.

RECOMMENDATION FOR DISCIPLINE

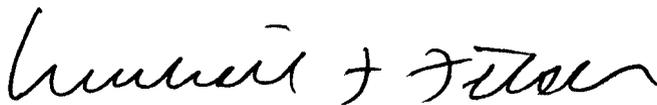
The undersigned respectfully recommends to the Minnesota Supreme Court that the following discipline be imposed:

1. That respondent be suspended from the practice of law for thirty ((30) days.

2. That respondent be placed on active, supervised probation for two years at respondent's expense.

3. That respondent be responsible for the costs of this proceeding, including costs and disbursements.

DATED: AUGUST 5, 2010

BY: 

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

MEMORANDUM

Respondent's extensive prior discipline history requires the suspension even though the facts proven are not so egregious of themselves to mandate suspension standing alone.

The fact that the opposing party in the PDQ Engine matter was likely judgment proof and PDQ's owner was not perturbed by the dismissal in the appeal mitigates to some degree the severity of respondent's conduct.

M.F.F.