

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against MARK DAVID SAVIN,
a Minnesota Attorney,
Registration No. 178007.
.....

**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. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 3, 1986. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. Respondent is a partner in the law firm of Faegre & Benson (Faegre).
2. For many years prior to 2006, Faegre represented Hennepin County as bond counsel and, as a part of that representation, also provided legislative advice and lobbying for the county.
3. In 2005 and 2006 Faegre represented Hennepin County at the Minnesota State Legislature with respect to legislation whereby the county would issue tax-exempt indebtedness to finance a new ballpark for the Minnesota Twins. During that period,

Stephen Rosholt, a Faegre bond lawyer, participated in numerous discussions with Hennepin County staff and others relating to the ability of the county to finance the project with tax exempt bonds, and prepared draft legislation to implement various proposals. Respondent did not personally participate in any of these activities.

4. On April 26, 2005, a bill for an act was introduced in the Minnesota State House of Representatives (HF 2480) calling for the construction of a new stadium for the Minnesota Twins.

5. On May 11, 2005, HF 2480 was amended to provide for construction of the Twins' stadium on a specific site in the City of Minneapolis (the designated site) and to authorize Hennepin County to acquire the designated site by purchase or eminent domain.

6. At the time of the 2005 legislation, the designated site was owned by Land Partners II, LLLP (Land Partners), Minikahda Ministorage IV, LLLP (Minikahda), and Duddy LLLP (Duddy). Land Partners' principal representatives were Richard Pogin and Bruce Lambrecht.

7. The legislation as eventually adopted also set a limitation of \$90,000,000 on the amount the county could expend for land, site improvements, and public infrastructure. Thus, any increase in the cost of land acquisition would result in a decreased amount of funds available for site improvements and public infrastructure. Respondent was not involved in the legislative lobbying that led to this limitation.

8. On May 16, 2005, Land Partners, Minikahda, and Duddy, collectively as sellers, and Hines Interests Limited Partnership (HILP) entered into a letter of intent with regard to the development by HILP or Hines' assignees of certain real property that included the designated site and adjoining parcels owned by Land Partners, Minikahda and Duddy.

9. On June 12, 2005, Hines Development Company (Hines), a client of Faegre, announced it would lead a joint venture with Land Partners to develop a mixed use

development in Minneapolis on the designated site and adjoining sites. This project was designated the Twinsville project.

10. Upon learning of Hines' involvement in the designated site, the Hennepin County Attorney's Office became concerned about a possible conflict of interest arising out of Faegre's representation of both Hennepin County and Hines in matters relating to the designated site. As noted more fully below, the Hennepin County Attorney's Office went to great lengths to ensure that Faegre would not undertake a representation materially adverse to Hennepin County with respect to the designated site.

11. On June 15, 2005, Charles Ferrrell, a Faegre partner, wrote to William D. Chopp of HILP. That letter stated, in part:

We appreciate your retaining us to represent [Hines entity]. By this letter, we confirm various matters concerning our engagement.

1. As you requested, we will represent [Hines entity] in connection with the Twinsville project and such other matters as we may accept at your request from time to time. At your request we will also represent your combined venture with the Pogin/Lambrecht interests. We will not represent the Pogin/Lambrecht interests separately.
2. As you know we presently represent Hennepin County in connection with its proposed ballpark project, and consequently conflict of interest rules prevent us from representing you in connection with any matter adverse to Hennepin County, including land sale. Similarly, without your consent we will not represent Hennepin County in matters adverse to you. It appears likely that when you have agreed with Hennepin County on such a land sale you will no longer be adverse to Hennepin County.

12. On June 17, 2005, Howard Orenstein, an attorney in the Hennepin County Attorney's Office, spoke with Steve Rosholt, a bond attorney with Faegre. Orenstein asked Rosholt to be especially aware of the potential for legal conflicts.

13. On July 28,2005, Charles Ferrell provided a memorandum to Walter Duffy, Jr., another Faegre partner, regarding the potential conflict of interest involving Hennepin County and Hines. A copy of this memorandum was provided to the Hennepin County Attorney's Office in response to their concerns regarding the potential for conflicts of interest. The memorandum stated:

Pursuant to the request of Hennepin County, I checked our time records relating to the Hines/Twinsville project. Attached is a printout of all time recorded. I am not aware of any other time recorded for Hines in connection with the Twinsville project.

We specifically told Hines at the outset that we could not represent Hines in any matter adverse to Hennepin County in connection with the potential ballpark, and Hines has accepted that understanding.

14. On July 29,2005, Walter Duffy, Jr. provided a draft letter to Orenstein stating, in part:

This letter is in response to your request that Faegre & Benson advise as to any past or present representation of Hines, Pogin and Lambrecht or a joint venture of any of them, which might be perceived as conflicting with Faegre & Benson's representation of Hennepin County's interests in the Ballpark Project.

After inquiry, I advise that Faegre & Benson has not, and does not presently, represent Hines, Pogin and Lambrecht or a joint venture of any of them, adverse to Hennepin County's interests, with regard to the Ballpark Project.

15. Respondent began representing Hines with respect to their interests in the designated site on September 21,2005. At the time respondent began his representation of Hines with respect to the designated site Charles Ferrell advised him that the representation was limited as to possible eminent domain issues. Respondent understood that Faegre could not represent Hines adverse to Hennepin County in an eminent domain proceeding pertaining to the designated site or if such a proceeding appeared likely.

16. On September 28, 2005, Faegre received an ethics opinion from outside counsel, Charles E. Lundberg, regarding the potential for conflicts of interest arising out of their representation of both Hennepin County and Hines. This opinion was provided by Faegre to Hennepin County on October 3, 2005, and Faegre waived any attorney-client privilege with respect to the opinion. Lundberg, in his opinion, states, in part:

Faegre & Benson stated to Hines that the firm cannot be adverse to the County on ballpark matters. Except to explain the possible consequences to Hines of certain language in the legislation relating to proposed County redevelopment powers [footnote omitted], Faegre has not represented Hines or its co-venturer, Pogin and Lambrecht, in any matters relating to the acquisition or development of what is now the Hines property.

* * *

Under the Principles of Agreement the County is responsible for acquiring the ballpark site and bearing the cost. Faegre & Benson has indicated to the County that it did not think it should be involved in that acquisition, even if the parties were willing to consent to that representation. It is expected that the County would first attempt to negotiate the purchase of the land and, if that failed, acquire it by condemnation. It is possible that the Ballpark Authority and its attorneys will undertake the acquisition work but, in any event, the County will participate in the process.

* * *

Site acquisition: The issue of representing the County in its responsibility for acquiring the Ballpark site from present landowners in the area was also considered. This engagement could potentially put you in a directly adverse position to Hines. As we understand it, you have recognized that this would be a potentially insurmountable problem under the 'Direct Adversity' concepts of Rule 1.7, and you have advised the County that you do not believe you should be involved in this part of the representation at all. We agree with this conclusion.

17. On October 3, 2005, Walter Duffy, Jr. wrote to Hennepin County stating, in part:

Over the past several years we [Faegre] have provided legal advice to the County regarding various proposals put forward by the Minnesota Twins for financing part of the cost of a new ballpark in downtown Minneapolis. During this period we also assisted the County in its negotiation of the terms of the 'Principles of Agreement' between the County and the Minnesota Twins, as well as prepared and lobbied legislation to permit financing of the ballpark project.

* * *

I advised you that Faegre & Benson would like to continue its representation of Hennepin County on the ballpark project while at the same time providing legal services to our longstanding clients, Hines and Mortenson, on matters which would not involve any adverse relationships with Hennepin County.

18. Respondent states he had no personal knowledge of the information exchanged in paragraphs 11-14, 16, and 17 above, but this information is imputed to him pursuant to Rule 1.10, Minnesota Rules of Professional Conduct.

19. On the basis of the representations and correspondence from Faegre that they would not undertake a representation of Hines on matters adverse to Hennepin County in connection with the designated site, Hennepin County continued using the legal services of Faegre in ballpark related matters at the legislature. Thereafter, Faegre continued to represent Hennepin County throughout the 2006 legislative session with respect to the ballpark legislation and otherwise continued as the county's outside bond counsel.

20. From September 21, 2005, through May 26, 2006, respondent provided legal services to Hines in regard to the Twinsville project. Those services included negotiating and participating in drafting of a Joint Defendant Confidentiality Agreement as set forth below.

21. On October 24, 2005, respondent, on behalf of Hines, signed a Joint Defendant Confidentiality Agreement entered into between Hines, Land Partners, Minikahda, and Duddy. That agreement specifically referenced the fact that Hines was working with

the other landowners to prepare for the possibility of a Hennepin County eminent domain proceeding, providing, in part:

Scope of Agreement. This Joint Defendant Confidentiality Agreement ('Agreement') pertains to the anticipated eminent domain actions to be brought by Hennepin County and other Minnesota government entities including the Hennepin County Regional Rail Authority and all future related matters and proceedings ('the Matter').

22. The parties to the Joint Defendant Confidentiality Agreement, as a group, undertook various actions with respect to planning and preparation for the anticipated eminent domain actions, including preparing for the stadium eminent domain proceedings, developing strategies to maximize the value of the designated site in the event of an eminent domain proceeding, monitoring the legislative process, discussion of lobbying the legislature against unacceptable provisions in the stadium legislation, and meetings to discuss strategic issues. Respondent personally participated in some, but not all of these activities.

23. Respondent's representation of Hines as set forth above was explicitly and directly related to the possibility that Hennepin County might institute eminent domain proceedings in order to acquire the ballpark property. Such representation of Hines was directly adverse to the interests of Faegre's then client, Hennepin County.

24. While Hennepin County was aware of some aspects of respondent's representation of Hines, neither respondent nor any other Faegre attorney notified Hennepin County of the Joint Defendant Confidentiality Agreement or the nature of the activities being pursued pursuant to the Joint Defendant Confidentiality Agreement. Hennepin County only learned of the Joint Confidentiality Agreement nearly two years later when the document was provided by one of respondent's co-counsel at another law firm on September 27, 2007, in response to an unrelated request by Hennepin County.

25. Further indication that respondent's representation of Hines involved working with Hines to prepare for the designated site eminent domain proceedings is found in a June 20, 2006, Confidential Condemnation Agreement entered into by and between Land Partners II, LLLP, Minikahda Ministorage IV, LLLP, Duddy, LLLP, and Hines Northstar Crossings Limited Partnership regarding the ballpark property. That agreement recognized that one of the purposes of the joint cooperation between Hines (represented by respondent) and the other landowners was to prepare for a possible eminent domain proceedings instituted by Hennepin County. The June 20 agreement recited, in part,

In recognition of the fact that the Sellers, Hines and/or affiliates of Hines might be named as respondents in any such Condemnation Proceeding, Sellers and Hines' predecessor in interest as developer of the land (Hines Northstar GP LLC), and their respective counsel, entered into that certain Joint Defendant Confidentiality Agreement dated October 24, 2005, a copy of which is attached hereto as Exhibit A and fully incorporated herein by reference (the 'Confidentiality Agreement').

26. On May 26, 2006, Governor Pawlenty signed the legislation authorizing construction of a Twins ballpark on the land designated herein as the ballpark land.

27. Hennepin County's bond counsel contract with Faegre expired on May 31, 2006, and Faegre provided no legal services to the county after that date.

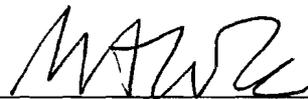
28. Respondent's representation of Hines in the matters relative to the anticipated eminent domain proceedings to be brought by Hennepin County with respect to the designated site was directly adverse to the interests of Hennepin County, which was simultaneously being represented by other Faegre attorneys.

29. Respondent and Faegre never sought, and Hennepin County never gave, its informed consent to respondent and Faegre simultaneously representing Hines with respect to the eminent domain proceedings pertaining to the designated site and Hennepin County with respect to the ballpark legislation.

30. Respondent's conduct in representing Hines in matters pertaining to anticipated eminent domain actions to be brought by Hennepin County while other Faegre lawyers, at the same time, represented Hennepin County with respect to the ballpark legislation violated Rule 1.7, Minnesota Rules of Professional Conduct (MRPC) as this Rule is enforced pursuant to Rule 1.10 of the MRPC.

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: March 19, 2010.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



PATRICK R. BURNS
FIRST ASSISTANT DIRECTOR
Attorney No. 134004