

FILE NO. A07-663

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against ROBERT SCOTT WEISBERG,
a Minnesota Attorney,
Registration No. 183945.

**THIRD SUPPLEMENTARY
PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this third supplementary petition for disciplinary action pursuant to Rules 10(e) and 12(a), Rules on Lawyers Professional Responsibility (RLPR).

Respondent is currently the subject of a March 26, 2007, petition for disciplinary action, an April 26, 2007, supplementary petition for disciplinary action and a November 1, 2007, second supplementary petition for disciplinary action. The Director has investigated further allegations of unprofessional conduct against respondent.

Respondent has committed the following unprofessional conduct warranting public discipline:

TWELFTH COUNT

False Statements to the Court

68. On November 15, 2005, respondent's wife filed a petition for dissolution of marriage in Hennepin County district court. The case was placed on inactive status by order filed December 13, 2006. On December 7, 2007, respondent's wife requested the case be reactivated. Upon reactivation, the case was initially assigned to Hennepin County referee Timothy Mulroony. The case was eventually assigned to Hennepin County district court Judge Tanja K. Manrique.

69. Respondent's divorce was scheduled for a pretrial conference in front of Judge Manrique on October 6, 2008, at 2:30 p.m. At approximately 1:50 p.m., respondent contacted the clerk of court and stated that he would not be available to attend the hearing pursuant to "instructions" from Judge Peter Albrecht, who presides over the criminal proceedings against respondent in Hennepin County district court. See the Director's March 27, 2007, petition for discipline. The clerk of court also received an unsigned fax from "The Weisberg Office" repeating the information respondent related in the telephone call.

70. After receiving the telephone call from respondent, Judge Manrique called Judge Albrecht to confirm that respondent was unavailable for the hearing date. Judge Albrecht informed Judge Manrique that no orders had been issued in the criminal case that would have prevented respondent's attendance at the hearing. Respondent's statements to Judge Manrique regarding his availability and Judge Albrecht's "instructions" were false.

71. On October 29, 2008, Judge Manrique issued an order containing factual findings that respondent had made a false statement to the court.

72. Respondent's conduct in making false statements to the court violated Rules 3.3(a)(1) and 8.4(c) and (d), Minnesota Rules of Professional Conduct (MRPC).

THIRTEENTH COUNT

Failure to Comply with Court Orders

73. On May 6, 2008, the district court issued an order in respondent's divorce proceedings that both respondent and his wife should submit to a chemical dependency evaluation and to cooperate with family court services in completing the evaluation.

74. Respondent did not return communications from family court services. Respondent did not complete a chemical dependency evaluation or submit to drug testing. By order dated June 18, 2008, the matter was set for hearing on July 7, 2008.

75. Respondent attended the review hearing and admitted to failing to comply with court ordered hair follicle testing. During the hearing, the court discussed criminal charges for possession of a controlled substance, careless driving and possession of drug paraphernalia. *See* Director's March 26, 2007, petition for discipline and November 1, 2007, second supplementary petition for discipline. Respondent agreed to immediately submit to hair follicle testing. The district court issued an order dated July 31, 2008, which contained findings stating the court was gravely concerned about respondent's chemical health and ordering respondent to immediately comply with family services in submitting to hair follicle testing.

76. That same day the district court also issued an order to show cause setting a hearing for October 6, 2008, as to why respondent should not be held in contempt for violating an April 16, 2008, court order directing him to abstain from the use of non-prescription drugs given his possession of a marijuana pipe as charged in criminal charges against him. *See* the Director's November 1, 2007, second supplementary petition for discipline.

77. On August 8, 2008, the guardian ad litem (GAL) assigned to respondent's divorce proceedings submitted an interim report that respondent failed to comply with the court's previous order to submit to a hair follicle drug test. The GAL requested the court's assistance to compel respondent's compliance.

78. On August 12, 2008, the district court issued an order directing respondent to immediately comply with the prior orders requiring him to submit to hair follicle testing. Respondent was directed to appear at Minnesota Monitoring for testing no later than August 18, 2008. The court noted:

The Respondent is hereby placed on notice that if he fails to comply with this order, the court may issue an order to show cause as to why respondent should not be held in constructive civil contempt of court. If the respondent is adjudicated in constructive civil contempt of court, he may be sentenced to a term of conditional confinement . . .

The order also noted that respondent tested positive for methamphetamine use. *See* Director's November 1, 2007, second supplementary petition for discipline. Despite the court's order, respondent did not complete a hair follicle test.

79. Respondent failed to appear at the previously court ordered review and pretrial hearing for October 6, 2008. Following the hearing, the district court issued an order dated October 29, 2008, which noted respondent's numerous failures to comply with court orders directing him to submit to drug testing among other things. The court order found that respondent's non-compliance with formal custody prejudiced his wife and prevented her from adequately preparing for trial. Pursuant to Rule 305.02(b) and (c) of the Minnesota Rules of Civil Procedure, the district court granted a default judgment in favor of respondent's wife on all marital assets. Due to respondent's failure to comply with drug testing and family services, the district court terminated respondent's temporary custody of the parties' minor children and directed a child in need of services or protection petition be filed immediately.

80. Respondent's failure to attend hearings and comply with numerous court orders regarding drug testing and discovery in his dissolution proceeding violated Rules 3.4(a) and (c) and 8.4(d), MRPC.

FOURTEENTH COUNT

Criminal Charges

Hennepin County

81. The allegations contained in paragraphs 27 to 28 of the Director's March 26, 2007, petition for disciplinary action are hereby re-alleged.

82. On September 24, 2008, respondent pled guilty to one count of possession of a controlled substance in violation of Minn. Stat. Sec. 152.025, subd. 2(1), a felony in the fifth degree.

83. Respondent is scheduled to be sentenced on January 8, 2009.

City of St. Louis Park

84. The allegations contained in paragraphs 52 to 53 of the Director's November 5, 2007, second supplementary petition for disciplinary action are hereby re-alleged.

85. On March 24, 2008, respondent pled guilty to one count of careless driving in violation of Minn. Stat. Sec. 169.13, subd. 2, a misdemeanor, and one count of possession of drug paraphernalia in violation of Minn. Stat. Sec. 152.092, a petty misdemeanor. Respondent was sentenced to 30 days in the workhouse, 27 days stayed and two days credit for time served, a fine and probation.

86. The rule violations alleged in paragraph 29 of the Director's March 26, 2007, petition for disciplinary action, and paragraph 54 of the Director's November 5, 2007, second supplementary petition for disciplinary are hereby re-alleged.

FIFTEENTH COUNT

Neglect, Inadequate Client Communication and Failure to Account

Martha Henderson Matter

87. In 2004 Martha Henderson retained respondent to represent her in a personal injury matter.

88. A settlement was reached in Henderson's personal injury matter. On August 6, 2004, respondent issued to Henderson a check in the amount of \$3,978.34 drawn on respondent's Bremer Bank trust account no. xxxx-1399 for her share of the settlement proceeds.

89. In the interest of ensuring that she did not spend the settlement proceeds frivolously, Henderson held the check given to her by respondent and did not negotiate it.

90. In late 2007, Henderson determined to negotiate the check. Henderson called respondent's personal injury law office, but learned that his number had been disconnected.

91. Henderson called respondent's collection law office, and left at least one message for him. Respondent failed to return Henderson's calls.

92. Henderson located and called the associate in respondent's law firm who had handled her case, who was then working for another firm. That associate was not able to put Henderson in contact with respondent.

93. Henderson called Bremer Bank and learned that the trust account on which respondent's check was issued had been closed. In fact, the Bremer Bank trust account was closed in or about September 2006, although respondent maintained at least two other trust accounts.

94. On June 18, 2008, Henderson wrote to respondent at his last known business address. Henderson asked respondent to issue her a replacement check. Respondent did not do so, and did not respond in any way to Henderson's letter.

Sidal Realty Matter

95. In March 2002 Sidal Realty hired respondent to handle collection work on its behalf.

96. As of January 8, 2008, Sidal Realty had referred approximately 250 collection accounts to respondent.

97. From approximately January 8, 2008, to the present, respondent has not communicated with Sidal Realty, has not returned Sidal Realty's collections files and has not tendered any funds collected on behalf of Sidal Realty.

98. During the period since January 8, 2008, Sidal Realty has unsuccessfully attempted to reach respondent by e-mail and telephone. In addition, on March 28, 2008, Sidal Realty wrote to respondent at his last known business address. Respondent has not responded to Sidal Realty's efforts to communicate with him.

99. Sidal Realty enclosed with its March 28, 2008, letter to respondent a \$165.85 check that Sidal Realty had received directly from a debtor. Sidal Realty asked respondent to remit to it \$99.15, which was its share of the debtor's payment. Respondent has not remitted this sum to Sidal Realty.

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100. Because respondent has failed to cooperate with the Director in the investigation of the Sidal Realty complaint, *see* paragraphs 116 to 118, below, and has not responded to Sidal Realty's communications, it is not known whether respondent has collected funds on Sidal Realty's behalf that he has failed to tender to Sidal Realty.

BT&A Construction

101. In February 2003 BT&A Construction ("BT&A") hired respondent to handle collection work on its behalf.

102. As of March 17, 2008, BT&A had referred to respondent approximately \$1,000,000 in collection accounts. Among those accounts were those on which respondent had been receiving on a regular, monthly basis some amount of funds garnished from BT&A debtors.

103. From approximately March 17, 2008, to the present, respondent has not communicated with BT&A, has not returned BT&A's collection files and has not tendered any funds collected on behalf of BT&A.

104. During the period March 17, 2008, BT&A has unsuccessfully attempted to reach respondent by telephone and has visited his office on at least one occasion. In addition, on May 16, 2008, BT&A wrote to respondent at his last known business address. Respondent has not responded to BT&A efforts to communicate with him.

105. Because respondent has failed to cooperate with the Director in the investigation of the BT&A complaint, *see* paragraphs 119 to 120, below, and has not responded to BT&A's communications, it is not known whether respondent has collected funds on BT&A's behalf that he has failed to tender to BT&A.

Foley Boulevard Animal Hospital

106. In 2006 Foley Boulevard Animal Hospital ("Foley") hired respondent to handle collection work on its behalf.

107. Respondent has not communicated with Foley, has not returned Foley's collection files and has not tendered any funds collected on behalf of Foley.

108. Foley has unsuccessfully attempted to reach respondent. Respondent has not responded to Foley's efforts to communicate with him.

109. Because respondent has failed to cooperate with the Director in the investigation of the Foley complaint, *see* paragraph 121, below, and has not responded to Foley's communications, it is not known whether respondent has collected funds on Foley's behalf that he has failed to tender to Foley.

110. Respondent's failure to respond to communications received from Henderson, Sidal Realty, BT&A and Foley, violated Rule 1.4(a)(4), MRPC.

111. Respondent's neglect of the Sidal Realty, BT&A and Foley collection matters, failure to return those clients' collection files and failure to account to those clients for funds he has collected on their behalf, violated Rules 1.3, 1.16(d) and 1.15(c)(1), MRPC.

SIXTEENTH COUNT

Additional Non-Cooperation

Martha Henderson Matter

112. On January 8, 2008, the Director received a complaint against respondent from Martha Henderson.

113. On January 10, 2008, the Director mailed to respondent a copy of Henderson's complaint, together with a notice of investigation. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

114. On May 5, 2008, the Director wrote to respondent and advised that, pursuant to Rule 8(c), RLPR, the Director had obtained investigatory subpoenas, described the efforts taken to obtain respondent's trust account records, identified the records so obtained and offered to provide respondent with copies of those records. Respondent made no response to the Director's letter.

115. On May 27, 2008, the Director wrote to respondent and requested his appearance in the Director's Office on June 10, 2008, to discuss the Henderson matter,

his failure to cooperate with the Director's investigations and the present state of his law practice. Respondent failed to appear for the June 10 meeting or to contact the Director to indicate that he was unavailable to attend.

Sidal Realty Matter

116. On April 30, 2008, the Director received a complaint against respondent from Sidal Realty. On May 6, 2008, the Director mailed respondent a copy of the Sidal Realty complaint together with a notice of investigation. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

117. On May 27, 2008, the Director wrote to respondent and requested his appearance in the Director's Office on June 10, 2008, to discuss the Sidal Realty matter, his failure to cooperate with the Director's investigations and the present state of his law practice. Respondent failed to appear for the June 10 meeting or to contact the Director to indicate that he was unavailable to attend.

118. On July 9, 2008, the Director wrote again to respondent to request his written response to the Sidal Realty complaint. Respondent failed to respond.

BT&A Construction Matter

119. On August 21, 2008, the Director received a complaint against respondent from BT&A Construction. On August 26, 2008, the Director mailed respondent a copy of the BT&A Construction complaint, together with a notice of investigation. The notice requested respondent's written response to the complaint within 14 days. Respondent failed to respond.

120. On September 12, 2008, the Director wrote to respondent and against requested his written response to the BT&A Construction complaint. Respondent failed to respond.

Foley Boulevard Animal Hospital Matter

121. On November 3, 2008, the Director received a complaint against respondent from Foley Boulevard Animal Hospital. On November 6, 2008, the Director

mailed respondent a copy of the complaint, together with a notice of investigation. The notice requested respondent's written response to the complaint with 14 days.

Respondent failed to respond.

False Statements to the Court and Failure to Comply with Court Orders

122. On November 6, 2008, the Director opened a file on respondent's failure to comply with court orders and making false statements to the court during his divorce. That same day the Director mailed respondent a copy of the complaint, together with a notice of investigation. The notice requests respondent's written response to the complaint within 14 days. Respondent failed to respond.

123. Respondent's failure to cooperate in the Director's investigation of the above complaints violated Rule 8.1(b), MRPC, and Rule 25, RLPR.

SEVENTEENTH COUNT

Additional Unauthorized Practice of Law

124. The allegations contained in paragraphs 55 to 58 of the Director's November 5, 2007, second supplementary petition for disciplinary action are hereby re-alleged.

125. On at least five occasions during the period August through October 2008, respondent communicated with the court in his marriage dissolution proceeding using "Weisberg Law Office" letterhead, facsimile cover sheets and/or envelopes.

126. During this period of time, respondent's Minnesota law license had been suspended for failing to pay his annual attorney registration fee. Respondent's use of letterhead, facsimile cover sheets and envelopes that implied he was a properly licensed lawyer was misleading and improper.

127. Respondent's use of letterhead, facsimile cover sheets and envelopes that identified him as a lawyer after his law license had been suspended for failing to pay his attorney registration fee, violated Rule 5.5(a) and (b)(2), MRPC.

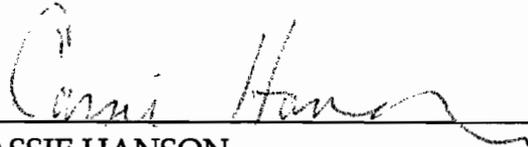
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: Nov 26, 2008.



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and



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This supplementary petition is approved for filing pursuant to Rule 10(e), RLPR, by the undersigned.

Dated: Nov. 24, 2008



KENT A. GERNANDER
CHAIR, LAWYERS PROFESSIONAL
RESPONSIBILITY BOARD