

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

RECEIVED
SEP 30 2015

In Re Petition for Disciplinary Action
against DARRYL CHARLES THOMAS II,
a Minnesota Attorney,
Registration No. 0390283.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

Upon the approval of a Lawyers Professional Responsibility Board Panel Chair, the Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition pursuant to Rules 10(d) 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 30, 2009. Respondent most recently practice law in Minneapolis, Minnesota. Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Unauthorized Practice of Law

1. Respondent failed to satisfy the continuing legal education (CLE) requirements and was not licensed to practice law in Minnesota from January 3, 2014, through February 4, 2014, when he fulfilled the requirement and was reinstated.

2. On January 11, 2014, respondent signed an amended complaint in a matter, which was filed on February 3, 2014. Respondent also signed and filed a notice of withdrawal and substitution of counsel form with the court, withdrawing as counsel during a period he was not licensed to act as legal counsel. Between January 3, 2014,

and February 3, 2014, while suspended for failure to fulfill his CLE requirements, respondent engaged in the practice of law.

3. Respondent's conduct in engaging in the practice of law by signing and filing an amended complaint, and signing a filing a notice of withdrawal and substitution of counsel form with the court while suspended from legal practice for noncompliance with CLE requirements violated Rules 5.5(a) and 8.4(d), MRPC.

SECOND COUNT

Failure to Appear/Sanctions

4. Respondent represented T.D. in a criminal matter.

5. On July 16, 2014, respondent appeared at hearing on T.D.'s behalf. A pre-trial hearing was scheduled for September 29, 2014.

6. Respondent failed to appear at the September 29 hearing. T.D. informed the court that he was still represented by respondent but had been unable to contact him before the hearing. After waiting for respondent for a period of time, T.D. decided to apply for a public defender. The court granted T.D.'s request.

7. On September 30, 2014, due to respondent's failure to appear, the court issued a notice of hearing requiring respondent to pay a sanction of \$200 or appear in court on October 8, 2014. Respondent did not appear in court or pay the sanction.

8. On October 8, 2014, the court ordered respondent to pay an additional sanction of \$300 within two weeks for his failure to appear on October 8 and/or pay the \$200 sanction.

9. On October 13, 2014, the court's September 30 notice of hearing was returned by the United States Postal Service (USPS) as not deliverable/unable to forward.

10. On October 20, 2014, a court representative wrote respondent at an address different from the address used September 30. The court's letter informed respondent of the now \$500 sanction against him and ordered him to pay the amount,

in full, within two weeks of October 20, 2014. It does not appear the October 20 letter was returned by the USPS.

11. By December 14, 2014, respondent had not paid the sanction against him, and the court filed a complaint with the Director against respondent.

12. On May 27, 2015, the court wrote respondent regarding his failure to pay the outstanding sanction. As of August 13, 2015, respondent has not paid the sanction against him.

13. Respondent's failure to appear in court on behalf of T.D. and G.S. violated Rules 1.3 and 8.4(d), MPRC.

THIRD COUNT

Failure to Appear

14. In January 2015, respondent was retained to represent G.S. in a criminal matter.

15. On January 22, 2015, respondent appeared at a hearing on G.S.'s behalf. A pretrial/omnibus hearing was scheduled for February 24, 2015.

16. Respondent failed to appear at the February 24, 2015, hearing. Respondent failed to notify the court and G.S. that he was not going to attend the hearing. G.S. called respondent after the hearing and respondent informed her that he was too sick to attend the hearing and too sick to call G.S. or the court prior to the hearing. The hearing was rescheduled for March 20, 2015.

17. Respondent did attend the March 20, 2015, hearing. A contested omnibus hearing was scheduled for April 24, 2015.

18. Shortly after the March 20, 2015, hearing, G.S. terminated respondent and hired new counsel to represent her.

19. Respondent's failure to pay the \$500 in sanctions against him or respond to the court in any way violated Rules 3.4(c) and 8.4(d), MRPC.

FOURTH COUNT

Non-Cooperation

20. On June 17, 2014, the Director's Office sent respondent a notice of investigation ("NOI"), and directed respondent to respond to the allegations set forth in a complaint against respondent within 14 days.

21. On June 26, 2014, respondent contacted the Director's Office, acknowledging receipt of the NOI, and asking questions about the complaint and investigation process. Respondent indicated that he would provide a response.

22. On July 10, 2014, respondent contacted the Director's Office, asking for an extension to respond to the NOI. Respondent's request for an extension was made after a response to the NOI was due.

23. Despite respondent's assurance that he would send a response to the NOI, and that the response should be received by the Director's Office during the week of July 13, 2014, a response was never received. On August 1, 2014, the Director's Office sent respondent correspondence requesting a response to the NOI. The letter requested a response by August 28, 2014. The Director's Office further informed respondent of his obligations under Rule 8.1(b), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR, to respond to the complaint in the NOI.

24. On August 14, 2014, the post office returned the August 1, 2014, letter to the Director's Office indicating that the letter was undeliverable due to an address change with no forwarding address. Respondent was aware of the pending investigation into allegations of professional misconduct, but failed to notify the Director's Office of his professional address change.

25. After researching for a new address, on August 18, 2014, the Director's Office re-wrote and re-sent the August 1, 2014 letter. The August 18, 2014, letter informed respondent of his obligations under Rule 8.1(b), MRPC, and Rule 25, RLPR, to

respond to the complaint in the NOI. Respondent's response was due on August 28, 2014.

26. The Director's Office did not receive a response from respondent by August 28, 2014. On September 9, 2014, the Director's Office sent another letter to respondent, requesting a response to the complaint in the NOI. In this letter, the Director's Office reminded respondent of his obligations under Rule 8.1(b), MRPC, and Rule 25, RLPR. The correspondence further informed respondent that his "[f]ailure to cooperate with a disciplinary investigation is itself unprofessional conduct and constitutes independent grounds for discipline." The correspondence advised respondent that if a response was not received by September 18, 2014, that the Director's Office may pursue public discipline with respect to respondent's failure to cooperate.

27. On or about September 15, 2014, respondent contacted the Director's Office, indicating that he received the most recent correspondence and stating that he would send a response immediately.

28. On October 21, 2014, having not received a response, the Director's Office sent another letter to respondent, requesting a response to the complaint in the NOI. In this letter, the Director's Office again reminded respondent of his obligations under Rule 8.1(b), MRPC, and Rule 25, RLPR. The correspondence further informed respondent that his "[f]ailure to cooperate with a disciplinary investigation is itself unprofessional conduct and constitutes independent grounds for discipline." The correspondence advised respondent that if a response was not received by November 3, 2014, that the Director's Office may pursue public discipline with respect to respondent's failure to cooperate.

29. The October 21, 2014, letter was returned as undeliverable. After researching an alternative address, the letter was re-sent on November 4, 2014, with a

request for a response by November 17, 2014. Respondent failed to respond by November 17, 2014.

30. On December 2, 2014, the Director's Office called respondent. Respondent claimed that had major problems with various address changes and believed he was not receiving correspondence from the Director's Office. The Director's Office obtained from respondent a mailing address that respondent assured was correct. On December 2, 2014, the Director's Office sent respondent correspondence informing him that his response to the NOI was due immediately, and that a complete response was required by December 10, 2014, or the Director would file charges of unprofessional conduct and pursue public discipline. Respondent did not respond by December 10, 2014.

31. On January 2, 2015, the Director's Office sent respondent a NOI in connection with a second complaint against respondent. The NOI directed respondent to respond to the complaint within 14 days.

32. On January 23, 2015, respondent submitted a response to the first NOI dated June 17, 2014. The response is significantly overdue despite the Director's numerous notices and requests for a response. Respondent did not respond to the January 2, 2015, NOI, which was due at that time.

33. On March 12, 2015, the Director's Office sent respondent correspondence requesting a response to the January 2, 2015, NOI. The letter requested a response by March 20, 2015. The Director's Office further informed respondent of his obligations under Rule 8.1(b), MRPC, and Rule 25, RLPR, to respond to the complaint in the NOI.

34. On June 5, 2015, the Director's Office sent respondent a NOI in connection with a third complaint against respondent. The NOI directed respondent to respond to the complaint within 14 days.

35. On June 26, 2015, the Director's Office sent respondent correspondence requesting a response to the June 5, 2015, NOI.

36. To date, respondent has not responded to the January 2 or June 5, 2015, NOI's.

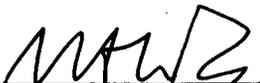
37. Respondent's conduct in failing to respond in any substantive manner to the allegations contained in the January 2, and June 5, 2015, NOI's violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

38. On August 31, 2015, the Director served on respondent charges of unprofessional conduct. Respondent's answer to the charges was due within 14 days. Rule 9(a)(1), RLPR. Respondent failed to answer or otherwise respond to the charges.

39. Respondent's failure to cooperate violated Rules 8.1(b), MRPC, and Rule 25, RLPR.

WHEREFORE, the Director respectfully prays for an order of this Court suspending respondent or imposing otherwise 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: Sept 28, 2015.



MARTIN A. COLE
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 0148416
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

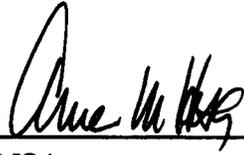
and



BINH TUONG
ASSISTANT DIRECTOR
Attorney No. 0297434

This petition is approved for filing pursuant to Rules 10(d) and 12(a), RLPR, by the undersigned Panel Chair.

Dated: September 30, 2015.



ANNE M. HONSA
PANEL CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD