

FILE NO. A05-847

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against BRIAN TODD PIERCE,
a Minnesota Attorney,
Registration No. 290038.

**SUPPLEMENTARY 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 supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of an April 18, 2005, petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

COUNT FIVE

Neglect, Non-Cooperation, Improper Business Transaction with Client,
Failure to Obey Court Order and Rules and Failure to Pay
Judicial Court Reporter – Amundson Matter

42. Respondent represented Scott Amundson in a criminal matter. Amundson was convicted of controlled substance crime in the fifth degree - possession.

43. On July 29, 2004, Amundson was sentenced. The sentencing order provided in pertinent part:

- Amundson would serve 36 months in prison;

- The entire sentencing order would be stayed unless Amundson failed to appeal timely or until the Minnesota Court of Appeals or Supreme Court issued a final decision on any appeal;
- If Amundson's conviction was affirmed, Amundson was to report within 10 days of the decision for execution of the sentence.

44. Amundson retained respondent to represent him in an appeal.

Respondent requested a \$5,000 flat fee. Amundson could only pay approximately \$1,700. Respondent agreed to take that money, and for the balance of the fee took Amundson's title to a late 1940's Chevrolet car.

45. Respondent did not notify Amundson in writing to consider independent counsel, did not disclose the terms of the transaction in writing, and did not have Amundson sign a consent to the transaction.

46. On or about October 26, 2004, respondent filed a notice of appeal and statement of the case. The statement of the case stated that a full transcript was required and requested oral argument.

47. Respondent was required to (1) order a transcript within 30 days of the filing of the notice of appeal and (2) file the certificate as to transcript within 10 days thereafter. Minn. R. Crim. P. 28.02, subd. 9; Minn. R. Civ. App. P. 110.02, subd. 2. On November 2, 2004, the clerk of appellate courts issued a notice of case filing which reminded respondent of these requirements. Respondent failed to order a transcript timely and failed to file a certificate as to transcript timely.

48. On December 27, 2004, the Court of Appeals ordered respondent to file a certificate as to transcript by January 5, 2005, and advised respondent that the failure to do so could result in sanctions, including dismissal of the appeal. Respondent failed to inform his client of the order and failed to provide a copy of the order to his client.

49. On or about January 4, 2005, respondent executed and filed a certificate as to transcript. In the certificate, respondent stated that he agreed with the court reporter upon satisfactory financial arrangements for the transcription.

50. On January 5, 2005, the court reporter delivered the transcript to respondent by mail.

51. Respondent's brief was due on or before March 10, 2005. Minn. R. Crim. P. 28.02, subd. 10; Minn. R. Civ. App. P. 134.01(b). Respondent failed to serve or file a brief.

52. On March 17, 2005, the Court of Appeals (1) ordered respondent to serve and file a brief on or before March 28, 2005, (2) advised respondent that the failure to do so could result in sanctions, including dismissal of the appeal, and (3) denied respondent's request for oral argument because of his failure to file a brief timely. Respondent failed to inform his client of the order, failed to send a copy of the order to his client, failed to respond to the order and failed to serve or file a brief.

53. On April 8, 2005, the Court of Appeals dismissed the appeal. The Court of Appeals allowed respondent until April 18, 2005, to serve and file a motion to reinstate the appeal, accompanied by respondent's brief on the merits. Respondent failed to inform his client of the order, failed to send a copy of the order to his client, failed to respond to the order, failed to serve or file a motion to reinstate the appeal and failed to serve or file a brief.

54. Because respondent failed to inform his client that the appeal had been dismissed, Amundson was unaware that he was obligated to report pursuant to the sentencing order.

55. On or about April 25, 2005, the prosecutor served on respondent and filed a motion for Amundson to report to prison. Respondent failed to inform his client of the motion, failed to send a copy of the motion to his client and failed to respond to the motion.

56. On April 26, 2005, the court granted the motion for Amundson to report to the Nobles County sheriff and ordered Amundson to report on or before 9:00 a.m. on April 29, 2005. Respondent failed to inform Amundson of the order, failed to send a copy of the order to Amundson and failed to respond to the order.

57. Accordingly, Amundson was unaware of the order and did not report. Amundson was subsequently arrested to begin his sentence.

58. Despite multiple requests, respondent failed to honor his arrangements with the court reporter and has not paid any portion of the price for the transcript.

59. Respondent's conduct violated Rules 1.3, 1.4, 1.8(a), 3.2, 3.4(c) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

COUNT SIX

Neglect and Failure to Appear in Court – Brown Matter

60. Respondent represents Tom Brown in a post-dissolution child custody matter involving Brown's motion for change of custody.

61. While the motion was pending, opposing counsel wrote respondent on March 30, April 7, and April 20, 2005. Respondent failed to respond to any of these letters.

62. Respondent also represents Brown in a related CHIPS proceeding. On February 17, 2005, the court sent respondent notice of a May 3, 2005, hearing.

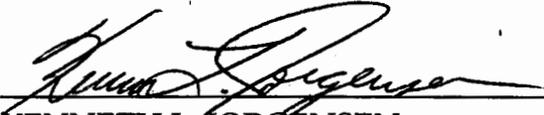
63. Respondent failed to attend the May 3 hearing, failed to notify the court or counsel that he would not attend and failed to ask that the hearing be rescheduled or continued.

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

WHEREFORE, the Director respectfully prays for an order of this Court disbaring respondent, 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 19, 2005.

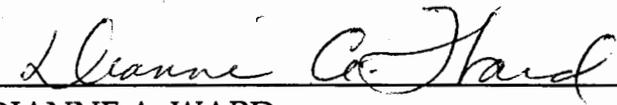

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and


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This supplementary petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: May 20, 2005.


DIANNE A. WARD
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD