

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against RACHEL LAUREN TOBERMAN,
a Minnesota Attorney,
Registration No. 389481.

**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 November 18, 2008. Respondent currently practices law in St. Paul, Minnesota. Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Thompson Matter

1. On November 19, 2009, Mitchell and Lisa Thompson signed a retainer agreement with respondent. Pursuant to that agreement, respondent agreed to represent both Mr. and Mrs. Thompson in their marital dissolution matter for a flat fee of \$1,000.

2. As part of the services provided for the Thompsons, respondent stated that she would conduct meetings as a mediator, and supply a mediation report. Respondent verbally represented to Mr. and Mrs. Thompson that she was a "qualified

neutral." Respondent also referred to herself as a "qualified neutral" in her response to the Notice of Investigation.

3. Rule 114.12, Minnesota General Rules of Practice (MGRP), defines a "qualified neutral" as an individual included on the State Court Administrator's roster. Respondent was not listed on the rolls as a Rule 114 neutral at the time of her representations to Mr. and Mrs. Thompson, or at the time of her representation to the Director.

4. Respondent agreed to negotiate an agreed disposition on behalf of Mr. and Mrs. Thompson, and draft and file a Marital Termination Agreement ("MTA"). At no point did respondent explain to Mr. and Mrs. Thompson that she was unable to represent both parties in drafting and filing the MTA, or that there was an inherent conflict of interest in representing both parties to a marriage dissolution. Respondent did not explain the risks of, and reasonably available alternatives to, the representation to Mr. and Mrs. Thompson. Respondent did not obtain informed consent to the conflict of interest, confirmed in writing, from Mr. Thompson and Mrs. Thompson.

5. On March 8, 2010, respondent submitted an email message to Mr. and Mrs. Thompson. That message reads, in part, "On Thursday, I submitted your initial petition. This petition has all of the general information and is for the Judge to get an idea of what to expect with the Final Complete Petition. I was expecting to get a confirmation number back from the Court today, but have not yet heard from them . . . With that confirmation I will also see if they are happy with all of the information and records that we have sent."

6. At the time that respondent wrote the March 8, 2010, email message, respondent had not submitted any documents to any court on behalf of the Thompsons.

7. On March 11, 2010, respondent submitted an email message to Mr. and Mrs. Thompson. That message reads, in part, "I have still not got a confirmation back from the court on my filing."

8. At the time that respondent wrote the March 11, 2010, email message, respondent had not filed any documents with any court on behalf of the Thompsons.

9. On March 15, 2010, respondent submitted an email message to Mr. and Mrs. Thompson. That message reads, in part, "I am still waiting for the confirmation number to submit the remaining (entire docs) there is nothing for me to officially submit for the final petition until the judge has reviewed the mediation reports, financial docs (which have been accepted) and 'baby petition'[".]"

10. At the time that respondent wrote the March 15, 2010, email message, respondent had not submitted any mediation reports, financial documents, or "baby petition" to any court on behalf of the Thompsons. Respondent did not ever complete or submit any mediation reports.

11. On April 5, 2010, respondent submitted an email message to Mr. and Mrs. Thompson. That message reads, in part, "I have been waiting to hear back from the court on their initial review."

12. At the time that respondent wrote the April 5, 2010, email message, respondent had not submitted any documents to any court for review on behalf of the Thompsons.

13. On April 27, 2010, respondent submitted an email message to Mr. and Mrs. Thompson. That message reads, in part, "Once we get the judges [sic] recommendation/proposed order we will then be able to finalize everything" and "we have sent over 800 pages of documents for the judge to review."

14. At the time that respondent wrote the April 27, 2010, email message, respondent had not submitted any documents to any court on behalf of the Thompsons.

15. Mr. Thompson released respondent from the representation on May 24, 2010. Concurrently, Mr. Thompson made a written request for the return of all documents in his file on June 10, 2010. To date, Mr. Thompson has not received the contents of his file.

16. Mr. Thompson asserted a conciliation court claim against respondent for the return of money paid for legal fees. On September 21, 2010, Mr. Thompson obtained a judgment against respondent in the amount of \$575 in case number 62-CV-10-10378. On or about April 5, 2012, after the Director had submitted charges of unprofessional conduct to a Panel for determination of probable cause, Mr. Thompson received payment and submitted a satisfaction of judgment to the court.

17. Respondent's conduct, in that she represented both Mr. Thompson and Mrs. Thompson in a marriage dissolution proceeding, and therefore engaged in a representation involving a conflict of interest, violated Rule 1.7(a)(1), and (a)(2), Minnesota Rules of Professional Conduct (MRPC).

18. Respondent's conduct, in that she held herself out to Mr. Thompson, Mrs. Thompson, and the District Ethics Committee (DEC) investigator as a "qualified neutral," when she was not in fact a qualified neutral under the meaning of Rule 114.02(b), MGRP, violated Rules 4.1, 7.1, 8.1(a), and 8.4(c), MRPC, and Rule 25, RLPR.

19. Respondent's conduct, in that she knowingly made multiple false statements to her clients regarding the status of the matter and what documents she had submitted to the court, violated Rules 1.4(a)(3), 1.4(a)(4), 4.1, and 8.4(c), MRPC.

20. Respondent's conduct, in that she failed to respond to Mr. Thompson's request for the return of his file at the termination of representation, violated Rule 1.16(d), MRPC.

SECOND COUNT

Non-Cooperation/False Statements During Investigation

21. Mr. Thompson submitted a complaint to the Office of Lawyers Professional Responsibility, and a Notice of Investigation was issued on June 30, 2010. Within the Notice of Investigation, the Assistant Director requested a written response within 14 days. Respondent did not provide a response within 14 days.

22. The DEC investigator assigned to investigate the complaint sent an email reminder to respondent on July 23, 2010, advising respondent that the 14-day deadline for her response had elapsed. Respondent did not submit an answer to the Notice of Investigation.

23. Between July 27, 2010, and July 30, 2010, the DEC investigator attempted to reach respondent on her office phone on four occasions. On each occasion, respondent's office phone played a recorded message. That message stated, "The person you have called is unavailable right now. Please call again later." The DEC investigator was unable to leave a message.

24. On July 30, 2010, the DEC investigator sent a certified letter to respondent, requesting her response to the Notice of Investigation. That certified letter was returned, unclaimed, on or about September 1, 2010.

25. Between August 4, 2010, and August 7, 2010, the DEC investigator placed two additional telephone calls to respondent. On each occasion, he received a message indicating that the respondent was unavailable, and was unable to leave a message. The DEC investigator reached respondent on August 10, 2010.

26. Respondent submitted an unsigned response to the Notice of Investigation on August 18, 2010, via email message.

27. On August 25, 2010, respondent met with the DEC investigator. At that time, the DEC investigator requested additional information and documents, including certain email messages, phone records, and documents. Respondent agreed to provide this information. Respondent also agreed to provide the mediation reports completed for Mr. Thompson. Respondent later admitted that she had not completed any mediation reports on behalf of the Thompsons.

28. Despite numerous reminders by telephone and email message, respondent did not provide to the DEC investigator any of the phone records, mediation reports, or email messages that were requested.

29. On September 16, 2010, the DEC recommended that this matter be submitted to a Lawyers Board Panel for review of whether probable cause existed for public discipline.

30. On September 23, 2010, the Assistant Director assigned to this matter sent a copy of the DEC recommendation to respondent at her office address, and requested that respondent provide a written response.

31. On October 12, 2010, not having heard from respondent, the Assistant Director attempted to contact respondent by telephone and email message.

32. On October 13, 2010, respondent contacted the Assistant Director and stated she had been out of town for the previous two weeks. She stated at that time that she would submit a response.

33. On October 14, 2010, the Assistant Director assigned to this matter sent a letter to respondent, requesting certain information. That letter requested a response from respondent within two weeks.

34. Respondent contacted the Assistant Director by telephone on October 20, 2010. At that time, respondent indicated she would require additional time to respond, and would contact the Assistant Director by the end of the week to discuss how much additional time was required.

35. Respondent contacted the Assistant Director on Monday, October 25, requesting an extension until November 15, 2010, to respond. Such request was granted.

36. On November 15, 2010, respondent contacted the Assistant Director, inquiring whether the Assistant Director had contacted her attorney in the matter. This communication was the first time respondent had informed the Assistant Director that she was represented by counsel. Neither respondent nor her attorney produced any response to the October 14, 2010, questions.

37. Respondent, through counsel, produced an unsigned response to the October 14, 2010, questions, as well as an unsigned amended response to the Notice of Investigation, on December 17, 2010.

38. On December 20, 2010, the Assistant Director sent an email message to respondent's counsel, requesting that respondent provide a signed copy of the documents submitted on December 17, 2010.

39. On January 3, 2011, the Assistant Director spoke with counsel for respondent. At that time, counsel for respondent agreed that respondent would appear for a meeting with the Assistant Director on January 12, 2011, and would supply a signed copy of the documents submitted on December 17, 2010.

40. On January 4, 2011, counsel for respondent informed the Assistant Director that respondent would be entering in-patient treatment for alcoholism beginning at 5:00 p.m. on January 6, 2011. Counsel represented that respondent would be in treatment for a period of weeks, and would therefore be unable to attend the scheduled meeting on January 12, 2011. Respondent did not produce a signed response at that time.

41. Respondent did not enter in-patient treatment on January 6, 2011.

42. Respondent was arrested on January 16, 2011, at a tavern. At the time of the arrest, witnesses noted that respondent smelled of alcohol, had red and watery eyes, and slurred her speech. Respondent was arrested and charged with violations of the Minnesota Criminal Code. The criminal charges against respondent are still pending.

43. On January 27, 2011, respondent and her counsel appeared for a meeting with the Assistant Director.

44. On January 31, 2011, a Notice of Investigation was issued relating to the January 16, 2011, arrest.

45. On February 1, 2011, the Assistant Director sent a letter to respondent, through her attorney, requesting that respondent produce any correspondence between

respondent and the Thompsons, a copy of any and all pleadings drafted for the Thompsons, and a signed copy of a response, or any revised response. That letter requested the production of those documents within two weeks. Respondent did not produce those documents.

46. On March 1, 2011, the Assistant Director sent a letter to respondent, through her attorney. In that letter, the Assistant Director requested an update as to the status of respondent's repayment of the final judgment obtained by Mr. Thompson against respondent; the status of respondent's attempts to enter a rehabilitation facility; the response to the Andersen complaint, and the responses to questions posed in the letter dated February 1, 2011. Respondent did not respond to those requests.

47. On March 23, 2011, the Assistant Director sent a letter to respondent, through counsel, repeating the requests for information and documents from March 1, 2011. Respondent did not respond to those requests.

48. On March 28, 2011, respondent's attorney withdrew.

49. On March 29, 2011, the Assistant Director wrote a letter directly to respondent, repeating the requests for information and documents that had been made on March 23, 2011, and requesting that respondent provide such information within seven days. Respondent did not respond to those requests.

50. On April 5, 2011, respondent contacted the Assistant Director by email message and indicated she would be entering an in-patient rehabilitation program. Respondent represented that the hospitalization was to begin on April 7, 2011, and would continue for 21 days. Pursuant to this information and a subsequent telephone discussion, the Assistant Director agreed to grant a further extension to complete responses to the March 23, 2011, requests for documents and information until after respondent completed her in-patient rehabilitation program. Respondent agreed to provide a signed medical authorization to confirm that she had entered rehabilitation,

and to provide a brief written explanation as to why she would require the extension, prior to her entry into the rehabilitation program.

51. Respondent provided a medical authorization on April 13, 2011, but did not provide the promised written explanation.

52. On April 25, 2011, the Assistant Director received notification from Regions Hospital, pursuant to a medical authorization signed by respondent, that respondent had not entered the rehabilitation program there on April 7, 2011, but had called and cancelled the admission.

53. On April 26, 2011, the Assistant Director wrote to respondent, renewing the requests for information contained in the March 29, 2011, letter. Respondent did not respond.

54. On May 3, 2011, respondent sent an email message to the Assistant Director, indicating she had been in an automobile accident on April 29, 2011, and had suffered injuries requiring hospitalization.

55. On May 3, 2011, the Assistant Director sent a letter to respondent requesting an additional medical release for the hospital to which respondent had been admitted following her automobile accident. Respondent did not respond.

56. On May 18, 2011, the Assistant Director sent correspondence to respondent, renewing the requests of March 23, renewing the request for the medical release, and requesting that respondent appear in-person for a meeting on May 27, 2011.

57. On May 26, 2011, respondent sent a partial response to the questions posed to her on March 23, 2011. Within that response, respondent stated, "[t]hough I have not formally been admitted to a rehabilitation center, I am fully sober and have been since February, 2011." This statement was false. Medical records produced pursuant to signed authorization indicate that when respondent was admitted to the hospital following her automobile collision on April 30, 2011, her blood alcohol content

was measured at .22. In addition, those medical records indicated that respondent reported that her date of last use for alcohol was April 3, 2011.

58. On May 27, 2011, respondent appeared for a meeting at the Director's Office. When respondent was asked whether she had been drinking on the night of April 29, 2011, the date of her automobile accident, she initially refused to answer the question. Respondent eventually admitted that she had consumed alcohol on the evening of April 29, 2011, and that her statement made on May 26, 2011, was false.

59. On June 9, 2011, the Assistant Director sent respondent a letter requesting that respondent produce a signed response to both complaints, to identify any and all medical providers in the event that respondent claimed mitigation based upon a mental condition, to complete medical authorizations for those providers, and to state whether she believed her false statement to the Director in the course of a disciplinary investigation constituted a violation of the MRPC. Respondent did not respond.

60. On June 28, 2011, the Assistant Director sent respondent a letter reiterating the requests from June 9, 2011, and requesting that respondent appear for a meeting to discuss her non-cooperation. Respondent did not respond.

61. On July 6, 2011, the Assistant Director sent an email to respondent renewing the requests for documents and information made in the Assistant Director's June 9, 2011, letter and reminding respondent that respondent was requested to appear at the Director's Office to discuss her non-cooperation.

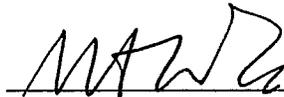
62. On July 7, 2011, respondent sent an email message to the Assistant Director, requesting that the meeting be rescheduled because she had a forfeiture hearing for a client on Monday, July 11, 2011. The Assistant Director did not release respondent from her obligation to appear at the Director's Office. Respondent did not appear for the scheduled meeting on July 8, 2011.

63. Respondent's conduct, in that she failed to respond to numerous reasonable requests for information made in the course of a disciplinary investigation, violated Rule 8.1(a), MRPC, and Rule 25, RLPR.

64. Respondent's conduct, in that she knowingly made a false statement to the Director in the course of a disciplinary investigation by stating she had been abstinent from alcohol between February 2011 and May 27, 2011, violated Rules 8.1(a) and 8.4(c), 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: April 18, 2012.



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