

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against DAVID TIMOTHY REDBURN,
a Minnesota Attorney,
Registration No. 212672.

**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 October 26, 1990. Respondent last practiced in Brooklyn Park, Minnesota.

On August 11, 2005, respondent was suspended from the practice law for four months effective 14 days from the date of the order. *In re Redburn*, 702 N.W.2d 215 (2005). Respondent remains suspended. Respondent was suspended on October 1, 2005, for nonpayment of attorney registration fees.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

A. Ballanger Matter

1. In or about January 2005, Bruce Ballanger (Ballanger) retained respondent to represent him in a Chapter 7 bankruptcy matter. Ballanger paid respondent \$1,000 for the representation. There was no written fee agreement.

2. Respondent advised Ballanger and his wife, Connie, to take the following actions prior to filing a bankruptcy petition:

- a. Transfer the title of one of their automobiles into Connie Ballanger's name and have her obtain a loan on the automobile;
- b. Open a bank account in Connie Ballanger's name only;
- c. File their 2004 income tax return and arrange to have the tax refund deposited directly into Connie Ballanger's new account, and then spend the tax refund and all other cash in the account;
- d. Remove funds from a jointly held Wells Fargo bank account (to avoid an offset by Ballanger's creditors) and place the funds in an account held in the name of Connie Ballanger at U.S. Bank; and
- e. Cash Ballanger's paychecks and deposit the cash into Connie Ballanger's account at U.S. Bank.

3. Respondent also advised Ballanger to transfer \$10,500 from a bank account in Connie Ballanger's name to Edward Meline, Connie Ballanger's father.

4. On April 1, 2005, respondent filed a voluntary Chapter 7 petition. In May 2005, respondent and Ballanger appeared in bankruptcy court. The trustee requested copies of the Ballangers' bank statements. Respondent advised Ballanger that the trustee was not entitled to the bank statements. Nevertheless, Ballanger provided respondent with the bank statements with the understanding that they were to be forwarded to the trustee.

5. On June 10, 2005, the trustee filed an Application for Order Authorizing Rule 2004 Examination seeking the U.S. Bank financial records to determine the assets of the bankruptcy estate. On June 15, 2005, an Order Authorizing Rule 2004 Examinations was granted.

6. In July 2005, Ballanger received a Discharge of Debtor from the bankruptcy court. Ballanger phoned respondent to inquire about the meaning of the Discharge of Debtor, and left a message. Respondent did not respond to this or numerous other calls from Ballanger to respondent's cell phone and office between July and November 2005.

7. Pursuant to Minnesota Supreme Court order dated August 11, 2005, respondent was suspended from the practice of law for four months beginning on August 25, 2005, subject to conditions of reinstatement. Respondent has not been reinstated. Respondent failed to notify Ballanger of his suspension, as required by Rule 26, RLPR, or otherwise communicate with him after June 2005.

8. In November 2005, respondent's office informed Ballanger that respondent was no longer employed at the office. In December 2005, respondent's cell phone became inactive.

9. On March 8, 2006, the trustee filed a Supplemental Application for Order Authorizing Rule 2004 Examination that was based, in part, on respondent's transfer of approximately \$10,000 to Edward Meline. The bankruptcy court issued an order on March 8, 2006, requiring the Ballangers and Edward Meline to appear for a Bankruptcy Rule 2004 Examination. On April 12, 2006, Meline returned the money to the Ballangers.

10. On April 20, 2006, the trustee examined Meline but advised the Ballangers that he would not examine them until they retained new counsel. Ballanger retained new counsel shortly thereafter.

11. Prior to October 1, 2005, respondent's conduct in the Ballanger matter violated Rules 1.1, 1.3, 1.4(a), 1.4(b), 1.5(a), 1.16(d), and 8.4(c), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Kimmes Matter

12. In July 2005, Timothy and Sarah Kimmes (the Kimmeses) retained respondent to represent them in bankruptcy proceedings. Respondent required a prepayment of \$1,000 to file the bankruptcy petition. The Kimmeses paid \$200 personally to respondent on June 6, 2005, paid \$300 by check on July 20, 2005, and paid \$500 by check on August 16, 2005. The July and August 2005 payments were made to a secretary working at respondent's office, who provided a receipt for the payment to the Kimmeses. The secretary forwarded all three checks to respondent, who negotiated them for his own benefit.

13. Pursuant to Minnesota Supreme Court order dated August 11, 2005, respondent was suspended from the practice of law for four months beginning on August 25, 2005, subject to conditions of reinstatement. Respondent has not been reinstated. Respondent failed to notify the Kimmeses of his suspension, as required by Rule 26, RLPR, or have any further contact with them after June 6, 2005, when he accepted a check from them.

14. After the August 16, 2005, payment to respondent, Timothy Kimmes attempted to contact respondent to commence bankruptcy proceedings. Timothy Kimmes repeatedly called respondent and left numerous telephone messages which went unanswered.

15. Timothy Kimmes sought the assistance of another attorney who unsuccessfully attempted to locate respondent. Thereafter, the Kimmeses retained new counsel.

16. Prior to October 1, 2005, respondent's conduct in the Kimmes matter violated Rules 1.4(a) and (b), 1.15(c)(3) and (4), 1.16(d), and 8.4(c) and (d), MRPC.

THIRD COUNT

Monahan Matter

17. In or about July 2005, David J. Monahan (Monahan) retained respondent to represent him in a dissolution of marriage proceeding. On July 29, 2005, Monahan paid respondent a \$2,000 retainer fee with money from his father (Richard P. Monahan). There was no written retainer agreement.

18. On August 11, 2005, pursuant to Minnesota Supreme Court order, respondent was suspended from the practice of law for four months beginning on August 25, 2005, subject to conditions of reinstatement. Respondent has not been reinstated. In early September 2005, Monahan met with respondent regarding the dissolution of marriage matter.

19. Respondent arranged for attorney Elizabeth Strand (Strand), respondent's former spouse, to appear at a September 28, 2005, court hearing on Monahan's behalf. Respondent failed to notify Monahan of his suspension, as required by Rule 26, RLPR, nor did he notify Monahan that Strand would be representing him in court.

20. Respondent agreed to forward the \$2,000 retainer to Strand for the representation, but failed to do so.

21. Prior to October 1, 2005, respondent's conduct in the Monahan matter violated Rules 1.4(a) and (b), 1.15(a), 1.15(c)(3) and (4), and 8.4(d), MRPC.

FOURTH COUNT

McEvoy Matter

22. In late 2003, Marianne McEvoy (McEvoy), a federally certified Spanish court translator, provided translation services on October 9, 2003, November 10, 2003, and December 2003 to respondent in connection with his representation of a Spanish-speaking client.

23. McEvoy sent invoices to respondent for her services on November 4, 2003, December 4, 2003, January 14, 2004, and March 4, 2004. Respondent did not pay the invoices.

24. In April 2004, McEvoy left a phone message for respondent that respondent did not return.

25. In May 2004, McEvoy sought the assistance of attorney Thomas Shiah in collecting the debt. On May 28, 2004, Shiah spoke with respondent who indicated there was some confusion concerning who was responsible for the debt. Nevertheless, respondent apologized and stated payment would be forthcoming. Respondent failed to pay the bill.

26. On June 24, 2004, McEvoy spoke with respondent who apologized for failure to pay the debt and promised to make the payment within a few days. Again, respondent failed to pay the debt.

27. McEvoy filed a Hennepin County Conciliation Court claim against respondent on or about September 13, 2004. The matter was heard on December 1, 2004, and respondent failed to appear for the hearing. McEvoy received a default judgment against respondent. The judgment was docketed on July 27, 2005. McEvoy has unsuccessfully attempted to collect on the judgment from respondent.

28. Respondent's conduct of failing to pay a professionally-incurred debt and subsequent judgment in the McEvoy matter violated Rule 8.4(d), MRPC.

FIFTH COUNT

Noncooperation and Failure to Comply with Rule 26, RLPR

Monahan Matter

29. On December 7, 2005, the Director issued a Notice of Investigation requesting respondent to respond to Monahan's complaint within 14 days. Respondent failed to provide a written response.

30. On January 3 and 16, 2006, the district ethics committee (DEC) investigator wrote to respondent requesting a response to the complaint immediately. Respondent failed to respond.

31. On January 24, 2006, the DEC investigator left a telephone message for respondent requesting a return call. Respondent failed to provide his written response to the complaint or call the DEC investigator.

32. On February 1, 2006, the DEC investigator sent by certified mail a letter requesting a response to the complaint. The letter was returned marked, "Mail refused, addressee not here, return to sender."

33. The DEC investigator confirmed new contact information for respondent through respondent's ex-wife. On February 8, 2006, the DEC investigator wrote to respondent's home and left a message on respondent's cell phone number. Respondent failed to respond.

34. On March 31, 2006, the Director sent respondent a letter requesting his response to the Monahan complaint by April 14, 2006. Respondent failed to respond.

McEvoy Matter

35. On March 3, 2006, the Director issued a Notice of Investigation requesting respondent to respond to McEvoy's complaint within 14 days. Respondent failed to respond.

36. On May 8, 2006, the DEC investigator left messages for respondent at his last known cell phone number and place of work. The DEC investigator also wrote to respondent requesting a written response to the complaint. Respondent failed to return the DEC investigator's telephone messages or provide his written response.

37. On June 21, 2006, the Director sent respondent a letter requesting his response to the McEvoy complaint by July 5, 2006. Respondent failed to respond.

Kimmes Matter

38. The Director issued a Notice of Investigation on March 24, 2006, requesting respondent to provide a written response to Kimmes' complaint within 14 days. Respondent failed to provide a written response.

39. On May 8, 2006, the DEC investigator unsuccessfully attempted to reach respondent at his last known cell phone number which was inactive. The DEC investigator also left a phone message for respondent at his law office. Respondent failed to return the telephone calls. On May 8, 2006, the DEC investigator also wrote to respondent requesting a response to the Kimmes complaint. Respondent failed to respond to the letter.

40. On June 21, 2006, the Director sent respondent a letter requesting a response to the Kimmes complaint. Respondent failed to respond.

Ballanger Matter

41. On April 12, 2006, the Director issued a Notice of Investigation requesting respondent to respond to Ballanger's complaint within 14 days. Respondent failed to provide a written response. On May 9, 2006, the DEC investigator wrote to respondent requesting an immediate response. Respondent failed to respond.

42. From April 15 to April 27, 2006, the DEC investigator made numerous unsuccessful attempts to contact respondent by telephone.

43. On May 16, 2006, the DEC investigator again sent a letter to respondent requesting a response to the complaint. Respondent failed to respond.

44. On June 14, 2006, the Director sent respondent a letter requesting his response to the Ballanger complaint by June 28, 2006. Respondent failed to respond.

45. Pursuant to Minnesota Supreme Court order dated August 11, 2005, respondent was suspended from the practice of law for four months beginning on August 25, 2005, subject to conditions of reinstatement. Respondent has not been reinstated.

46. Rule 26(a), RLPR, requires a suspended lawyer to notify all clients and tribunals in pending matters of the lawyer's suspension. Respondent failed to notify Ballanger, the Kimmeses, and Monahan of his suspension.

47. Rule 26(e), RLPR, also requires a suspended lawyer to file with the Director's Office an affidavit which documents the suspended lawyer's notification to clients and tribunals. Respondent has failed to file an affidavit with the Director, as required by Rule 26(e), RLPR.

48. Prior to October 1, 2005, respondent's non-cooperation in the disciplinary investigations involving the Ballanger, Kimmes, Monahan and McEvoy matters violated Rules 8.1(a)(3) and 8.4(d), MRPC, and Rule 25, RLPR.

49. Respondent's conduct in failing to (1) notify Ballanger, the Kimmeses, and Monahan of his suspension, and (2) file with the Director an affidavit which documents his notification to clients and tribunals, violated Rule 3.4(c), MRPC.

50. On June 1, 2007, the Director served on respondent by mail charges of unprofessional conduct, notice of pre-hearing meeting and notice of panel assignment. The notice specifically stated that pursuant to Rule 10(d), RLPR, flagrant non-cooperation with the Director's Office, including failure to attend a pre-hearing meeting may, upon motion to the Panel Chair, result in the filing of a public petition for disciplinary action, without a Panel hearing. The notice stated that the pre-hearing meeting would be held at 11:00 a.m. on June 26, 2007.

51. Respondent failed to appear on June 26, 2007.

52. Respondent's failure to cooperate violated Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

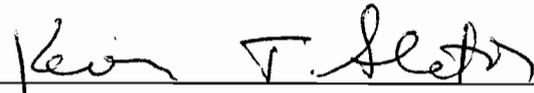
WHEREFORE, the Director respectfully prays for an order of this Court further suspending respondent or imposing otherwise appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just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

Dated: July 9, 2007.



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and



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

Dated: July 22, 2007.



RICHARD A. BEENS
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD