

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

STATE OF MINNESOTA

IN SUPREME COURT

-----  
In Re Petition for Disciplinary  
Action against SCOTT SELMER,  
a Minnesota Attorney,  
Registration No. 156024.  
-----

**PETITION FOR  
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

At the direction of a Lawyers Professional Responsibility Board Panel, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition.

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on May 11, 1984. Respondent currently practices law in Minneapolis, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline, including admonitions, is as follows:

A. On April 14, 1995, the Supreme Court publicly reprimanded respondent and ordered respondent placed on probation for two years for failing to promptly provide an accounting to a client, charging and suing to collect an unreasonable fee, abusing the discovery process in litigation against his client, failing to maintain proper trust account books and records, commingling personal and client funds in his trust account, and false certification to the Supreme Court in violation of Rules 1.4, 1.5(a), 1.5(c), 1.15(a), 1.15(b), 1.15 (d),

1.15(g), 3.1, 3.4(d), 4.4, 5.1(c)(1), 8.4 (a), 8.4(c), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC). *In re Selmer*, 529 N.W.2d 684 (Minn. 1995).

B. On April 14, 1995, the Supreme Court affirmed an admonition issued to respondent for improperly charging a client the costs of copying a file before returning the file to the client after respondent was discharged from representation in violation of Rule 1.16(d), MRPC. *In re Admonition Issued to X.Y.*, 529 N.W.2d 688 (Minn. 1995).

C. On September 11, 1997, the Supreme Court suspended respondent from the practice of law for engaging from 1983 through 1995 in a pattern of harassing and frivolous litigation, making false and misleading statements in response to discovery requests and in pretrial proceedings, and failing to comply with proper discovery requests in violation of Rules 3.1, 3.3(a)(4), 3.4(d), 4.1, and 8.4(d), MRPC. *In re Selmer*, 568 N.W.2d 702 (Minn. 1997).

D. On May 22, 2008, the Supreme Court publicly reprimanded respondent and placed him on unsupervised probation for failing to pay a judgment entered against him, failing to file tax returns, failing to abide by the terms of his probation, and committing fifth degree assault, in violation of Rules 3.4(c), 8.1(b), 8.4(b), and 8.4(d), MRPC. *In re Selmer*, 749 N.W.2d 30 (Minn. 2008).

#### FIRST COUNT

##### St. Paul Urban League Matter

1. As more fully set forth below, respondent has engaged in a pattern of bad faith litigation involving his dealings with the St. Paul Urban League (SPUL) and various constituents of the SPUL.

2. On January 7, 2008, respondent was hired as President/CEO of the SPUL.

3. SPUL suspended operations as of February 2011.

4. It is unclear exactly when respondent's position as President/CEO of SPUL came to an end, but respondent maintains he acted in that capacity through March 31, 2011.

5. Thereafter, respondent engaged in a pattern of harassing and frivolous litigation involving various issues related to SPUL. Ultimately, the litigation involving respondent and SPUL and its constituents encompassed 10 different court files—two venued in Hennepin County District Court, two venued in Ramsey County District Court, five venued in the Minnesota Court of Appeals, and one venued in Federal District Court for the District of Minnesota.

**Hennepin County File No. 25154**

6. On August 8, 2011, respondent signed a summons and complaint in the matter of *Scott Selmer and Raymond Jefferson v. Willie Mae Wilson*. That complaint was venued in Hennepin County and was ultimately assigned File No. 27-CV-11-25154 (25154 matter).

7. Respondent's complaint in the 25154 matter alleged that Wilson had made a number of false, libelous statements about respondent in connection with his administration of SPUL.

8. On August 11, 2011, respondent served the summons and complaint on Wilson.

9. On December 14, 2011, respondent filed the summons and complaint in the 25154 matter with the Hennepin County District Court.

10. On February 29, 2012, Hennepin County District Court Judge Susan Robiner issued an order for submissions directing, among other things, that the parties must file informational statements with the Court Administrator on or before March 16, 2012. That order further provided that "[i]f the parties do not file Informational Statements on or before the [March 16, 2012] deadline, this matter will be dismissed with prejudice."

11. Neither party filed an informational statement before March 16, 2012.
12. On April 2, 2012, Judge Robiner issued an order dismissing the 25154 matter with prejudice for failure to comply with applicable rules and for failure to prosecute.
13. On May 14, 2012, respondent brought a motion to vacate the April 2, 2012, order.
14. On May 25, 2012, respondent's motion to vacate was heard. At the hearing respondent argued that he failed to read the February 29 order requiring the filing of an informational statement until after the March 16 deadline.
15. On June 12, 2012, Judge Robiner issued an order vacating the dismissal of the action, conditioned upon respondent first paying \$2,400 in sanctions awarded against him. In that order, the judge found:
  - "Plaintiff Selmer's failure to monitor deadlines and collect, open, and read his mail strikes the Court as unreasonable. His excuses related to the demands of family and the limitations of his small practice are hollow and not compelling."
  - "On balance, Plaintiff Selmer's sloppiness and lack of attention should not jeopardize the entirety of Plaintiffs' case."
  - The Court also finds a sufficient basis to sanction Plaintiffs with a monetary fine. . . . Defendants should never have been obligated to defend a motion to vacate and to incur those expenses. Plaintiff Selmer's conduct was the sole cause for this motion and, as noted above, his conduct is unacceptable to the Court. While the conduct by Plaintiffs is not so egregious so as to bar reopening this case, the conduct deserves to be sanctioned."
16. Except as noted below, respondent has not paid the sanctions or taken any other action to re-institute the suit.
17. Respondent's failure to file an informational statement as directed by the court constitutes disobedience of an obligation under the rules of a tribunal and conduct prejudicial to the administration of justice.

**Court of Appeals File No. 1418**

18. On August 13, 2012, respondent filed a notice of appeal from Judge Robiner's order of June 12, 2012, and a statement of the case.

19. On August 14, 2012, the Office of the Clerk of the Appellate Courts issued a notice of case filing. That notice assigned Case No. A12-1418 to the appeal (1418 matter), acknowledged receipt of the case filing and noted deficiencies in the filings made by respondent. The Clerk noted that an original signature for the statement of the case is required and that the affidavit of service of the appeal papers states that it was served on July 4, 2012, while the appeal papers themselves are dated July 30, 2012. The Clerk's notice of case filing required that any deficiencies noted must be corrected within ten days.

20. On August 30, 2012, the Court of Appeals issued an order noting that the deficiencies noted by the Clerk's office had not yet been corrected; that respondent had not filed with the Court a copy of the district court's August 6, 2012, order permitting him to proceed *in forma pauperis* on the appeal; and that a certificate as to transcript signed by appellant (respondent herein) and the court reporter had not yet been filed. The Court's order directed that respondent correct these deficiencies on or before September 10, 2012, noting that failure to comply may result in dismissal of the appeal.

21. On September 20, 2012, the Court of Appeals issued an order noting that respondent had not submitted any response to the Court's August 30 order and dismissing the appeal.

22. On October 24, 2012, respondent filed a petition to the Minnesota Supreme Court seeking review of the September 20 Court of Appeals' order together with a motion to proceed *in forma pauperis*.

23. On October 26, 2012, respondent filed a motion to reinstate his appeal with the Court of Appeals.

24. On October 29, 2012, the Clerk's office wrote to respondent noting they had received his petition for review directed to the Supreme Court together with a motion for *in forma pauperis*. The Clerk's letter stated, in part,

We cannot accept your petition for review as filed because it is not double-spaced as is required under Minn. R. Civ. App. P. 132. If the petition for review is re-filed in corrected form within seven (7) days of the date of this letter, it will be deemed timely filed.

\* \* \*

The motion for in forma pauperis (IFP) that accompanied your petition for review was captioned in the Minnesota Court of Appeals and not in the Minnesota Supreme court. Please re-submit your motion for IFP captioned in the Minnesota Supreme Court when you file your corrected petition for review. The corrected motion for IFP is also due within seven (7) days of the date of this letter.

25. Respondent did not re-file his petition for review or his IFP motion with the Supreme Court.

26. On November 29, 2012, the Court of Appeals issued an order denying respondent's motion to reinstate his appeal. In its order the Court noted that respondent still had not corrected any of the filing deficiencies and that his failure to timely order the transcript of the appeal substantially delayed processing of the appeal. The Court also noted that, although respondent claimed he had not received either the August 14 notice of case filing or the August 30 order directing him to correct deficiencies, the Clerk had sent email notifications to respondent at the email address he had provided. The Court stated, "Appellant's [respondent herein] claim that he had no notice of the filing deficiencies is not credible."

27. Respondent's failure to correct the deficiencies in his filings with the Court of Appeals and the Supreme Court as directed by them constitutes disobedience of an obligation under the rules of a tribunal and conduct prejudicial to the administration of justice.

**Ramsey County File Nos. 1213 and 9413 and Hennepin County File No. 16157**

28. On February 13, 2012, a complaint was filed in Ramsey County District Court in the matter of *Willie Mae Wilson and William Wilson, individually and behalf of others similarly situated v. Scott Selmer, Raymond Jefferson, Paul Quast, Terri Mische, Ann Seifert, and Susan K. Moore*. That matter was assigned File No. 62-CV-12-1213 (1213 matter). The complaint alleged that respondent had not been properly hired as President/CEO of SPUL, had breached his fiduciary duties to SPUL, was acting beyond his authority in seeking to sell a building owned by SPUL, and was harassing the Wilsons via the Hennepin County litigation (the 25154 matter). The complaint sought an injunction temporarily and permanently enjoining the sale of the SPUL building, transferring all SPUL accounts, records, documents and assets to be held in trust pending resolution of SPUL's difficulties, and seeking monetary damages.

29. On March 16, 2012, respondent filed an amended answer of Scott Selmer to plaintiffs' amended verified complaint. In that answer respondent asserted separately both affirmative defenses and a counterclaim. In his counterclaim respondent alleged, in part, that "[p]laintiffs' actions have deprived Scott Selmer of his right to receive a salary and be compensated as is required in his position as President & CEO of the St. Paul Urban League."

30. On July 27, 2012, the court issued an order noting that the plaintiffs and defendants Jefferson, Quast, Mische, Seifert, and Moore had entered into a settlement agreement and noting that the court would continue to exercise jurisdiction over the case until completion of the terms of the settlement agreement, at which time the plaintiffs' complaint against the remaining defendant would be dismissed with prejudice. The order also provided that "[t]he Court will continue to exercise jurisdiction over the remaining Counterclaim brought by Mr. Selmer."

31. On July 27, 2012, respondent filed an April 25, 2012, summons and complaint in Hennepin County District Court that was assigned File No.

27-CV-12-16157 (16157 matter). In that complaint respondent listed himself as plaintiff and the SPUL as defendant. The complaint sought judgment against SPUL in the amount of \$213,000 plus interest for compensation allegedly owed to him by SPUL for his services as president and CEO of SPUL.

32. On August 7, 2012, the attorney for the plaintiffs served their first set of interrogatories and request for production of documents on respondent. These discovery requests were captioned as venued in Ramsey County District Court File No. 1213.

33. On August 14, 2012, the Ramsey County District Court issued an order granting the plaintiffs' motion to enjoin respondent from proceeding with the action he filed in Hennepin County, File No. 12-16157. In a memorandum attached to its order the court stated, "It is troubling that Mr. Selmer, an attorney licensed to practice for several years, has filed suit in Hennepin for the same claim that he asserted in his counterclaim in the Ramsey litigation, and over which this Court has expressly retained jurisdiction."

34. On October 16, 2012, plaintiffs served requests for admissions on respondent. This discovery request was captioned as venued in Ramsey County District Court File No. 1213.

35. On October 17, 2012, having received no response to their discovery requests, the attorney for the plaintiffs sent an email to respondent with another copy of the discovery requests, stating, "Enclosed please find the discovery requests that we originally served on you on August 7, 2012, pursuant to your email to Tom Kayser yesterday requesting that we resend them because you cannot find the original copies. We have also sent you hardcopies in the mail." That same day, respondent replied by email stating, "I received discovery documents that are improperly venued in Ramsey County. I do not intend to respond to discovery that is not in the proper venue of Hennepin County."

36. On December 5, 2012, the Hennepin County District Court issued an order in File No. 16157 granting SPUL's motion to transfer venue of respondent's Hennepin County action to Ramsey County. In that order the court noted, "As to whether the 'ends of justice would be promoted by the change [of venue]', the parties noted that a separate case, involving substantially similar issues, in which Plaintiff [respondent] is a co-defendant with the St. Paul Urban League, and in which Plaintiff appears to have filed a counterclaim, is currently being litigated before Judge Marrinan in Ramsey County, 62-CV-12-1213. In that case, Judge Marrinan issued an injunction against Mr. Selmer from proceeding in the present matter. It is in the interests of justice and comity for this Court to respect Judge Marrinan's ruling."

37. Respondent's Hennepin County action—File No. 12-16157—was transferred to Ramsey County District Court as File No. 62-CV-12-9413 (9413 matter).

38. On December 14, 2012, the Ramsey County District Court issued an order directing respondent to respond to the August 7 discovery requests within 20 days from the date of the order. The order also awarded SPUL \$2,236 in fees and costs as a sanction against respondent. The order further provided that if respondent did not provide the discovery within the time set forth in the order, additional sanctions of \$5.00 per day would be assessed for each day his response remains outstanding for a further 20 days, with the amount of the sanction increasing thereafter to \$10 per day for each day his response remains outstanding.

39. On January 14, 2013, respondent served on the plaintiffs' attorney a motion to "[R]escind the court's order of November 14, 2012 [sic] wherein the court granted attorney's fees and sanctions in behalf of the Wilsons and the St. Paul Urban League, Inc." Although the motion sought to rescind a November 14 order, it appears that it was actually seeking to "rescind" the court's December 14, 2012, order. The notice of motion, as served and filed, did not set forth a date for a hearing on the motion.

40. On February 5, 2013, the court issued a notice of hearing scheduling a settlement conference for March 15, 2013.

41. On March 15, 2013, respondent filed with the court a March 13, 2013, voluntary dismissal without prejudice. In that document respondent stated, "Scott Selmer has not filed a counter-claim in this action, however, to the extent that the plaintiffs or the court believes that he has, pursuant to Minn. R. Civ. P. 41.01 (a), Scott Selmer, voluntarily dismisses this case without prejudice." As noted in paragraph 29 above, respondent had, in fact, filed a counterclaim in the action.

42. At the March 15 settlement conference respondent indicated that he wished to bring a formal written motion seeking recusal of Judge Marrinan because she is "bigoted and biased against [him]" and seeking a determination that the court lacked subject matter jurisdiction over the case and personal jurisdiction over him. The court invited respondent to make such a motion by contacting the scheduling clerk. Respondent never brought a formal written motion to recuse Judge Marrinan or to have the action dismissed for lack of subject matter or personal jurisdiction.

43. On May 8, 2013, plaintiffs brought a motion to dismiss respondent's counterclaims for failure to comply with the court's order regarding discovery.

44. On June 10, 2013, the Ramsey County District Court issued an order dismissing respondent's counterclaims with prejudice and entering judgment against respondent in the amount of \$8,912. In that order the court noted that "[i]n addition to his failure to comply with the Court's Order compelling discovery and two Scheduling Orders, Defendant Selmer has routinely failed to appear at, or arrived late to, scheduled hearings – often asserting that [he] did [not] receive notice of the hearing. He has also failed to avail himself of the Court's procedure for scheduling and filing motions" and "Defendant Selmer's failure to comply with the Court's orders in this case is a part of a pattern of misconduct designed to flout the Court's jurisdiction and litigate his claim in

a second forum by use of a backdoor method which avoids compliance with the rules of procedure. This conduct is willful and without justification.”

45. On June 18, 2013, the Ramsey County District Court issued an order dismissing respondent’s claim with prejudice in the matter of *Selmer v. St. Paul Urban League*, File No. 12-9413. In that order the court concluded that respondent’s claim in that file was for compensation and was the same claim raised by him in File No. 62-CV-12-1213; that Judge Marrinan’s June 10, 2013, order decided that issue; and that respondent’s claims in File No. 12-9413 are barred by the doctrines of *res judicata* and collateral estoppel.

46. Respondent’s failure to respond to discovery served upon him constitutes a failure to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

47. Respondent’s failure to comply with the court’s order requiring him to respond to discovery served upon him constitutes the disobedience of an obligation under the rules of a tribunal.

48. Respondent’s bringing an action in Hennepin County (the 16157 matter) seeking the same relief sought in the already pending Ramsey County matter (the 1213 matter) was done without a good faith basis in law or fact that was not frivolous and was prejudicial to the administration of justice.

**Court of Appeals File No. A12-484**

49. On March 16, 2012, respondent filed a notice of appeal and statement of the case with the Court of Appeals seeking to appeal orders issued by the Ramsey County District Court on February 23 (granting plaintiffs’ motion for temporary restraining order) and March 13, 2012 (directing the setting of an evidentiary hearing on plaintiffs’ motion for temporary injunction and prohibiting entry onto SPUL property by certain persons) in File No. 1213. Respondent asserted that the district court erred in ruling that it has subject matter jurisdiction over the matter; that the plaintiffs lacked

standing; that the court erred in continuing the injunction without requiring a bond; that the court erred in attaching the property in question; and that the court improperly and materially impacted his substantial property rights.

50. On March 16, 2012, the Clerk of Appellate Courts issued a notice of case filing with respect to respondent's appeal. In that notice, the Clerk assigned File No. A12-484 to the appeal and advised respondent that a \$550 filing fee or a district court order waiving the filing fee is required.

51. On March 16, 2012, respondent brought a motion in district court for permission to proceed *in forma pauperis* in his appeal to the Court of Appeals.

52. On March 22, 2012, the district court issued an order denying respondent's *in forma pauperis* motion, finding that the motion was frivolous and without merit.

53. On April 4, 2012, the Court of Appeals issued an order denying respondent's motion to proceed *in forma pauperis* and directing that he pay the \$550 filing fee; post a \$500 cost bond; and file a completed certificate as to transcript. In its order, the Court stated:

4. Appellant's motion to proceed *in forma pauperis* was considered by the district court. The court found that appellant was not yet a party to the action and made no appearance at the February 21 hearing that led to the issuance of the order filed on February 23, 2012. Accordingly, appellant failed to preserve any issues for appellate review of that order and may not appeal from the order filed on February 23, 2012. *See Chapman v. Dorsey*, 230 Minn. 279, 287, 41 N.W.2d 438, 433 (1950) (holding that *ex parte* orders are not appealable because trial court must be afforded an opportunity to correct claimed errors that may have resulted in a one-sided application).

5. The district court's order ruling on the application to proceed *in forma pauperis* indicates that appellant had been served and did make an appearance at the hearing held on March 13, 2012. The court's order indicates that appellant identified his interest in those proceedings as a named defendant not currently affiliated with the Urban League, which owns the real property at issue. The district court concluded that the

issues identified in appellant's statement of the case are frivolous and the appellant "lacks standing to address those issues."

6. Appellant challenges the district court's denial of his motion to proceed in forma pauperis. This court may review the denial, but our record is limited to the record submitted to the district court. Minn. R. Civ. App. P. 109.02. An appellant seeking to proceed in forma pauperis must establish, from the issues identified in the statement of the case, that the appeal is "not frivolous." *Id.*

7. The orders from which this appeal is taken make no reference to most of the issues in the appellant's statement of the case. There is no indication that the appellant raised any challenge to the district court's subject-matter jurisdiction, to the standing of the plaintiffs to bring the action, or to the absence of an injunction bond. Even if the issues were raised in some fashion, there is no indication that the district court has ruled on these issues or that they are ripe for appellate review. The orders from which the appeal is taken do not purport to "attach" the property, as alleged in the statement of the case. And there is no indication that appellant properly raised "the substantial property right," to which the final issue in his statement of the case refers, in the proceedings before the district court.

8. Because appellant has not established that any of the issues raised in the statement of the case are properly before this court or were actually presented to and decided by the district court, there is no basis for this court to set aside the district court's finding that appellant failed to establish that this appeal is "not frivolous."

54. On April 25, 2012, the Court of Appeals, after receipt of informal memoranda from the parties, issued an order dismissing respondent's appeal in File No. A12-484, stating, "This appeal is dismissed as taken from interlocutory, nonappealable orders."

55. Respondent's filing of an appeal asserting issues that were not properly before the Court was done without a good faith basis in law or fact that was not frivolous and was prejudicial to the administration of justice.

**Court of Appeals File No. A12-535**

56. On March 22, 2012, respondent filed a petition for writs of prohibition and mandamus with the Court of Appeals. In that petition respondent sought (a) to stop an evidentiary hearing scheduled for March 27, 2012, in Ramsey County matter 1213; (b) to dissolve the February 23, 2012, temporary restraining order issued by the Ramsey County District Court in the 1213 matter; (c) to require the plaintiffs in the 1213 matter to post a bond; and (d) to dismiss the underlying action (matter 1213) for lack of subject matter jurisdiction.

57. On March 26, 2012, the Clerk of Appellate Courts issued a notice of case filing with respect to respondent's petition. In that notice, the Clerk assigned File No. A12-535 to the petition and advised respondent that additional copies of the petition and attachments were required.

58. On April 11, 2012, the Court of Appeals issued an order directing respondent to (a) file four copies of the petition and related documents; (b) serve the petition and related documents on the substituted attorney for Wilson, et al. and file a notarized affidavit of service; and (c) pay the \$550 filing fee to the Clerk of the Appellate Courts.

59. On May 15, 2012, the Court of Appeals issued an order denying respondent's petition for prohibition and mandamus in its entirety. In that order the Court noted, "There is no indication in the record provided to this court that petitioner [respondent] has actually moved the district court to dissolve the TRO, to require the plaintiffs in the underlying action to post a bond, or to dismiss the action for lack of jurisdiction. . . . Petitioner has not established that the issues raised in the petition are ripe for appellate review or that the ordinary remedy of a direct appeal from an order denying relief would be inadequate."

60. Respondent's failure to correct the deficiencies in his filings with the Court of Appeals as directed by them constitutes disobedience of an obligation under the rules of a tribunal and conduct prejudicial to the administration of justice.

61. Respondent's filing of a petition asserting issues that were not ripe for appellate review was done without a good faith basis in law or fact that was not frivolous and was prejudicial to the administration of justice.

**Court of Appeals File No. A12-990**

62. On June 8, 2012, respondent filed a notice of appeal and statement of the case with the Court of Appeals appealing an order issued in Ramsey County matter 1213 on June 6, 2012.

63. On June 13, 2012, the Court of Appeals dismissed respondent's appeal noting that respondent had not paid the \$550 filing fee; that there was nothing in the district court administrator's register of actions to show that respondent had filed a motion in district court to proceed *in forma pauperis*; that, while the district court administrator's register of actions does indicate that a scheduling conference was held on June 6, 2012, there was no indication that an order was issued following the conference; and that respondent has not provided a transcript of the June 6, 2012, proceedings.

64. Respondent's filing of an appeal without paying the required filing fee or obtaining permission to proceed *in forma pauperis* and his failure to provide a transcript of the June 6, 2012, proceedings constitutes disobedience of an obligation under the rules of a tribunal and conduct prejudicial to the administration of justice.

**Federal District Court File No. 12-1707**

65. On July 16, 2012, respondent commenced an action in the United States District Court, District of Minnesota, captioned *Scott Selmer v. State of Minnesota, County of Ramsey, Margaret Marrinan, Willie Mae Wilson and William Wilson*. That same day, respondent also filed an application to proceed *in forma pauperis* in the action, a motion

seeking a temporary restraining order (TRO), a declaration of Scott Selmer in support of motion for TRO and temporary injunction, a brief in support of motion for TRO and temporary injunction, and a civil cover sheet. The matter was assigned File No. 12-1707.

66. The complaint filed by respondent requested monetary damages, stating, "Plaintiffs pray for joint and several relief in a sum in excess of five-hundred thousand dollars (\$500,000), for denial of his Constitutional rights to equal protection, due process, race discrimination and deprivation of his property rights, together with attorneys fees, costs and disbursements and any other relief that the Court deems just and appropriate."

67. The civil cover sheet separately filed by respondent noted that the relief requested in his complaint was \$500,000.

68. On July 17, 2012, United States District Court Judge Richard H. Kyle issued an order denying respondent's application to proceed *in forma pauperis* and dismissing the underlying complaint with prejudice.

69. Judge Kyle, in issuing the order dismissing respondent's complaint, found that respondent's complaint was frivolous or malicious, failed to state a claim on which relief may be granted, and that it sought monetary relief against a defendant who is immune from such relief. In his order Judge Kyle stated, in part:

First, Selmer has failed to state a claim against the State of Minnesota, Ramsey County, or the Wilsons. The State is nowhere mentioned in Selmer's rambling Complaint, and Ramsey County appears to have been sued only because Judge Marrinan is chambered there. Moreover, the Complaint pleads no cause of action against the Wilsons; they have apparently been sued simply because they are plaintiffs in the state-court case [footnote omitted]. All of the alleged "misconduct" identified in the Complaint was undertaken by Judge Marrinan alone.

Second, Selmer has failed to allege any valid claim predicated on his race. Indeed, he has not even pleaded that he falls within a protected racial category, and there is nothing in the Complaint – not even a conclusory allegation – remotely suggesting that any of the challenged conduct occurred on account of his race (whatever it might be).

Third, Judge Marrinan is absolutely immune from suit here.

\* \* \*

Fourth, and finally, but perhaps most importantly, the entire Complaint is frivolous.

\* \* \*

At bottom, the Court is left with the distinct impression that Selmer commenced this action to harass and annoy his opponents in the state-court action; to undermine Judge Marrinan's continued handling of that case; and to seek a forum (ostensibly) more favorable to him.

70. Respondent's filing of the federal court complaint seeking monetary damages was without a basis in law or fact that was not frivolous.

**Court of Appeals File No. A12-1740**

71. On September 28, 2012, respondent filed a notice of appeal and statement of the case appealing orders issued in Ramsey County matter 1213 on March 13, June 6, July 27, and August 14, 2012. Respondent's appeal was assigned File No. A12-1740.

72. On March 25, 2013, the Court of Appeals issued an unpublished opinion dismissing respondent's appeal as moot. In the opinion the Court noted that respondent's appeal argued that the district court in the 1213 matter did not have subject matter jurisdiction because the Wilsons lacked standing to bring the underlying action. The Court noted that the district court had scheduled an evidentiary hearing to address the question of standing, but before this took place the respondents in the appeal settled the underlying action and the action was dismissed, leaving only respondent's [appellant's in the appeal] counterclaim remaining.

73. On April 22, 2013, respondent petitioned the Minnesota Supreme Court for review of the Court of Appeals' March 25 decision.

74. On May 29, 2013, the Supreme Court issued an order directing respondent to, within seven days, file an affidavit of service confirming that the petition for review was timely served on counsel for four of the defendants in the underlying matter

together with an affidavit of service indicating that a corrected motion to proceed *in forma pauperis* was served on all respondents to the appeal.

75. On June 21, 2013, the Supreme Court issued an order dismissing respondent's petition for review for failure to comply with the directives in the Court's May 29, 2013, order.

76. Respondent's failure to comply with the directives in the Court's May 29, 2013, order constitutes disobedience of an obligation under the rules of a tribunal and conduct prejudicial to the administration of justice.

77. Respondent's conduct in engaging in a pattern of frivolous and harassing litigation, failing to abide by court orders, and failing to comply with legally proper discovery requests, violated Rules 1.1, 3.1, 3.4(c), 3.4(d), and 8.4(d), 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: December 5, 2013.



---

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