

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

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

**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 petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on October 16, 1987. Respondent currently practices law in St. Louis Park, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

A. On December 5, 2000, respondent was placed on private probation for two years for failing to maintain proper trust account books and records and failing to supervise office staff in violation of Rules 1.15(h) and 5.3, Minnesota Rules of Professional Conduct (MRPC), and Lawyers Professional Responsibility Board Opinion No. 9.

B. On August 26, 2002, respondent was issued an admonition for attempting to collect a debt on behalf of a client after already accepting a reduced amount in accord and satisfaction of the debt in violation of Rules 3.1 and 8.4(d), MRPC.

C. On February 25, 2005, respondent was placed on private probation for two years for failing to forward a settlement offer in a client matter; failing to convey a settlement offer in a client matter without discussing the offer with the client or obtaining the client's consent; failing to return client communications from at least two clients; neglecting client matters, which resulted in some claims expiring under the statute of limitations; entering into a contingent fee agreement without a written fee agreement; losing client files; and failing to return client files in violation of Rules 1.2, 1.3, 1.4, 1.5(c), 1.15(c)(4), and 1.16(d), MRPC.

FIRST COUNT

Neglect of Client Matters

Easybar Beverage Systems Matter

1. Easybar Beverage Systems (Easybar) is a company that manufactures and supplies beverage control systems. T.Z. is the owner of Easybar. In the summer of 2005, Easybar retained respondent to pursue a collection claim in the amount of approximately \$20,000 against The King of Diamonds. In June 2006, respondent served and filed a summons and complaint on behalf of Easybar against The King of Diamonds.

2. Over the course of the litigation, respondent repeatedly failed to respond to communications from opposing counsel about trial issues and failed to appear at several hearing dates.

3. By order dated February 28, 2006, the district court ordered the parties to complete mediation by no later than April 10, 2006. The district court specifically stated that Easybar's claim would be dismissed with prejudice if Easybar failed to follow the court's revised scheduling order. Respondent failed to complete mediation by the court ordered deadline.

4. As a result, the opposing party brought a motion to dismiss Easybar's claim on May 3, 2006. Attorneys Mark Vavreck and Chris Gonko, who were associates in one of respondent's law firms at the time, drafted a memorandum and affidavit opposing dismissal of the case. Respondent signed both documents and assured T.Z. that he would be present at the hearing on the morning of May 31, 2006. Gonko decided to attend the hearing under fear that respondent would fail to appear. The motion to dismiss was the first case on the morning docket. Respondent was not present when the court called the case. Gonko called respondent's cell phone and respondent indicated that he was running late. Respondent claimed that he was in his car but thirty minutes away from the courthouse. Gonko located T.Z., whom he had never met before, and explained that he would be appearing on behalf of Easybar in place of respondent. Respondent did not make it for the hearing.

5. Despite Gonko's presence at the hearing, the district court entered an order dated June 1, 2006, dismissing Easybar's claim with prejudice and ordering Easybar to pay the opposing party's attorney's fees and costs in bringing the motion. In dismissing the claim the district court specifically concluded that respondent had missed court appearances and failed to communicate with the opposing counsel regarding trial issues. The district court stated that respondent's behavior "amounts to inexcusable attorney neglect."

6. On June 17, 2006, T.Z. sent respondent a fax indicating that respondent had repeatedly failed to communicate with him, that respondent had failed to inform him of the motion to dismiss his case or the hearing date, and that he had only learned of the motion and hearing date and location from Gonko with whom he had never spoken before.

7. On June 19, 2006, T.Z. faxed respondent and requested that respondent forward the collection file to attorney Rikke Dierssen-Morice. Respondent failed to respond. T.Z. unsuccessfully contacted respondent by phone several more times and

sent him a second fax on June 23, 2006. Respondent told T.Z. that his file was in his vehicle but failed to return the file. On June 27, 2006, T.Z. sent respondent a third fax requesting his file.

8. Respondent and T.Z. eventually entered into an agreement whereby respondent agreed to repay T.Z. \$22,000 to compensate for Easybar's claim being dismissed due to respondent's negligence. To date respondent has repaid T.Z. \$15,000.

BT&A Construction Matter

9. BT&A Construction (BTA) retained respondent to initiate collection proceedings against Daniel Vishnevetsky. Respondent filed a summons and complaint on behalf of BTA. The complaint was insufficiently pled and contained only two sentences. The complaint stated only that Vishnevetsky owed BTA \$50,000 "pursuant to contract" and that "there remains a balance due and owing" on the contract.

10. On September 14, 2006, counsel for Vishnevetsky brought a motion to dismiss BTA's claim based upon insufficient pleadings. Respondent failed to amend the complaint. On October 25, 2006, respondent failed to appear at the hearing on the motion to dismiss. The district court subsequently dismissed BTA's claim by order dated November 6, 2006.

11. Respondent's conduct violated Rules 1.1, 1.3, 1.4, 3.2, and 8.4(d), MRPC.

SECOND COUNT

Pattern of Failing to Timely Remit and Account for Settlement Funds

Ibrahim Farah Matter

12. Farah retained respondent to represent him on a legal matter. In December 2006, Farah received a phone call from respondent indicating that his case had been settled and that Farah should come to respondent's office to sign the settlement check. On January 2, 2007, Farah signed the settlement check.

13. Farah made several unsuccessful attempts to contact respondent about signing the settlement check. Farah went to respondent's law office located on 800 N. Washington Avenue, Suite 600, Minneapolis, MN 55401, but the law office was abandoned. Farah subsequently filed an ethics complaint.

14. The Director had several conversations with David Miller, a non-lawyer employee in respondent's law office, about locating Farah's file and issuing the settlement check. On February 12, 2007, the Director also sent respondent a letter scheduling a meeting for February 20, 2007. The Director requested that respondent be prepared to discuss transferring various client files to substitute counsel. Respondent failed to respond and failed to attend the meeting. After charges of unprofessional conduct were issued against respondent, he subsequently located Farah's file and disbursed the settlement check to Farah on March 6, 2007.

Daniel Contreras Matter

15. On January 2, 2006, Contreras was injured in a car accident. On February 20, 2006, Contreras retained respondent to represent him on a personal injury claim. In December 2006, respondent informed Contreras that his claim had been settled and that he should come into respondent's law office to sign the settlement check. Contreras went to respondent's Washington Avenue law office but the office was abandoned and that someone in the building informed him that respondent had moved his law firm. Contreras had not received notice of respondent's move.

16. Contreras called respondent's law firm and left several messages with the representative of an answering service but received no response. Contreras was eventually told by a representative of respondent's answering service that the voicemail was full and that respondent was not checking his messages. Contreras has had no further contact with respondent or received any accounting regarding the settlement proceeds.

Kamal Mohamed Matter

17. Mohamed retained respondent to represent him on a legal matter. Respondent settled Mohamed's legal matter and requested that Mohamed sign the settlement check. In January 2007, Mohamed left multiple messages for respondent on his answering service requesting an update on the settlement funds and to arrange a time to sign the settlement check. Respondent failed to respond.

18. Mohamed contacted Gonko and asked about the location of the settlement check. Gonko gave Mohamed the numbers for respondent's various law offices. Respondent has at times maintained three different law offices. On February 15, 2007, Mohamed contacted Gonko and indicated that respondent had failed to return all of his phone calls. Mohamed subsequently retained Gonko to handle his legal matter. Gonko has unsuccessfully attempted to locate the settlement check on behalf of Mohamed.

19. Respondent's conduct violated Rules 1.3, 1.4, and 1.15(c)(1) and (4), MRPC.

THIRD COUNT

Failure to Timely Return Client Files

20. Respondent moved his personal injury practice located at 800 N. Washington Avenue, Suite 600, Minneapolis, MN 55401. Respondent did not notify clients of his move or provide a forwarding address. Respondent failed to return communications from numerous clients and substitute counsel requesting their files.

21. In early January 2007, attorneys Mark Vavreck, Jody Martineau, Chris Gonko, and Nadia De La Rosa left employment with respondent's law firm and formed a new firm entitled Scrimshire, Martineau, Gonko & Vavreck. Approximately 160 clients of respondent's law firm retained Scrimshire, Martineau, Gonko & Vavreck to take over their cases. On January 25, 2007, Scrimshire, Martineau, Gonko & Vavreck sent respondent engagement letters signed by these clients indicating that the client had

retained the Scrimshire, Martineau, Gonko & Vavreck law firm and requesting that respondent forward the client file to the firm. Respondent failed to respond.

22. On February 7, 2007, Scrimshire, Martineau, Gonko & Vavreck followed up with a second written request that respondent transfer the client files. Respondent failed to respond.

23. Respondent's continued failure to return client files has harmed many of these clients. Many of these clients are unable to pursue their cases and are in danger of having their cases dismissed due to inability to prosecute. For example, George Lewis retained Scrimshire, Martineau, Gonko & Vavreck to take over his personal injury claim. Respondent's failure to turn over Lewis' client file necessitated that an arbitration hearing date previously scheduled be postponed.

24. On February 12, 2007, the Director sent respondent a letter scheduling a meeting for February 20, 2007, and forwarded respondent a copy of a list of client files that Scrimshire, Martineau, Gonko & Vavreck had requested. The Director stated that these clients were in immediate need of their client files and that respondent should be prepared to discuss transferring these files. Respondent failed to attend the meeting.

25. Approximately 171 clients requested transfer of their client files through either the Scrimshire, Martineau, Gonko & Vavreck law firm or other successor counsel. Only after charges of unprofessional conduct were issued did respondent return the requested client files.

26. Respondent's conduct violated Rule 1.16(d), MRPC.

FOURTH COUNT

Possession of a Controlled Substance

27. On June 14, 2006, respondent's vehicle was stopped by a police officer who executed a search warrant. The police found methamphetamine and ecstasy in respondent's vehicle. The police also seized a Kel Tac .40 caliber submachine gun, two

expandable batons, a Twin Turbo Uniden brand scanner, and ammunition from the vehicle.

28. On August 30, 2006, respondent was charged with one count of possession of a controlled substance in violation of Minn. Stat. § 152.022, subd. 2(1), which is a felony in the second degree.¹ Respondent was also charged with one count of possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1), which is a felony in the fifth degree.² The criminal charges are currently pending.

29. Respondent's conduct violated Rule 8.4(b), MRPC.

FIFTH COUNT

Non-Cooperation

30. On January 25, 2007, the Director sent respondent a notice of investigation on the complaint of Chris Gonko and Mark Vavreck. Respondent has not responded to the complaint.

31. On February 12, 2007, the Director sent respondent a notice of investigation on the complaint of Ibrahim Farah. Respondent has not responded to the complaint.

32. On February 15, 2007, the Director sent respondent a notice of investigation on the complaint of Daniel Contreras. Respondent has not responded to the complaint.

33. On February 12, 2007, the Director sent respondent a letter scheduling a meeting for February 20, 2007. The Director requested that respondent also respond to the notices of investigation on the above complaints and be prepared to discuss transferring various client files to substitute counsel. Respondent failed to respond.

34. Respondent's conduct violated Rule 8.1(b), MRPC, and Rule 25, Rules on Lawyers Professional Responsibility (RLPR).

¹ Respondent was charged with possessing 6 grams or more of a methamphetamine.

² Respondent was charged for possessing ecstasy.

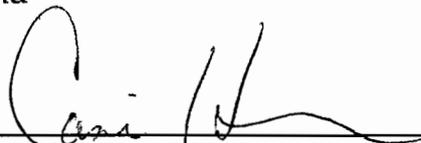
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: March 26, 2007.



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