

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against IRA WILBUR WHITLOCK,
a Minnesota Attorney,
Registration No. 265275.

**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 June 10, 1996. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

Respondent's history of prior discipline, including admonitions, is as follows:

- a. On December 18, 1997, respondent was issued an admonition for failing to obtain a continuance and failing to adequately communicate with his client in violation of Rules 1.3 and 1.4, Minnesota Rules of Professional Conduct (MRPC).
- b. On July 8, 1998, respondent was issued an admonition for failing to timely file a writ and for failing to adequately communicate his fee requirements to his client in violation of Rules 1.3, 1.4 and 3.2, MRPC.
- c. On March 29, 1999, respondent was publicly reprimanded and placed on two years' supervised probation for failing to request the court to

enlarge the one-year limitation period, failing to prepare a petition for a writ of habeas corpus, failing to adequately communicate with his client, failing to timely return his client's file and in making misrepresentations to his client in violation of Rules 1.3, 1.4, 1.16(d), 3.2, 4.1, and 8.4(c) and (d), MRPC.

d. On January 27, 2004, respondent was issued a Panel admonition for failing to inform the tribunal of a material fact known to respondent in an *ex parte* hearing in violation of Rule 3.3(d), MRPC.

e. On September 28, 2004, respondent was placed on two years private probation for negotiating a client's settlement check without his client's endorsement and failing to maintain proper trust account client subsidiary ledgers in violation of Rules 1.15(h) and 8.4(c), MRPC, and Lawyers Professional Responsibility Board Opinion 9.

FIRST COUNT

1. In 2002 respondent was retained by Lou Ann and Bruce Thompson to pursue a dram shop claim arising out of their son's October 27, 2000, death in an alcohol-related automobile accident. The statute of limitations governing dram shop claims, Minn. Stat. § 340A.802, requires that such actions be commenced within two years after the injury. In the case of the Thompsons' claim, an action had to have been commenced no later than October 27, 2002.

2. On October 25, 2002, respondent attempted to commence the dram shop action by effectuating service of a summons and complaint on counsel for the two named defendants by mail pursuant to Rule 4.05, Minnesota Rules of Civil Procedure (MRCP).

3. Respondent did not enclose with the summons and complaint an acknowledgement form or a prepaid return envelope as required by Rule 4.05, MRCP.

4. The attorneys for the defendants did not accept or acknowledge service on behalf of their clients. Respondent did not attempt personal service upon the defendants.

5. On October 29, 2002, the attorney for one of the named defendants wrote to respondent noting that his attempted service was "of no effect" and pointing out that there is a two-year statute of limitations for the case.

6. Respondent did not tell the Thompsons that he had failed to properly serve the summons and complaint within the period required by the statute of limitations until 2004.

7. On February 10, 2005, the Thompsons' dram shop action was dismissed due to respondent's failure to effect proper service within the statute of limitations.

8. Respondent's conduct in failing to competently effect service of process in the dram shop matter and in failing to, in a timely fashion, tell the Thompsons that he had failed to properly effectuate service violated Rules 1.1 and 1.4, 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: April 12, 2006.



BETTY M. SHAW
ACTING DIRECTOR OF THE OFFICE OF
LAWYERS PROFESSIONAL RESPONSIBILITY
Attorney No. 130904
1500 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102-1218
(651) 296-3952

and



PATRICK R. BURNS
SENIOR ASSISTANT DIRECTOR
Attorney No. 134004