

FILE NO. \_\_\_\_\_

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against BRIAN LOUIS PITERA,  
a Minnesota Attorney,  
Registration No. 298475.  
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**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on December 29, 1999. Respondent most recently practiced law in Roseville, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline is as follows:

A. On January 10, 2005, respondent was placed on private probation for a period of two years for accepting representation of a client and appearing in court on three occasions while suspended for nonpayment of his lawyer registration fee; failing to communicate with the client and leaving the client with no means by which to contact him; failing to appear in court for the client's trial without informing either the court or the client; and failing to cooperate with the

Director's disciplinary investigation. Respondent's conduct was in violation of Rules 1.3, 1.4, 3.2, 5.5(a), 8.1(a)(3), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR.

FIRST COUNT

Felony Assault Matter

1. On or about December 25, 2010, respondent and his roommate, R.W., were involved in a physical altercation with one another. The altercation left R.W. with serious injuries.

2. On August 1, 2011, pursuant to a plea agreement, respondent pled guilty to the charged offense of assault in the first degree, a felony, in violation of Minn. Stat. § 609.221.1.

3. On November 17, 2011, respondent was sentenced to 75 months imprisonment in the Minnesota Correctional Facility located in St. Cloud, Minnesota.

4. Respondent's conviction under Minn. Stat. § 609.221.1 of felony assault in the first degree violated Rule 8.4(b), MRPC.

SECOND COUNT

Failure to Appear – K.G. Matter

5. Respondent represented K.G. with respect to two felony narcotics charges in Isanti County District Court.

6. On March 29, 2011, K.G.'s father, J.G., paid to respondent \$2,000 as a flat, nonrefundable fee for representation of K.G. through trial. On March 30, 2011, K.G. signed a retainer agreement with respondent to this effect.

7. Respondent appeared in court on K.G.'s behalf two or three times following his retention.

8. K.G.'s matter was ultimately set for a settlement conference on July 26, 2011. Respondent telephoned K.G. the night before the settlement conference and

instructed her to appear and request the judge reschedule as respondent had another court appearance scheduled for that morning.

9. K.G. appeared for the settlement conference; respondent did not appear. At the conference, K.G. informed the court respondent was in trial in Ramsey County that day.

10. On July 26, 2011, Isanti County District Court Judge James Dehn telephoned respondent and informed him that K.G.'s court date was set for August 8, 2011.

11. At some point in the week preceding the August 8, 2011, hearing, respondent spoke with K.G. and confirmed he was aware of the August 8, 2011, court date.

12. On August 4, 2011, the prosecutor assigned to K.G.'s criminal matter, Jeffrey R. Edblad, left a message on respondent's cellular telephone informing him that K.G.'s case would be the first case on the court's calendar on August 8, 2011. In his message, Edblad further requested respondent return his telephone call on August 5, 2011, to discuss K.G.'s case. Respondent did not return Edblad's telephone call on August 5, 2011, as requested.

13. On the morning of August 5, 2011, Isanti Deputy Court Administrator Heather Holland telephoned respondent and left a message informing him that K.G.'s case would be the first case on the court's calendar on August 8, 2011. In the afternoon of August 5, 2011, Holland again telephoned respondent and left another message informing him that K.G.'s case would be the first case on the court's calendar on August 8, 2011. Respondent did not respond to either of Holland's messages.

14. On August 8, 2011, K.G. and Edblad appeared in Isanti County District Court before Judge Hunter P. Anderson. Respondent did not appear in court on August 8, 2011. Respondent did not call or otherwise notify K.G., Edblad, or Judge

Anderson prior to or on August 8, 2011, that he would not appear at K.G.'s scheduled court hearing.

15. As a result of respondent's failure to appear in court on August 8, 2011, K.G. was left without counsel at the hearing and the court, *sua sponte*, rescheduled the hearing for a later date.

16. K.G. has since been unable to contact respondent on his office or cellular telephone numbers and respondent has not communicated with K.G. regarding the representation following his last contact with her in the week preceding the August 8, 2011, hearing.

17. To date, respondent has not returned any portion of the \$2,000 paid by J.G. for K.G.'s representation.

18. Respondent's failure to appear in court on August 8, 2011, on K.G.'s behalf or otherwise notify K.G., the prosecutor, or the court of his inability to appear violated Rules 1.3, 1.4(b), 3.2, 3.4(c), and 8.4(d), MRPC.

19. Respondent's failure to refund any portion of the \$2,000 flat-fee paid by J.G. for K.G.'s representation despite not representing K.G. through trial as agreed violated Rule 1.5(a), MRPC.

### THIRD COUNT

#### Embaye Matter

20. In 2000, respondent represented a client who was involved in a car accident. Following the accident, the client was provided chiropractic services by Dr. Teame H. Embaye. On June 7, 2000, respondent sent Dr. Embaye a letter requesting he draft a narrative report and provide it and the client's medical records to respondent. Respondent stated in the letter that all charges for the requested information would be paid by his office "upon receipt of an invoice."

21. Dr. Embaye drafted the narrative report and, in approximately July 2000, provided it and the client's medical records to respondent as requested.

22. Respondent failed to provide payment to Dr. Embaye for the report or records and did not comply with Dr. Embaye's subsequent attempts to collect the debt.

23. In 2002, Dr. Embaye filed an action against respondent in conciliation court seeking payment for the report and records. Respondent did not appear in court to contest Dr. Embaye's claim. On October 1, 2002, Dr. Embaye obtained a judgment against respondent in the amount of \$421.71.

24. Respondent did not appeal the determination or pay the judgment.

25. In early 2009, Dr. Embaye retained the services of an attorney to assist him in recovering the 2002 judgment.

26. Attempts by Dr. Embaye's attorney to communicate with respondent were unsuccessful until approximately September 21, 2010. Despite respondent speaking with Dr. Embaye's attorney, no resolution was ultimately reached with respect to payment of the judgment.

27. On October 18, 2010, Dr. Embaye obtained from the Hennepin County District Court a writ of execution against respondent in the amount of \$654.56.

28. On January 21, 2011, a representative of the Ramsey County Sheriff's Office (RCSO) sent to Dr. Embaye a letter stating that, while the writ of execution was served upon respondent on December 2, 2010, as of January 21, 2011, no response or payment had been received from respondent by the RCSO.

29. All attempts to date by Dr. Embaye and his attorney to secure payment of the court-ordered judgment have been unsuccessful and respondent has, to date, taken no affirmative action to satisfy the debt, judgment or any portion thereof.

30. Respondent's failure to pay Dr. Embaye's law-related judgment against him violated Rule 8.4(d), MRPC.

## FOURTH COUNT

### Non-Cooperation – Embaye Matter

31. On October 18, 2010, the Director sent to respondent notice of investigation of Dr. Embaye's complaint, thereby notifying respondent that the matter had been assigned to the Second District Ethics Committee (DEC) for investigation.

32. Respondent responded to the complaint by letter dated November 1, 2010.

33. On December 28, 2010, the Director sent to respondent a copy of the DEC report and recommendation, along with a series of questions to which respondent's response was requested. The Director requested respondent to respond by January 11, 2011. Respondent failed to respond by that date.

34. On January 18, 2011, respondent telephoned the Director and informed the Director that respondent was in a treatment facility until approximately March 3, 2011. Respondent informed the Director that, while receipt of mail was, at the time, irregular, he would have someone check his mail and open anything from the Director.

35. On February 8, 2011, the Director sent to respondent a letter reiterating the Director's request for a response to the Director's December 28, 2010, letter and enclosing a letter received from Dr. Embaye on January 26, 2011, to which respondent was given the opportunity to respond. In the Director's letter, respondent was further requested to update the Director with respect to any progress made towards satisfying the judgment against him. The Director requested respondent to respond by February 22, 2011, or to inform the Director if additional time was needed to complete the response. Respondent failed to respond.

36. On March 14, 2011, the Director sent a letter to respondent requesting a response to the Director's December 28, 2010, letter and requesting an update on the progress made to satisfy the judgment against him. The Director requested respondent to respond by March 24, 2011. Respondent failed to respond.

37. On March 30, 2011, the Director sent to respondent a letter reiterating prior requests for a response to the Director's December 28, 2010, letter and requesting an update on progress made towards satisfaction of the judgment. The Director requested respondent to respond at that time. Respondent failed to respond.

38. On April 19, 2011, the Director sent to respondent a letter requesting a complete written response to the Director's December 28, 2010, letter, a response regarding any progress made with respect to satisfaction of the judgment, a response to a series of questions regarding respondent's failure to respond to the Director's communications, and information regarding respondent's current client matters. The Director requested respondent to respond by April 26, 2011. Respondent was further informed that his failure to respond would likely result in the Director seeking discipline, at a minimum, for respondent's non-cooperation. Respondent failed to respond to the Director's April 19, 2011, letter. To date, no further communication has been received from respondent regarding the Embaye matter.

39. Respondent's failure to fully cooperate with the disciplinary investigation violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

#### FIFTH COUNT

##### Non-Cooperation – K.G., Felony Assault, and J.G. Matters and Failure to Notify Lawyer Registration of Address Change

40. At the present time and at all times relevant to all matters referenced herein, respondent has maintained the following address with Lawyer Registration:

2332 Lexington Avenue North  
Roseville, MN 55113

41. At no time relevant to any matters referenced herein has respondent notified Lawyer Registration or the Director of any change of address.

42. On August 8, 2011, the Director sent to respondent at the Lexington Avenue address notice of investigation with respect to respondent's entry of a plea of

guilty to assault in the first degree. This notice was not returned to the Director's Office as undeliverable.

43. On August 12, 2011, the Director sent to respondent notice of investigation with respect to respondent's failure to appear in court for K.G.'s August 8, 2011, court hearing. The notice was sent to the address respondent maintained with Lawyer Registration indicated above. On August 31, 2011, the notice was returned to the Director's Office as undeliverable.

44. On September 2, 2011, the Director sent to respondent notice of investigation regarding his failure to appear on behalf of K.G. on August 8, 2011, and notice of investigation regarding respondent's felony assault conviction to the following three addresses located by the Director through an internet search:

1407 Sheldon Street  
St. Paul, MN 55118

1215 Sherren Street West  
Roseville, MN 55113

859 Osceola Avenue  
St. Paul, MN 55105

In the transmittal letter accompanying each of the above three mailings, the Director reminded respondent of his obligation under Rule 2(G), Rules of the Supreme Court on Lawyer Registration (RSCLR), to immediately notify Lawyer Registration of any change of address and requested respondent do so at that time.

45. The Director's September 2, 2011, letter to the Osceola Avenue address was returned to the Director as undeliverable on September 9, 2011.

46. The Director's September 2, 2011, letter to the Sherren Street address was returned to the Director as undeliverable on September 20, 2011.

47. The Director's September 2, 2011, letter to the Sheldon Street address was not similarly returned as undeliverable.

48. Respondent neither responded to the Director's September 2, 2011, letter and notice sent to the Sheldon Street address nor did he subsequently notify Lawyer Registration of a change of address.

49. On October 6, 2011, the Director sent to respondent at the Sheldon Street address a letter requesting his responses to the complaints regarding his failure to appear in court on behalf of K.G. on August 8, 2011, and regarding his conviction for felony assault in Ramsey County District Court. In this letter, the Director reminded respondent of his obligation under Rule 2(G), RSCLR, to immediately notify Lawyer Registration of any change of address and again requested respondent do so at that time. Respondent failed to respond to the Director's October 6, 2011, letter and did not notify Lawyer Registration of a change of address.

50. On December 7, 2011, the Director received a complaint filed by K.G.'s father, J.G., regarding respondent's failure to appear on K.G.'s behalf in court at the August 8, 2011, hearing, respondent's failure to communicate with K.G., and respondent's failure to refund any portion of the \$2,000 paid by J.G. as a flat fee for K.G.'s representation.

51. On December 15, 2011, the Director sent to respondent notice of investigation regarding J.G.'s complaint at the following address, located on the Minnesota Department of Corrections (MNDOC) website<sup>1</sup>:

Minnesota Correctional Facility – St. Cloud  
2305 Minnesota Boulevard SE  
St. Cloud, MN 56304

Pursuant to the requirements of the MNDOC set forth on its website, the Director's letter was addressed using both respondent's legal name (Brian L. Pitera) as well as his offender identification number (#236575). The Director requested respondent respond by December 29, 2011. Respondent failed to respond.

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<sup>1</sup> The MNDOC website is <http://www.doc.state.mn.us>.

52. Respondent's failure to fully cooperate with the disciplinary investigation into the above matters violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

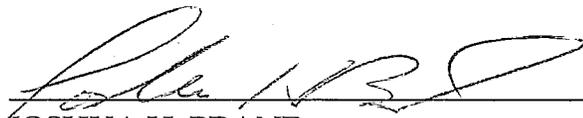
WHEREFORE, the Director respectfully prays for an order of this Court disbarring or suspending respondent or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may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

Dated: January 31, 2012.



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PROFESSIONAL RESPONSIBILITY  
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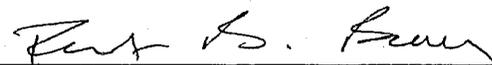
and



JOSHUA H. BRAND  
ASSISTANT DIRECTOR  
Attorney No. 388248

This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: February 6<sup>th</sup>, 2012.



ROBERT B. BAUER  
PANEL CHAIR, LAWYERS PROFESSIONAL  
RESPONSIBILITY BOARD