

DEC 08 2014

FILED

FILE NO. A14-0213

STATE OF MINNESOTA

IN SUPREME COURT

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

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND
RECOMMENDATION FOR DISCIPLINE

This matter was heard by the undersigned, acting as Referee by appointment of the Minnesota Supreme Court, on October 17, 2014, at the Minnesota Judicial Center in St. Paul, Minnesota.

Timothy M. Burke, Senior Assistant Director, appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director).

John G. Westrick, Attorney at Law, appeared with and on behalf of Christopher Robert Walsh (Respondent), who was personally present throughout the proceedings.

The Director called the following witness to testify at the hearing: Howard Tarkow. The Director also called Respondent for cross-examination. Further, the Director offered Exhibits 108 through 152. Exhibits 108 through 128 were received in

evidence for all purposes relevant to the proceedings and Exhibits 129 through 152 were received in evidence for the limited purpose of establishing the presence of aggravating factor(s).

Respondent's counsel questioned Respondent following the Director's cross-examination and then called Respondent for direct examination. No additional witnesses were called by Respondent and no exhibits were offered in evidence by Respondent.

At the conclusion of the hearing, the undersigned Referee directed counsel to submit written arguments along with proposed findings and recommendations on or before November 24, 2014. Both parties complied and this matter was taken under advisement by the undersigned Referee on November 24, 2014.

Based upon the Petition for Disciplinary Action and the Pro Se Respondent's Answer to Petition for Disciplinary Action by the Office of Lawyers Professional Responsibility filed herein, the testimony presented, the exhibits received in evidence, and the written arguments submitted by counsel, the undersigned Referee makes the following Findings of Fact, Conclusions of Law, and Recommendation for Discipline.

FINDINGS OF FACT

1. Respondent was admitted to practice law in the State of Minnesota on May 12, 1989, and currently practices law in Minneapolis, Minnesota.
2. At all times relevant to these proceedings, Respondent was a licensed attorney in the State of Minnesota.
3. No evidence was offered by the Director indicating that Respondent has previously been subjected to discipline for unprofessional conduct.

FIRST COUNT

Flores Matter

4. During a hearing before the undersigned Referee on August 26, 2014, Respondent admitted both the factual allegations and the rule violations alleged in the first count of the Petition for Disciplinary Action herein. The admitted factual allegations are set out in Findings of Fact No. 5 through No. 53 herein.

5. 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).

6. On April 12, 2006, M.I. died.

7. 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).

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

9. On April 2, 2007, Respondent sent a notice of claims to Ramsey County.

10. 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.

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

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

13. On October 17, 2008, Respondent received the DHS denial of the administrative tort claim.

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

15. 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.

16. Respondent sued entities not the 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.

17. 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.

18. Pursuant to Minn. Stat. § 145.682, Subd. 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.

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

[Note: The court grouped the defendants into three categories, which for ease of a reference herein will be called the “federal defendants,” the “Ramsey County defendants,” and the “Advance Practice Solutions defendants.”]

20. 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.

21. Minn. Stat. § 145.682, Subds. 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, Subds. 6(a) and (b). Respondent failed to timely file an affidavit pursuant to this statute.

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

23. 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 identification

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

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

25. Local Rule 72(a) limits the length of the objection to 3500 words.

Respondent violated this rule. The objection he submitted was at least 8900 words in length.

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

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

28. 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.

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

30. 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.

31. 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.

32. 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.

33. 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.

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

35. 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.

36. 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 motion and/or move the hearing date.

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

38. 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.

39. 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).

40. On September 7, 2010, Respondent filed memoranda in opposition to the dispositive motions.

41. 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.

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

43. On September 9, 2010, Respondent took the first deposition that he took in the case.

44. On October 3, 2010, Respondent filed a motion to compel.

45. 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.

46. On November 1, 2010, Respondent served discovery on the defendants.

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

48. 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.

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

50. 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.

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

52. 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.

53. Ultimately, the remaining claims were dismissed. Respondent filed an appeal, and the Eighth Circuit Court of Appeals affirmed.

SECOND COUNT

Benford Matter

54. During a hearing before the undersigned Referee on August 26, 2014, Respondent admitted both the factual allegations and the rule violations alleged in the second count of the Petition for Disciplinary Action herein. The admitted factual allegations are set out in Findings of Fact No. 55 through No. 79 herein.

55. 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.

56. On November 12, 2010, Respondent filed the complaint.

57. On January 14, 2011, Respondent filed the amended complaint.

58. 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.

59. On March 24, 2011, Respondent filed proofs of service, reflecting service in March 2011.

60. 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.

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

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

63. On October 7, 2011, Respondent provided Rule 26(a) disclosures (nearly 4 months late).

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

65. Respondent did not timely served 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.

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

67. 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.

68. 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).

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

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

71. 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.

72. 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.

73. 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 either memorandum because they were untimely.

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

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

76. 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.

77. 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).

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

79. 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.

THIRD COUNT

Davis Matter

80. During a hearing before the undersigned Referee on August 26, 2014, Respondent admitted both the factual allegations and the rule violations alleged in the third count of the Petition for Disciplinary Action herein. The admitted factual allegations are set out in Findings of Fact No. 81 through No. 100 herein.

81. 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.

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

83. In December 2006, Respondent told Mr. Davis that State Farm stopped paying the no-fault benefits.

84. In February 2008, Respondent, with Davis' permission, associated with attorney A.R. as co-counsel.

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

86. In or about January 2009, Respondent resumed full representation of Mr. Davis.

87. In or about April 2011, Respondent requested updated medical records from Mr. Davis' medical providers.

88. On or about November 3, 2011, Respondent sent a demand letter to State Farm.

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

90. 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.

91. 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.

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

93. 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.

94. 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).

95. 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.

96. 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.

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

98. 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.

99. 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 deprive 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.

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

FOURTH COUNT

Hewitt Matter

101. During a hearing before the undersigned Referee on August 26, 2014, Respondent admitted both the factual allegations and the rule violations alleged in the fourth count of the Petition for Disciplinary Action herein. The admitted factual allegations are set out in Findings of Fact No. 102 through No. 122 herein.

102. 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").

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

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

105. 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.

106. 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.

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

108. 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").

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

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

111. On August 7, 2012, Mr. Hewitt retained Respondent.

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

113. 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.

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

115. 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.

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

117. 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.

118. 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.

119. 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.

120. 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.

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

122. On February 27, 2013, the court issued an order denying Respondent's motion 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."

FIFTH COUNT

Barber Matter

123. Respondent represented Kathleen Barber.

124. In March 2013, Respondent served a complaint on behalf of Barber in a lawsuit captioned *Kathleen Barber v. The Minneapolis Institute of Arts, et al.*

125. Howard B. Tarkow was an opposing counsel in that lawsuit.

126. On or about March 4, 2013, Respondent signed the original complaint (Ex. 108) In addition to signing the original complaint, Respondent signed an attached acknowledgment which stated: "The allegations of this Complaint are well grounded in fact . . ."

127. In that original complaint it was alleged that the Minneapolis Institute of Arts (MIA) illegally discriminated against Barber in her employment with MIA.

128. In that original complaint it was alleged that the MIA terminated Barber's employment with the MIA. Although Barber's specific employment position with the MIA was eliminated, Barber was placed in another employment position. At the time Respondent served the original complaint, and throughout the entirety of the litigation, Barber remained employed at the MIA. Accordingly the allegation that the MIA had terminated Barber's employment was false.

129. Some of Barber's claims were predicated on alleged age discrimination. The original complaint included inconsistent statements with respect to Barber's age. In a claim of age discrimination, the plaintiff's age can be of significance when compared to the ages of other employees and alleged wrongdoers.

130. The original complaint included allegations that were cut and pasted from a different complaint involving a different plaintiff of a different gender and a different employer.

131. The original complaint further contained multiple spelling and grammatical

errors, incomplete sentences, and blank spaces where factual allegations should have been set out.

132. The original complaint made reference to an Exhibit A which was attached and incorporated by reference. The original complaint did not, however, include an attached Exhibit A.

133. Despite multiple requests from Mr. Tarkow, Respondent failed to provide the document referred to as Exhibit A.

134. On or about March 6, 2013, Respondent telephoned one of the attorneys representing the defendants in the lawsuit and stated that he would serve an amended complaint to correct some mistakes. When asked why the complaint contained allegations from a different lawsuit, Respondent attributed this to his law firm's limited resources.

135. On March 20, 2013, Mr. Tarkow accepted service by fax of a 59 page "Amended Complaint" which Respondent had signed on March 19, 2013. (Ex. 109) The fax transmission notations in the upper left corner of the document indicate that Pages 1 through 18 of the document were transmitted between 6:17 PM and 6:23 PM on March 19, 2013, that Pages 19 through 38 of the document were transmitted between 6:41 PM and 6:47 PM on March 19, 2013, and that Pages 39 through 59 of the document were transmitted between 6:52 PM and 6:59 PM on March 19, 2013. It is Respondent's position that because this document was transmitted in three installments, it did not constitute service of the "Amended Complaint." This position is rejected by the undersigned Referee. The fax transmission of the "Amended Complaint" did satisfy the requirements of Minn. R. Civ. P. 5.02(c) and did constitute

service despite the fact that the document was divided into three installments for fax transmission.

136. The “Amended Complaint,” removed the cut and paste allegations from a different lawsuit and corrected the inconsistent statements with respect to Barber’s age, but continued to falsely state that the MIA had terminated Barber’s employment, continued to contain incomplete sentences, continued to contain blank spaces where factual allegations should have been set out, and continued to refer to an Exhibit A which was not attached.

137. 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.”

138. On March 21, 2013, Respondent, without leave of the court or written consent of opposing counsel, served a second and different version of the “Amended Complaint.” (Ex. 110)

139. The “Amended Complaint” served on March 21, 2013, continued to falsely state that the MIA had terminated Barber’s employment, continued to contain incomplete sentences, and continued to make reference to an Exhibit A which was not attached.

140. When initially asked by opposing counsel about serving two versions of the “Amended Complaint,” Respondent denied that there were any differences in the two documents. This statement was false. When pressed, Respondent acknowledged that there were substantial new factual allegations in the “Amended Complaint” served on March 21, 2013.

141. On or about April 4, 2013, defense counsel served and filed a notice of

motion and motion to dismiss the “Amended Complaint.”

142. At an April 30, 2013, scheduling conference, the court determined that the motion to dismiss should apply to the “Amended Complaint” served on March 21, 2013. Respondent was directed to file that version of the “Amended Complaint.” Further, the court stayed further discovery pending the court’s ruling on the motion to dismiss.

143. The hearing on defense counsel’s 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. Respondent confirmed that the June 5 date was acceptable.

144. On May 8, 2013, defense counsel served and filed an amended 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 prior to the hearing.

145. Although directed by the court to file the “Amended Complaint” served on March 21, 2013, at the scheduling conference conducted on April 30, 2013, Respondent did not file the document until two days prior to the date set for the hearing of defense counsel’s motion to dismiss. Further, Respondent failed to serve and file a response to the motion to dismiss by the deadline established in Minn. Gen. R. Prac. 115.03(b).

146. On June 3, 2013, at 1:37 AM, Respondent filed a letter with the court (Ex. 118) requesting a continuance of the June 5 hearing and further requesting that the court “enlarge” the time period within which Respondent could respond to the pending

motion. This letter was sent to the court after Respondent's response to the motion was due and two days prior to the date set for the hearing of the motion.

147. Respondent's requests were denied by the court in a letter dated June 4, 2013, and transmitted to Respondent via email. (Ex, 119)

148. 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 Respondent's letter to "not a word over five pages" in "an ordinary typed font." (Ex. 120, p. 57)

149. Despite the court's directive, Respondent submitted a six page letter with 45 pages of exhibits appended. (Ex. 121)

150. For reasons unrelated to Respondent's conduct set forth in the preceding findings, the court granted the motion to dismiss on the merits of the case.

AGGRAVATING FACTORS

151. While this disciplinary proceeding was pending, Respondent committed additional professional misconduct in the *Barber* matter.

A. On or about November 4, 2013, Respondent filed a notice of appeal of the district court's dismissal in the *Barber* matter and indicated that a full transcript was necessary.

B. By way of a notice of case filing dated November 7, 2013, the Office of the Clerk of the Appellate Courts notified Respondent that his notice of appeal was deficient in that it lacked an original signature. Respondent was directed to correct this deficiency within 10 days. The notice of case filing further advised Respondent that "Appellant must order transcript

within 10 days and file completed certificate as to transcript within 10 days of ordering.” (Ex. 123)

C. In an order issued by the Minnesota Court of Appeals dated December 12, 2013, it was noted that a transcript certificate had not been filed and that Respondent had filed a photocopy of the notice of appeal rather than the original notice of appeal containing Respondent’s original signature. The December 12, 2013, order further noted that Respondent had failed to file an affidavit of service with respect to the statement of the case filed on November 18, 2013. The December 12, 2013, Order directed Respondent to correct all three of these deficiencies by December 27, 2013. Respondent was specifically advised that his failure to comply with the dictates of the December 12, 2013, order “may result in the imposition of sanctions, including dismissal of the appeal.” (Ex. 124)

D. By reason of Respondent’s failure to comply with the Minnesota Rules of Civil Appellate Procedure, in general, and Respondent’s noncompliance with the December 12, 2013, order, Barber’s appeal was dismissed. Respondent was, however, permitted to serve and file a motion to reinstate the appeal on conditions set out in the order issued by the Minnesota Court of Appeals on January 10, 2014, including a condition that the motion to reinstate be served and filed on or before January 23, 2014. (Ex. 125)

E. On January 23, 2014, Respondent filed a motion to reinstate the appeal.

F. By order dated February 11, 2014, and filed February 12, 2014, the Minnesota Court of Appeals granted respondent's motion to reinstate the appeal. The order specifically provided that Respondent was to serve and file the appellant's brief no later than March 4, 2014, and further provided: "No extension motions will be entertained. Appellant's failure to serve and file the brief as directed by this order will result in dismissal of the appeal, without further notice." (Ex. 126)

G. Respondent failed to file appellant's brief by the March for 2014, deadline set by the Minnesota Court of Appeals. Instead, on March 4, 2014, Respondent served a motion to reconsider the order dated February 11, 2014, to grant appellant a 10 day extension to file appellant's brief, to strike the statement of the case filed by opposing counsel, to award attorneys fees against opposing counsel, and to disqualify opposing counsel.

H. By order dated March 18, 2014, noting that Respondent had "shown no justifiable cause for the failure to file the brief" (Ex. 127, p. 3), the Minnesota Court of Appeals denied Respondent's motion in all respects and dismissed the Barber appeal. (Ex. 127)

152. Respondent's failure to comply with court orders and court rules continued during the course of this disciplinary proceeding.

A. On November 14, 2013, Respondent was served with charges of unprofessional conduct. In that document Respondent was advised that his answer to the charges must be served within 14 days. (Ex.129)

B. By letter dated November 30, 2013, and received by the Office of Lawyers Professional Responsibility on December 2, 2013, Respondent requested an extension of the time within which his answer must be served. (Ex. 130)

C. Respondent was granted an extension to December 9, 2013. (Ex. 131)

D. By letter dated December 10, 2013, the Director advised Respondent that his answer to the charges of unprofessional conduct had not as yet been received. This letter was transmitted to Respondent both by fax and US Mail. (Ex. 132)

E. On December 11, 2013, Respondent signed his response to the charges of unprofessional conduct and presumably served the Director. (Ex. 133)

F. On January 14, 2014, the Director mailed the petition for disciplinary action to Respondent along with an admission of service to be signed by Respondent. A letter which accompanied the petition for disciplinary action requested that the admission of service be signed and returned to the Director within 10 days. (Ex. 135)

G. On January 29, 2014, Respondent spoke by telephone with Assistant Director Timothy Burke. Mr. Burke inquired of Respondent whether he had signed the admission of service. Respondent stated that he had not yet done so. Respondent requested a 10 day extension of the time in which to answer the petition for disciplinary action. Mr. Burke advised Respondent that the Director could not grant such an extension and that

only the Supreme Court could grant an extension of the time to answer a petition. Mr. Burke further advised respondent that the Director would not object to a motion by Respondent for a 10 day extension. (Ex. 138)

H. On January 29, 2014, Respondent signed the admission of service. (Ex. 136) Because the admission of service was signed on January 29, 2014, Respondent's answer to the petition for disciplinary action was due February 18, 2014. (Rule 13(a), Rules on Lawyers Professional Responsibility) Respondent failed to serve or file an answer to the petition for disciplinary action or a motion to extend the time for submission of his answer by February 18, 2014. (Ex. 138)

I. On February 28, 2014, Respondent signed and mailed to the Director a motion for extension of time to obtain counsel and to respond to petition for disciplinary action. This motion was received by the Director On March 3, 2014. (Ex.137)

J. By order dated March 20, 2014, the Supreme Court granted Respondent's motion for an extension of time and directed: "Within 30 days of the date of this order, [R]espondent must file and serve his answer to the petition for disciplinary action." (Ex. 139) As a result of this order, Respondent's answer to the petition for disciplinary action was due April 19, 2014.

K. Respondent failed to serve or file an answer to the petition for disciplinary action on or before April 19, 2014.

L. On April 21, 2014, Respondent spoke with Assistant Director Timothy

Burke on the telephone requesting a further extension to submit his answer to the petition for disciplinary action.

M. By letter dated April 22, 2014, Mr. Burke informed Respondent that the Director objected to any further extensions. Mr. Burke further informed Respondent that having not submitted an answer, he was in default. Mr. Burke informed Respondent that if his answer was not received within seven days, the Director would serve and file a motion for summary relief. (Ex. 140)

N. The Director did not receive service of an answer to the petition for disciplinary action by April 29, 2014.

O. On April 30, 2014, the Director served and filed a motion for summary relief together with a supporting affidavit. (Ex. 141)

P. On May 2, 2014, Respondent signed an answer to the petition for disciplinary action and mailed a copy to the Director. (Ex. 142) The answer was received by the Office of Lawyers Professional Responsibility on May 5, 2014. The answer was filed with the court on May 5, 2014.

Q. On May 5, 2014, the Director served and filed a motion to withdraw the motion for summary relief previously filed and to strike a portion of Respondent's answer. (Ex. 143)

R. By order dated and filed May 29, 2014, the Supreme Court accepted Respondent's answer which had been filed on May 5, 2014, granted the Director's motion to withdraw the previously filed motion for summary relief, and granted the Director's motion to strike a portion of

Respondent's answer. (Ex. 145)

S. On May 14, 2014, the Director served on Respondent interrogatories and requests for production of documents. (Ex. 144) Pursuant to the Minnesota Rules of Civil Procedure, Respondent's responses were due within 30 days of the date of service.

T. Respondent failed to answer the interrogatories and failed to respond to the requests for production of documents.

U. By letter dated June 19, 2014, the Director informed Respondent that the Director had received no responses to the interrogatories nor to the requests for production of documents. The director requested that Respondent respond to the interrogatories and the request for production of documents by the close of business on June 26, 2014. The Director further advised Respondent that should he fail to do so, the Director intended to bring a motion to compel. (Ex. 146)

V. Respondent failed to provide answers to the interrogatories or to produce the requested documents.

W. On June 27, 2014, the Director brought a motion to compel. (Ex. 150)

X. On July 11, 2014, the undersigned Referee ordered Respondent to provide full and complete responses to the interrogatories and to produce all requested documents no later than July 15, 2014. (Ex. 152)

Y. Respondent failed to provide full and complete responses to the interrogatories and to produce all requested documents by July 15, 2014.

153. Respondent is a person with substantial experience in the practice of law.

Respondent testified that he graduated from law school in 1988, passed the bar examination in February 1989, and was admitted to practice in the State of Minnesota on May 12, 1989. He further testified that he is admitted to practice in the State of Colorado, Washington D.C., the United States District Court for the District of Minnesota, and the Eighth Circuit Court of Appeals. Respondent served a judicial clerkship of two years. He has represented clients in employment matters, in personal injury matters, and in wrongful death matters. He has conducted "about 25" jury trials and "less than five" court trials over the course of his career. Given the breadth of his experience, Respondent should have a working knowledge of the various rules governing court procedures as well as those governing the professional conduct of attorneys.

154. Respondent neither expresses nor displays remorse for his misconduct or for the harm it has caused.

MITIGATING FACTORS

155. The undersigned Referee is unable to find any factor which mitigates Respondent's misconduct.

CONCLUSIONS OF LAW

1. As admitted by Respondent, Respondent's conduct in the Flores matter violated Rules 1.1, 1.3, 3.1, 3.2, 3.4(c), and 8.4(d) MRPC.

2. As admitted by Respondent, Respondent's conduct in the Benford matter violated Rules 1.3, 3.2, 3.4(c) and (d), and 8.4(d), MRPC.

3. As admitted by Respondent, Respondent's conduct in the Davis matter violated Rules 1.3, 1.4, 3.2, 3.4(c) and (d), and 8.4(d), MRPC.

4. As admitted by Respondent, Respondent's conduct in the Hewitt matter violated Rules 1.3, 3.2, 3.4(c), and 8.4(d), MRPC.

5. Respondent's conduct in the Barber matter violated Rules 1.3, 3.2, 3.3(a)(1), 3.4©), 4.1, and 8.4(c) and (d), MRPC.

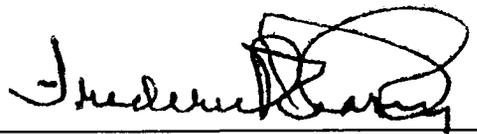
RECOMMENDATION FOR DISCIPLINE

Respondent has committed multiple acts of professional misconduct involving multiple matters over an extended period of time, including acts of misconduct which continued during the course of this disciplinary proceeding. Respondent's acts of misconduct have resulted in claims lost by clients and the expenditure of unnecessary time and resources by the courts and opposing counsel in dealing with Respondent's conduct. Accordingly, the undersigned Referee makes the following recommendation for discipline:

1. That Respondent be suspended from the practice of law in the State of Minnesota, ineligible to apply for reinstatement for a minimum of one year.
2. That Respondent comply with the requirements of Rule 26, RLPR.
3. That Respondent pay to the Director \$900 in costs, plus disbursements, pursuant to Rule 24, RLPR.
4. That after a minimum of one year of suspension has elapsed, Respondent may petition for reinstatement pursuant to Rule 18, RLPR, if he can demonstrate by clear and convincing evidence that:
 - a. He has complied with the requirements of Rule 26,RLPR;
 - b. He has paid \$900 in costs, plus disbursements, to the Director pursuant to Rule 24, RLPR;

- c. He has successfully completed and obtained a passing grade on the multi-state professional responsibility examination within 12 months of the date of the Supreme Court's suspension order pursuant to Rule 18(e), RLPR;
- d. He has satisfied all continuing legal education requirements pursuant to Rule 18(e), RLPR; and
- e. He is fit to practice law and professional misconduct is not likely to again occur.

Dated: December 3, 2014.



Frederick J. Casey
Referee