

FILE NO. A10-1381

STATE OF MINNESOTA

IN SUPREME COURT

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

**SUPPLEMENTARY 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 supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of an August 10, 2010, petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

The Director alleges that respondent has committed the following additional unprofessional conduct warranting public discipline:

SIXTH COUNT

Stephen Shea Matter

79. In approximately July 2008, Rosemary Shea retained respondent to represent her in a civil dispute involving a piece of real property. Rosemary Shea was the plaintiff in the lawsuit and her brother Stephen Shea was one of the defendants.

80. On August 13, 2008, respondent filed a civil complaint in the matter on behalf of his client.

81. On May 20, 2009, defendants served respondent with a motion for an order directing the sale of the real property.

82. On June 15, 2009, two days before the scheduled hearing on defendants' motion, respondent filed responsive papers. The court accepted respondent's untimely filing.

83. On August 31, 2009, the court issued an order denying defendants' motion and ordering the parties to appear for a scheduling conference on September 16, 2009. Respondent and his client failed to appear at the September 16 scheduling conference. On September 16, 2009, the court issued an order setting November 30, 2009, as the discovery deadline.

84. On November 25, 2009, defendants brought a motion to compel plaintiff's responses to defendants' interrogatories, request for production of documents and request for medical records and authorizations. At the hearing, the court extended the discovery deadline to December 15, 2009.

85. At a December 16, 2009, pretrial conference, plaintiff Rosemary Shea informed the court she was no longer seeking the return of the real property but that she objected to defendant Stephen Shea acting as the listing agent for sale of the property.

86. On January 4, 2010, a telephone conference was held in the matter. During the conference, the court directed both parties to submit the names of three proposed realtors to act as the listing agent for the property by January 12, 2010. Respondent failed to submit a list to the court until January 15, 2010.

87. Defendants objected to plaintiff's proposed list and requested a telephone conference to resolve the issue. Respondent failed to return several calls with respect to the scheduling of the telephone conference. As a result, on February 18, 2010, the court issued an order appointing a listing agent without further comment from respondent on the issue.

88. A settlement conference in the matter was scheduled for May 26, 2010. Respondent failed to place the settlement conference on his calendar and failed to notify

his client of the scheduled settlement conference. As a result, neither respondent nor his client appeared at the May 26 settlement conference.

89. On May 28, 2010, the court issued an order to show cause as to why plaintiff's complaint should not be dismissed with prejudice and why sanctions should not be imposed. The order directed the parties to appear in court on June 8, 2010, at 11:00 a.m.

90. Respondent failed to open the envelope from the court which contained the May 28, 2010, order until the afternoon of June 8, 2010. As a result of respondent's failure to timely open correspondence from the court, neither respondent nor his client appeared at the June 8 hearing.

91. On June 9, 2010, the court issued an order dismissing plaintiff's complaint with prejudice and finding in favor of defendants with respect to defendants' counterclaim. The order further required the parties to appear for an evidentiary hearing to determine the amount of defendants' damages, including attorneys' fees and appropriate sanctions.

92. On June 11, 2010, respondent filed a motion with the court on behalf of his client requesting relief from the court's June 9 order. The motion requested that plaintiff's case be reinstated based in part on respondent's failure to notify plaintiff of the May 26 settlement conference and the June 8 hearing.

93. On September 16, 2010, the court issued an order granting relief to plaintiff. The court's order states in part,

Plaintiff's motion for relief from the Court's June 9, 2010 Order is granted. This matter shall be placed on the Court's calendar for pretrial/scheduling conference as early as possible. Following that pretrial conference, the Court will issue a new scheduling order, setting this matter for an expedited trial. **No further continuances shall be granted, except upon written stipulation of the parties.**

As a condition of reopening this matter, plaintiff shall pay attorneys' fees in the amount of \$12,510.80 and costs in the amount of \$302.52 within thirty days of the date of this Order.

94. On October 18, 2010, more than 30 days after the date of the court's order, respondent provided defendants' counsel, Gene Adkins, with a check in the amount of \$12,813.32. Respondent's check was dishonored because of insufficient funds.

95. On October 27, 2010, the court held a scheduling conference. The court gave respondent until 4:30 p.m. that afternoon to provide certified funds in the full amount to Adkins.

96. Respondent provided Adkins with certified funds in the amount of \$12,813.32 before 4:30 p.m. on October 27, 2010.

97. Trial in the matter is scheduled for early next year.

98. Respondent's conduct violated Rules 1.3, 1.4(a)(1), 1.4(a)(3), 3.2, 3.4(c), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

SEVENTH COUNT

Leah Weaver Matter

99. Respondent represented plaintiff Brett Holm in a contract dispute regarding real property. Leah K. Weaver was counsel for one of the defendants.

100. An evidentiary hearing in the matter was scheduled for October 15, 2009. Respondent failed to inform his client of the hearing date, and both respondent and his client failed to appear for the hearing. The court telephoned respondent, who indicated he had recently lost his secretary and was having trouble maintaining his calendar on his own. The court rescheduled the hearing to November 5, 2009.

101. On October 22, 2009, the court issued an order directing respondent to pay attorney fees in the amount \$600 to Weaver's client for the October 15 hearing. The order also provided that plaintiff pay a monthly bond in the amount of \$1,080.06 to court administration, commencing November 10, 2009, and then on the first of each month beginning with December 1, 2009.

102. Respondent paid the \$600 award of attorney fees.

103. At the November 5, 2009, hearing one of the defendants appeared *pro se*. Respondent had not served that defendant, but she appeared based on the notice of hearing she received from court administration. Respondent also failed to properly serve another named defendant who did not appear on November 5. Due to respondent's failure to properly serve two named defendants, the court determined the matter must be continued.

104. On November 19, 2009, the court issued an order based on the November 5 hearing. The order, in part, directed respondent to pay \$400 in attorney fees to Weaver's client, continued plaintiff's bond obligation, and set the matter for pretrial on December 21, 2009, and trial on January 26, 2010. The order further stated that plaintiff's failure to make complete and timely payments would serve to dismiss the temporary injunction without further hearing. Weaver's client would then be allowed to immediately remove plaintiff from the home.

105. Respondent paid the \$400 award of attorney fees.

106. On December 2, 2009, respondent emailed Weaver requesting a phone call. Weaver called respondent, who requested a copy of the court's order from the November 5 hearing. Weaver sent a copy of the court's order to respondent via email.

107. Respondent did not inform plaintiff until December 21, 2009, of the contents of the court's October and November orders, including the requirement that plaintiff pay a monthly bond. As a result of respondent's failure to notify his client of his financial obligation to the court, plaintiff failed to timely make the first payment, due November 10, 2009.

108. On December 21, respondent appeared at the pretrial. Respondent presented the court and Weaver with a letter, which detailed respondent's failure to notify his client of the court's order directing the client to pay a monthly bond to the court. Respondent's letter also detailed respondent's failure to serve another defendant

in the matter until December 18, 2009, one business day before the December 21 pretrial. Respondent further stated that he had offered to withdraw from the matter, but would continue to represent plaintiff until plaintiff could secure new counsel.

109. Respondent's conduct violated Rules 1.1, 1.3, 1.4(a)(1), 1.4(a)(3), 3.2, 3.4(c), and 8.4(d), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent from the practice of law, 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: October 28, 2010.



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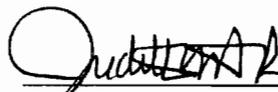
and



SIAMA Y. CHAUDHARY
ASSISTANT DIRECTOR
Attorney No. 350291

This supplementary petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: November 1, 2010.



JUDITH M. RUSH
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD