

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against BRADLEY C. RHODES,
a Minnesota Attorney,
Registration No. 155913.

**PETITION FOR REVOCATION OF
PROBATION AND FOR FURTHER
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 pursuant to Rule 12(a), Rules on Lawyers Professional Responsibility (RLPR), and pursuant to this Court's May 18, 2005, order in the matter.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 11, 1984. Respondent has been suspended for nonpayment of his attorney registration fee since October 1, 2006. Respondent previously practiced law in Aitkin, Minnesota.

INTRODUCTION

By May 18, 2005, order, this Court publicly reprimanded respondent and ordered respondent placed on probation for two years. A copy of the Court's order is attached as Exhibit 1.

Respondent's discipline was based upon his failure to serve and file a brief during his representation of a client in a criminal matter, respondent's failure to serve and file another brief for that client, and failing to cooperate with the Director's investigation of the matter.

Respondent has committed the following unprofessional conduct warranting revocation of probation and further public discipline:

FIRST COUNT

Failure to Cooperate with Probation

1. On May 27, 2005, the Director sent a copy of the Supreme Court's order placing respondent on probation to the attorney who had represented respondent in the disciplinary proceeding.¹ In his letter, the Director set out respondent's obligations under the probation. Among the items listed was respondent's obligation to submit the names of four attorneys who would be willing to act as his supervisor and to submit an inventory of active client files. That information was to be provided within two weeks of the date of the Director's letter. Respondent was also instructed to provide a copy of his written office procedures ensuring prompt responses to all communications by June 20, 2005. Respondent failed to provide the required information within the required time.

2. On July 20, 2005, the Director wrote directly to respondent. In that letter, the Director reminded respondent of his obligation to provide a list of attorneys willing to serve as his probation supervisor, a monthly inventory of active client files and his written office procedures. The Director scheduled a meeting with respondent for August 3, 2005, to discuss these issues.

3. On August 2, 2005, the Director received a facsimile transmission from respondent's attorney. In his letter, respondent's attorney provided the names of two people to serve as probation supervisors. Regarding respondent's office procedures, respondent's attorney wrote that respondent had "hired a full-time secretary who was assisting him in returning phone calls; and his computer e-mail account has been straightened out" Respondent's attorney indicated that the list of active client files

¹ In cases where a probationer was represented by counsel in the underlying disciplinary proceeding, the Director's initial letter regarding the probation is sent to the probationer's attorney. However, since probations are not adversarial proceedings, probationers rarely have their attorneys continue to represent them. Therefore, the Director indicates in the initial letter that unless instructed otherwise, future correspondence will be sent directly to the probationer. In this case, respondent's lawyer did not request that future correspondence be sent to him, but since he replied to the initial letter, the Director continued to correspond with him until his subsequent withdrawal.

would be supplied under separate cover. Respondent's attorney also indicated that respondent was in trial on August 3, 2005, and accordingly would be unable to meet with a representative of the Director's Office for the scheduled meeting.

4. On August 3, 2005, the Director again wrote to respondent's attorney. In that letter, the Director indicated that while respondent had now provided the names of two potential supervisors, he had otherwise failed to comply with the conditions of his probation. The Director noted that the purpose of the meeting was to advise respondent "that this lack of compliance is unacceptable" and reiterated respondent's obligations under the terms of his probation (i.e., that respondent was to provide a written plan outlining his office procedures and to provide an inventory of all active client files by the first day of each month of his probation).

5. On August 10, 2005, the Director received from respondent's attorney a list of open files as of August 2, 2005. However, the list did not provide, as required by the Supreme Court's order, the date the file was opened, most recent activity on the file, the next anticipated action and the anticipated closing date. In addition, in a number of instances while the list provided the names of the parties in the litigation, it did not identify the names of respondent's clients.

6. On August 16, 2005, an attorney from the Director's Office, respondent, and respondent's attorney, met to discuss respondent's probation. The attorney from the Director's Office shared with respondent the Director's concerns regarding respondent's failure to comply with the probation. Following the meeting and with respondent's attorney's authorization, the Director wrote directly to respondent setting out what respondent needed to do to fulfill his probation obligations.

7. On August 25, 2005, the Director finally received a written plan of office procedures and respondent's list of private cases providing the required information about each of the cases. Respondent also provided a list of his public defender cases. Further, on September 8, 2005, the Director selected an individual to act as respondent's supervisor.

8. On January 13, 2006, respondent's supervisor sent his first quarterly report. Enclosed with the report were respondent's case lists for November and December of 2005. The supervisor indicated that as of the date of his letter, he had not yet received respondent's case list for January 2006.

9. On March 13, 2006, respondent's supervisor submitted his second quarterly report. The supervisor noted that despite several requests, he had yet to receive a case list from respondent for the month of March. While noting that there were some positives, the supervisor also wrote that there were several items that troubled him. The supervisor indicated that he had been contacted by a local attorney who had expressed his frustration in dealing with respondent. According to this attorney, respondent was supposed to prepare the findings and order in a case, but had failed to do so. In a subsequent telephone conversation with the Director's Office, the supervisor also indicated his difficulty in communicating with respondent.

10. On March 27, 2006, the Director wrote to respondent informing him of a meeting to take place at the Director's Office on April 6, 2006.² Respondent was informed that the purpose of the meeting was to discuss his compliance with the terms of his probation. Respondent failed to appear for the meeting and did not contact the Director's Office to reschedule or explain why he was unable to attend.

11. On April 20, 2006, respondent's probation supervisor resigned as supervisor. The supervisor noted that he had found it increasingly difficult to monitor respondent's activities. Respondent had not provided the required case list, the supervisor had received calls from respondent's clients asking about respondent's whereabouts and why they were not receiving return phone calls from respondent.

12. On June 21, 2006, the Director again wrote to respondent instructing him to appear for a meeting to discuss why the Director should not petition the Court to revoke respondent's probation. The meeting was scheduled for July 12, 2006.

² By this time respondent's attorney was no longer representing respondent.

Respondent was instructed to contact the Director if he was unable to appear. Respondent failed to appear for the meeting and did not contact the Director's Office to reschedule or explain why he was unable to attend.

13. Respondent has continued in his failure to provide inventories of his active client files, respond to inquiries from the Director's Office or otherwise comply with the obligations of his probation.

14. Respondent's conduct violated Rule 8.1(b), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, Rules on Lawyers Professional Responsibility (RLPR), and the probation order.

SECOND COUNT

Unprofessional Conduct in the Handling of Client Matters

McNurlin Representation

15. On November 2, 2004, Victoria McNurlin mailed a check to respondent in the amount of \$500. The check represented a retainer to hire respondent to assist McNurlin with her mother's estate. Respondent failed to hold the funds in a trust account; rather, respondent placed the funds in his personal account.

16. In December of 2004, McNurlin telephoned respondent concerning the representation. Respondent indicated that he would commence the necessary paperwork at the start of the new year. However, McNurlin never received anything from respondent.

17. Over the course of the next several months, McNurlin left numerous telephone messages for respondent. Respondent did not reply to those messages.

18. On July 27, 2005, McNurlin wrote to respondent setting out the history of his representation of her and pleading with respondent to contact her. Respondent never replied to her letter.

19. Respondent did not refund McNurlin's \$500, did not return the original documents McNurlin provided to him, and did not provide any legal services to McNurlin.

20. Respondent's conduct violated Rules 1.3, 1.4, 1.15(a) and 1.16(d), MRPC, and the probation order.

Monse Representation

21. On April 12, 2005, Kent Monse hired respondent to represent him in his divorce. By approximately June 16, 2005, the parties had reached an agreement on settlement. Respondent was to draft the settlement documents.

22. In early July of 2005, when he still had not received the promised settlement documents, Monse contacted respondent. Respondent told Monse that he was in the process of finalizing the settlement documents. However, another four weeks passed without respondent providing the promised documents.

23. Several weeks later, Monse and his wife got into a disagreement regarding Monse's obligation to pay insurance for their children. As a result of that disagreement, Monse's wife attempted to revoke the settlement agreement. Through her counsel, Monse's wife filed a motion to reopen the dissolution. On October 17, 2005, the district court heard the matter and the trial judge ruled that the case could be reopened.

24. On December 14, 2005, Monse paid respondent an additional \$2,000 to appeal the judge's order. Although respondent had told Monse that they had a strong chance of winning the appeal, respondent took no further action on the matter. Respondent failed to return several subsequent telephone calls from Monse.

25. On February 27, 2006, Monse waited at respondent's office until he could speak with him personally. On that date, respondent told Monse that he had decided not to appeal the court's decision. Respondent had not discussed this decision with Monse prior to that time and had not informed him of the decision not to appeal the judge's decision.

26. Monse discharged respondent and retained new counsel. Despite Monse's new attorney's request for an itemization of the work performed and the return of Monse's file, respondent failed to provide either.

27. Respondent's conduct violated Rules 1.2, 1.3, 1.4, and 1.16(d), MRPC, and the probation order.

Turner Representation

28. On December 1, 2005, Patricia and Dennis Turner paid respondent \$500 for representation in a property dispute. The Turners entrusted respondent with their original abstract and property survey. Respondent told the Turners that he would resolve the matter by spring 2006.

29. When Patricia Turner spoke to respondent during April and March 2006, respondent told her that he had been too busy to commence the matter. Respondent also told Patricia Turner that he had sent copies of everything to the county attorney, but the county attorney was backlogged due to illness. However, when the Turners retained respondent it was agreed that they would not involve the county attorney, but rather would seek an immediate cease and desist order.

30. During May and June 2006, Patricia Turner called and left voicemails for respondent every second or third week. Respondent failed to return her calls. On June 12, 2006, the Turners wrote to respondent by certified mail, return receipt requested. Respondent did not respond to notices from the U.S. Post Office to pickup the Turners' letter. On June 28, 2006, the Turners' letter was returned undelivered.

31. On July 5, 2006, Patricia Turner was able to reach respondent by telephone. She expressed her concern and requested that respondent return their retainer, original abstract and other documents. Respondent apologized for not having had time to work on the Turners' matter, stated it would be better for someone else to handle the case and agreed to return the Turners' retainer and documents after July 7, 2006. Respondent did not do so.

32. During July 2006, Patricia Turner left messages for respondent asking when their retainer and documents would be available for pickup. Respondent never returned Turner's calls, or her retainer, or her documents.

33. Respondent's conduct violated Rules 1.3, 1.4, 1.15(c) and 1.16(d), MRPC, and the probation order.

Kautz Representation

34. In July 2005 Molly Kautz retained respondent to represent her in her divorce from Kaleb Kouba. On July 19, 2005, respondent wrote to Richard Kautz, Molly's uncle, informing him (Richard Kautz was paying Molly's legal fees) that he was requesting a retainer of \$1,000, which would include a \$300 civil filing fee. Respondent also indicated that he would have "the information to have the paperwork filed within the week."

35. On July 29, 2005, Richard Kautz mailed respondent a check for \$1,000, which respondent cashed on August 2, 2005. Despite the fact that \$300 of the retainer was to be used for a filing fee and the remaining \$700 as an advance fee payment, respondent failed to place the money in a trust account.

36. After receiving the \$1,000 retainer, respondent did no work on the file. Despite repeated voicemail messages from Molly Kautz, and her mother, about their concerns regarding verbal abuse by Molly's husband and the threat of physical violence toward Molly and her infant daughter, respondent did not respond to their voicemail messages nor do any work on the file. In September of 2005, Molly Kautz retained another lawyer who completed the dissolution proceeding by February 2006.

37. On April 24, 2006, Richard Kautz sent respondent a certified letter requesting the return of the \$1,000 retainer. The letter was returned to Richard Kautz, unclaimed, on May 12, 2006, after no response was received to two delivery notices.

38. Apparently in response to the telephone call from Molly Kautz's mother, Richard Kautz received a letter from respondent dated June 16, 2006. Enclosed with that letter was a check for \$1,000, which respondent indicated represented the return of the previously tendered retainer agreement. However, when Richard Kautz attempted to cash the check, it was returned for insufficient funds. Despite several follow-up efforts by Richard Kautz, respondent did not refund the \$1,000.

39. Respondent's conduct violated Rules 1.3, 1.4, 1.16(d), and 1.15(a) and (c), MRPC.

Olson Representation

40. Gary and Linda Olson retained respondent in January of 2004 to defend a mechanic's lien being asserted by Deerwood Builders. The Olsons paid respondent a \$1,000 retainer fee and provided him with documentation (e.g., photographs of defective workmanship) necessary to defend their claim.

41. After they initially retained respondent, the Olsons were unable to contact him. Respondent failed to reply to their telephone calls or letters.

42. As a result of respondent's failure to move the case forward, the Olsons were forced to cancel several court dates. The Olsons then attempted to retrieve their files, so they could hire another attorney. However, they were unable to obtain the files from respondent.

43. Respondent's conduct violated Rules 1.3, 1.4, and 1.15(a) and (c), MRPC.

WHR Matter

44. On January 1, 2005, WHR was charged with driving while intoxicated in Crow Wing County, Minnesota. WHR had an earlier conviction for a DWI and it was his understanding that any subsequent conviction would result in the permanent loss of his driver's license.

45. On January 10, 2005, WHR retained respondent to represent him in the matter. After retaining respondent, it was WHR's understanding that respondent was going to seek a modification of the earlier disposition. WHR was told by respondent that this would have to be done within the next 30 days. On February 7, 2005, WHR had a court appearance regarding the second DWI. At that time, WHR learned that respondent had never sought any review of the earlier court determination.

46. On February 12, 2005, WHR received an open bottle citation, also in Crow Wing County.

47. On March 16, 2006, respondent had another court appearance. Although respondent arrived late for the court date, respondent told WHR that he had reached an agreement with the prosecution to convert the DWI to a careless driving with the payment of a fine and the requirement that WHR attend MADD meetings. Respondent told WHR that he (WHR) did not need to stay, that respondent would prepare the necessary settlement documents and obtain the judge's signature. Respondent never did so.

48. When WHR did not receive the follow-up documents from respondent, he made repeated efforts to reach respondent. Respondent did not return his calls and did not provide WHR with any of the promised documentation. Eventually, WHR began contacting the prosecuting attorney to see if he had heard from respondent. Initially, the prosecuting attorney refused to speak with WHR as he understood WHR was represented by counsel.

49. In September of 2006, WHR discharged respondent. WHR was then able to reach a negotiated settlement with the prosecuting attorney.

50. Respondent's conduct violated Rules 1.3 and 1.4, MRPC.

NLF Matter

51. In May of 2005, NLF was charged with numerous counts of theft and swindle relating to her handling of a trust for family members. NLF was referred to respondent by a retired judge to defend her in this criminal proceeding.

52. At their initial meeting, NLF explained to respondent that she and her husband, DLF, did not have funds to pay him a retainer. However, it was anticipated that DLF would be receiving a workers' compensation settlement shortly and it was agreed that respondent's retainer would be paid from those funds.

53. In December of 2005, DLF was criminally charged in a separate and unrelated matter. At that time, respondent was retained by DLF to represent him as well. Respondent appeared with DLF at a preliminary hearing that same month.

54. In January of 2006, when it became apparent that DLF's workers' compensation matter would not be settling anytime soon, NLF and DLF agreed to pay respondent \$500 toward his retainer. They also provided respondent with five rifles and a pistol as "collateral" for payment of his legal services.

55. Around this same time, NLF provided respondent with what she described as a "bag of evidence" in her case. According to NLF, the bag contained numerous documents and receipts evidencing that the expenditures she had made in the trusteeship were legitimate expenses.

56. In August of 2006, NLF met with respondent to discuss her case. During their meeting at respondent's office, NLF noticed the bag of documents that she had given to respondent earlier. It appeared to NLF that the documents had never been touched. Despite this fact, respondent assured NLF that everything was proceeding on track. However, after that time NLF and DLF were unable to reach respondent.

57. Over the course of the next several months, NLF left numerous messages on respondent's voicemail system. On October 27, 2006, she sent respondent a certified letter in which she questioned what was happening with her case. Respondent never claimed the letter and it was eventually returned to NLF as undelivered.

58. On November 13, 2006, NLF was scheduled for a court appearance. Respondent did not appear at the hearing. The trial court judge informed complainant that respondent was no longer authorized to practice law (respondent was fee suspended on October 1, 2006).

59. NLF has been unable to reach respondent, has been unable to retrieve the evidence she provided to respondent in her criminal case, and respondent has not returned the personal property (i.e., the rifles and pistol) that NLF and DLF gave to respondent as collateral.

60. Respondent's conduct violated Rules 1.3, 1.4, 1.8(a), and 1.16(d), MRPC.

THIRD COUNT

Failure to Cooperate with the Director's Disciplinary Investigations

61. On October 24, 2005, the Director issued a notice of investigation in response to the Victoria McNurlin complaint. Respondent was instructed to respond within 14 days. He failed to do so.

62. On December 22, 2005, the district ethics committee (DEC) investigator handling the McNurlin complaint attempted, unsuccessfully, to reach respondent by telephone. One week later, the investigator wrote to respondent and several days after that the investigator's employee left a telephone message for respondent. Respondent did not reply to any of those contacts.

63. On February 27, 2006, the DEC investigator in the McNurlin complaint wrote to respondent requesting a reply. Respondent never replied and the DEC returned the file to the Director's Office.

64. On March 8, 2006, the Director issued a notice of investigation regarding the Kent Monse complaint. As with the earlier investigation, respondent was instructed to provide a written response to the DEC within 14 days. He failed to do so.

65. On April 10, 2006, the DEC investigator handling the Monse complaint forwarded a copy of the complaint to respondent and also requested a written response. When respondent failed to provide that response, the investigator sent a follow-up letter on April 28, 2006.

66. On May 8, 2006, the Director sent respondent a notice of investigation regarding respondent's failure to cooperate with the terms of his probation. Respondent was instructed to respond within 14 days. He failed to do so.

67. On May 11, 2006, the DEC investigator in the Monse complaint sent a third and final letter to respondent requesting a response. Respondent never replied and eventually the DEC returned the Monse and McNurlin complaints to the Director's Office.

68. On June 21, 2006, the Director sent respondent notice of a meeting at the Director's Office in early July. As the Director explained in his cover letter, the purpose of the meeting was to discuss both the pending complaints and respondent's non-cooperation with his probation. Respondent did not appear for the meeting and did not contact the Director in response to the letter.

69. On August 14, 2006, the Director issued a notice of investigation regarding the Dennis and Patricia Turner complaint. As with the other notices of investigation, respondent was directed to respond within 14 days. He failed to do so.

70. On August 23, 2006, in two separate letters, the Director again requested a response to the Monse complaint. The Director also instructed respondent to provide a response to his failure to cooperate with the terms of his probation. Respondent was told that his failure to respond could result in the Director filing a petition for revocation of the probation and for further discipline. Respondent failed to respond.

71. On August 14, 2006, the Director issued a notice of investigation in the complaint of Dennis and Patricia Turner. Respondent failed to provide any response to the complaint.

72. On September 25, 2006, the Director issued a notice of investigation in the WHR complaint. Respondent failed to provide any response to the complaint.

73. On October 2, 2006, the Director issued a notice of investigation in the Richard L. Kautz complaint (on behalf of his niece Molly Kautz). Respondent failed to provide any response to the complaint.

74. On October 27, 2006, the Director issued a notice of investigation in the Gary and Linda Olson complaint. Respondent failed to provide any response to the complaint.

75. On November 29, 2006, the Director received a letter from the Aitkin County court administrator concerning correspondence that a district court judge in Aitkin County had received from a criminal defendant regarding respondent's representation of her. On December 18, 2006, the Director issued a notice of

investigation regarding respondent's conduct in that matter. Respondent failed to provide any response to the Director's notice of investigation.

76. On January 31, 2007, the Director issued a notice of investigation concerning the complaint filed by DLF. NLF filed a separate complaint and on February 7, 2007, the Director issued a notice of investigation in the NLF complaint. Respondent failed to provide any response to either of the complaints.

77. Respondent's conduct violated Rule 8.1(b), MRPC, Rule 25, RLPR, and the terms of the probation order.

WHEREFORE, the Director respectfully prays for an order of this Court revoking respondent's probation, suspending respondent's license to practice law 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: March 9, 2007.



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