

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

STATE OF MINNESOTA

IN SUPREME COURT

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In Re Petition for Disciplinary Action  
against DAVID TIMOTHY REDBURN,  
a Minnesota Attorney,  
Registration No. 212672  
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**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 petition upon the parties' agreement pursuant to Rules 10(a) 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 currently practices law in Brooklyn Park, Minnesota. On June 11, 2004, the Minnesota Supreme Court placed respondent on restricted status for failure to comply with the CLE requirements.

Respondent has committed the following unprofessional conduct warranting public discipline:

**DISCIPLINARY HISTORY**

A. On September 16, 1996, respondent was issued an admonition for failing to deposit a retainer into his client trust account, filing a summons and petition to commence an action before obtaining service of the summons and petition on any defendant, losing an original unclaimed certified mail envelope with its contents, failing to handle a litigation matter entrusted to him with adequate diligence and promptness,

and failing to adequately communicate with a client, in violation of Rules 1.3, 1.4, 1.15(a) and (b), 3.2, and 3.4(c), Minnesota Rules of Professional Conduct (MRPC).

B. On September 16, 1996, respondent was issued a second admonition for failing to promptly prepare a proposed order, in violation of Rule 1.3, MRPC.

C. On September 4, 1997, respondent was placed on private probation for failing to properly maintain his client trust account books and records, making misleading statements to the court, and failing to act diligently in a client matter, in violation of Rules 1.3, 1.15(b)(3), and 8.4(d), MRPC.

D. On October 1, 1999, respondent was issued an admonition for failing to pay a judgment obtained by an expert witness, whose services respondent had retained, in violation of Rule 8.4(d), MRPC.

E. On February 12, 2003, respondent was issued an admonition for failing to promptly file his client's dissolution matter with the court or obtain a hearing date despite his client's numerous directives over a nine-month period to proceed as soon as possible, in violation of Rules 1.2 and 1.3, MRPC.

### FIRST COUNT

#### A. Antoine Donnell Morish Matter

1. In June 2001 Antoine Donnell Morish (Morish) was incarcerated at the Sherburne County jail after being convicted in a criminal matter. Morish met with respondent at the jail and retained him to file a notice of appeal in order to preserve his appeal rights while respondent ordered the sentencing transcript and reviewed the case.

2. In either June or July 2001 Rita Neal, Morish's mother, gave respondent a \$500 check for attorney fees. There was no written fee agreement.

3. On July 2, 2001, respondent filed a notice of appeal with the U. S. Court of Appeals for the Eighth Circuit. On August 7, 2001, respondent wrote to the Eighth Circuit withdrawing the appeal and advising that he would not be filing a brief.

4. On August 10 and 29 and during the week of September 10 and on September 20, 2001, the Eighth Circuit clerk's office telephoned respondent to advise him that the local rules of procedure required that respondent obtain Morish's signed consent to dismiss the appeal. Respondent did not return the clerk's calls or provide the signed consent.

5. On September 20, 2001, the chief deputy clerk for the Eighth Circuit wrote to respondent requesting a proper dismissal motion or his appellate brief within 10 days.

6. When respondent did not provide a proper dismissal motion, the Eighth Circuit reinstated the case on its briefing schedule. By letter dated February 5, 2003, the Eighth Circuit notified respondent that they had not received a proper dismissal motion with Morish's signed consent and that respondent's brief was due on March 7, 2003. Respondent did not contact the Eighth Circuit or file a brief.

7. On April 2, 2003, the Eighth Circuit issued an order to show cause why the appeal should not be dismissed for failure to prosecute. Respondent did not respond.

8. On May 16, 2003, the Eighth Circuit dismissed Morish's appeal on the grounds that it had been abandoned. That same day the clerk of court with the Eighth Circuit filed a complaint with the Director's Office at the direction of the Eighth Circuit Court of Appeals.

9. In addition to the above-mentioned neglect, respondent failed to respond to numerous telephone calls from Morish's mother in September and October 2001. Respondent also failed to keep Morish apprised on the status of his case. On July 24,

2001, Morish was transferred from the Sherburne County jail to the Sandstone FCI, where he remained until he was transferred to the Duluth FPC in May 2004. Morish received no written or telephone communications from respondent. The mail log at the Sandstone FCI does not reflect any correspondence from respondent to Morish from July 2001 to May 2004.

10. Respondent also did not discuss withdrawing the appeal with Morish or obtain his consent to withdraw the appeal. Respondent did not inform Morish about the order to show cause or that his appeal was dismissed. Morish first learned that his appeal was dismissed when he received a letter from the Eighth Circuit Court of Appeals in either May or June 2003.

11. Respondent's conduct violated Rules 1.1, 1.2, 1.3, 1.4(b), 3.2, 3.4(c) and 8.4(d), MRPC.

## SECOND COUNT

### B. Failure to Cooperate

12. During June 2003, the District Ethics Committee (DEC) investigator asked respondent on three occasions to provide a copy of a letter he claims to have sent to Morish requesting his signed consent to the withdrawal of his appeal. The DEC investigator's requests for information included telephone calls to respondent, which were made on June 1 and 25, 2003. Despite the DEC investigator's repeated requests, respondent did not provide the requested letter.

13. By letter dated January 20, 2004, the Director asked respondent to explain his failure to obtain a signed retainer agreement, his failure to deposit Morish's retainer funds into his trust account, and his failure to respond to communications from the Eighth Circuit. The Director further requested that respondent provide copies of the retainer check, and an accounting of Morish's funds. Respondent failed to provide the requested information or contact the Director to request an extension.

14. On February 19, 2004, the Director sent respondent a second letter requesting that he appear at a March 4, 2004, meeting with the information requested in the January 20, 2004, letter. Respondent failed to provide the requested information, appear for the meeting or call the Director to reschedule the meeting.

15. On March 4, 2004, the Director sent respondent another letter scheduling a second meeting for March 12, 2004. The Director requested that respondent provide the information requested in the January 20, 2004, letter along with a written description of his communications with Morish regarding the dismissal of the appeal by no later than March 11, 2004. Respondent did not provide the requested information, appear for the meeting or call the Director to reschedule the meeting.

16. On March 31, 2004, Morish filed a complaint against respondent alleging non-communication and neglect. On April 7, 2004, the Director sent respondent a notice of investigation on the Morish complaint. Respondent did not provide a response to the notice of investigation as required under Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

17. On April 22, 2004, the Director sent respondent a letter scheduling a third meeting for April 29, 2004. Respondent was also to provide the materials previously requested by the Director, and his response to the notice of investigation on the Morish complaint. Respondent did not provide the requested information, appear for the meeting or call the Director to reschedule the meeting.

18. On April 30, 2004, the Director sent respondent a final letter by certified and regular mail requesting his response to the notice of investigation and the materials requested in the Director's January 20, 2004, letter. Respondent was to respond by no later than May 7, 2004. Respondent failed to respond.

19. On June 23, 2004, the Director issued charges of unprofessional conduct against respondent.

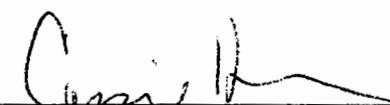
20. Respondent's conduct violated Rule 8.1(a)(3), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court imposing 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: November 4, 2004.

  
KENNETH L. JORGENSEN  
DIRECTOR OF THE OFFICE OF LAWYERS  
PROFESSIONAL RESPONSIBILITY  
Attorney No. 159463  
1500 Landmark Towers  
345 St. Peter Street  
St. Paul, MN 55102-1218  
(651) 296-3952

and

  
CASSIE HANSON  
ASSISTANT DIRECTOR  
Attorney No. 303422