

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against CHRISTOPHER ROBERT WALSH,
a Minnesota Attorney,
Registration No. 199813.

**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 May 12, 1989. Respondent currently practices law in Minneapolis, Minnesota. Respondent has committed the following unprofessional conduct warranting public discipline:

FIRST COUNT

Flores Matter

1. On April 10, 2006, respondent informed Ramsey County that he represented the husband and relatives of M.I. requested records from Ramsey County, and sent to Ramsey County a release signed by M.I.'s husband. At that time M.I. was in custody at the Ramsey County Adult Detention Center after being arrested by the Department of Immigration and Customs Enforcement (ICE).
2. On April 12, 2006, M.I. died.
3. On June 13, 2006, respondent filed a notice of appearance with ICE. That same day, respondent made a request to ICE pursuant to the Freedom of Information Act (FOIA).

4. On August 25, 2006, respondent renewed the April 10, 2006, request to Ramsey County. Ramsey County responded later that day.

5. On April 2, 2007, respondent sent a notice of claims to Ramsey County.

6. On April 21, 2008, the Department of Homeland Security (DHS) received an administrative tort claim form which respondent had mailed to the DHS. The claim was untimely. Pursuant to 28 U.S.C. § 2401(b), the claim had to be presented to the appropriate federal agency within two years after the claim accrued. Here, the claim accrued upon M.I.'s death on April 12, 2006. The government did not receive the claim from respondent until April 21, 2008, after the two-year period expired.

7. On May 13, 2008, DHS made its final response to respondent's June 13, 2006, FOIA request.

8. On October 9, 2008, DHS denied the administrative tort claim as untimely.

9. On October 17, 2008, respondent received the DHS denial of the administrative tort claim.

10. On April 6, 2009, respondent requested information from Ramsey County. This was his first follow-up since August 25, 2006.

11. On April 10, 2009, respondent filed the summons and complaint. Respondent venued the matter in federal district court in Minnesota. Some claims made under the Federal Tort Claims Act were untimely. Pursuant to 28 U.S.C. § 2401(b), the lawsuit had to be filed within six months after the federal agency mailed notice of denial of the claim. Here, the claim denial was mailed on October 9, 2008. Respondent did not commence the lawsuit until April 10, 2009, after the six-month period expired.

12. Respondent sued entities not legally capable of being sued: The Ramsey County Sheriff's Department, the Ramsey County Adult Detention Center, and the St. Paul-Ramsey County Department of Public Health.

13. Multiple claims respondent brought were grounded in allegations of medical malpractice under Minnesota law. On April 13, 2009, respondent filed an

affidavit of no expert review pursuant to Minnesota statutes governing malpractice claims.

14. Pursuant to Minn. Stat. § 145.682, subdiv. 3(a), respondent was required to file an affidavit of expert review within 90 days of filing the affidavit of no expert review. Here, respondent had until July 13, 2009, to file an affidavit of expert review. Respondent failed to do so until November 24, 2009.

15. On September 17, 2009, the federal defendants filed a motion to dismiss.¹

16. On September 21, 2009, respondent filed a motion to extend the deadlines for service of process and to extend the time to file expert affidavits. That same day, the Advance Practice Solutions defendants and the Ramsey County defendants filed motions to dismiss.

17. Minn. Stat. § 145.682, subdivs. 2(2) and 4(a), requires that, 180 days after the action is commenced, an affidavit must be filed identifying each person whom the plaintiff expects to call as an expert witness at trial on the issues of malpractice or causation, state the substance of the facts and opinions to which the expert is expected to testify, and provide a summary of the basis for each opinion. Failure to comply with this statute causes "mandatory dismissal with prejudice of each cause of action as to which expert testimony is necessary to establish a prima facie case." Minn. Stat. § 145.682, subdiv. 6(a) and (b). Respondent failed to timely file an affidavit pursuant to this statute.

18. On November 24, 2009, respondent filed an affidavit of expert review and identification of an expert (Dr. A.I.).

19. On December 10, 2009, the court denied respondent's motion to extend the time for him to file an affidavit of expert review and an affidavit of expert

¹ The court grouped the defendants into three categories, which for ease of reference herein will be called the "federal defendants," the "Ramsey County defendants," and the "Advance Practice Solutions defendants."

identification and denied respondent's motion to extend the time to serve as yet unserved defendants.

20. Respondent filed documents objecting to the December 10, 2009, order.

21. Local Rule 72(a) limits the length of the objection to 3,500 words.

Respondent violated this rule. The objection he submitted was at least 8,900 words in length.

22. On December 17, 2009, respondent filed an affidavit of expert review and identification of expert (Nurse S.B.).

23. On March 5, 2010, the court issued an order confirming the December 10, 2009, order.

24. On January 8, 2010, the court issued a pretrial scheduling order that discovery was to be completed by December 1, 2010, and non-dispositive motions were due January 2, 2011.

25. Respondent failed to serve multiple defendants with the summons and complaint and failed to timely serve one defendant.

26. On April 1, 2010, the magistrate judge issued a report and recommendation on the motions of various defendants to dismiss or for summary judgment. The magistrate judge recommended that all the claims against the federal defendants and the claims against the Ramsey County defendants under the Federal Tort Claims Act (FTCA) be dismissed because respondent failed to prosecute the FTCA claims timely.

27. The magistrate judge also recommended that the action against three individual defendants be dismissed because respondent did not serve, or did not timely serve, the summons and complaint on them. Service must be accomplished within 120 days after the complaint is filed. Fed. R. Civ. P. 4(m). Respondent filed the complaint on April 10, 2009. Defendant M.R. was not served, however, until September 21, 2009, more than five months later. Defendants J.J. and D.B. were not served at all.

28. Finally, the magistrate judge recommended that all claims based on alleged malpractice be dismissed because respondent failed to timely serve and file the required affidavits regarding expert review and identification.

29. On June 29, 2010, the Advance Practice Solutions defendants filed a motion for summary judgment, which identified that the hearing would be on August 10, 2010.

30. On July 13, 2010, the hearing on the Advance Practice Solutions defendants' motion for summary judgment was rescheduled to September 1, 2010.

31. On July 21, 2010, the Ramsey County defendants filed a motion for summary judgment, which identified that the hearing would be conducted on September 1, 2010.

32. Respondent's responses to the dispositive motions were due on August 11, 2010. Respondent did not timely file responsive pleadings, but did file a motion to strike the motions and/or move the hearing date.

33. On August 12, 2010, the court issued an order affirming the April 1, 2010, report and recommendation.

34. On August 13, 2010, the court rescheduled the hearing on the summary judgment motions to September 27, 2010. Therefore, the deadline for respondent to file documents in opposition was extended to September 7, 2010.

35. On August 19, 2010, the court issued an order denying respondent's motion to strike because respondent failed to comply with Fed. R. Civ. P. 56(f).

36. On September 7, 2010, respondent filed memoranda in opposition to the dispositive motions.

37. On September 8, 2010, respondent filed exhibits and affidavits in opposition to the defendants' dispositive motions. Respondent's documents were filed one day after the deadline.

38. The hearing date on the summary judgment motions was rescheduled thereafter, to October 15, 2010.

39. On September 9, 2010, respondent took the first deposition that he took in the case.

40. On October 3, 2010, respondent filed a motion to compel.

41. On October 15, 2010, the hearing on the summary judgment motions was conducted. During the hearing, the court allowed respondent to conduct discovery and conduct six depositions. The court also allowed respondent until November 1, 2010, to request documents identified during the depositions, and until December 20, 2010, to respond to the defendants' dispositive motions by providing additional evidence regarding the motions.

42. On November 1, 2010, respondent served discovery on the defendants.

43. On November 29, 2010, the magistrate judge issued a report and recommendation that the Advance Practice Solutions defendants' motion for summary judgment be granted.

44. On December 13, 2010, respondent obtained February 1, 2011, as a date for a hearing on a motion to compel, but he never filed any such motion or a notice of such motion.

45. Respondent failed to file a response regarding the dispositive motions as ordered on October 15, 2010.

46. Fed. R. Civ. P. 5.2 provides in pertinent part that in filings with the court, when a social security number is contained in a document, only the last four digits of the social security number may be used; that when the name of a minor is used in a document, only the minor's initials may be used; when an individual's date of birth is used in a document, only the year of the individual's birth may be used.

47. Multiple deposition transcripts respondent filed contained the full names and dates of birth for multiple minors.

48. The court sanctioned respondent by ordering him to notify the minors' parents, in writing, that their personal information was improperly disclosed, by

making a payment of \$500 to a specified charity, and to attend one of the court's Electronic Case Filing training sessions.

49. Ultimately, the remaining claims were dismissed. Respondent filed an appeal, and the 8th Circuit Court of Appeals affirmed.

50. Respondent's conduct violated Rules 1.1, 1.3, 3.1, 3.2, 3.4(c), and 8.4(d), Minnesota Rules of Professional Conduct (MRPC).

SECOND COUNT

Benford Matter

51. Respondent represented Ronald Benford and five other persons in an action against the City of Minneapolis and others. Respondent venued the matter in federal district court in Minnesota.

52. On November 12, 2010, respondent filed the complaint.

53. On January 14, 2011, respondent filed the amended complaint.

54. On March 21, 2011, the court ordered respondent to file proof of service within 20 days of the date of that order or the case would be dismissed.

55. On March 24, 2011, respondent filed proofs of service, reflecting service in March 2011.

56. Disclosures pursuant to Fed. R. Civ. P. 26(a) were due July 5, 2011, plaintiff expert witness disclosures were due January 15, 2012, defense expert disclosures were due March 15, 2012, and discovery would be closed May 15, 2012.

57. Respondent failed to timely file Fed. R. Civ. P. 26(a) disclosures.

58. On July 28, September 6 and September 21, 2011, the defense asked respondent about the Rule 26(a) disclosures.

59. On October 7, 2011, respondent provided Rule 26(a) disclosures (nearly four months late).

60. On October 7, 2011, interrogatories and requests for production of documents were served on respondent.

61. Respondent did not timely serve responses to any of this discovery. On November 23 and December 8, 2011, February 6, February 15 and March 8, 2012, the defense inquired about the discovery responses.

62. Although plaintiff expert witness disclosures were due January 15, 2012, respondent did not provide any such disclosures on or before that date.

63. In early March 2012 respondent provided interrogatory responses on behalf of two of his clients. Respondent never provided interrogatory responses on behalf of his four other clients in the matter.

64. Respondent's March 2012 discovery responses included the names of three experts, but did not provide an expert report with any opinions, a description of the facts and data upon which the expert relied, or any exhibits used to support the opinion(s).

65. Respondent first served written discovery on April 12, 2012. This was 17 months after he commenced the action and 33 days before discovery closed.

66. On May 16, 2012, the defense filed motions to compel and to exclude expert testimony.

67. On May 16, 2012 (the same day), respondent filed a motion to extend discovery, to amend the pretrial schedule, to compel discovery, for sanctions for the defendants' alleged failure to identify experts, for a protective order, and for costs and attorney's fees.

68. Respondent's memorandum in support of his motion was due on May 21, 2012, but he did not file that memorandum until June 4, 2012. The court refused to consider the memorandum because it was untimely.

69. Respondent's memoranda in opposition to the defense motions to exclude experts and to compel were due on May 28, 2012. Respondent did not file these opposing memoranda until June 4, 2012. The court refused to consider either memorandum because they were untimely.

70. Because respondent failed to identify experts timely, by order filed July 30, 2012, the court excluded any experts on behalf of the plaintiffs.

71. Respondent filed an objection to the July 30 order.

72. Respondent's memorandum objecting to the July 30, 2012, order exceeded the word limit set forth in the local rules of procedure and sought relief regarding issues not addressed in the July 30 order and therefore not properly included in the challenge to that order.

73. By order filed August 29, 2012, the court affirmed that July 30 order and advised respondent to read the Minnesota Rules of Professional Conduct (MRPC).

74. On July 15, 2012, the defendants served and filed a motion for summary judgment.

75. Respondent's September 26, 2012, memorandum in opposition to the motion for summary judgment contained incomplete sentences, blank citations to the record, and citations to inapposite portions of the record.

76. Respondent's conduct violated Rules 1.3, 3.2, 3.4(c) and (d), and 8.4(d), MRPC.

THIRD COUNT

Davis Matter

77. On or about April 12, 2006, Christopher Davis retained respondent for representation in a personal injury matter arising out of an accident on or about March 25, 2006, in which Mr. Davis was injured.

78. On October 31, 2006, the insurance company, State Farm Mutual Automobile Insurance Co ("State Farm"), stopped paying no-fault benefits.

79. In December 2006 respondent told Mr. Davis that State Farm stopped paying the no-fault benefits.

80. In February 2008 respondent, with Davis's permission, associated with attorney A.R. on as co-counsel.

81. Between February 2008 and January 2009, neither respondent nor his co-counsel, A.R., performed any substantial work on the matter.

82. In or about January 2009, respondent resumed full representation of Mr. Davis.

83. In or about April 2011, respondent requested updated medical records from Mr. Davis's medical providers.

84. On or about November 3, 2011, respondent sent a demand letter to State Farm.

85. Later that month, State Farm made a settlement offer.

86. Respondent failed to communicate with Mr. Davis between September 2011 and February 2012. By letter dated February 27, 2012, Mr. Davis requested an update from respondent and noted that soon it would be six years from the date of the accident.

87. On March 23, 2012, respondent sent a summons and complaint to State Farm (the defendant) and to the Commissioner of the Minnesota Department of Commerce by certified mail. Respondent attempted to commence and venue the matter in Minnesota state court.

88. The defendant did not receive the summons and complaint until March 27, 2012.

89. Respondent in attempting to commence the action failed to comply with Minn. Stat. § 45.028. This statute provides in pertinent part:

Service of process under this section may be made by leaving a copy of the process in the office of the commissioner, or by sending a copy of the process to the commissioner by certified mail, and is not effective unless: (1) the plaintiff, who may be the commissioner in an action or proceeding instituted by the commissioner, sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last known address; and (2) the plaintiff's affidavit of compliance is filed in the action or proceeding on or before the return day of the process, if any, or within further time as the court allows.

90. To summarize, a person attempting to commence an action pursuant to the statute must meet three requirements:

(1) the commissioner receives a copy of the process, (2) the plaintiff sends notice of the service and a copy of the process to the defendant's last known address and (3) the plaintiff files an affidavit of compliance with the court.

Artishon v. Estate of Swedberg, No. A08-0492, 2009 WL 1047327, at *4 (Minn. Ct. App. Apr. 21, 2009).

91. Respondent did not file an affidavit of compliance until July 16, 2012. It was due, however, within 20 days of service. Respondent did not file the affidavit until more than three months after it was due and after the defendant had moved for summary judgment based on respondent's failure to file the affidavit.

92. On April 16, 2012, the defendant served requests for admission on respondent. Minn. R. Civ. P. 36.01 provides that responses are due within 30 days of service and that, if a party does not respond, the requests are deemed admitted.

93. Respondent failed to respond to the requests for admissions.

94. On or about July 14, 2012, respondent left a voicemail for Mr. Davis, stating that the insurance company had filed a motion claiming that respondent filed the claim too late but not to worry, it was just legal stuff and not a big deal.

95. By order filed August 3, 2012, the court dismissed respondent's lawsuit because respondent had failed to comply with the requirements of Minn. Stat. § 45.028, which deprived the court of jurisdiction to consider the matter. By that date the statute of limitations had expired, so that Davis could no longer pursue his claims.

96. On or about August 14, 2012, respondent told Mr. Davis that the judge had dismissed Mr. Davis's case because respondent had filed it too late.

97. Respondent's conduct violated Rules 1.3, 1.4, 3.2, 3.4(c) and (d), and 8.4(d), MRPC.

FOURTH COUNT

Hewitt Matter

98. On February 12, 2007, George Hewitt filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) and the Minneapolis Department of Civil Rights (MDCR) ("2007 Charge").

99. On December 7, 2010, the MDCR issued a determination of no probable cause.

100. A review panel of the Minneapolis Commission on Civil Rights (MCCR) subsequently affirmed this determination.

101. On June 1, 2011, the MCCR mailed to Mr. Hewitt a notice of private rights form, advising Mr. Hewitt that there was a 45-day statute of limitations for state law claims.

102. On July 12, 2011, the EEOC sent a Dismissal and Notice of Rights, advising Mr. Hewitt of a 90-day statute of limitations for federal claims.

103. On April 6, 2012, the EEOC sent to the City of Minneapolis a notice of charge of discrimination by Mr. Hewitt.

104. On May 2, 2012, Mr. Hewitt signed a discrimination charge which was filed with the EEOC, MDCR and the Minnesota Department of Human Rights ("2012 Charge").

105. On May 17, 2012, the EEOC dismissed the 2012 charge.

106. On June 25, 2012, the MDCR dismissed the 2012 charge.

107. On August 7, 2012, Mr. Hewitt retained respondent.

108. On August 17, 2012, respondent commenced a lawsuit on behalf of Mr. Hewitt. The matter was removed to federal district court in Minnesota.

109. At least two paragraphs of the complaint are copy and paste allegations from respondent's first amended complaint in the *Benford* matter that have no relevance to Hewitt's claims.

110. On September 5, 2012, the defendants filed a motion to dismiss.

111. On September 6, 2012, the hearing date on the motion to dismiss was established. Pursuant to Local Rule 7.1(c)(2), respondent's response to the motion was due November 16, 2012.

112. On October 12, 2012, respondent told the court and/or defense counsel that he would prepare an amended complaint.

113. In October 2012, defense counsel told respondent of the copy/paste allegations referenced above. On October 24, 2012, defense counsel asked respondent whether the copy/paste paragraphs were inadvertently included. Respondent did not respond to this inquiry.

114. On December 7, 2012, respondent filed a memorandum and affidavit in opposition to the motion to dismiss. This was on the date of the hearing and 20 days after they were due. As a result, the court declined to consider respondent's memorandum.

115. On December 13, 2012, the court issued an order directing respondent to file a proposed first amended complaint by December 17, 2012, and suggested respondent read the MRPC.

116. On December 17, 2012, respondent filed his proposed first amended complaint. Local Rule 15.1(b) requires an amended complaint to be redlined or the like. The amended complaint was not.

117. By letter dated December 19, 2012, respondent asked the court for leave to file a second amended complaint and to join additional parties.

118. On February 27, 2013, the court issued an order denying respondent's motion and to amend and granting the motion to dismiss. The court found that respondent "has repeatedly failed to comply with the rules" and "has unduly delayed and acted in bad faith in moving to amend his complaint."

119. Respondent's conduct violated Rules 1.3, 3.2, 3.4(c), and 8.4(d), MRPC.

FIFTH COUNT

Barber Matter

120. Respondent represented Kathleen Barber. In March 2013 respondent served a complaint on behalf of Barber in a matter titled *Kathleen Barber v. The Minneapolis Institute of Arts, et al.*

121. On or about March 4, 2013, respondent signed the original complaint. The complaint alleged that the Minneapolis Institute of Arts (MIA) illegally discriminated against Barber in her employment with MIA.

122. The original complaint alleged that MIA terminated the employment of respondent's client. This statement was false. At the time respondent served the complaint, and through the entirety of the litigation, respondent's client remained employed with MIA.

123. Some of the claims were predicated on alleged age discrimination. The original complaint included inconsistent statements of the age of respondent's client.

124. The original complaint included allegations that were cut and pasted from a different complaint involving a different, male plaintiff against a different employer. The original complaint also contained multiple spelling and grammatical mistakes, incomplete sentences, and blanks for factual allegations.

125. The original complaint referenced an Exhibit A thereto which the original complaint stated was incorporated by reference. Despite multiple requests from opposing counsel, respondent failed to provide to opposing counsel the document referenced as Exhibit A.

126. On or about March 6, 2013, respondent telephoned one of the lawyers for the defendants and stated that he would serve an amended complaint to "correct some mistakes." When asked why the complaint contained allegations from another lawsuit, respondent blamed his law firm's limited resources.

127. On March 20, 2013, opposing counsel accepted service by fax of a complete copy of the amended complaint, which respondent signed on March 19, 2013.

128. The amended complaint, although removing the cut and paste allegations from a different lawsuit and correcting the statement of the age of respondent's client, again falsely stated that MIA terminated the employment of respondent's client, continued to contain incomplete sentences and blanks, and continued to reference an Exhibit A without including that document.

129. Minn. R. Civ. P. 15.01 provides that a pleading may be amended a second time only "by leave of court or by written consent of the adverse party."

130. On March 21, 2013, respondent, without permission of the court or consent of opposing counsel, served a second, different version of the amended complaint. This document, although also captioned amended complaint, contained differences from the first amended complaint. This document again falsely stated that MIA terminated the employment of respondent's client, continued to contain incomplete sentences, and continued to reference an Exhibit A without including that document.

131. One of the lawyers for the defendants asked respondent about serving two different versions of the amended complaint. Respondent initially denied there were any differences between the two documents. This statement was false. (*See* ¶ 26, above.) When opposing counsel pressed respondent that, in fact, there were substantial new factual allegations in the second version of the amended complaint, respondent finally acknowledged that this was so.

132. On or about April 4, 2013, opposing counsel served and filed a notice of motion and motion to dismiss the amended complaint.

133. During an April 30, 2013, scheduling conference, the court determined that the motion to dismiss should respond to the second version of the amended complaint. At the court's direction, respondent promised to file the second version of the amended complaint. The court then stayed discovery pending the motion to dismiss.

134. Respondent failed to file the second amended complaint until two days before the hearing on the motion to dismiss and ten days after his response to that motion was due.

135. The hearing on the motion to dismiss was originally scheduled for June 6, 2013. On May 2, 2013, the court emailed counsel of record, including respondent, to request that the hearing be moved to June 5, 2013, to accommodate the court's schedule. In reply, respondent confirmed that the June 5 date was acceptable.

136. On May 8, 2013, opposing counsel served and filed the motion to dismiss together with a memorandum of law and other supporting documentation. Pursuant to Minn. Gen. R. Prac. 115.03(b), respondent's response was due nine days before the hearing.

137. Respondent failed to file a response by the deadline.

138. On June 3, 2013, at 1:37 a.m., respondent filed a letter with the court requesting a continuance of the June 5 hearing date and enlargement of the time to respond to the motion to dismiss. Respondent sent this letter after his response to the motion was due, and two days before the hearing date. The court denied respondent's request.

139. Respondent appeared at the June 5 hearing. During the hearing, the court granted respondent nine days to submit a five-page letter addressing his client's claims. The court specifically limited the letter to "not a word over five pages."

140. In violation of the court's order, respondent submitted a six-page letter, together with forty-five pages of exhibits.

141. For reasons unrelated to respondent's conduct set forth above, the court granted the motion to dismiss.

142. Respondent's conduct violated Rules 1.3, 3.2, 3.3(a)(1), 3.4(c), 4.1, and 8.4(c) and (d), MRPC.

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: January 14, 2014.



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