

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against JOHN M. TANCABEL,
a Minnesota Attorney,
Registration No. 108273.

**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 April 22, 1976. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On September 15, 2000, respondent was issued an admonition for his failure to submit proposed findings to the court in violation of Rule 1.3, Minnesota Rules of Professional Conduct (MRPC).

B. On February 18, 2000, respondent was issued an admonition for engaging in a pattern of failing to timely pay his lawyer registration fee and continuing to practice law while fee suspended in violation of Rule 5.5, MRPC.

C. On January 9, 1998, respondent was issued an admonition for suggesting that his client and opposing party split insurance proceeds despite respondent and his client's knowledge that the proceeds may have been obtained incorrectly and threatening that he or his client may expose the potentially incorrect distribution to the insurance company if the opposing party did not agree to respondent's proposed resolution in violation of Rule 8.4(b) and (d), MRPC.

FIRST COUNT

Manoucher Rostamkhani Matter

1. Respondent was retained to represent Manoucher Rostamkhani in a real estate matter.

2. On December 17, 2008, respondent filed a civil lawsuit on Rostamkhani's behalf in Hennepin County District Court. On March 31, 2009, Option One Mortgage Corporation, the defendant, removed the matter to federal court. On April 6, 2009, the defendant filed an answer to Rostamkhani's complaint.

3. On April 7, 2009, the magistrate judge issued an order of pretrial conference, advising the parties and counsel that a pretrial scheduling conference was set to take place on May 12, 2009, at 10:00 a.m. The order further required that counsel meet and confer for purposes of preparing a report pursuant to Fed. R. Civ. P. 26(f), and that counsel separately submit a confidential settlement letter to the court at least three days prior to the scheduling conference.

4. On May 5, 2009, counsel for the defense filed a Rule 26(f) report. The report stated that defense counsel made numerous attempts to contact respondent which were ignored. The report further stated that respondent failed to appear for the scheduled meeting as required by Rule 26(f). Therefore, defense counsel submitted a Rule 26(f) report on its own, without input from respondent.

5. Respondent failed to submit the confidential settlement letter to the court at least three days prior to the scheduling conference as directed in the order of pretrial conference.

6. On May 12, 2009, a pretrial conference was held. Respondent failed to appear for the conference. That same day, the magistrate judge issued an order to show cause as to why respondent should not be held in contempt for his failure to appear at the May 12 hearing. A hearing on the matter was scheduled for May 29, 2009.

7. Respondent failed to appear for the May 29, 2009, hearing.

8. On May 29, 2009, the magistrate judge issued a report and recommendation based on respondent's contempt. The report stated that respondent had not contacted the court regarding his failure to appear and to timely submit documents. The report further recommended that respondent "be suspended from the [sic] practicing before the United States District Court for the District Court in this action, Rostamkhani v. Option One Mortgage Corp., Civil File No. 09-739 JMR/AJB, and any other active case in the District of Minnesota in which he may be counsel of record, until such time as he appears before the court to satisfactorily explain his failure to cooperate and comply with court orders."

9. On June 12, 2009, respondent filed a motion to file under seal an objection and affidavit opposing the contempt recommendation. On June 29, 2009, the court granted respondent's motion.

10. On July 7, 2009, respondent filed his objection.

11. On August 18, 2009, the court issued an order holding respondent in contempt for failing to comply with court orders. The court found that respondent acknowledged he had no excuse for his failure to appear as directed. The order further stated that for the next 18 months respondent may not practice before the United States

District Court without supervising or corresponding co-counsel, who must file an appearance and co-sign documents filed by respondent.

12. Respondent's conduct in the Rostamkhani matter violated Rules 1.1, 1.3, 3.2, 3.4(c), and 8.4(d), MRPC.

SECOND COUNT

Laurie Ingram Duren Matter

13. In late February 2007, Laurie Ingram Duren retained respondent to represent her in a real estate matter. Duren was trying to reclaim her home, which had been previously conveyed to a third party to avoid foreclosure under the agreement that she would be able to repurchase her home from said third party. Duren's former counsel had filed a summons and complaint seeking to have the previous conveyance to the third party declared void. Additionally, the third party was attempting to evict Duren from her home. At the time respondent was retained, Duren was making monthly payments toward her home that were being held in escrow by the court.

14. Respondent did not enter into a written fee agreement with Duren and she did not pay any money up front for the representation. Respondent and Duren agreed that she would pay for respondent's services at a later date.

15. At some point prior to a July 12, 2007, hearing, Duren agreed that respondent would be paid his legal fees from the funds being held in escrow by the court.

16. On July 12, 2007, a hearing was held in the matter. Respondent appeared on behalf of Duren. The parties entered into a settlement agreement on the record, which provided that the third party would sell Duren's home back to her via a contract for deed. Based on the settlement, the court agreed to release to Duren the money she had been paying to the court minus \$1,000 that was to go to the third party.

17. On July 16, 2007, respondent wrote Duren, stating that he was charging her \$3,000 for his representation. Sometime after receiving respondent's letter, Duren informed respondent that she believed they had previously agreed that respondent would charge her \$2,000 for the representation.

18. Between July 20 and early September 2007, respondent and opposing counsel exchanged several emails in an attempt to finalize the stipulations and other documents that were required to be filed with the court according to the settlement that was placed on the record on July 12. This included the documents necessary to provide to the court to secure the release of Duren's funds that were held in escrow.

19. On September 14, 2007, respondent sent Duren an email notifying her that he was withdrawing from representation effective immediately.

20. On September 19, 2007, respondent received a check from the court for \$5,800, representing the funds that Duren had previously paid to the court. That same day, respondent sent an email to Duren informing her of the receipt of the check. Respondent further stated that he would deposit the check into his trust account immediately and write Duren a check for \$2,800. Additionally, respondent stated that he would retain \$3,000 in his trust account as he believed that is what Duren owed for his legal services, but that he understood \$1,000 of respondent's fee was disputed. Respondent indicated he would not pay himself the \$1,000 until the issue was resolved. Respondent also sent a letter to Duren on September 19 enclosing a check payable to Duren and stating in part, "I will hold \$1000 in my trust account as disputed legal fees."

21. On or about February 5, 2008, without any input from Duren, respondent disbursed the \$1,000 in disputed funds to himself. Respondent did not notify Duren that he was disbursing the disputed funds to himself.

22. Respondent's conduct in paying the funds disputed by Duren to himself without any resolution between he and Duren and no notification to Duren that he intended to pay the funds to himself violated Rule 1.15(b), MRPC.

THIRD COUNT

Ron Lindberg Matter

23. In December 2007, Ron Lindberg retained respondent to commence a civil lawsuit on his behalf. Respondent did not enter into a written fee agreement with Lindberg.

24. On December 27, 2007, Lindberg paid respondent \$5,000 toward the representation. Respondent did not place the funds into a trust account and had not earned \$5,000 as of December 27, 2007.

25. On February 22, 2008, Lindberg paid respondent an additional \$5,000 toward the representation. Respondent did not place the funds into a trust account.

26. In August 2008, Lindberg wrote to respondent informing him that he was terminating the representation. At the time of the termination, respondent did not provide a copy of the file to Lindberg.

27. On November 10, 2008, Lindberg filed a complaint with the Director. In his one-page complaint Lindberg stated of respondent, "I have given him many weeks to provide a refund or to otherwise communicate with me, which he has not done, not even an accounting or a return of my files." A copy of Lindberg's complaint was sent to respondent by Lindberg and also by the Director's Office.

28. Sometime thereafter, respondent's secretary provided Lindberg with a compact disc of documents related to his case.

29. On approximately May 19, 2009, Lindberg wrote respondent requesting the return of his original documents. Lindberg provided his current address to

respondent in the body of the one-page letter. Lindberg sent his letter by certified mail, with a return receipt requested. Respondent signed for the letter on May 21, 2009.

30. On June 1, 2009, after Lindberg received no response from respondent, the Director wrote respondent, encouraging him to work with Lindberg to resolve any outstanding issues with the representation, including the return of original documents.

31. On June 10, 2009, respondent wrote the Director's Office. In his letter, sent by fax, respondent stated that he did not know where Lindberg was living and did not have his current address, despite the fact that he signed for a certified letter from Lindberg on May 21, 2009, which contained Lindberg's mailing address. Respondent requested the Director provide him with Lindberg's address.

32. On June 12, 2009, the Director wrote respondent and provided Lindberg's current address. Among other questions, the Director asked respondent why he stated that he did not have Lindberg's address when he had signed for a certified letter from Lindberg on May 21, 2009, which contained Lindberg's current address. The Director also asked respondent why he did not return Lindberg's original documents when he received the certified letter from Lindberg requesting his documents.

33. On June 18, 2009, respondent came to the Director's Office, requesting a copy of the Director's letter containing Lindberg's address. Respondent stated that he had copied the file and planned to mail it to Lindberg, but had lost the Director's letter with Lindberg's address. The Director provided respondent with a copy of the June 12, 2009, letter.

34. On June 22, 2009, respondent mailed the photocopied version of Lindberg's file to Lindberg, despite Lindberg's request for his original documents.

35. On June 24, 2009, Lindberg faxed the Director, stating that he received copies of documents from respondent rather than his originals, and that he needed his original documents to pursue his case.

36. On June 25, 2009, the Director wrote respondent, asking whether he had retained any original documents provided to him by Lindberg.

37. On July 7, 2009, after receiving no response to the Director's June 25 letter, the Director scheduled a meeting with respondent for July 21, 2009.

38. On July 15, 2009, the Director received a call from Lindberg stating that he received additional documents from respondent.

39. On August 27, 2009, respondent provided Lindberg with an accounting of the \$10,000 paid by Lindberg for the representation.

40. Respondent's failure to place Lindberg's funds into his trust account and to timely return Lindberg's original documents violated Rules 1.5(b), 1.15(c)(5), and 1.16(d), MRPC.

FOURTH COUNT

Peg and Don Kutz Matter

41. On September 25, 2007, Peg and Don Kutz retained respondent to assist them regarding problems with their home mortgage. The Kutzes paid respondent \$200.

42. On September 25, 2007, respondent wrote the Kutzes confirming his representation. In the letter, respondent stated his billing rate would be \$200 per hour and that he would contact them if their bill reached \$1,000. Respondent further indicated that he would "try to locate a loan officer who can get you a more affordable mortgage."

43. After September 27, 2007, the Kutzes made several attempts to contact respondent by phone and email. Respondent did not respond to the Kutzes' attempts to contact him. The Kutzes left messages with respondent asking him to return their documents.

44. On March 27, 2008, after receiving no response from respondent, the Kutzes filed a complaint with the Director's Office.

45. On April 11, 2009, respondent wrote the Director, stating that he had returned the Kutzers' documents and refunded the \$200 paid to him by the Kutzers.

46. Respondent's failure to diligently pursue the Kutzers' matter and respond to their requests for information violated Rules 1.3, 1.4(a)(4), and 1.16(d), MRPC.

FIFTH COUNT

Non-Cooperation

Ron Lindberg Matter

47. On November 17, 2008, the Director sent respondent a notice of investigation regarding the complaint of Ron Lindberg. The notice instructed respondent to respond to Lindberg's complaint within fourteen days. Respondent failed to respond to Lindberg's complaint.

48. On December 8, 2008, the Director wrote respondent requesting a response to Lindberg's complaint within one week.

49. On December 15, 2008, respondent wrote the Director requesting an extension to respond to the complaint until December 22, 2008. Respondent failed to submit a response by December 22, 2008.

50. On December 30, 2008, the Director wrote respondent requesting a response to Lindberg's complaint within one week. Respondent failed to submit a response to the Director.

51. On June 1, 2009, as previously set forth above, the Director wrote respondent requesting a response to the Lindberg complaint and encouraging respondent to work with Lindberg to resolve outstanding issues.

52. On June 10, 2009, the Director received a fax from respondent stating he is unable to return Lindberg's file to him as he does not have any contact information for Lindberg. Respondent made this assertion despite the fact that on May 21, 2009,

respondent signed for and received a certified letter from Lindberg which contained Lindberg's current address.

53. Also on June 10, 2009, the Director spoke to respondent. During the conversation, respondent indicated that he had previously sent a response to the Lindberg complaint to the Director. Respondent further stated that he would print a copy of that response and promptly forward it to the Director.

54. On June 12, 2009, the Director wrote respondent. Among other requests, the Director asked respondent to provide documents and information relating to the Lindberg complaint, including the response to the complaint which the Director understood from the June 10 conversation was to have been reprinted and faxed on June 10. The Director requested that respondent provide the information and documents to the Director within one week.

55. On June 18, 2009, as previously set forth above, respondent came to the Director's Office requesting a copy of the Director's June 12 letter as he had lost it. The Director reminded respondent that his response to the June 12 letter was due the following day. Respondent indicated that he would provide the response by the next day. Respondent failed to timely respond to the Director's June 12 letter.

56. On June 22, 2009, the Director received a one-page letter from respondent. Respondent's letter did not include the original response to Lindberg's complaint or the additional questions asked in the Director's June 12 letter. Respondent's letter stated in part, "I will be working on completing the bill and I will personally deliver a copy of my letter of transmittal and the bill to your office. The bill should be completed today."

57. On June 25, 2009, the Director wrote respondent, requesting an immediate response to Lindberg's complaint and the Director's June 12 letter. Respondent failed to respond to the Director's letter.

58. On July 7, 2009, the Director wrote respondent requesting his attendance at a meeting on July 21, 2009, to further discuss the Lindberg matter. The Director requested respondent bring to the meeting his original response to Lindberg's complaint, a response to the Director's June 12 and 25 letters, and the documents requested in said letters.

59. On July 20, 2009, respondent arrived at the Director's Office for the meeting scheduled for July 21, 2009. The Director advised respondent that the meeting was scheduled for July 21, but agreed to meet with respondent since he was present at the Director's Office. During the meeting, respondent provided the Director with a compact disc containing electronic versions of portions of Lindberg's file. The disc also contained respondent's original response to Lindberg's complaint. The Director asked respondent to provide additional documents and information.

60. On July 23, 2009, the Director wrote respondent, confirming the Director's request for documents and information as discussed during the July 20 meeting. The Director requested respondent to provide the documents and information by August 3, 2009.

61. On July 31, 2009 (Friday), respondent left a message for the Director stating he was unable to timely provide the requested documents, but would provide them by the next week.

62. On August 3, 2009 (Monday), respondent stopped by the Director's Office without an appointment. The Assistant Director assigned to this matter was out of the office that day.

63. On August 5, 2009, the Director called respondent. During the conversation respondent requested an extension until August 10, 2009, to respond to the Director's July 20 request for information. The Director granted respondent's request.

64. On August 11, 2009, respondent stopped by the Director's Office without a scheduled meeting. Respondent stated orally and by letter provided to the Director that he would work exclusively on the Director's requests beginning the next day for two consecutive days. Respondent agreed to provide the requested information to the Director by August 14, 2009. Respondent failed to provide the requested information by August 14.

65. On August 20, 2009, the Director wrote respondent requesting that he provide the previously requested information by August 27, 2009.

66. On August 27 and 28, 2009, the Director received responses from respondent.

Laurie Ingram Duren Matter

67. On November 27, 2007, the Director sent respondent a notice of investigation regarding the complaint of Laurie Ingram Duren. The notice instructed respondent to provide a response to the complaint to the District Ethics Committee (DEC) investigator within fourteen days.

68. On December 4, 2007, the DEC investigator wrote respondent, requesting a response to the complaint within fourteen days of November 27.

69. On December 31, 2007, respondent sent the DEC investigator his untimely response to the complaint.

70. On January 2, 2008, the DEC investigator sent a request for additional information to respondent via facsimile. Respondent failed to respond to the investigator's request.

71. On February 5, 2008, the DEC investigator sent respondent a second request for information by facsimile. In the fax, the investigator noted that he needed to complete his investigation by February 14 and asked respondent to respond to his

January 2 and February 5 requests by February 7, 2008. Respondent failed to respond to the investigator's requests.

72. On February 15, 2008, the DEC investigator called respondent and left a message with respondent's assistant. Respondent did not return the call until February 20, 2008, when respondent asked the investigator to email the faxes previously sent to him. The investigator sent the faxes by email to respondent and received nothing further from respondent.

73. On February 26, 2008, the Director received the DEC investigator's report in the matter. On March 3, 2008, the Director wrote respondent, asking him to respond within two weeks to the questions set forth by the investigator on January 2 and February 5, 2008, and to provide a copy of the fee agreement in the matter. The Director's letter stated that respondent should contact the Director's Office if he needed an extension of time to respond. Respondent failed to request an extension and submitted a partial and untimely response on March 24, 2008.

74. On March 25, 2008, the Director wrote respondent, requesting a response within two weeks to the questions posed by the DEC investigator that were not addressed in his March 24 letter to the Director.

75. On April 10, 2008, the Director wrote respondent again requesting, among other things, a response to the Director's March 25 letter.

76. Also on April 10, 2008, respondent's assistant called the Director's Office stating they had misplaced or were unable to find the DEC investigator's February 5 correspondence and requesting that the Director's Office send it to respondent by fax. A representative from the Director's Office faxed the requested correspondence to respondent's office that same day. Respondent failed to respond to the Director's request for information after receiving the April 10 fax from the Director and failed to request an extension of time to respond.

77. On April 17, 2008, the Director wrote respondent requesting, among other things, a response to the Director's March 25 letter within one week. On April 23, 2008, respondent hand delivered a response to the Director's Office.

78. Respondent's failure to cooperate with the disciplinary investigations regarding the complaints of Ron Lindberg and Laurie Ingram Duren violated Rule 8.1(b), 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: August 10, 2010.



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