

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against ERIC CHRISTOPHER THOLE,
a Minnesota Attorney,
Registration No. 232063.

**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 23, 1992. Respondent currently practices law in Stillwater, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

1. At all times material, respondent was an Assistant Washington County Attorney. Respondent was assigned to the criminal division; at various times one of his responsibilities was to prosecute crimes committed at the Minnesota Correctional Facility — Oak Park Heights ("Oak Park Heights").

2. At all times material, Matthew Runningshield has been an inmate at Oak Park Heights.

3. In 2000 respondent prosecuted a case in which a number of inmates at Oak Park Heights were accused of murdering another inmate. Runningshield was an

uncharged witness in the murder case. In or about August 2000 he testified to the grand jury for the prosecution.

4. Runningshield testified, among other things, that he is a member of the Shakopee Mdewakanton Sioux Community (the "Community").

5. In February 2003 Runningshield wrote to respondent, asking for help to get early release.

6. Respondent and Runningshield developed a friendship. They corresponded with each other, and respondent and Runningshield also spoke by phone.

7. In January 2003 respondent wrote a letter to the Minnesota Board of Pardons in support of Runningshield's request for a sentence reduction. Respondent wrote the letter on Washington County Attorney's Office letterhead and signed it in his capacity as an Assistant Washington County Attorney. Respondent wrote the letter without the knowledge of the Washington County Attorney. However, after respondent wrote the letter he informed the County Attorney of the letter. Respondent also wrote the letter without the knowledge of the Hennepin County Attorney's Office, which had prosecuted Runningshield in the murder case which resulted in Runningshield's incarceration. In October 2003 respondent wrote again to the Board of Pardons on Runningshield's behalf.

8. As the friendship between respondent and Runningshield continued to develop, Runningshield called respondent at his home, office and cell phones. Inmates are prohibited from receiving calls.

9. Before the end of 2003, Runningshield told respondent that he received more than one million dollars (\$1,000,000) per year as a member of the Community from his share of the profits from Mystic Lake Casino, which is owned and operated by the Community. Runningshield said that he had millions of dollars held in trust during his incarceration and available to him only for limited purposes, such as investments.

10. In a December 2003 letter, Runningshield spoke to respondent of "this business sh*t I wanna do."

11. Between January and November 2004, respondent spoke with Runningshield between 50 and 100 times.

12. During 2004 respondent sent to Runningshield pictures of his family, travels and home.

13. The Department of Corrections (DOC) has issued policies and directives governing various matters related to inmates. DOC policy 302.020 establishes guidelines for the processing of incoming and outgoing inmate mail. The policy differentiates between:

- All incoming mail is subject to being read by prison staff.
- Inmates may not use the facility address as a personal business address.
- Inmates may not receive mail pertaining to an unauthorized business activity.
- Incoming legal mail is opened by staff only in the presence of the inmate. Legal mail is defined as correspondence to or from the court, attorneys or groups of attorneys involved in the representation of the inmate and which clearly indicates as part of the address that it is to or from one of these sources.

14. On three (3) or four (4) occasions respondent sent correspondence which had nothing to do with official county attorney business to Runningshield in County Attorney's Office envelopes.

15. On January 9, 2004, respondent wrote to Runningshield, referring Runningshield to a named attorney for information and possible representation in trying to get Runningshield's sentence reduced. Respondent also stated, "P.S. I am interested in the other things you mentioned and have a few ideas myself." The letter was on Washington County Attorney's Office letterhead.

16. In February 2004 respondent told Runningshield that respondent could no longer correspond to him on County Attorney's Office letterhead unless it related to official County Attorney's Office business. Respondent thereafter corresponded to

Runningshield by handwritten, unsigned and generally undated letters. Respondent gave the letters to a lawyer who was representing or advising Runningshield to mail or deliver to Runningshield.

17. DOC policy 300.1003 prohibits inmates from conducting business activity during incarceration and prohibits inmates from using the prison address as a business address. DOC policy 300.1001 states that "business activity":

[I]ncludes, but is not limited to, the practice of a profession, the sale or solicitation of sales or services and/or the manufacture or distribution of any goods or services, whether direct or indirect. This does not include authorized hobby craft activity or routine communication with a person who is operating a business established by an offender prior to the offender's incarceration.

18. By February 2004 respondent and Runningshield had begun to discuss establishing a new business for Runningshield to own that would invest his earnings from the Community in outside ventures. These discussions continued throughout the spring, summer and fall of 2004.

19. In February 2004 respondent told Runningshield that respondent could not discuss future business dealings until Runningshield's commutation request was resolved. Respondent explained that he was a witness for Runningshield, but that they could discuss business matters if respondent would not be a witness.

20. During 2004 respondent provided legal advice to Runningshield regarding Runningshield's efforts to have his sentence reduced. Respondent also advised Runningshield to consult with another attorney.

21. In April 2004 Runningshield asked respondent to write another letter to the Board of Pardons on Runningshield's behalf.

22. On April 14, 2004, respondent forwarded to Runningshield a copy of respondent's October 2003 letter to the Board of Pardons (§ 7, above).

23. On May 4, 2004, respondent wrote to Runningshield about his application with the Board of Pardons and about a call from Runningshield respondent had missed. The letter was written on Washington County Attorney's Office letterhead.

24. In May 2004 respondent spoke with the secretary of the Board of Pardons to get information on the status and chances of Runningshield's request for sentence commutation. Respondent reported what he learned to Runningshield.

25. Later that month, Runningshield told respondent that respondent would not be a witness in the commutation proceedings, as the Board of Pardons would rely on respondent's letter to the Board.

26. In June 2004 the United States Supreme Court decided *Blakely v. Washington*. That case related to sentencing and potentially affected the sentences of some then-incarcerated persons. Respondent advised Runningshield about how *Blakely* could affect Runningshield's sentence and how to proceed in light of *Blakely*. Respondent also advised Runningshield to consult with another attorney.

27. In May or June 2004, respondent introduced Runningshield to attorney John C. Lillie, III. At all times material, Lillie has been with the law firm of Dudley & Smith.

28. Respondent provided to Lillie correspondence for Lillie to mail to Runningshield. Lillie did so in Dudley & Smith envelopes and/or envelopes identified as "legal mail," thereby avoiding the mail security system at Oak Park Heights. Respondent's correspondence was unrelated to official Washington County Attorney business or Runningshield's legal affairs.

29. Lillie advised Runningshield about the impact of *Blakely* on Runningshield's sentence and worked with respondent and Runningshield on forming a new business to invest Runningshield's profits.

30. In July 2004 Runningshield told respondent about the DOC policy prohibiting inmates from establishing and running a new business while incarcerated.

31. The next month, articles of incorporation were established for the new business and a bank account was opened for the new business. The bank account was at a bank whose president was a friend of respondent's. Respondent, Lillie and Runningshield discussed a corporate name that included or referenced their names or initials. Respondent, however, did not want his name in the company name. Eventually the corporation was named "R. Shield Ventures, Inc."

32. Runningshield was to own the majority of the business corporation; respondent and Lillie would equally own the balance. The lawyers were not required to invest any of their own funds in the business.

33. Respondent talked with multiple people who respondent thought would be interested in assisting R. Shield Ventures in making investments or in receiving an investment from R. Shield Ventures.

34. Runningshield told respondent and Lillie that he would initially transfer \$1 million each to respondent and Lillie to spend on their own needs and later transfer substantially more to the corporation.

35. In September 2004 respondent called the secretary of the Board of Pardons on Runningshield's behalf to get information on the status of Runningshield's request for sentence commutation. Respondent reported the results of his conversation to Runningshield.

36. In the summer of 2004 respondent and his wife made an offer of \$715,000 on a house. The offer was not accepted.

37. During conversations in October 2004 respondent told Runningshield and Lillie that he and his wife could not offer more on the house because the funding of R. Shield Ventures and transfer of money to respondent had not happened yet.

38. Respondent failed to disclose the extent of his dealings with Runningshield to the Washington County Attorney.

39. In November 2004, DOC staff discovered a partially opened envelope in the incoming mail. The envelope was a Dudley and Smith firm envelope, but the letters

enclosed were handwritten. The letters were from respondent and Lillie and dealt solely with personal matters and R. Shield Ventures. An investigation ensued, which led to the discovery of respondent's dealings with Runningshield.

40. In fact, Runningshield is not a member of the Community and receives no profits from Mystic Lake Casino. In 2000, counsel for one of the defendants in the murder case at Oak Park Heights had provided to respondent a letter from the Community's general counsel stating that Runningshield was not a member of the Community. Respondent did not recall this letter or the specific information in it until after his dealings with Runningshield were discovered.

41. Respondent's conduct violated Rule 8.4(c) and (d), Minnesota Rules of Professional Conduct.

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: November 9 2005.


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